

STRICTLY PRIVATE AND CONFIDENTIAL

Elizabeth Broderick, Commissioner responsible for Age
Discrimination
Australian Human Rights Commission
Level 8
Piccadilly Tower
133 Castlereagh Street
SYDNEY

Dear Commissioner,

**Application by Carnival Australia for Exemption under section 44(1) of the
Age Discrimination Act 2004 (Cth)**

We act for Carnival plc trading as Carnival Australia (*Carnival Australia*).

Our client seeks an exemption from the operation of the *Age Discrimination Act 2004* (Cth) (*the Act*) pursuant to section 44(1) of the Act.

In seeking an exemption, our client does not admit that the Act applies to its operations, to the extent that these operations are conducted on cruise ships which are not within the jurisdiction of the laws of the Commonwealth of Australia. Our client reserves all of its rights in this respect.

Background

Carnival Australia is Australia's leading cruise company and operator of 12 cruise brands (including P&O Cruises Australia).

Carnival Australia is committed to the safety and comfort of its passengers and acknowledges the changing community standards in respect of youth alcohol consumption. As an integral part of this commitment, Carnival Australia discontinued its promotion and operation of dedicated "Schoolies" cruises after 2006.

The reason for this decision was that our client experienced an exponential increase in the amount of alcohol-related security incidents during "Schoolies" cruises. Carnival Australia did undertake valid measures to reduce such incidents. Those measures included refusing alcohol service to persons involved in incidents, de-activating alcohol purchasing cards, and increasing the presence of onboard security. Despite these measures, Carnival Australia continued to experience a high level of Schoolies incidents which were fuelled by alcohol and threatened the security, comfort and health and safety of its passengers. These risks were compounded by Schoolies bringing contraband alcohol on board cruises, and the fact that cruises are contained environments that are

isolated from emergency services during periods at sea. Consequently, our client made an informed decision to discontinue promoting and operating these voyages.

Even though Carnival discontinued marketing targeted towards school leavers for cruises during the relevant "Schoolies" period, there continued to be high levels of school-leavers seeking to book cruises during the traditional "Schoolies" periods and Carnival continued to experience alcohol-fuelled incidents.

Carnival Australia wishes to restrict the ability of persons aged under 21 years of age to take part in cruises without a parent or guardian during the traditional "Schoolies" period of 1 November to 30 January (*Schoolies Period*). Our client seeks an exemption, as set out in the remainder of this letter to ensure that it does not contravene relevant age discrimination legislation by imposing this restriction.

Attached to this letter is a policy document setting out in greater detail as to the basis for our client's desire to restrict cruises during Schoolies periods, and relevant social research and data. We also attach a letter in support of our client's application from the Alcohol and other Drugs of Australia Council dated 23 December 2008.

Key Criteria for Assessment of Application

Guidelines

We refer to the Guidelines for applications for exemptions under section 44 of the Act which are published by the Commission. We address the criteria referred to in the Guidelines below.

We note that the Guidelines suggest that applications for exemptions are to allow organisations time to make changes to comply with the Act. However, we find no such limitation on the Commission's general powers to grant exemptions under section 44 of the Act.

We note that in other jurisdictions similar exemptions have previously been granted for reasons other than to allow for compliance.

1. Is an exemption necessary?

As set out above, our client does not, in making this application, admit that the Act applies to its activities in relation to leisure cruises upon vessels that are not "flagged" in the Australian jurisdiction. However, to the extent that the Commission is of the opinion that the Act does apply, it is possible that by putting in place a condition or requirement related directly to chronological age, may amount to unlawful discrimination under sections 14 and/or 15 and 28(b) of the Act.

The exemptions in sections 33, 34, 35, 36, 37, 38, 40, 41, 41A, 42, and 43 of the Act do not appear to apply to the conditions that our client proposes to impose on persons during the Schoolies Period.

The exemption contained in section 39 extends to acts done in compliance with certain applicable Commonwealth, State and Territory acts and regulations. One of the main reasons for our client's seeking to implement the restrictions we have outlined above is a concern for the health, safety and well-being of all passengers and staff on its vessels.

Because our client's vessels do not carry Australian flags, pursuant to maritime laws these vessels are not subject to Commonwealth, State and Territory acts and regulations with regards to occupational health and safety. However, our client is under similar obligations with respect to health and safety under laws in the jurisdictions of the flags that its ships carry.

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

The objects of the Act are set out in section 3 to the Act. These explicit objectives are directed towards eliminating discrimination, ensuring equality, allowing appropriate benefits, to promote community recognition, and to remove negative stereotypes.

Our client's application for an exemption is motivated principally by concerns for the health and safety of its passengers, and a concern that it does not promote or condone cultural rights of passage amongst young Australians which involve drinking to dangerous levels and substance abuse. However, our client's concerns are not inconsistent with the objectives of the Act for the following reasons:

- Our client is not seeking to remove the ability of "under 21s" to enjoy cruises during the Schoolies period. Rather, it wishes to ensure that persons are accompanied by responsible persons who are likely to monitor the behaviour of persons under 21 years of age and reduce the likelihood of the types of unacceptable behaviour associated with the rite of passage known as Schoolies Week.
- Our client is not relying upon negative stereotypes about persons of a similar age to school leavers in making this application. Rather it is relying upon its own experience of incidents during the Schoolies Period, and upon social research and statistical data. This is set out in the attached policy document.

Further, as noted above, our client is under certain statutory obligations in other jurisdictions regarding the health and safety of its passengers and employees. Section 39 of the Act exempts conduct in compliance with other legislation. To the extent that our client's proposed conduct does not fall within the exemption in section 39, the exemption sought is similar to the exemption contemplated in section 39.

3. *Is it appropriate to grant the exemption?*

Our client respectfully submits that it is appropriate, on public policy grounds, to grant the exemption sought. As set out above, our client seeks an exemption for the purpose of ensuring the security and safety of its passengers and also because it does not wish to provide a forum for a rite of passage that is endemically associated with alcohol and substance abuse.

Our client believes that its concern is consistent with current public sector initiatives regarding alcohol and substance abuse amongst young adults.

We also note that a number of other hospitality providers in popular Schoolies locations already impose conditions on school leavers during the Schoolies period such as increased room and property bonds, and parent or guardian supervision for under 21 year

olds. Some properties simply do not allow persons under the age of 21 to book hotel rooms during the Schoolies Period.

4. *Opinions of interested parties*

As set out above, we attach a letter from David Templeman of the Alcohol and other Drugs Council of Australia in which Mr Templeman supports Carnival's application.

We also note that our client's application is consistent with recent government spending to address dangerous drinking behaviours amongst young adults.

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We thank you for considering our client's application. Our client would be happy to provide any further information that may assist its application upon the Commission's request.