



*Australian Au Pair Families Association Incorporated*

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## Working holiday maker visa review – Backpacker tax

The Australian Au Pair Families Association Incorporated (AAPFA) is an industry body representing the interests of Australian Au Pair Host Families hosting au pairs according to internationally acceptable standards, defining the role of an au pair in a family home.

Our response to the proposed tax for working holiday maker (WHM) visa holders (visa subclasses 417 and 462) will focus mainly on the au pair industry. The industry is growing due to the child care crisis in Australia and Australia being a popular country for tourism. The Australian au pair host family community has a widespread interest in attracting au pairs to assist with affordable and flexible child care. Host families have a good reputation world wide for au pairs.

We will show in this submission, where we see a need for regulation, which is mainly the definition of what a genuine au pair is, what can reasonably be expected, how many hours shall be acceptable and give reasons, why genuine au pairs shall be tax-exempt.

Lack of regulation so far has not deterred au pairs to chose Australia as their favorite country. The introduction of the backpacker tax for au pairs will bring the industry down. We will therefore demonstrate the benefits to society if au pairs will continue to be able to provide child minding service for Australian host families.

### Au Pairs – who is one and what do they do?

At present all young travelers from overseas providing in home child care in an Australian host family home are called au pairs. This is regardless whether internationally acceptable standards<sup>1</sup> are being followed or not, as long as the traveler has some child minding duties.

An essential fact is that au pairs are integrated into the family as an additional member for a period of time and a substantial number of au pairs remain fond of their host families in years to come and vice versa. The **intention** for au pairs is not to work in an Australian host family for wages, but to have real **insight into the Australian culture**, living conditions, customs and build a relationship with the whole family. Au pairs are choosing their host family not based on the 'job', they are **choosing the people they would like to live with** and the children they like to look after. Host families in return are looking for a right fit for their family, someone they can imagine to share their private life with, whom they trust will look after the host children to the best of abilities. This is a **very important aspect** when looking at remuneration and tax liability for au pairs.

The hours an au pair commits to helping out the host family with child care vary in Australia. When working on a student visa, students help out up to max 20 hours per week (15-20 hours is very

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<sup>1</sup> <https://www.iapa.org/about/> (At present AAPFA is not a member of the IAPA as we are representing host families and are therefore not a trade association)



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common) in exchange for room and board. This arrangement is called demi-pair and is tax free as the students work in exchange for room and board.

AAPFA came to the conclusion that 30 hours are a good and healthy amount of hours, just as well as the au pair usually communicates in another language than her own, which is exhausting in itself. From our research, 30 to 35 hours seem to be the average for au pairs. Longer hours might be acceptable if the work load of extra hours will have low demand, e.g. being around when a toddler sleeps, watching a child at swimming lessons, evening babysitting (child asleep), watching a movie with the child etc. No more than 38 hours with a minimum of one full day off per week and 1 full weekend per month are acceptable requests for an au pair.

Au pairs can be asked to undertake light household duties in the host family's home. You would expect (or hope for at least) that a young adult is well capable of standard household tasks. All tasks for the au pair need to be child related.<sup>2</sup> This protects the au pair from work overload and it becomes clear, what special status the au pair has compared to a domestic worker for example, who can be asked to perform all duties in a domestic home.

The recent enquiry by the Fair Work Ombudsman asked a series of questions to determine the differences between nannies and au pairs. It is unfortunate that the study did not reflect the situation accordingly as it was strongly suggested to define the role of a genuine au pair. The conclusion of Fair Work<sup>3</sup> is incorrect and we suggest to review the comments of the inquiry.

Based on the presumption that an au pair is coming for a cultural exchange, with the expectation of a reasonable work load, Au Pairs who are working long hours and/or having high work loads to manage should simply not be called au pairs but rather 'live-in childcarers'.<sup>4</sup> Whether they are nannies would depend on their qualification and if those are agreed to be recognised by the host family. Although some genuine au pairs might hold relevant professional qualifications, as always, if they are not needed<sup>5</sup> for the job at hand, consideration can be neglected.

Here is one example, how an au pair describes what she does:

*██████████ I don't see au pairing as a 'real' job!  
I sit and watch movies with a three year old five days a week and we go to the park and chill occasionally mixing things up with a McDonald's play date. The family pay my phone bill and even bought a car for me when I bought my air ticket here and they knew for definite I'd be coming. I just can't see any family paying so*

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<sup>2</sup> Washing for the host children is acceptable, dealing with the complete family laundry is not. Gardening and pet care again is not a job for an au pair.

