



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

By this instrument, under section 44(1) of the *Age Discrimination Act 2004* (Cth) (ADA), the Australian Human Rights Commission grants an exemption to Carnival plc, trading as Carnival Australia (Carnival), from the operation of section 28 of the ADA.

This exemption is granted for a period of three years from the date of this instrument and is subject to the conditions outlined below.

1 The Application

Carnival is a cruise company that operates cruises to the Pacific Islands from Australia and New Zealand.

On 7 April 2009, Carnival applied for an exemption under the ADA to implement a strategy for managing security issues, which were arising on its cruises in the period of 1 November to 31 January each year (Schoolies Period). The core aspects of this strategy, for which the exemption was sought, were, inter alia:

1. requiring that any passengers under the age of 19 years, travelling in the period 1 November to 7 January, be accompanied by a responsible adult (subject to waiver by Carnival) (The Responsible Adult Requirement)
2. restricting to 60 (subject to any increase at Carnival's discretion) the number of unsupervised passengers under the age of 19 years on-board any cruise in the period 8 January to 31 January (Quota Restriction).

Carnival submitted that its age restriction policy had the aim of preventing 'Unauthorised Events' occurring on its cruise-ships. Carnival'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 (Unauthorised Event). Carnival's policy identifies a 'Schoolies Event' as an example of an Unauthorised Event. The Commission notes that the term 'Schoolies Event' generally refers to celebrations by young people who have 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 (Schoolies Event). The term 'Schoolies' refers to a group of young people who have just finished high school and are typically 16 to 19 years of age (Schoolies).

On 23 December 2010, the Commission granted to Carnival an exemption for two and a half years (Initial Exemption).

On 21 June 2013, Carnival applied to the Commission for an extension of the Initial Exemption, on the same terms, for a further period of two and a half years. On 15 November 2013, the further exemption was granted (2013 Exemption).

On 28 October 2016, Carnival applied to the Commission for an extension of the 2013 Exemption, on the same terms, for a further period of two and a half years.

On 22 June 2017, an exemption was granted for a one year period on similar terms as the 2013 Exemption (2017 Exemption), with the additional requirements that:

Where the Responsible Adult Requirement is mentioned in Carnival's advertising or online booking system, Carnival will state that it has retained a discretion to waive the Responsible Adult Requirement. Carnival will also state that queries/requests for review in relation to a waiver application decision can be made through its complaints handling process and will publish information about this process. Carnival will assess each application for waiver of the Responsible Adult Requirement that it receives.

Carnival will adopt/amend its current complaints handling mechanism to allow applicants who are dissatisfied with Carnival's initial assessment on a waiver application to further engage with Carnival on the matter, and Carnival will participate in that process in good faith.

The 2017 Exemption was granted subject to the condition that Carnival would provide a report to the Commission as to the following:

1. how many applications/requests for waiver of the Responsible Adult Requirement it receives for the 1 November 2017 to 7 January 2018 period and how many of these applications/requests it approves
2. how many applications/requests it receives for waiver of the Responsible Adult Requirement during the 8 January 2018 to 31 January 2018 period, once the quota is filled
3. on how many occasions and to what number it increased the quota
4. how many applicants utilised Carnival's complaints handling process to engage with Carnival further on waiver application decisions
5. any changes to the number or level of Unauthorised Events
6. analysis and evidence that any reduction in Unauthorised Events are a direct result of the restrictions based on age
7. whether, and why, the restrictions continue to be necessary to reduce Unauthorised Events
8. any alternate methods/strategies to reduce Unauthorised Events that it has implemented or trialled
9. the success or otherwise of those methods/strategies.

On 20 June 2018, Carnival applied to the Commission for an extension of the 2017 Exemption, on substantially the same terms as the 2017 Exemption, for a further period of five years.

2 Decision of the Commission

After an extensive period of consultation with Carnival, the Commission has decided to grant an exemption for a period of three years from the date of this notice, subject to the terms and conditions set out below (2019 Exemption).

