

# ISANA

## Accommodation Issues Paper

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### 2010

**Prepared by members of the  
ISANA Special Interest Group on Accommodation and Pre-tertiary Students**

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## **ISANA Accommodation Issues Paper 2010**

### **Abstract**

The ISANA Accommodation and Pre-tertiary Working Party has identified gaps in the existing legislation regarding homestay accommodation for international students and welfare support for under age students and has made 14 recommendations to address these issues. This paper has been developed for ISANA Council with the intention that the recommendations be forwarded to the Office of the Minister for Tertiary Education, Skills, Jobs and Workplace Relations as a submission to the Australian Government's consultation paper for its review the National Code, specifically those provisions relating to the education providers' duty of care relating to accommodation and guardianship.

### **Overview**

Sound accommodation is essential for the well-being of international students as this affects their overall study experience. This paper is the outcome of issues raised at the ISANA 2009 Annual Conference by the ISANA Accommodation and Pre-tertiary Special Interest Group concerning the lack of consistency in the definitions of and national guidelines for homestay and rooming house accommodation, the disparity in the duty of care towards the accommodation of Under 18 students, and concerns regarding guardianship or primary carers. The paper contains a series of 14 recommendations for presentation to ISANA Council, with the intention that the paper would be forwarded to AEI / Austrade to inform its review of the National Code, which has been necessitated by the ESOS Act 2010.

The recommendations have been developed under the following headings:

1. Standards in Homestay
2. Internet advertising
3. Educations agents promoting their own Homestay placements
4. Taxation
5. Training Programs
6. Under Age students
7. Government Legislation
8. National Privacy Laws relating to Accommodation Provision
9. Rooming Houses

## **Summary of Recommendations**

### **Recommendation 1**

That ISANA Council seek funding to produce a set of Homestay standards for providers, their staff and their hosts. These standards in best practice should take into consideration state and territory legislation and should cover guidelines for service levels, good practice in the provision of appropriate accommodation, meals, use of utilities and acceptable standards of behaviour by both hosts and students. The standards should show evidence of risk management, critical incident and complaints policies and procedures; mediation and client management processes; accurate record keeping and ongoing staff development.

### **Recommendation 2**

That ISANA Council recommends to the Australian Government's consultation paper that Standard 2 of the National Code be amended to include the requirement that the registered provider has documented procedures in place, and implements these procedures to regularly monitor homestays and to assess whether their homestay provider has evidence of the policies and procedures, as listed in Recommendation 1.

### **Recommendation 3**

That ISANA Council recommends, in the absence of any existing state legislation, the maximum allowable number of students in a homestay is limited to two students. However, up to three students may be allowed in some regions if the facilities are adequate and the ability of the homestay parents to care for the students is deemed to be satisfactory. This decision would need to be assessed by the homestay provider with the education provider.

### **Recommendation 4**

That ISANA Council recommend to the Australian Government's consultation paper that Standard 2 of the National Code be amended so that education providers take full responsibility for advising their students of either suitable homestays or of their recommended Homestay provider, for regular monitoring of all their students' homestay placements and that this commitment be linked to their ongoing CRICOS registration.

### **Recommendation 5**

That ISANA Council recommends to the Australian Government a strengthening of Standard 4 of the National Code, so that education providers ensure that their agents act ethically in the provision of information regarding accommodation since the education provider is ultimately responsible for the performance of its education and homestay agents.

### **Recommendation 6**

That the ISANA Accommodation Special Interest Group seek a further Interpretive Decision from the Australian Taxation Office regarding the tax status of a homestay host who has one or more students.

### **Recommendation 7**

That ISANA Council seek funding from AEI for the development of a **national** training package on homestay accommodation and Under 18 issues.

**Recommendation 8**

That ISANA assist in the development of best practice tools such as the online training materials previously developed by ISANA for training in the National Code.

**Recommendation 9**

That ISANA Council recommend that DEEWR run a campaign to remind education providers that under the National Code, they have additional duty of care for their under age students' accommodation, including homestay, and that as best practice, regular meetings are scheduled with the student and reports forwarded to the parent at least bi-annually.

**Recommendation 10**

That ISANA Council recommends to the Australian Government that Standard 5 of the National Code 2007 be amended to include a condition that the education provider takes responsibility for ensuring that the nominated primary carer / care-giver has an appropriate skill level and undergone appropriate training in the responsibilities required.

**Recommendation 11**

That, as an independent and multi-sectoral organisation, ISANA Council seeks funding from AEI to develop a training package, reflecting best practice, for primary carers to be used nation-wide.

**Recommendation 12**

That ISANA Council recommends to the Australian Government in its review of the National code 2007 that the education provider be responsible for placing Under 18 students only with a host family where each member of the household, aged 18 and above, has undergone a screening process, i.e. Working with Children Check (except ACT and Tasmania) and Police Check. This should be written into the placement agreement.