<sup>3</sup> <https://www.fairwork.gov.au/about-us/news-and-media-releases/newsletter/april-2016/consider-nannies-and-au-pairs-is-my-babysitter-actually-an-employee>

<sup>4</sup> This is where the Fair Work inquiry failed.

<sup>5</sup> Many parents have expressed satisfaction with care provided by family day care, nannies and au pairs — options that may offer more flexibility and potentially less education than formal childcare – Productivity Commission Report, p.9



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*much money for an au pair to live with them when for 500 dollars they could have their kid in day care and not have the hassle of a stranger in their house!*

## The situation in Australia

The Productivity Commission reviewed the situation for Childcare and Early Childhood Learning in Australia with an inquiry in 2014. Au pairs have been recognised as providing informal care for children. The findings are very relevant in deciding whether au pairs shall be taxed or be exempt.

*... informal (largely unregulated) care and early learning arrangements provided by relatives, neighbours, playgroups, most nannies, and au pairs. Informal carers, particularly grandparents (who provide care for 26 per cent of children aged 12 years or under), also tend to be relied on when suitable formal care is not available or is too costly for the hours that parents work. It is estimated that around 40 per cent of children aged 12 years or under use some type of informal non-parental care on a regular basis. ..*

As we can clearly read, cost is a big issue for families and if we look at grandparents, they often might provide childcare for free, especially as adequate before and after school care is not available nationwide (this would be a typical demi-pair position with work in exchange for room and board)<sup>6</sup> We believe there is a possibility to claim some CCB if grandparents/friends are registered carers, however, in home care would need special approval from the government department.

*Increasingly, women wish to join or return to the workforce at some point after the birth of children. The workforce participation rate of mothers with a child under 15 years has grown from 57 per cent to 67 per cent over the past two decades. That, combined with a growing community awareness of the importance of early learning for child development, means that more families now use formal ECEC, although at times and in a manner considerably changed from past decades when often only one parent worked outside the family home. <sup>7</sup>*

The increased workforce participation has its challenges. What is not mentioned here is, that Australian women often work in part-time positions, in which Australia has one of the highest concentrations of women in the world.<sup>8</sup> As explained above, women are especially unable to find

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<sup>6</sup> <http://aupair-assist.com/aupair-options/demi-pair/>

<sup>7</sup> Childcare and Early Childhood Learning -Productivity Commission Inquiry Report No. 73, page 5

<sup>8</sup> This might have its cause that until today domestic labour came to be defined no longer as work but rather an integral part of women's proper role as mothers and wives, which relegated women to full-time unpaid roles as mothers and housewives in the 1950s and 1960s).

J. Baxter (2005) 'White Australians and Male Breadwinners: The Role of Employment and Immigration Policies in Shaping Domestic Labour Patterns in Australia' in S. Huang, B. S. A. Yeoh and N. A. Rahman (eds.) *Asian Women as Transnational Domestic Workers* (Singapore: Marshall Cavendish Academic) 380–94 – p.383



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adequate and/or affordable after school care, confirmed by the Productivity Commission, to be able to seek full-time work, unless they have a support network. And it is illegal in most states to leave a child unattended at home. Affordability plays a huge role, especially for shift workers (penalty rates for night work) and sole parents (low income), even more so, as no reasonable government subsidies are available for in home care.

Australians are simply not available in the required numbers as live-in child carers as most would have their own accommodation and overnight stays are an inconvenience which needs to be reimbursed; the cultural exchange obviously has no value for Australians. Those who are available, might choose child care as a career and have or working towards relevant qualifications. A short placement with a family might benefit the Australian, but usually does not bring the stability into a family to rely on this. Australian host families don't need the carer to hold qualifications. They need someone with genuine love and care and enough maturity to look after a child.<sup>9</sup> As a matter of fact, some au pairs, who earned extra money in their home country with babysitting, have more experience than some host parents.

A recent development was the change by the Department of Immigration and Border Protection to allow au pairs to stay longer with one family than 6 months.

