



Office of the Anti-Discrimination Commissioner

Celebrating Difference, Embracing Equality

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| (June 2009

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

Dear Ms Redmond

**Temporary exemption application under the *Age discrimination Act 2004 (Cth)*-
Carnival plc**

Thank you for the opportunity to provide a submission in respect of an exemption application from Carnival plc (trading as Carnival Australia).

I have considered the Guidelines published by the Australian Human Rights Commission (AHRC) in respect of temporary exemption applications under section 44 (1) of the *Age Discrimination Act 2004 (Cth)* (the Act).

I note that Carnival Australia wishes to restrict the ability of persons aged under 21 years of age to take part in cruises without a guardian during the traditional 'Schoolies period.'

The Office of the Anti-Discrimination Commissioner (OADC) comments as follows in relation to the specific questions for consideration.

1. Is an exemption necessary?

The OADC agrees with the point made in the submission that putting in place a condition or requirement related directly to chronological age would amount to unlawful discrimination under section 14 and/or 15 and 28 (b) of the Act.

The proposal by Carnival Australia, if implemented, would contravene the provisions of the Act because it would restrict the right of adults under 21 years of age to travel unaccompanied.

The OADC is of the view that it not appropriate to grant the exemption for the reasons stated below.

2. Is granting an exemption consistent with the objectives of the Act?

The proposed exemption would be contrary to the object of eliminating discrimination against persons on the grounds of age in the provision of goods, services and accommodation as it would constitute a restriction for the duration of schoolies week on a young adult under 21 from purchasing travel on the cruise ship unless they can demonstrate they have a guardian to accompany them.

Such a restriction cannot be characterised as a benefit or assistance to the group of young persons, as it represents a restriction of rights rather than a broadening of rights. The exemption proposal would not promote recognition and acceptance within the community of the principle that people of all ages have the same fundamental rights.

3. Is it appropriate to grant the exemption?

The exemption policy is based on a discriminatory assumption that people under the age of 21 will drink to excess and will behave inappropriately. The policy assumes that parents and guardians will ensure responsible behaviour and drinking. Absent an issue of legal capacity, there is generally no 'guardianship' of an adult. There is no guarantee that parents and guardians would ensure responsible behaviour when they have no legal obligation in respect of an adult. These considerations relate only to adults aged 18-21 years. Clearly young persons under 18 should not be drinking on ship, and should not have alcohol served to them because it is unlawful.

It is worth noting the exception in section 39 under the *Anti-Discrimination Act 1998* (Tas) in relation to being accompanied by an adult concerns a child. Section 39 provides an exception if the circumstances require a child to be accompanied by an adult where there is a reasonable risk that the child may cause a disruption, or endanger himself or herself, or any other person, if not accompanied by an adult. There is no similar provision for people age 18 and over.

Amongst the reasons cited in the application for seeking the exemptions is concern for the health, safety and well-being of all passengers and staff on its vessels. The OADC recognises that concern about excessive alcohol consumption is a serious issue and an important public policy consideration in the formulation of public programmes. The OADC considers the exemption proposal is not a feasible or practical solution to the problem. The OADC is of the view that other less restrictive measures can be implemented to advance the important public health goal of reducing excessive alcohol consumption.

The public health considerations can be addressed by other steps, such as strict observance of guidelines regarding responsible serving of alcohol. In relation to the responsible serving of alcohol, staff can ask for identification where necessary to

ensure that a person is not under age and refuse service if a person is behaving inappropriately. Security measures should be in place to ensure that no illicit substances are being brought on board. If Carnival are not already doing so, they could monitor the quantity of personal supplies of alcohol brought on board by passengers to ensure that excessive drinking is minimised.

Staff should also not hesitate to exclude passengers of any age group who are behaving in a threatening, harmful or anti-social way towards others. Other measures can be adopted such as a code of conduct regarding all passengers on ship. An issue of concern is that anti-social and harmful behaviour by passengers on board should be addressed at all age groups. The OADC supports the public health goal of addressing excessive alcohol consumption but this should be done on a non-discriminatory basis. The OADC supports measures that are addressed at the harmful behaviour and not based on age.

If the Australian Human Rights Commission requires further information or clarification on this submission, please do not hesitate to contact Catherine Edwards, Complaints Manager.

Yours sincerely,

A handwritten signature in black ink, appearing to be 'Sarah Bolt', with a long horizontal line extending to the right.

Sarah Bolt
Anti-Discrimination Commissioner