3 Considerations

In reaching its decision, the Commission considered the following:

- The application and submissions by Carnival dated 29 June 2018
- Carnival's report to the Commission, as required by the conditions of the 2017 Exemption, dated 29 March 2018
- Applications and submissions by Carnival in relation to previous exemption applications that Carnival stated it relied upon
- All information provided by Carnival in response to the Commission's requests for further information
- Submissions from other interested parties.

These documents are available on the Commission's website at:

<https://www.humanrights.gov.au/our-work/legal/exemptions>

In reaching its decision, the Commission had regard to the following:

- The terms and objects of the ADA
- *The Commission Guidelines: Exemption applications under the Age Discrimination Act 2004 (Cth)*.

4 Background

Carnival relies on substantially the same reasons for seeking this exemption as it relied on in its previous applications.

In support of the current application, Carnival has included data in accordance with the conditions attached to the grant of its 2017 Exemption and relevant to its implementation of the exemption. Carnival has also provided the Commission with additional information and data as requested by the Commission in its consultation with Carnival.

4.1 Reasons for initial application

Carnival states that prior to lodging the Initial Exemption application it experienced a high level of alcohol-fuelled and other security incidents on-board its cruises in the traditional Schoolies Period.

Up until 2006, Carnival operated Schoolies cruises, which were marketed exclusively to passengers aged 16 to 19 years celebrating the end of their high school education. However, these Schoolies cruises became problematic due to the large number of alcohol-related and other security incidents involving a large number of school-leavers. These incidents included serious risks to the health and safety of passengers, crew and the Schoolies participants themselves.

Carnival attempted to reduce the number and severity of these incidents by obtaining the advice of security experts and implementing a range of security measures, including the following:

- Increasing security presence on-board—including contracting 60 security personnel and two trained investigators across its cruise ships
- Screening for and confiscation of alcohol at embarkation using screening devices (all guests screened)
- Drug screening on embarkation using screening devices and drug sniffer dogs (all guests screened)
- Increasing restrictions to the access and consumption of alcohol, including refusing to serve alcohol to persons involved in incidents, de-activating alcohol purchasing cards, providing unique wrist bands secured with metal clips to identify guests aged 18 years and over, and attempting to police the secondary supply of alcohol
- Tightening its policies and procedures in relation to the access and consumption of alcohol, including providing certain on-board bars designated as alcohol free bars, and limiting guests to the purchase of a maximum of 2 drinks at any visit to the bar
- Enhancing the training and instruction of its crew in relation to the above procedures, including additional Responsible Service of Alcohol enforcement duties for all staff.

Despite these various measures, Carnival advised that it continued to experience a large number of alcohol-fuelled incidents involving Schoolies. Carnival advised that Schoolies participants continued to find methods of circumventing Carnival's security measures by either smuggling alcohol on board, obtaining alcohol through above-drinking age passengers or drinking to excess at ports before re-boarding the ship. Carnival further advised that there were also incidents where Schoolies participants pre-arranged fights and rioting which had not necessarily been fuelled by alcohol.

In 2006, Carnival decided to discontinue promoting its cruises to school leavers. However, Carnival advised that even after this step was taken, there continued to be large numbers of school-leavers booking cruises and it continued to experience alcohol-fuelled and other Schoolies incidents.

4.2 Reasons for further applications

Carnival advises that since the Commission granted the Initial Exemption, it has observed a significant and continued decrease in the number of alcohol related security incidents during the Schoolies Period. Carnival considers that this decrease is attributed to the Initial Exemption granted by the Commission in 2010 and the further 2013 and 2017 Exemptions granted by the Commission.