*With effect from 21 July 2015, Working Holiday Maker visa holders ... who have worked as an au pair for six months with one family and wish to continue working will be able to go through a simple, free, employment extension process. This will allow them to continue working for one family until their Working Holiday Maker visa expires, potentially allowing au pairs to work for 12 months with one family. <sup>10</sup>*

This decision followed the recommendation 10.7 of the Productivity Commission Inquiry into Childcare and Early Learning on the role of au pairs. It is noticeable that even though another study into illegal work in Australia<sup>11</sup> from 2012, which was again confirmed in the draft report of the Productivity Commission<sup>12</sup> in 2014, confirmed that au pairs are actually undertaking work on a cash-in-hand basis and are therefore regarded as illegal workers. This is a very confusion situation for host families, as they of course need access to childcare but don't want to do anything illegal. Therefore one can only assume that the cash-in-hand situation is acceptable in Australia as it is clearly supported by the DIABP who did not make the extended stay subject to the presentation of pay slips.

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<sup>9</sup> Productivity Commission Report, p.9

<sup>10</sup> Letter from DIABP to one of our members on 17 July 2015

<sup>11</sup> The DIAC studie clearly refers to nannies (which would include au pairs) and also provides some case studies about how the illegal work is being perceived, which in case of "domestic chores, babysitting or nannying etc, are seen as a universal right of travellers enjoyed all over the world." DIAC - Sociological Study of illegal work in Australia, p. 6

<sup>12</sup> Draft Report July 2014, p. 95



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Au pair agencies were actually pushing for the 12 months extension. All agencies stipulate the pocket money a host family has to pay. They might claim in the fine print, they are only introducing au pairs to host families and that the parties are supposed to seek their own advice about tax obligations, however, it is not enforced to seek advice. This is all very well known by the different government departments and has basically been legitimised by the Department of Immigration and Border Protection.

The 12 months extension confirms the ongoing need and high demand for affordable and flexible childcare in Australia.

The big question is, whether host families can rely on doing the right thing paying cash to the au pair – regardless of hours actually work?<sup>13</sup>

## Remuneration and Tax for au pairs

Shall the income of an au pair be subject to income tax? We need to look at, how au pairs are reimbursed. As explained above, au pairs come with the **intention** to help out with child care in return for room, board, a small stipend and the opportunity for an **in-depths cultural exchange**.

Room and board for the au pair is provided by the host family in a way which they find suitable and fits into their lifestyle. The au pair is entitled to three nutritional daily meals of acceptable quality.

Au pairs also receive a stipend, which is simply called “pocket money” to allow the au pair to experience the Australian culture and the near surrounds, e.g. going to a cafe, the movies, meeting up with friends, sightseeing etc.

The remuneration mostly is dependent on the hours, but will be affected by the number of children to care for, where the family lives, their expectations and how high the general demand is for au pairs.<sup>14</sup> Here is a guideline of what is reasonable in au pair arrangements, with expectations as described above:

Up to 20 hours room and board only (if au pair has other commitments/jobs)

up to 20 hours \$ 80 - \$100 pocket money (if unable to find other income/no own commitments)<sup>15</sup>

up to 30 hours \$120 - \$160 pocket money

up to 35 hours \$160 - \$200 pocket money

up to 40 hours \$200 - \$250 pocket money

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<sup>13</sup> See also below about Protection of vulnerable workers

<sup>14</sup> Au pairs in countries with an au pair programme will receive a fixed amount as au pairs are not allowed to take up outside employment.

<sup>15</sup> Some families need irregular hours or their location prevents the au pair of finding extra work.



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The ATO ruled that homestay rates as introduced by the AHN<sup>16</sup> are non-commercial and therefore don't constitute declarable income for host families. We have decided to use those prices for our calculation. Obviously accommodation cost in Bondi or Toowoomba would vary to quite a degree, however, this would make it very complicated, as well if real food costs need to be applied, especially for dietary requirements. Food choices are quite often also the discretion of the host parents (host mum) who provide the food items for the whole family. With the room and board package, the au pair cannot actively influence the cost and would have to accept that the expected help is reasonable compared to the value. And again: An au pair chooses the people she likes to live with and not the package. The approach to use the standard homestay rates therefore is justified.

Au pairs receive extras on top, like free internet access, often a phone plan/mobile phone for communication with the host parents, a car might be available for personal use, outings and vacation with the host family and all those other little things parents would provide for their own young adult relative.