**Recommendation 13**

That ISANA Council recommends to the Australian Government in its review that Standard 5 of the National Code 2007 be amended to reflect that if a guardian visa holder has to leave Australia during the first 12 weeks of arrival, it is the education provider's responsibility to:

- approve and monitor alternative welfare arrangements until the guardian's return
- provide the guardian visa holder with a letter of support, to be shown to border control authorities when departing Australia.

A flash record identifying that the adult is on a guardian visa would assist border control authorities.

**Recommendation 14**

That ISANA Council agree to the development of a separate paper on the impact of Rooming Houses on international students.

## Introduction

The Commonwealth Government's Review of the ESOS Act 2000 (2010) found that education providers should play a more active role in securing accommodation for international students<sup>1</sup>. These concerns mainly arose from disreputable landlords taking advantage of gaps in regulation in order to exploit international students.

Accommodation issues also featured in the Senate Report on the Welfare of International Students<sup>2</sup> where submissions were made to the Senate Committee on the issues of adequate and affordable accommodation, accessibility and availability, tenancy rights and disputes, and accommodation assistance and support. At its meeting in July 2009, the Council of Australian Governments (COAG) 'agreed to develop a comprehensive national International Student Strategy. The strategy will improve the experience of international students in Australia and in turn benefit all of Australian society'<sup>3</sup>.

Subsequent to the COAG meeting, an International Students Roundtable was convened in September 2009 and in their communiqué stated, 'the Roundtable would like to see some improvements in the provision of basic services for international students studying in Australia. The priority basic services are accommodation, transport and health care'<sup>4</sup>. The Roundtable's recommendation on accommodation was that 'Education providers should collaborate with state and federal governments to develop a model for the provision of affordable accommodation to international students. This may include creative ways of utilizing unused or undiscovered resources, such as an organised home-stay program'<sup>5</sup>.

In April 2010, COAG agreed to introduce a range of measures as part of its International Students Strategy, including 'a Study in Australia information portal [which] will provide a single source of authoritative, comprehensive, accurate and up-to-date information for students, including information on personal safety, student support services, and tenancy and employment rights and responsibilities'<sup>6</sup>. COAG also accepted the finding in the Baird Report that international students should have access to an independent statutory complaints body. In late November 2010 the Senate Education Committee endorsed an amendment to the ESOS Act, thereby allowing international students to lodge their complaints regarding their education provider, to the Commonwealth Ombudsman<sup>7</sup>. It was reported that Greens Senator Sarah Hanson-Young said that the Ombudsman should become 'a one-stop national authority' for student complaints<sup>8</sup>.

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<sup>1</sup> Stronger, simpler, smarter ESOS: supporting international students. Review of the *Education Services for Overseas Students (ESOS) Act 2000*, 43, vii.

<sup>2</sup> Senate Education, Employment and Workplace Relations References Committee, *Welfare of International Students*, November 2009, 33-38; para 3.36 - 3.71.

<sup>3</sup> COAG communiqué, 2 July 2009, item 5.

<sup>4</sup> International Students Roundtable communiqué, p. 3.

<sup>5</sup> Ibid.

<sup>6</sup> COAG communiqué, 19-20 April 2010.

<sup>7</sup> ESOS Legislation Amendment Bill 2010.

<sup>8</sup> The Australian, Higher Education, 24 November 2010. *One-stop Ombudsman Shop*.

The majority of the issues raised at, and the submissions received by, the Senate Committee Review, Roundtable and the National International Students Strategy tended to focus on the tertiary and VET sector, where the vast majority of students are aged over 18 and have a much wider range of accommodation options. Pre-tertiary students and under age students in tertiary courses place a far greater onus on education providers to effectively and closely manage their welfare and accommodation, in accordance with the National Code of Practice (2007), Standards 2, 5 and 6<sup>9</sup>. However, this additional duty of care usually ceases when the student turns 18, leaving the student to fend for themselves even though they may be less able to do this than a local student of the same age, especially due to their lack of familiarity with their new environment.

Marginson et al. have argued that 'the National Code effectively protects government and providers from being significantly held to account for these [accommodation] problems'.<sup>10</sup> In regard to legislation, Fallon and Hooker have compared the Australian and New Zealand models of approving and monitoring accommodation for under age students and found that in the New Zealand model there is much greater onus on the education provider to regularly check the facilities and consult with students about the suitability of arrangements<sup>11</sup>. State regulation also needs to be recognised as most states have specific requirements for students under eighteen. Very few Australian universities<sup>12</sup> have been able to follow the example of universities in the UK and USA which offer accommodation to all first year international students.