By way of an example, Carnival states that:

- in December 2005, it recorded 457 separate security incidents on one cruise-ship, during one cruise
- in December 2012, it recorded a total of 67 security incidents, across its four cruise-ships and in all cruises for that month
- In December 2014, it recorded a total of 18 security incidents across six Australian home-ported vessels and across all cruises on those vessels for that month
- In December 2015, it recorded a total of five security incidents across six Australian home-ported vessels and across all cruises on those vessels for that month
- In December 2017, it recorded a total of 13 security incidents across seven Australian home-ported vessels and across all cruises on those vessels for that month.

Carnival also states that since the Initial Exemption, it continues to observe a general decrease in the number of customer service complaints from passengers' on-board cruises during Schoolies Periods in relation to excessive behaviour engaged in by passengers under the age of 19 years.

Carnival also states that the exemptions have served to:

- discourage Schoolies from making bookings for the purpose of engaging in improper behaviour and under-age drinking
- reduce the likelihood of unmanageable large-scale Schoolies events organised through means such as social networking
- promote an understanding that Carnival cruises will not tolerate improper behaviour and under-age drinking on its cruise-ships as part of the Schoolies Period celebrations.

In seeking this further exemption, Carnival emphasises the primacy of health, safety and security of its crew and passengers. It states that health and safety risks on its cruise-ships are compounded by the following factors which Carnival submit are as relevant today as they were at the time Carnival applied for its first exemption:

- the on-board environment contains inherent risks, including risks associated with confined spaces and falling from heights or into the ocean
- cruise ships are unique environments where guests can move freely between venues on-board the ship, such as bars, restaurants, theatres, outside decks and their cabins. Guests can move around the ship with food and beverages, for example, a drink purchased at a bar could then be taken into a theatre to watch a show or consumed in a guest's cabin
- while at sea, its cruise-ships are isolated from emergency medical services and there are limited on-board medical facilities
- while at sea, it cannot call upon an immediately available police presence

- there are practical limitations to security personnel numbers which it can accommodate on its cruises, more specifically:
 - there are limited staff cabins and staff facilities on-board
 - security personnel are required to complete highly specialised training in accordance with all relevant maritime laws, and Carnival has a limited pool of security personnel available with the requisite training
 - on-board staff must have the required visas, vaccinations and travel documentation available before joining a ship, and therefore it is difficult to increase staff members in emergency circumstances or with limited notice
- on-board security personnel are limited in terms of:
 - their rights to detain, search and control passengers
 - the facilities available for detaining passengers who are a threat to themselves and/or others
- past experience shows that Schoolies participants have a remarkable ingenuity for circumventing its procedures in relation to restricting access to and the consumption of alcohol—Carnival states that contraband alcohol has been detected on-board in Listerine mouthwash bottles, shampoo bottles and in sealed soft drink cans
- the legal drinking age in many ports of call in the Pacific Islands is below 18 years of age, and minors may be legally permitted to purchase and consume alcohol while Carnival’s ships are in port. Some ports of call have local traditions that involve consuming products containing narcotics, for example, drinking kava in Pacific Island nations. Carnival notes that it has no ability to control a guest’s behaviour in port, and it also cannot refuse to allow a passenger to re-board its ship as disembarkation of a passenger can be complex where it involves repatriation
- past experience shows that Schoolies celebrations involve large groups organised through school and social networking, and these groups seek to run events/gatherings on-board which are difficult to manage.

4.3 Data from the 2017 Exemption period

Carnival’s report to the Commission dated 29 March 2018 (provided pursuant to clause 5.1(b) of the 2017 Exemption Grant Notice) and Carnival’s current exemption application, dated 29 June 2018, relevantly contained the following information:

- The 2017 Exemption required Carnival to create a complaint handling mechanism to allow applicants who were dissatisfied with Carnival’s initial assessment on a waiver application, to further engage with Carnival on the matter.

Carnival states that during the 1 November 2017 to 7 January 2018 period, it received 15 applications for waiver of the Responsible Adult Requirement, of which five were approved

and ten were denied. The applications denied were based on Carnival's assessment of the risk, including where:

- a) 18 year old guests were travelling with 17 year old guests with the inherent risk of secondary supply of alcohol to minors; and
- b) more than one cabin of 18 year old guests requested to travel together.

