



Australian Human Rights Commission

Temporary exemption application

Age Discrimination

Carnival plc

June 2009

Submission by Stepan Kerkyasharian AM
President of the Anti Discrimination Board of NSW



Anti-Discrimination
Board of New South Wales

Our Ref: LS/09/020

Sophie Redmond
Legal Section
Australian Human Rights Commission
GPO Box 5218
Sydney NSW 2001

Dear Ms Redmond

Re: Temporary exemption application -Age Discrimination –Carnival plc

As President of the New South Wales Anti-Discrimination Board (the ADB), I welcome the opportunity to make a submission.

1. Anti-Discrimination law in NSW

The ADB is an independent statutory body that administers the *Anti-Discrimination Act 1977 (NSW)* ("the AD Act"). The AD Act makes it unlawful to discriminate on certain grounds, such as age¹, in certain circumstances, including the provision of good and services², and accommodation³.

Functions undertaken by the ADB include investigating and conciliating individual and representative complaints about discrimination; providing education about discrimination; undertaking projects and activities aimed at eliminating discrimination; and providing legal and policy advice to government and other interested parties.

Where a person believes they have been discriminated against, they may lodge a complaint with the ADB. They may complain on their own behalf, or in certain circumstances, through an agent, guardian, representative or lawyer. They may also complain as a group, or as a representative of a group.

The ADB may decline the complaint at any stage, but only for good reason. If accepted, the ADB will investigate the complaint. If the matter appears to be covered by the AD Act, and investigation does not resolve the complaint, the ADB provides conciliators who meet with both parties to try to reach an agreement.

Where the parties are unable to reach a conciliated agreement at the ADB, and in certain other cases, the matter will be heard by the NSW Administrative Decisions Tribunal ("the ADT").

¹ *Anti-Discrimination Act 1977 (NSW)* s49ZYA

² *Anti-Discrimination Act 1977 (NSW)* s49ZYN

³ *Anti-Discrimination Act 1977 (NSW)* s49ZYO

The remedies available from the ADT to those people covered by the AD Act include: orders for compensation; orders prohibiting future unlawful discriminatory conduct; publication of an apology; development of programs or policies aimed at eliminating unlawful discrimination; and declarations that unlawfully discriminatory contracts are unenforceable.⁴

It is also against the law to advertise in breach of the AD Act⁵, and to aid and abet a breach of the AD Act⁶. Principals and employers may, in certain circumstances, be liable for the conduct of their agents or employees⁷.

However, the AD Act also includes some exceptions. These are generally based on the concepts of "genuine occupational qualification", "undue hardship", and certain special categories of exceptions (eg sport, superannuation)., so that discriminatory conduct, otherwise prohibited under the AD Act, is lawful.

In addition, the President and the Minister may grant exemptions from the AD Act. These are orders for specific positions, programs or activities which are allowed to discriminate, either because of necessity, reasonableness or as a form of redressing past discrimination (eg affirmative action policies for women).

2. The ADB does not support the proposed exemption.

We do not support the request for an exemption, as the proposed condition would discriminate against all persons less than 21 years of age, and not just those involved in schoolies activities. More importantly, the exemption appears to be sought to overcome a management problem, rather than to redress past discriminatory practices.

I hope that this submission is of assistance to the Australian Human Rights Commission. Should you have any questions, please contact the ADB's Legal Officer, Charlotte Steer, on 02 9268 5572.

Yours sincerely,



Stepan Kerkyasharian AM

President

NSW Anti-Discrimination Board

Dated: 18 June 2009

⁴ *Anti-Discrimination Act 1977 (NSW) s108*

⁵ *Anti-Discrimination Act 1977 (NSW) s 51*

⁶ *Anti-Discrimination Act 1977 (NSW) s 52*

⁷ *Anti-Discrimination Act 1977 (NSW) s 53*