While the lack of adequate and affordable accommodation continues to be a major concern for international students in some states in Australia, this Issues Paper intends to review major issues regarding

- Homestays, in particular Under 18 students and guardianship
- private rental housing, especially Rooming Houses where individual rooms of a house are rented out to students by the owner of the property or the principal tenant.

Since accommodation affiliated with education providers (such as secondary school boarding house) for the most part, is run under the close supervision of the provider along well-established lines, that type of accommodation will remain outside the scope of this paper. Furthermore, in researching this paper, it became clear that Rooming Houses would require a separate issues paper, due to the legislative complexities, knowledge of tenant's rights, and associated issues such as poor living arrangements and exploitation of students by landlords.<sup>13</sup>

While all states provide generic advice to students on all aspects of living and studying in Australia, it should be noted that the level of accommodation advice offered by education providers ranges from minimal, with no vetting of advertisements placed on notice boards, to full advocacy and support.

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<sup>9</sup> ESOS National Code of Practice 2007, D. Standards for Registered Providers, 12-15.

<sup>10</sup> Marginson et al., 2010, p. 150.

<sup>11</sup> Fallon & Hooker (2007), pp. 1-3.

<sup>12</sup> Eg Curtin University, University of Canberra.

<sup>13</sup> ABC *Lateline* (2010).

## 1 Homestay

Homestay, where the student lives with a local family, can assist in social inclusion and interaction of international students within Australian society. It is promoted by many education providers and is seen as part of the learning experience for language and understanding the culture. However, whilst good homestay experiences are true for the overwhelming majority of students, many have found themselves in unsuitable environments<sup>14</sup>. The major difficulties are the lack of clear definition on what constitutes Homestay, lack of legislation governing Homestay and no central authority to which homestay providers can refer homestay problems. Recently, seminars have been conducted nationally and questions from attendees were sent to AEI for response. These questions were for clarification of conflicting statements found within the rules and regulations of five different government bodies which all have some part of responsibility for international students. It is these conflicting statements that confuse those working in the international education industry. The responses received have done little to assist but discrepancies were acknowledged

Organisations such as the Centre for Multicultural Youth (CMY)<sup>15</sup> have recommended that Homestay be the first accommodation option when students first arrive in Australia where students can receive support and guidance in a safe environment. While this may appear to be commendable, in reality it could lead to a burgeoning of unsuitable homestay hosts and students can easily be exploited if there are no controls in place<sup>16</sup>. Controls are important to stop students being exploited as many will look for the cheapest accommodation option due to limited financial resources (i.e. shared room rental either with relatives, friends or fellow students). Statistically, adult students tend to live independently rather than in a Homestay<sup>17</sup>.

### 1.1 Standards in Homestay

Many Homestay providers have written their own standards and best practice guidelines which vary considerably and are reflective on the skills of staff and resources available. Professional development is not always readily available for staff working in the Homestay area and many have not been trained in the necessary skills of mediation and counselling. Bad news sells and stories of poor homestay experiences abound<sup>18</sup>. However, when tight control is maintained over the host families through thorough selection and orientation processes, regular inspections, feedback from their placements and ongoing communication, it is rare for students to have a poor Homestay experience<sup>19</sup> and the majority of trained hosts are more interested in the intercultural experience than seeing Homestay as a

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<sup>14</sup> Marginson et al., 2010, p. 156.

<sup>15</sup> CMY, 2008, 6.

<sup>16</sup> Marginson et al., 2010, p. 160.

<sup>17</sup> *ibid.*, 168.

<sup>18</sup> Lewohl, Case Studies, *Submission 7*.

<sup>19</sup> Richardson, 2009, pp. 169-173.

supplementary income<sup>20</sup>. Government schools and many secondary schools prefer to run their own in-house Homestay service<sup>21</sup>, as do some tertiary institutions. The preference in some independent schools<sup>22</sup> is to maintain strong relationships with their Homestay providers where they are confident that any issues which arise in the homestay will be dealt with in conjunction with the school's own risk management processes.

ISANA members in the VET and Higher Education sectors have reported many cases of homestay problems ranging from lack of clarification regarding the terms and conditions to substandard living environments<sup>23</sup>. Their students search online prior to arriving in Australia, usually choosing their Homestay based on its proximity to their campus<sup>24</sup>, and not realising that many homestay hosts have had to resort to advertising independently online since no quality provider would continue to register them. There are wide variations in the quality of host families and the interpersonal relationship between host and student<sup>25</sup>. In many cases the educational institution does not have the resources to assist students who are encountering difficulties with their Homestay host, or they are not in a position to deal directly with the host, so the student has to struggle to resolve the situation on their own. Tertiary sector students in particular are at times unaware whom they should refer their homestay issues to. There have also been instances of students being evicted unreasonably<sup>26</sup> and not having any consumer protection.