Carnival had two applicants utilise the complaint handling process to engage with Carnival further on waiver application decisions. These two applicants were ultimately granted waiver approval and are part of the five applications which were approved in total. These two cases were escalated to Carnival's Head of Customer Service for further assessment, and where necessary, assurances from parents/legal guardians were sought prior to a waiver being approved.

- Carnival states that there were no requests for a waiver of the Responsible Adult Requirement in the 8 January 2018 to 31 January 2018 period, as the quota of 60 unaccompanied passengers under the age of 19 was not reached for any of Carnival's cruises which departed during that period.
- Carnival states that there were some isolated security incidents involving guests aged 17 to 19 between 1 November 2017 and 31 January 2018, but Carnival does not consider these incidents to be attributed to large scale Unauthorised Events or excessive behaviour engaged in by groups.
- Carnival submits that the restrictions permitted under the 2017 Exemption continue to be necessary due to its ongoing concern for the health, safety and security of its crew and passengers. Carnival emphasises that land-based Schoolies events have the benefit of substantial support from emergency services and government departments in preventing and responding to incidents. For example, the Gold Coast benefits from having Police, Ambulance, Fire and Rescue, SES, Queensland Health, the Education Department and local Councils involved. These support services are not available to cruise ships.
- Carnival believes that the most responsible course of action is to try and manage the risk at the booking phase, rather than the point at which Unauthorised Events involving large groups occur on-board its ships, hence its view that there is a continued need for its Responsible Adult Requirement policy.
- Carnival submits that there continues to be a strong demand for Schoolies cruises, and cruises operating during the Schoolies Period (albeit not promoted as Schoolies Cruises) continue to be a popular option for school leavers when choosing a destination for their end of school celebrations. Carnival provided an online report dated 16 February 2018, of a third party travel supplier advertising and promoting a cruise operated by a major cruise line brand as a 'Schoolies Cruise'. Carnival asserts that this was done without the knowledge or authorisation of that cruise line brand. Carnival also provides evidence of that same third party supplier advertising Schoolies packages and deals for 2018 and 2019 on its website. Carnival provides these examples in support of its submission that cruises are still a popular option for school leavers. Carnival further submits that without an

exemption, Carnival will have no control over the promotion by third parties (such as travel agents) of its cruises which operate during the Schoolies Period.

Carnival has also provided relevant information for each Schoolies period from 2010 to 2018 in relation to the following matters:

- how many Carnival cruises departed from Australian ports in the Schoolies Period
- how many young people (aged 16 to 18 years inclusive) were on-board each of the cruise-ships which departed in the Schoolies Period
- how many young people, on the cruise-ships which departed in the Schoolies Period, were accompanied by an adult and how many were unaccompanied
- incidents of anti-social behaviour on its cruise-ships during the Schoolies Period
- how many applications were received by Carnival for a waiver of the Responsible Adult Requirement, and how frequently Carnival waived the Responsible Adult Requirement, in the period 1 November to 7 January
- how frequently Carnival increased the 60 passenger quota, applicable in the period 8 January to 31 January and on how many occasions and to what number Carnival increased the quota.

5 Submissions received by the Commission

Carnival's request for a further exemption was posted on the Commission's website and interested parties were invited to comment on the application.¹ The Commission also circulated the application to:

1. all State and Territory anti-discrimination bodies
2. the New South Wales Police Marine Area Command
3. the Alcohol and Other Drugs Council of Australia.