Au pairs until now receive 'pocket money' from host families' tax free either in cash or via bank transfer. Families argue that the au pairs are treated like family members and it is only pocket money, the value of room, board and extras is not being considered (and as mentioned, au pairs don't have much of a choice but just accept, what is offered if they like the family). Although families could ask the ATO for a private ruling that in fact the au pair is working in a domestic arrangement and therefore the au pair income is exempt from income tax, nobody does this as it is perceived as being complicated and a negative ruling would create big problems for the family.

With an update of their website the ATO has also removed the only reference ever made about au pairs, which could be found in superannuation for domestic workers.<sup>17</sup> Unfortunately we were unable to find out the reason for removing the reference but believe that a decision must have been made to tolerate the current situation due to the lack of childcare options and maybe the special live-in situation and intention for such domestic help.

If au pairs were to be taxed as non-residents (backpacker tax), especially young au pair would still owe the family money after 35 hours of work, based on National Minimum Wages<sup>18</sup> as the below calculations show.

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<sup>16</sup> <http://students.homestaynetwork.org/pricing/>

<sup>17</sup> <https://www.ato.gov.au/Business/Super-for-employers/Working-out-if-you-have-to-pay-super/#DomesticWorkers>

<sup>18</sup> [https://www.fwc.gov.au/documents/documents/modern\\_awards/award/ma000104/default.htm](https://www.fwc.gov.au/documents/documents/modern_awards/award/ma000104/default.htm) - Level 2 applies after working 3 months with one employer



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			hours	tax	homestay						pocket money
			35	32.5%	\$ 290.00						\$ 200.00
			before tax	after tax	less r & b	super 9.5%	super tax 15%	admin fee	super net	DASP 38%	AP Difference
Level 1	18 year old	\$ 12.09	\$ 423.12	\$ 285.60	<b>-\$ 4.40</b>	\$ 40.20	\$ 6.03	\$ 5.00	\$ 29.17	<b>\$18.08</b>	\$ 186.31
Level 2		\$ 12.92	\$ 452.04	\$ 305.13	\$ 15.13	\$ 42.94	\$ 6.44	\$ 5.00	\$ 31.50	<b>\$19.53</b>	\$ 165.34
Level 1	19 year old	\$ 14.60	\$ 511.09	\$ 344.98	\$ 54.98	\$ 48.55	\$ 7.28	\$ 5.00	\$ 36.27	<b>\$22.49</b>	\$ 122.53
Level 2		\$ 15.60	\$ 546.03	\$ 368.57	\$ 78.57	\$ 51.87	\$ 7.78	\$ 5.00	\$ 39.09	<b>\$24.24</b>	\$ 97.20
Level 1	20 year old	\$ 17.29	\$ 605.25	\$ 408.54	\$ 118.54	\$ 57.50	\$ 8.62	\$ 5.00	\$ 43.87	<b>\$27.20</b>	\$ 54.25
Level 2		\$ 18.48	\$ 646.63	\$ 436.47	\$ 146.47	\$ 61.43	\$ 9.21	\$ 5.00	\$ 47.22	<b>\$29.27</b>	\$ 24.25
Level 1	21 year old	\$ 17.70	\$ 619.50	\$ 418.16	\$ 128.16	\$ 58.85	\$ 8.83	\$ 5.00	\$ 45.02	<b>\$27.92</b>	\$ 43.92
Level 2		\$ 18.91	\$ 661.85	\$ 446.75	\$ 156.75	\$ 62.88	\$ 9.43	\$ 5.00	\$ 48.44	<b>\$30.04</b>	\$ 13.22

The average age of au pairs is 19 years of age. Such au pair, who is on duty for 35 hours, would have \$54.98 or after three months \$78.57 spending money left. Even in the true spirit of providing a cultural exchange, this feels like exploitation ... by the Australian government in this case. Another big take is on the superannuation with 47% due to the DASP of another 38%. Au pairs and other young travellers are not even entitled to a concession card for public transport, as the international student card is not accepted in most councils.<sup>19</sup>

Assuming that an au pair receives \$200 for 35 hours, it is clearly visible that even a 21 year old in Level 2 would still be \$13.22 better off under the current system. Host families are known as being generous to their au pairs, providing treats, outings, some toiletries etc. and the usual free internet plus contribution to a mobile phone plan. They simply want them to be happy and have an enjoyable experience with the children.