One of the major concerns raised by ISANA members and student welfare officers at the ISANA Conference in 2009 was the need for nationally agreed standards. For example, the Victorian Department of Education and Early Childhood recommended that all its Homestay providers submit to a Fit and Proper Person screening in addition to holding a Working with Children card.

### **Recommendation 1**

That ISANA Council seek funding to produce a set of Homestay standards for providers, their staff and their hosts. These standards in best practice should take into consideration state and territory legislation and should cover guidelines for service levels, good practice in the provision of appropriate accommodation, meals, use of utilities and acceptable standards of behaviour by both hosts and students. The standards should show evidence of risk management, critical incident and complaints policies and procedures; mediation and client management processes; accurate record keeping and ongoing staff development.

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<sup>20</sup> Soropos, Submission 16.

<sup>21</sup> Vision International, *Submission 20*.

<sup>22</sup> *ibid*.

<sup>23</sup> Eynesbury College *Submission 2*, University of Sydney, *Submission 19*.

<sup>24</sup> Marginson et al. pp. 164-165.

<sup>25</sup> Griffith University, *Submission 4*; PSC *Submission 13*; Ryugaku Times, *Submission 14*; Educare, *Submission 1*, p. 1.

<sup>26</sup> University of Sydney *Submission 19*.

### **Recommendation 2**

That ISANA Council recommends to the Australian Government's consultation paper that Standard 2 of the National Code be amended to include the requirement that the registered provider has documented procedures in place, and implements these procedures to regularly monitor homestays and to assess whether their homestay provider has evidence of the policies and procedures, as listed in Recommendation 1.

### **Recommendation 3**

That ISANA Council recommends, in the absence of any existing state legislation, the maximum allowable number of students in a homestay is limited to two students. However, up to three students may be allowed in some regions if the facilities are adequate and the ability of the homestay parents to care for the students is deemed to be satisfactory. This decision would need to be assessed by the homestay provider with the education provider.

## **2 Internet Advertising**

Almost all applications for Homestay placement are made online, through a Homestay provider's website. When the accommodation service is under the control of the education provider or appoints a company to represent them, the student can be confident that they will be appropriately housed and that there are clear procedures in place to ensure that they are safe and secure. Student support staff have reported numerous cases of students applying via the web to independent, unregistered suppliers<sup>27</sup> and either losing money<sup>28</sup>, being sexually harassed<sup>29</sup>, or ending up in an 'at risk' situation<sup>30</sup>. Students who are on a tight budget are often the victims of internet scams because there is a perception that Homestay or other accommodation approved by or linked to an education provider is 'expensive'<sup>31</sup> so they will accept a cheaper option, not realising that they may fall into the hands of unscrupulous operators<sup>32</sup>. The majority of 'Homestay hosts' who advertise independently on the web or through a 'Homestay website' have had no assessment of their suitability or any training in hosting and many are only interested in the revenue from students. It is not uncommon for hosts who have been blacklisted for inappropriate behaviour or standards to advertise on the internet because they can bypass the systems put in place by ethical providers<sup>33</sup>.

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<sup>27</sup> Eynesbury College, *Submission 2*.

<sup>28</sup> University of Sydney, *Submission 19*.

<sup>29</sup> PSC, *Submission 13*, Case Study 7, p.4.

<sup>30</sup> Familystay, *Submission 3*.

<sup>31</sup> Richardson, 2009, p. 174.

<sup>32</sup> The Age, 31 May 2008, Call for crackdown on rogue landlords of overseas students

<sup>33</sup> Lewohl, *Submission 7*.

#### **Recommendation 4**

That ISANA Council recommend to the Australian Government's consultation paper that Standard 2 of the National Code be amended so that education providers take full responsibility for advising their students of either suitable homestays or of their recommended Homestay provider, for regular monitoring of all their students' homestay placements and that this commitment be linked to their ongoing CRICOS registration.

### **3 Education agents promoting their own Homestay placements**

As highlighted in the Senate Report on the Welfare of International Students<sup>34</sup>, education providers are accountable for the conduct of their education agents. However, it was acknowledged that many overseas agents had used unscrupulous practices to recruit international students. The Committee was of the view that due to the difficulty of regulating agents overseas, mechanisms be put in place to ensure that overseas agents are in receipt of authoritative information regarding studying in Australia.<sup>35</sup> There have been cases reported of students applying and paying up to \$10,000 upfront, then being evicted after a few months in Australia on the grounds that the student has reached the end of their 'credit'<sup>36</sup>. Given that safety and security of accommodation is the next most important consideration when arranging their study program, cases such as these lead to negative outcomes for international education in Australia.