The Commission received a response from the Victorian Equal Opportunity and Human Rights Commission (VEOHRC). The VEOHRC did not express a view in relation to Carnival's application for an exemption, however it noted that it would seek to write to Carnival to advise Carnival to seek an exemption through VEOHRC from relevant Victorian anti-discrimination legislation. No other submissions were received. The Anti-Discrimination Board of New South Wales (ADBNSW) did not make a submission in relation to Carnival's current application, however the Commission notes that the ADBNSW has, in relation to Carnival's previous applications in 2010, 2013 and 2017, expressed the view that it does not support the grant of the exemption. The ADBNSW's view has been that the exemption does not appear to give any benefit to the targeted age group, nor does it appear to reduce disadvantage to them and to that extent, it would appear to be inconsistent with the purposes of the ADA. The ADBNSW has previously noted that, notwithstanding any grant of an exemption, should its President receive a complaint against Carnival that alleges a breach of the

¹ <http://www.humanrights.gov.au/notice-application-exemption-carnival-australia>

Anti-Discrimination Act 1977 (NSW) on the ground of age, the President would be obliged to investigate the alleged breach.

6 Relevant law

The Commission may grant an exemption from the operation of a provision of Division 2 or 3 of Part 4 of the ADA.² An exemption may be granted subject to terms and conditions specified in the instrument, and may be expressed to apply only in circumstances, or in relation to particular activities, as specified in the instrument.³ Exemptions are to be granted for a specified period not exceeding five years.⁴ It is not unlawful for a person to act in accordance with an exemption.⁵

Pursuant to section 28 of the ADA, it is unlawful to discriminate on the ground of age in the provision of goods, services or facilities. This provision is located in Division 3 of Part 4 of the ADA. Therefore, the Commission may grant Carnival an exemption from the operation of section 28 of the ADA.

7 Decision and reasons

The Commission has decided to grant an exemption to Carnival from section 28 of the ADA on the terms set out below, in order to allow Carnival to implement its age restriction policy which has the aim of preventing Unauthorised Events occurring on its cruise-ships.

7.1 Terms and conditions of the Exemption

(a) Terms

Carnival may impose the following restrictions, based on age, in relation to its cruises commencing in Australia:

1. For Carnival cruise-ships departing an Australian port between 1 November and 7 January, Carnival will permit a quota of 20 passengers per cruise who are under the age of 19 and not accompanied by a responsible adult. Once this quota is filled, Carnival will require passengers who are under the age of 19 to be accompanied by a responsible adult (Responsible Adult Requirement).
2. For Carnival cruise-ships departing an Australian port between 8 January and 31 January, Carnival will permit a quota of 60 passengers per cruise who are under the age of 19 and not accompanied by a responsible adult. Once this quota is filled, Carnival will apply its Responsible Adult Requirement.
3. The quotas, in 1 and 2 above, will not include infants and will also not include passengers under the age of 17 where Carnival considers that the minor does not present a risk of

² Section 44(1) and (2) of the ADA.

³ Section 44(3)(a) and (b) of the ADA.

⁴ Section 44(3)(c).

⁵ Section 47 of the ADA.

participating in an Unauthorised Event. Carnival will otherwise determine how the quota in each period is filled.

Carnival may, in its sole and absolute discretion, increase the quota in either or both periods, where it decides that the increase will not result in a risk to health, safety and security of the passengers and crew, having regard to the purpose of its policy.

Carnival may, at its sole and absolute discretion, waive the Responsible Adult Requirement where it is satisfied that a specific passenger under the age of 19 does not present a risk of participating in an Unauthorised Event. Carnival may require any such passenger to sign a code of conduct or provide other commitments as a condition of boarding.

Where the Responsible Adult Requirement is mentioned in Carnival's advertising or online booking system, Carnival will clearly state that it can decide to waive the Responsible Adult Requirement. Carnival will state that prospective passengers can apply to Carnival for a waiver of the Responsible Adult Requirement and will provide information about how an application for a waiver can be lodged. Carnival will provide clear publicly available information regarding the factors it considers when making decisions about waiver applications. This information will be provided at the time of booking. Carnival will also state that requests for review in relation to a waiver application decision can be made through its complaint handling process and will publish information about this process.

Carnival will assess each application for waiver of the Responsible Adult Requirement that it receives (when the relevant quota is filled, and it becomes applicable).

