

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

By this instrument, the Australian Human Rights Commission ('Commission') grants 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

(a) Description of the Applicant's proposed policy

The Applicant has applied for a temporary exemption under the ADA in respect of a policy to prevent Unauthorised Events occurring on its cruise ships which are likely to compromise the health, safety and security of passengers and crew.

The Applicant's policy defines an Unauthorised Event as any event which may be large in scale, and which is associated with excessive or anti-social behaviour, including the abuse of alcohol. The Applicant's policy specifically identifies a 'Schoolies' event as an example of an Unauthorised Event. The Commission notes that term 'Schoolies' events generally refers to celebrations by young people who have either just finished their last year of high school, or who are celebrating with other young people who have just finished their last year of high school.

(b) Restrictions based on age in the Applicant's policy

The Applicant wishes to impose the following restrictions based on age on Applicant cruises commencing from Australia:

- for Applicant cruise ships departing an Australian port between 1 November and 7 January annually, passengers who are under the age of 19 must be accompanied by a responsible adult (the 'Responsible Adult Requirement'); and
- for Applicant cruise ships departing an Australian port between 8 January and 31 January annually, the Applicant will permit a quota of 60 passengers per cruise who are under 19 years of age and not accompanied by a responsible adult. After this quota is filled, the Applicant will apply its requirement that passengers under 19 years of age must be accompanied by a responsible adult.

In respect of the first restriction, the Applicant may, at its own initiative, waive the Responsible Adult Requirement where it is satisfied (in its sole and absolute discretion) that there is no risk that a specific passenger under the age of 19 will participate in an Unauthorised Event. The Applicant may require any such passenger to sign a code of conduct or provide other commitments as a condition of boarding. This discretion may be exercised by the Applicant on a case by case basis. The

Applicant will not (and is not required to) make an assessment of each and every case.

In respect of the latter restriction, the Applicant notes that the quota will not include infants, and will also not include passengers under the age of 17 where the Applicant believes there is no risk that the minor will participate in an Unauthorised Event. The Applicant will otherwise determine how the quota is filled.

The Applicant may, in its sole and absolute discretion, increase this quota where it decides that this increase will not result in a risk to health, safety and security of passengers and crew, having regard to the purpose of the Applicant's policy.

(c) *The Applicant's proposed general right of refusal in relation to all of its cruises*

Where the Applicant forms the view, on reasonable grounds, that a passenger (of any age) is planning to participate in an Unauthorised Event, the Applicant may refuse boarding to that passenger or impose other conditions aimed at reducing or eliminating any risk to the health, safety and security of passengers and crew. Those conditions include requiring the passenger to sign a code of conduct or provide other commitments as a condition of boarding.

This restriction applies in respect of any Applicant cruise ship departing from an Australia port at any time of the year. The restrictions based on age, outlined in paragraph (b) above, are not intended to limit the operation of this general right of refusal.

Applicant's reasons for requesting an exemption

The Applicant is seeking to prevent events occurring on board its cruise ships which compromise the Applicant's ability to ensure the health, safety and security of passengers and crew. The Applicant is particularly concerned about 'Schoolies' celebrations on board its cruise ships and has outlined its ongoing concern about the risk of secondary supply of alcohol on board its cruise ships to passengers under the age of 18.

Until 2007, the Applicant operated 'Schoolies' cruises which catered exclusively for passengers aged 16 to 19 years of age celebrating the end of their high school education. The Applicant states that it discontinued these cruises because of an exponential increase in alcohol-related security incidents during the cruises. While the Applicant discontinued its 'Schoolies' cruises and its marketing towards school leavers, the Applicant states that there has continued to be a high level of school-leavers seeking to book cruises during the summer months.

In 2009, the Applicant made an application to the Commission for a temporary exemption under the ADA to permit it to operate an 'under-21s' policy. The Applicant's under-21s policy was to require all persons under the age of 21 to travel with a parent or guardian on Applicant cruise ships between 1 November and 30 January each year. The Applicant sought the under-21s policy to address its concerns about 'Schoolies' celebrations on board its cruise ships, and submitted that it had tried all other reasonable measures open to it, without success.

The Commission declined to grant that temporary exemption application. One of the Commission's reasons was that the scope of the requested exemption was significantly broader than its intended purpose. The objective of the under-21s policy was to discourage school leavers from taking cruises during the traditional 'Schoolies' period. The effect of the under-21s policy was to exclude all persons under the age of 21, regardless of whether they were school leavers, university students or in full-time employment.

The Applicant has submitted a revised temporary exemption application whose restrictions correspond more closely with the type of behaviour it is seeking to address.

REASONS FOR DECISION

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

The Applicant's policy pursues a legitimate public policy goal and is appropriately targeted in its approach

The Commission accepts the Applicant's health, safety and security concerns regarding 'Schoolies' celebrations, including the risk of secondary supply of alcohol to passengers under the age of 18, and the difficulty in preventing this as the number of people involved in the celebration increases. Considering that the secondary supply of alcohol contravenes the Applicant's RSA policies and obligations and raises a significant risk to the health, safety and security of passengers, the Responsible Adult Requirement is an appropriate response to that concern.

The Commission considers that limiting the Responsible Adult Requirement to passengers under the age of 19, instead of the Applicant's earlier proposal of applying the Responsible Adult Requirement to all passengers under the age of 21, is an appropriately targeted approach.

The Commission also considers that the Applicant's proposal to introduce an adjustable quota of unaccompanied passengers under the age of 19 on cruises between 8 January and 31 January narrows the application of the Responsible Adult Requirement to a period which more closely resembles the traditional period for 'Schoolies' celebrations.

Finally, the Commission notes that the Applicant's policy provides for a waiver of the Responsible Adult Requirement. This waiver recognises that there will be passengers under the age of 19 who do not present a risk of participating in an Unauthorised Event and thus should not be subject to the limitation.

Having regard to the objects of the ADA, the Applicant's policy is a reasonable measure

In making a determination on a temporary exemption application under the ADA, the Commission has regard to the objects of the Act. The objects of the ADA include seeking to eliminate, as far as possible, discrimination against persons on the ground of age in a range of areas, including provision of goods, services and facilities and accommodation.

The Commission recognises that the Applicant's policy allows conduct which is inconsistent with the objects of the ADA. While this is a factor which suggests against the grant of the exemption sought,¹ it does not mean that the Commission cannot grant the exemption. In line with the Commission's guidelines on the granting of temporary exemption under the ADA, the Commission has considered the reasonableness of the Applicant's policy, weighing up the nature and extent of the discriminatory effect against the reasons advanced in favour of the exemption.²

The Commission has taken into account the Applicant's legitimate concern about controlling the consumption of alcohol on board its cruises and its previous experience of 'Schoolies' celebrations. The Commission has also taken into account the Applicant's substantial narrowing of its earlier proposal. In the Commission's view, the Applicant's policy is a reasonable measure which should be permitted. The Applicant has sought to minimise as far as possible the discriminatory effect of its policy by reducing both the age range and the time period of the Responsible Adult Requirement and by making it subject to exceptions in appropriate cases.

TERM OF EXEMPTION

The Commission grants the temporary exemption for a term of 2.5 years, commencing on 23 December 2010 and expiring on 22 June 2013.

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 21st day of December 2010



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

¹ Australian Human Rights Commission, *Temporary Exemption under the Age Discrimination Act: Commission Guidelines* (2009), section 3(b). Available at: http://www.humanrights.gov.au/legal/exemptions/ada_exemption/ada_exemp_info_appl.html.

² Australian Human Rights Commission, note 1, section 3(b).