#### **Recommendation 5**

That ISANA Council recommends to the Australian Government a strengthening of Standard 4 of the National Code, so that education providers ensure that their agents act ethically in the provision of information regarding accommodation since the education provider is ultimately responsible for the performance of its education and homestay agents.

### **4 Taxation**

Many host families first hear about homestay through national or local advertising, giving the impression that homestay is a form of income. The Australian Taxation Office's Interpretative Decision on homestay<sup>37</sup>, is that where the taxpayer hosts one or two homestay students, the amounts paid by the student/s are 'designed to cover the costs to the host family of supplying food, utilities, and other minor expenses of the student's stay'<sup>38</sup>. This decision has appeared on the ATO website for a number of years and the figures quoted are no longer valid. However, where the homestay has three students it is unclear

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<sup>34</sup> Senate Education, Employment and Workplace Relations References Committee, *Welfare of International Students*, November 2009, para 5.17, p. 99.

<sup>35</sup> *Ibid.* p.104

<sup>36</sup> *Familystay, Submission 3.*

<sup>37</sup> ATO ID 2001 / 381

<sup>38</sup> ATO, *ibid.*

whether the payments from the third student should be reported to the ATO. Similarly, homestay hosts who are in receipt of a Commonwealth Government pension are often unaware that hosting more than two students constitutes income, which could have a bearing on their benefit and they should be encouraged to refer to Centrelink for further advice. Up to date clarification from both the ATO and Centrelink would assist homestay providers to direct hosts to provide a Statement by a Supplier where applicable. Aside from the tax issues, this clarification would assist in differentiating genuine homestays from hosting as a business.

#### **Recommendation 6**

That the ISANA Accommodation Special Interest Group seek a further Interpretive Decision from the Australian Taxation Office regarding the tax status of a homestay host who has one or more students.

## **5 Training Programs**

Both CISWA<sup>39</sup> and Study Queensland<sup>40</sup> have produced excellent and comprehensive materials to guide homestay providers in their responsibilities under the National Code<sup>41</sup>. Study Queensland in conjunction with the Australian Homestay Network has also provided professional development on critical incident management<sup>42</sup>. The ISANA Working Party is not aware of any other state-wide training resources. State Education departments<sup>43</sup> and most homestay providers have their own in-house manuals<sup>44</sup> and training programs. These materials should be used as a basis for the development of a national training program for homestay providers and accommodation support staff in education institutions.

Students from the Middle East have traditionally been perceived as difficult to host due to their dietary requirements, religion and lack of exposure to Western customs. The findings from the ISANA / AHN / AEI Dubai Project on Saudi Students in Homestay Focus Groups<sup>45</sup> were used in developing the Hosting Students from Saudi Arabia Workshop Workbook<sup>46</sup>. The workbook has been used to train welfare and accommodation staff to understand the reasons why they may have had difficulty dealing with Saudi students. Gresham and Walsh<sup>47</sup> at the University of Newcastle have also developed extensive materials to prepare and assist students, academics and the local community to adapt successfully to life in an Australian city. Similarly, Queensland Education and Training International (QETI) also has material which has been adapted by Queensland providers for their specific use.

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<sup>39</sup> Council for International Students of Western Australia: Homestay Guidebook

<sup>40</sup> Queensland Education and Training International (QETI) (2007): Guide to providing homestay in Queensland

<sup>41</sup> ESOS National Code of Practice 2007, D. Standards for Registered Providers.

<sup>42</sup> Queensland Education and Training International (2009): Critical Incident Management Workbook

<sup>43</sup> Eg QETI (2007), *op.cit.*; Department of Education, Victoria.

<sup>44</sup> Australian Homestay Network; Monash College P/L.

<sup>45</sup> Saudi Students in Homestay Focus Group Report prepared for ISANA / AEI Dubai Project by Australian Homestay Network

<sup>46</sup> Dr F Fallon, ISANA in conjunction with Australian Homestay Network, 2009

<sup>47</sup> Gresham & Walsh, 2009

### **Recommendation 7**

That ISANA Council seek funding from AEI for the development of a **national** training package on homestay accommodation and Under 18 issues.

### **Recommendation 8**

That ISANA assist in the development of best practice tools such as the online training materials previously developed by ISANA for training in the National Code.