Carnival will continue operating its complaint handling mechanism to allow applicants who are dissatisfied with Carnival's initial assessment on a waiver application to further engage with Carnival on the matter, and Carnival will participate in that process in good faith.

(b) Conditions

Carnival will provide a report to the Commission by no later than 1 June 2022, as to:

1. how many applications/requests for waiver of the Responsible Adult Requirement it receives for the 1 November to 7 January period in each year that this exemption operates, and how many of these applications/requests it approves
2. how many applications/requests it receives for waiver of the Responsible Adult Requirement during the 8 January to 31 January period in each year that this exemption operates, and how many of these applications/requests it approves
3. on how many occasions and to what number it increased the quotas, and reasons for the exercise of this discretion
4. how many applicants utilised Carnival's complaints handling process each year to engage with Carnival further on waiver application decisions, and the outcomes of that process
5. any changes to the number or level of Unauthorised Events

6. the details of the publicly available information published by Carnival in relation to:
 - i. Carnival's discretion to waive the Responsible Adult Requirement, and information regarding how a prospective passenger can apply for a waiver
 - ii. factors Carnival considers when making decisions about waiver applications
 - iii. the process for requesting a review in relation to a waiver application decision
7. whether, and why, the restrictions continue to be necessary to reduce Unauthorised Events
8. any new methods/strategies to reduce Unauthorised Events that it has implemented or trialled over the course of this exemption period
9. the success or otherwise of those methods/strategies to meet its objectives.

(c) *Period of Exemption*

The exemption is granted for three years from the date of this instrument.

7.2 Reasons for decision

The reasons for the Commission's decision to grant the exemption are as follows.

(a) *Carnival's policy pursues a legitimate public policy goal and is appropriately targeted in its approach*

The Commission accepts Carnival's submissions in relation to the health, safety and security concerns that arise at Schoolies celebrations on its cruises, including:

- the risk of secondary supply of alcohol to passengers under the age of 18 and the difficulty of preventing this. The secondary supply of alcohol contravenes Carnival's Responsible Service of Alcohol policies and obligations, and raises a significant risk to the health, safety and security of passengers.
- the limited capacity of on-board medical facilities in the event of accidents and the risks of accidents occurring (such as falling from heights on a cruise ship or into the ocean)
- the inability to control passengers' behaviour while in port, and the complexities involved in refusing to allow a passenger to re-board a ship where repatriation is involved
- the inability to call upon a police presence in the management of issues which may arise as a result of Unauthorised Events
- the limitations facing on-board security personnel in the management of issues which may arise as a result of Unauthorised Events
- the ability of Schoolies to organise unmanageable large-scale events through means such as social networking.

The Commission notes that Carnival has had an exemption from section 28 of the ADA since 2010. During this period, Carnival has collected data relevant to its application. This data reveals that:

- the number of Unauthorised Events has significantly decreased during the time that an exemption has been in place
- in the 2017 Exemption period, Carnival received 15 applications requesting a waiver of the Responsible Adult Requirement, and in the 2013 Exemption period, Carnival received 19 applications for wavier of the Responsible Adult Requirement
- the quota of 60 unaccompanied passengers was not reached on any cruises during the 2013 and 2017 Exemption periods—this quota was reached on only one occasion, in the Initial Exemption period.

In the circumstances, the Commission considered that it may be possible to narrow the scope of the exemption and still address Carnival’s health, safety and security concerns.

The Commission consulted with Carnival to ensure the terms of any further exemption were appropriately targeted. This exemption is granted subject to terms that require a narrower operation of Carnival’s age restriction policy, compared to previous years that an exemption has been in place. The principal change is that Carnival will permit a quota of 20 passengers per cruise, in the 1 November to 7 January period, who are under the age of 19 and not accompanied by a responsible adult. Once this quota is filled, Carnival will require passengers who are under the age of 19 to be accompanied by a responsible adult. In previous exemptions, the Responsible Adult Requirement has been applied throughout the 1 November to 7 January period without an adjustable quota—i.e. all passengers under the age of 19 years were restricted from travelling unless accompanied by a responsible adult.

