

**AUSTRALIAN HUMAN RIGHTS COMMISSION
AGE DISCRIMINATION ACT 2004 (CTH), section 44(1)
NOTICE OF REFUSAL OF A TEMPORARY EXEMPTION**

By this instrument, the Australian Human Rights Commission (Commission) rejects the application of Carnival plc (trading as Carnival Australia) for a temporary exemption pursuant to s 44(1) of the *Age Discrimination Act 2004* (Cth) (ADA).

BACKGROUND

Carnival plc (trading as Carnival Australia) (the Applicant) is a cruise company and operator of 12 cruise brands, including P&O Cruises Australia and Princess Cruises Australia.

Nature of application

The Applicant has applied for an exemption under the ADA to permit it to restrict the ability of persons aged under 21 years of age (under-21s) to take part in its cruises. Specifically, the Applicant wishes to require under-21s to travel with a parent or guardian on cruises operated between 1 November and 30 January each year. This is hereafter referred to as 'the under-21s Policy'.

Applicant's reasons for requesting an exemption

The Applicant submits that, unless it imposes the under-21s Policy, it will be unable to ensure the security, comfort, health and safety of its passengers aboard its ships.

The Applicant states that until 2007, it operated 'Schoolies' cruises during the summer months, which catered exclusively for passengers aged 16 to 19 years of age, celebrating the end of their high school education. The Schoolies cruises were extremely popular, but the Applicant discontinued the cruises because of an exponential increase in alcohol-related security incidents during the cruises. The Applicant states that it tried a variety of measures on the Schoolies cruises to try to reduce these incidents, but it was unable to do so. The Applicant notes that the risk of these incidents was compounded by passengers bringing alcohol on board cruises, and the fact that cruises are contained environments that are isolated from mainland police and medical services during periods at sea.

The Applicant states that although it discontinued the Schoolies cruises and its marketing towards school leavers, there continued to be a high level of school-leavers seeking to book cruises during the summer months, and that it continued to experience alcohol-related incidents on its cruises.

In the Applicant's view, the under-21s Policy is an appropriate measure to combat the risk of binge-drinking among young people in a holiday environment. The Applicant submits that research demonstrates that the presence of a parent or guardian inhibits the effect of the peer pressure associated with binge-drinking. The Applicant further submits that it has explored all other reasonable and effective measures to address the issue of binge-drinking and other anti-social behaviour by young people on board its cruises.

Submissions received by the Commission

The Commission invited interested parties to comment on the exemption application, including other cruise operators, Gold Coast City Council, peak advocacy organisations for youth affairs, and anti-discrimination boards and tribunals in each State and Territory. The Commission also posted the exemption application on its website.

The Commission received 6 submissions in response. Only one submission did not oppose the grant of the temporary exemption. In the 5 submissions opposing the grant of the temporary exemption, the main grounds of objection were as follows:

- the requested exemption appears to be based on a discriminatory assumption that under-21s will drink to excess and behave inappropriately;
- it is inappropriate, absent an issue of legal capacity, to require an adult to be accompanied by his or her parent or guardian in order to access goods, services or accommodation;
- the Applicant's principal concerns could, and should, be achieved through measures which encourage and support responsible alcohol consumption by all passengers. Such measures should focus on the harmful behaviour, rather than the age of the passenger;
- the proposed exemption would apply to all under-21s. It would not be restricted in its application to those under-21s who intend on participating in a Schoolies celebration onboard one of the Applicant's cruises; and
- granting the exemption would not be consistent with the objects of the ADA.

The Applicant's response to the submissions received by the Commission

The Applicant's response addressed a range of matters, including the 5 issues outlined above.

The Applicant denies that the under-21s Policy is based on a discriminatory assumption regarding the behaviour of young adults, and states that it has relied upon its own actual experiences and observations in identifying the class of passenger which has engaged in harmful Schoolies activities. In addition, it submits that research demonstrates:

- the systematic and predictable nature of binge-drinking at Schoolies events;
- that the majority of young people at certain, predictable locations and time periods are Schoolies participants or high school students;
- the substantially heightened degree of substance abuse and anti-social behaviour by Schoolies participants compared with the general population;
- evidence of selection into Schoolies, meaning that heavy-drinking young people are more likely to holiday on Schoolies with friends; and
- that binge-drinking behaviour of the kind demonstrated by Schoolies participants does not stop at the age of 18. Indeed, the presence of persons aged over 18 years at Schoolies events has created a greater risk of harm,

and some land-based events have been age-restricted with an upper limit of 18.

The Applicant denies that it is inappropriate to require parental or guardian supervision for persons aged between 18 and 21 years and points to research that suggests that such supervision is an effective preventative measure in respect of harmful drinking behaviour, for both persons under the age of 18 years of age and for young adults. The Applicant also points to the 'norm-regulating function' which parental or guardian supervision can provide in respect of young adults.

In relation to measures supporting the responsible consumption of alcohol by all passengers, the Applicant emphasises that it already has in place stringent requirements in respect of the Responsible Service of Alcohol (RSA) and other measures which apply to all passengers. The Applicant maintains that these measures alone were unlikely to prevent alcohol-related security incidents arising from Schoolies celebrations and submitted that these measures were not successful in reducing the level of incidents during cruises in the summer months. The Applicant further submits that the under-21s Policy had been successful in dramatically reducing the level of such incidents.