Host families are not a profitable entity, profit is not their intention, but rather make ends meet after once income got lost due to the decision of having children. Host families are not employers either as they rarely have the required qualification or training. We hope that it is not needed to burden genuine host families with the need for a PAYG withholding number. As the above example shows, they would have to stop hosting as au pairs would not work for such a low amount.

## Cost to society

If the au pair option is being taken away from host families, the cost for society will be immense. It can be expected that women will be the ones being hit the hardest and being 'degraded'<sup>20</sup> again to full-time unpaid roles as mothers and housewives. Single mothers would have to rely on social security benefit payments.

<sup>19</sup> A return trip to Brisbane city over 3 zones cost close to \$10 for example.

<sup>20</sup> Degraded is meant in a way that it is unpaid and undervalued work and the work-live balance choice is taken away.



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Families will suffer as the children might be exposed to the frustration of losing an income and work-life balance of one (or the only) parent. Relationships suffer under financial pressure, which always has an effect on the children and the prospects for families to secure their retirement with owning their own home will diminish, or providing good schooling for the children becomes unaffordable. Not having a second set of helping hands around, bears a higher risk of burn out and depression in mothers.<sup>21</sup> Host parents also enjoy a regular date night when having an au pair around, which is beneficial for their relationship.

A mother staying at home will ultimately face a career break from which most never really recover. Obviously the lack of equality in the Australian labour market plays a big part, which is even more a reason to keep women in employment if they wish to do so and Australia does not lose their highly qualified work force.

Women will end up being financially dependent on their husbands, which might lead to women staying in relationships just for financial reasons. Domestic violence quite often happens in strongly dependent relationships.

Women will retire on very little money due to the inability to invest into their own superannuation fund. I believe there is research about poverty in female retirees.

A substantial number of au pairs would choose other countries, where they would have the certainty of having a decent amount of spending money in return for their assistance.<sup>22</sup> An estimate given to the productivity commission was that in 2013 around 10.000<sup>23</sup> au pairs came to Australia and the number is climbing.<sup>24</sup> Australia's tourism industry will be affected as all au pairs are travelling after finishing up with a family. We should also see that the money au pairs get for their help will be spend in Australia.

Some might choose not to be an au pair assuming they could live much cheaper in a backpacker hostel, sharing the room with 5-7 other strangers and surviving on \$2 noodles<sup>25</sup> and finding some other "cash" work. Because with the backpacker tax of 32.5 % it can be expected that most backpacker jobs will end up being cash in hand unless pay slips are needed for the 2<sup>nd</sup> year visa.

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<sup>21</sup> It would be beneficial to conduct a study to see the benefits of having an au pair to avoid the 'baby blues' postnatal depression in new mothers especially with young children to care for, multiple birth families, special needs children etc.

<sup>22</sup> A lot of European countries and the US have specific visas for au pairs. Au pairs usually come to learn the language of that country where they have to attend language courses as a visa condition. Although au pairs like to improve their English, not many attend language courses, also due the cost. Au Pairs usually cannot work outside the host family home and for the US, breach of this visa condition might lead to deportation. Therefore the stipend for au pairs is highly regulated and mostly tax free. In some countries host families can claim the cost for an au pair as childcare cost at a rate of 50% of the whole package. (Internet research)

<sup>23</sup> Productivity Commission, draft report, p.95

<sup>24</sup> Au Pairs are coming from industrialised countries. The majority of au pairs is from the UK, Germany and France. Their livelihood does not depend on the work they are doing and also they have no dependants in Australia or back home who rely on the income being generated in Australia.

<sup>25</sup> Hostels in the inner cities however might charge \$30 per night, which brings the cost up.



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With this we would also make a strong point to allow au pairs to apply for the 2<sup>nd</sup> working holiday visa after working in the specified postcode areas. It is important though to ensure that au pairs are being treated fairly and not 'hold out' just for the visa sign off. Families living in those areas find it quite hard to attract au pairs and always state that formal childcare options are very limited if at all available. We can confidently assume that these families would appreciate having access to au pairs, even if it is only for those required 3 months. The first step of allowing au pairs to stay with one family up to 12 months is a step in the right direction, however, they might not choose a regional family if no other incentives are provided.