## **6 Under Age students**

### **6.1 Homestay Accommodation for Under 18s**

The majority of under age students are at secondary school, with the next largest cohort in foundation, English or pre-tertiary (eg diploma programs). The duty of care and risk mitigation needs for under age students<sup>48</sup> have resulted in two different models for managing their homestay placements. Some educational institutions have a contractual arrangement with a homestay provider to suitably match and place their students and to provide ongoing monitoring of the placement<sup>49</sup>. The education provider is able to review the homestay provider's performance to ensure it meets their service level agreement<sup>50</sup>. Other educational establishments prefer to maintain and manage their own cohort of homestay hosts in order to have total control of their student placements due to their emphasis on pastoral care.<sup>51</sup>

### **6.2 Primary carer / care-giver responsibility**

There are three different models for primary carer or care-giver responsibility while the student is under age. Richardson cites:

- a) the student's parent or legal guardian
- b) a relative nominated by the student's parents
- c) the school attended by the student.<sup>52</sup>

However,

- d) some parents nominate a family member in Australia (often a sibling)<sup>53</sup> to be the primary carer (guardian) or
- e) pay for a professional care-giver (or guardianship) service, to act *in loco parentis*.

These care-giver services are generally recommended by the education provider and have in place communication procedures between themselves, the parent and the school; monitoring procedures for the students in their care; risk management, critical incident and complaints policies and processes, and appropriate public liability insurance.

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<sup>48</sup> Richardson, 2009, pp. 150-152

<sup>49</sup> Richardson, *op.cit.* pp. 167-168

<sup>50</sup> St Michael's Grammar School, *Submission 15*.

<sup>51</sup> Vision International, *Submission 20*, Monash College Under 18 placements.

<sup>52</sup> Richardson, 2009, pp. 179-180.

<sup>53</sup> Richardson, *ibid.* p.183.

Although it may appear that having the student's own parent as their guardian would be the preferred model, nevertheless student support staff have cited many cases where the child has been abandoned by its parent for a lengthy period of time. In one instance,<sup>54</sup> the under age student was left alone for ten weeks while his mother (legal guardian) returned home for a funeral.

For students in homestay, education providers will monitor their students' welfare in a variety of ways:

- students to have a carer service which is independent of the homestay and the educational institution<sup>55</sup>
- nominate a staff member who liaises with the homestay provider
- the school nominates a suitable homestay host as the guardian

This last model needs to be well selected by the education provider so that the host is well known to be responsible and rational if there is a difficulty.

It can also lead to conflict if the education provider tries to remove the student from the homestay and there have been instances where the guardian/homestay turns out to be unreliable.<sup>56</sup>

#### **Recommendation 9**

That ISANA Council recommend that DEEWR run a campaign to remind education providers that under the National Code, they have additional duty of care for their under age students' accommodation, including homestay, and that as best practice, regular meetings are scheduled with the student and reports forwarded to the parent at least bi-annually.

#### **Recommendation 10**

That ISANA Council recommends to the Australian Government that Standard 5 of the National Code 2007 be amended to include a condition that the education provider takes responsibility for ensuring that the nominated primary carer / care-giver has an appropriate skill level and undergone appropriate training in the responsibilities required.

#### **Recommendation 11**

That, as an independent and multi-sectoral organisation, ISANA Council seek funding from AEI to develop a training package, reflecting best practice, for primary carers to be used nation-wide.

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<sup>54</sup> Stirling Education, *Submission 17*.

<sup>55</sup> ISA Guardianship Service, *Submission 6*.

<sup>56</sup> Richardson, 2009, pp. 180-181.

### 6.3 State Regulations regarding Under 18 students

An overview of the differing state regulations has been summarised by Sylvia Lewohl<sup>57</sup> and is also comprehensively covered in the National Child Protection Clearinghouse Resource Sheet<sup>58</sup>. There is no consistent standard in the regulations, either in the type of screening required, or in the differentiation between volunteers or employees, nor in any minimum age stipulation. In all states and territories except the ACT, people working with children have to undertake a screening check. In the ACT, there is no relevant Act, but it is understood that 'services contracted to government are required to employ "fit and proper" people.'<sup>59</sup> In Victoria, teachers and police officers who offer homestay are able to claim exemption from the need to obtain a Working with Children Check on the grounds that they have had a Police check. The Department for Families and Communities in South Australia has developed a Screening Unit which 'provides a centralised, consistent and confidential approach to the screening and assessment of background information of people working with children or vulnerable adults'<sup>60</sup>. Across the states and territories, only Queensland specifies the need for a Blue Card for child accommodation services, including homestays. As part of their procedures, many homestay companies across Australia already require their current and new host families to obtain clearances. A further confusion arises with some education departments requiring their providers of homestay services to under age children to complete a Determination of Fit and Proper Person.

At the very least, ISANA recommends that all homestay family members aged 18 and over obtain a Working with Children Check Card in states which have working with children legislation and a Police check in the other states. Where police checks are used, they should be renewed every two years.

#### **Recommendation 12**

That ISANA Council recommends to the Australian Government in its review of the National code 2007 that the education provider be responsible for placing Under 18 students only with a host family where each member of the household, aged 18 and above, has undergone a screening process, i.e. Working with Children Check (except ACT and Tasmania) **and** Police Check. This should be written into the placement agreement.