In response to the argument that the proposed exemption would apply to all under-21s, the Applicant argues, amongst other things, that the ADA itself anticipates the application of a policy based on the general characteristics of a certain age group, rather than the characteristics of specific persons.

In response to the argument that granting the temporary exemption would not be consistent with the objects of the ADA, the Applicant notes that one of the objects of the ADA, outlined in s 3(c), is 'to allow appropriate benefits and other assistance to be given to people of a certain age, particularly younger and older persons, in recognition of their particular circumstances'. The Applicant submits that the vulnerability of children, young people and the elderly is more apparent:

- in the isolated environment of a cruise ship with no police presence; and
- in an enclosed space, which is liable to exacerbate the potential effects of alcohol-induced or alcohol-related behaviour.

The Applicant further refers to s 33 of the ADA which provides general exemptions for specific acts of positive discrimination. The Applicant submits that s 33 does not require that the positive discrimination benefits persons of the same age or age group. Rather, s 33 simply requires that a benefit accrues to persons 'of a particular age'. In the Applicant's view, the benefits which are likely to result from the under-21s Policy will benefit all passengers and, in particular, under-21s, the elderly, and children, and meet the requirements of s 33(a) of the ADA as well as the requirements of ss 33(b) and 33(c) of the ADA. The Applicant submits that even if the under-21s Policy did not meet the requirements of s 33 of the ADA, the under-21s Policy is consistent with the objects and/or 'spirit' of the ADA.

REASONS FOR DECISION

The Commission has considered all the material before it including, but not limited to, the issues outlined above.

The Commission has decided to reject the application. The reasons for the Commission's decision are as follows.

The Commission is not satisfied that unaccompanied under-21s pose a serious threat to the health, safety and security of passengers

The Applicant seeks the exemption on the basis that, without the under-21s Policy, it is unable to ensure the health, safety and security of its passengers.

The Commission requested the Applicant to provide details of how many unaccompanied under-21s were on its summer cruises from 2007 onwards, and the number of recorded alcohol-related incidents involving unaccompanied under-21s on those cruises. The Applicant advised that it had been applying its under-21s Policy since the discontinuation of the Schoolies cruises. It had permitted some unaccompanied under-21s to travel on its summer cruises, assessed on a case-by-case basis. The number of unaccompanied under-21s on its summer cruises ranged from 1 passenger to 45 passengers per cruise. The Applicant advised that none of those unaccompanied under-21s had been involved in an alcohol-related incident on its cruises.

The evidence before the Commission does not satisfy it that unaccompanied under-21s on board regular cruises run by the Applicant present a serious risk to the security, comfort, health and safety of passengers. In the Commission's view, the environment of a Schoolies cruise is materially different to that of the Applicant's regular cruises on which, the Commission is informed, the average passenger age is 45 years and the majority of passengers travel as part of a family group.

The exclusion of unaccompanied under-21s is not a proportionate response

The Commission does not consider the proposed exclusion of unaccompanied under-21s to be a proportionate measure to achieve the Applicant's objective of ensuring the security, comfort, health and safety of its passengers aboard its ships. Other measures are available to the Applicant, which are less restrictive and more effective at ensuring the security, comfort, health and safety of its passengers. Specifically, the Commission considers that stringent RSA measures which apply to all passengers are a more appropriate means of addressing binge-drinking or other anti-social behaviour on board cruises.

The scope of the requested exemption is significantly broader than its intended purpose

The Commission understands the objective of the Applicant's under-21s Policy is to discourage school-leavers from taking cruises during the traditional 'Schoolies' period, because the Applicant considers them more likely to engage in binge-drinking and other anti-social behaviour. In the Commission's view, the effect of the under-21s Policy is much broader than this. It is therefore not a proportionate response to the Applicant's concerns.

The Commission notes that the under-21s Policy would apply to all persons aged under 21 years, regardless of whether they were school leavers, university students, or in full-time employment. The Commission further notes that it is proposed that the under-21s Policy would apply to all cruises during the summer months, rather than

the period of time more closely associated with the traditional 'Schoolies' celebrations, that is mid-November to early December.

Granting the exemption would be inconsistent with the objects of the ADA

The ADA seeks to eliminate, as far as possible, discrimination on the ground of age in a number of areas, including the provision of goods, services and facilities. The ADA also seeks to promote recognition and acceptance within the community of the principle that people of all ages have the same fundamental rights.

In the Commission's view, the proposed exemption is inconsistent with, and undermines, both of these objects of the ADA.

APPLICATION FOR REVIEW

Subject to the *Administrative Appeals Tribunal Act 1975* (Cth), any person whose interests are affected by this decision may apply to the Administrative Appeals Tribunal for a review of the decision.

Dated this 3rd day of November 2009

A handwritten signature in black ink, appearing to read 'Catherine Branson', written in a cursive style.

Signed by the President, Catherine Branson QC, on behalf of the Commission.