### Protection of vulnerable workers

Although au pair families and au pairs might sign some form of agreement<sup>26</sup>, it usually is not an employment contract. The agreements are hardly ever legally binding contracts as in fact they are not enforceable. This is simply due to the nature of au pairs living-in with their host family. If the relationship between the host family and the au pair does not work out, the au pair can simply pack up and leave. Au Pairs leave families for all sorts of reasons, some even invented reasons and quite often no notice is given, which creates problems for the host family.

The visa condition for working holiday travelers clearly recommends funds of \$5000 on entry to Australia, after the cost for flight and health insurance are covered. This requirement gets casually ignored by a lot of travelers. If they don't have the money, they ask relatives to transfer the money into their bank account, print a statement and then transfer the money back. It is unfortunately at times a self-inflicted vulnerability of au pairs who did not prepare well financially. If the government would put a little more emphasis on the financial requirement, au pairs who feel exploited will have the financial means to leave and stay in a hostel.

Australia has also a large network of host families who are available to help an au pair in distress. As stated above, au pairs are being treated as members of the family and most host families feel for a young adult, who is often the first time away from home. This network is easily accessible through social media as a simple message to any admin of a host family group will lead to action.

Au pairs need to know where they will receive help. The police is unable to investigate poor work conditions. Fair Work only looks at the pay rates but the process also takes quite some time. Au pair agencies will hopefully assist (not all of them do unfortunately). Au pairs in a self-matched arrangement are basically on their own, even more so, if they are living remotely<sup>27</sup>.

Grossly underpaid au pairs have taken their host families to Fair Work and as far as AAPFA is aware those were cases where the "au pair" in fact was a live-in carer with duties and hours exceeding what can be reasonably be expected from a genuine au pair.

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<sup>26</sup> AAPFA suggests to use the international recognised agreement from the IAPA <https://www.iapa.org/wp-content/uploads/sites/7/2015/06/Code-of-Conduct-au-pairs-and-host-families.pdf>

<sup>27</sup> See the episode of "Insight – Fair Work Fair Pay on SBS"



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The difficulty for au pairs is, that host families can simply withhold pay from an au pair. This might happen for a reason, e.g. a car accident, sometimes because the family is not happy with the performance or the au pair leaves earlier than agreed and the family needs more expensive formal childcare. The au pair has the decision to make whether it is worth pursuing her entitlement or let it go and move on, enjoying what Australia has to offer.

We know of a Fair Work case where an au pair has claimed every minute she spend with the children or the family as having worked/being on duty, even if she asked the host parents if she can join them grocery shopping.

Excessive hours are being reported on a regular basis, regardless whether adequately reimbursed or not and au pairs suffer from burn out. Some simply pack up and leave as they can't cope.

We simply cannot forget that families are also vulnerable as they rely on the comittment of the au pair to make a living and this is just as well a guarantee that host families make a great effort to keep the au pair happy. Of course if the expectations are unreasonable, families would bear the consequences.

We, as AAPFA, are working on a service to offer registration to all self-matched au pairs and host families and this will be extended to au pair agencies. Au pairs and host families would have access to a fast acting body for information, training and mediation. Those families, who proofed to be unfit hosts, will simply be banned from registering. The same would also apply to an au pair, for example if the au pair proofed to be a risk for the children.<sup>28</sup>

Host families would have to fulfill the requirments that they actually need care for at least one child aged 12 or under, none of the adults has a criminal record and of course follow a code of conduct to provide a cultural exchange, where family integration is essential.

If this system can be supported by the government in the same way as the AHN is being supported, au pairs and host families will be well informed about the hosting standards and it will also be possible to make insurance available and compulsory for host families and au pairs. This self-regulated system would be finance by host families and au pairs and therefore would have no cost to the government.

Registered host families would come under a (to be negotiated) class ruling with the ATO for au pairs being classified working in a domestic arrangement, which is tax exempt. Therefore the status quo can be legalised as otherwise we would expect that families would continue with how they operate with the only change to pay real cash and not bank transfers and might not nominate an au pair on their car insurance.

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<sup>28</sup> The au pair would still be able to seek other employment.



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A specific au pair visa is simply not needed, unless Australia decides to open up for developing countries. A lot of au pairs from the Philippines would like to come to Australia, but it is understood that they are a high risk category for overstaying visas.