## 7 Government Legislation

The ESOS Act legislates for the duty of care responsibilities of education providers in relation to their international students, but the issue often lands in the Department of Immigration and Citizenship (DIAC) as there is no DEEWR requirement for the legal guardian (parent) to fulfil their duty of care obligations to their child.

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<sup>57</sup> Lewohl, Submission 8.

<sup>58</sup> Berlyn et al., Working with Children Checks and Police Checks, February 2010.

<sup>59</sup> Ibid.

<sup>60</sup> [www.dfc.sa.gov.au/pub/screening](http://www.dfc.sa.gov.au/pub/screening)

While it is acknowledged that there are processes in place for guardian visas, they do not prevent a guardian from departing from Australia and leaving the student without alternative, approved guardianship arrangements. In situations where the student has been left to live alone in independent accommodation, it is up to the education provider to step in and make alternative arrangements for the student's welfare on a case by case basis<sup>61</sup>. In addition, the National Code applies to students on a student visa but there is no regulation or protection for Under 18 students on temporary or permanent resident visas who are here without appropriate welfare support. There have also been cases of students whose visa status changes from international student to permanent resident. In these cases, there is no clarity on the legislated responsibility of the parent or the education provider towards the student.

### **Recommendation 13**

That ISANA Council recommends to the Australian Government in its review that Standard 5 of the National Code 2007 be amended to reflect that if a guardian visa holder has to leave Australia during the first 12 weeks of arrival, it is the education provider's responsibility to:

- approve and monitor alternative welfare arrangements until the guardian's return
- provide the guardian visa holder with a letter of support, to be shown to border control authorities when departing Australia.

A flash record identifying that the adult is on a guardian visa would assist border control authorities.

## **8 National Privacy laws relating to Accommodation Provision**

Under the National Code of Practice for Student Engagement before Enrolment<sup>62</sup>, education providers are responsible for providing relevant information to students on accommodation options. However, while education providers can assiduously provide advice to students through comprehensive pre-departure sessions, at orientation once the student is in-country, and through Housing Advisory staff, students will always be at the mercy of unscrupulous landlords.

Due to privacy legislation, it has not been possible to share information regarding unsuitable accommodation providers or Homestay hosts who have proved to be unsuitable for hosting students, in particular those Under 18. It is common for hosts who have been blacklisted by one provider to register with another provider or to offer their accommodation via the internet. There is therefore the risk that an unsuitable Homestay host continues to host students until they have been blacklisted by all the homestay or education providers in their area.

There is currently no national approach to imposing sanctions on private accommodation providers who breach local council or state legislation yet are able to move their business from state to state in order to avoid being prosecuted for unfair trade practices.

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<sup>61</sup> Stirling Education, *Submission 17*.

<sup>62</sup> National Code 2007, Standard 2, p. 12.

Clearer guidelines in the National Code as outlined in Recommendations 2 and 4, coupled with the availability of comprehensive training for staff who deal with accommodation issues (Recommendation 7) should reduce the prevalence of unsuitable accommodation providers through closer oversight of accommodation arrangements and increased support for students.

## 9 Rooming Houses

The most negative publicity in the national press surrounding accommodation cases is commonly in rooming house situations where stories abound of over-crowding<sup>63</sup>, lost bonds<sup>64</sup> and unsafe living arrangements<sup>65</sup>. Every week, students report incidents and cases of substandard accommodation to support staff<sup>66</sup>. Victoria University, among other tertiary institutions, has warned its students to be aware of scammers and dodgy accommodation websites<sup>67</sup>.

Confusion over the definition of Rooming House, which can depend on local government interpretation, has made it difficult for students to understand which legislation applies in their own case. In some municipalities, a family and three non-related residents constitutes a rooming house, in others, the limit is two students. ISANA members have reported cases of a landlord failing to complete bond lodgement forms or to give them to tenants for signing<sup>68</sup>. Homestay hosts (and some homestay providers) are not aware (or choose to ignore the fact) that if the family hosts more than the maximum number of homestay students allowable in their state, the house needs to be registered as a rooming house.

Marginson et al. have recommended that 'the regulations governing boarding houses and other forms of accommodation, which are separate from the ESOS Act that governs international education, need to be invoked consistently by state, territory and local governments'<sup>69</sup>. In addition, organisations such as the Tenants Union of Victoria have expressed concern over the discriminating factors at play in the private rental market and they also believe these issues need to be addressed<sup>70</sup>.

Due to the breadth and complexity of rooming house and tenancy issues, it is evident that Rooming Houses warrant a separate investigation and Issues Paper by ISANA due to the enormous legislative domain. It is important to ascertain Australia-wide the ways in which current legislation in each state and territory impact on our international students, by far the dominant sector of the population utilising Rooming Houses in one form or another.

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<sup>63</sup> Brisbane Courier Mail, July 26, 2010, Landlord fined for house overcrowded with international students

<sup>64</sup> PSC, *Submission 13*, Case study 8.

<sup>65</sup> Marginson et al. *op. cit.* pp. 153-154.

<sup>66</sup> Griffith University, *Submission 4*.

<sup>67</sup> The Age, August 14, 2009, Operator of rooming company raided

<sup>68</sup> Consumer Affairs Victoria, outcome of Court Action, 16 July 2010

<sup>69</sup> Marginson et al. *op. cit.* p. 173.

<sup>70</sup> Better Tenancies Policy Platform, p. 8

#### **Recommendation 14**

That ISANA Council agree to the development of separate paper on the impact of Rooming Houses on international students. This report would consider the following as its primary tasks:

- Whether a national definition and standards on Rooming Houses could be established in close collaboration with councils and municipalities to ensure a uniform understanding of such standards.
- The feasibility in establishing a national practice that, prior to referring its students to a rooming house, the education provider has checked with the local Council that the rooming house has been registered as such.
- The importance of education providers ensuring that their student accommodation staff attend relevant training which is conducted by Consumer Affairs.

#### **Conclusion**

The submissions (Appendix B) provided by education providers, welfare support staff and homestay providers show the high level of concern across all sectors of the education industry for all homestay students.

There should be discussion as to whether students aged between 18 and 25 should be regulated within the National Code as the majority of incidents occur with students in this age bracket.

Accommodation is a vital component of the international student experience and homestay is one of the best ways to get positive interaction between students and the local community. Poor experiences reflect badly on Australia as a whole and education providers can and should play their part in safeguarding their students' welfare.

The improvements in legislation which have come about from the Australian government's reviews in 2009 should be built on so that best practice standards are developed in accommodation, particularly in the care of under age students. We believe that our recommendations for amendments to the National Code would assist education providers, by clarifying their responsibilities in regard to the provision of accommodation and approving welfare arrangements for their students.

## **Appendices**

### **Appendix A: Glossary / definitions**

#### **Accommodation Provider**

Is the property-owner (i.e. landlord) or person sub-letting the accommodation to a student.

#### **Care-giver / primary carer / aka guardian**

These terms tend to be used interchangeably by education providers, homestay providers and students. However, it is generally accepted that Guardian is the legal guardian and custodian of the student (i.e. a parent or legally appointed Guardian), whereas the person who has responsibility *in loco parentis* is the care-giver or primary carer.

#### **Homestay**

A form of accommodation where a student lives with a homestay host and is treated like a member of the family. Two or three meals a day are provided by the homestay host and utilities (water, electricity and gas) are included in the cost. Students are not expected to cook their own meals and Under 18 students must be provided with three meals a day, seven days a week. Each student should have their own room with natural light, bed, desk, chair and space for their clothing.

Maximum number of students is two in Queensland, three in Victoria, four in Western Australia. If the number of students exceeds the maximum for that state, the house is no longer considered a homestay and must be registered as a rooming house (see below).

#### **Homestay provider**

A company or organisation which is responsible for sourcing, interviewing and evaluating potential host families. They may be affiliated with an education provider or operate independently; in both cases they place students with a homestay host who has registered with it.

#### **Homestay host**

A homestay host may be a single female, single mother, or a couple, with or without offspring. A household which welcomes an international student into their home where no profit is expected but whose expenses are reimbursed for the services provided to the student.

#### **Rooming House**

Student rents a room in a private home. The room could be a shared space with other student/s and more than three students can live in the house. The owner of the property might not necessarily live on the premises. The students usually self-cater.

To comply with local government legislation, a rooming house must be registered with the local Council and appropriate insurance must be in place.

## **Appendix B: Submissions**

Listed in alphabetical order

1. Educare
2. Eynesbury College
3. Familystay: Case Studies
4. Griffith University: Case Studies
5. Independent Schools Queensland
6. ISA Guardian Services: Case Studies
7. Lewohl, S.: Case Studies
8. Lewohl, S.: Overview on State regulations regarding Under 18 students
9. Lewohl, S.: Homestay Issues Paper
10. Lewohl, S.: Responses from AEI to questions collated at AHN International Student Accommodation Industry Seminars
11. Lewohl, S.: AHN Standards document for Homestay Services
12. Mentone Grammar School
13. Professional Student Care
14. Ryugaku Times
15. St Michael's Grammar School
16. Soropos, E.
17. Stirling Education
18. Talkabout Tours
19. University of Sydney
20. Vision International
21. Wesley College
22. Summary of issues identified in submissions to the ISANA Accommodation Working Party

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