The Commission considers that the parameters set in relation to the adjustable quotas and the Responsible Adult Requirement in this 2019 Exemption make it an appropriately targeted approach. Specifically, the Commission has had regard to Carnival’s policy being:

1. Appropriately targeted in terms of age

The Responsible Adult Requirement is limited to passengers under the age of 19 years and it does not include passengers under the age of 17 where Carnival believes that the minor does not present a risk of participating in an Unauthorised Event.

2. Appropriately targeted in terms of its periods of application and method of application

The 1 November to 7 January period closely resembles the traditional period of Schoolies celebrations. Under this exemption, Carnival will apply an adjustable quota, to allow 20 guests under the age of 19 to travel without a responsible adult during this period.

Carnival submits that for the 2018–2019 Schoolies season (the last Schoolies period), the average number of unaccompanied passengers aged 17 to 19 years, who sailed between 1 November 2018 to 7 January 2019, was six. For the 2018–2019 Schoolies season, the average number of unaccompanied passengers aged 17 to 19 years, who sailed between 8 January to 31 January, was 21. The latter statistic suggests that Carnival can safely

accommodate approximately 20 passengers aged 17 to 19 years and who are not accompanied by an adult. Therefore, in this exemption, the quota introduced for the 1 November to 7 January period has been set at 20 passengers per cruise where travel is not restricted by the Responsible Adult Requirement. This should allow a greater number of passengers under the age of 19 to travel unaffected by the Responsible Adult Requirement in the 1 November to 7 January period, relative to previous years that an exemption has been in place.

The Responsible Adult Requirement is applied less strictly in the 8 January to 31 January period, during which time Carnival applies an adjustable quota to allow 60 guests under the age of 19 to travel without a responsible adult. The Commission notes that, since 2010, during the Initial Exemption period, Carnival has on one occasion increased the quota of 60 to 68 and that it has not been necessary to consider increasing the quota on other occasions as Carnival has not had more than 60 passengers under the age of 19 seek to make bookings during the 8 January to 31 January period. It appears that in practice, the restriction in the 8 January to 31 January period has little to no discriminatory impact. The restriction remains in place as a precautionary measure.

The 1 November to 7 January period is the peak Schoolies Period where most Schoolies celebrations take place. Carnival submits that it is appropriate for a stricter quota to be applied in this period. Carnival further states that it cannot usefully draw on its experience in the 8 January to 31 January period to assess potential risks because the number of unaccompanied 17 to 19 year old passengers have not frequently been in the range of 60, the current average being 21 unaccompanied passengers per cruise in this period.

The quota of 20 unaccompanied passengers under the age of 19 years in the 1 November to 7 January period appears to strike an appropriate balance that minimises the discriminatory impact of Carnival's age restriction policy, while accommodating Carnival's health, safety and security concerns.

3. Appropriately targeted in terms of its flexibility in application

Carnival's policy provides for a waiver (at its discretion) of the Responsible Adult Requirement. Carnival will state in its advertising and online booking system that it has retained this waiver discretion. Carnival will also state that prospective passengers can apply to Carnival for a waiver of the Responsible Adult Requirement and will provide information about that process.

The Commission understands that Carnival's current practice is to consider exercising its discretion in relation to each application for a waiver of the Responsible Adult Requirement that it receives. That is, Carnival does not assess each and every booking by a passenger under the age of 19 but will assess whether to waive the Responsible Adult Requirement for a booking when it is accompanied by an application for a waiver. Carnival has submitted that it is not in a position to assess every booking on a case by case basis, and this becomes difficult when Carnival's external agents do the booking. However, where a booking is accompanied by a request for a waiver and a passenger has made a request for an exception to the Responsible Adult Requirement policy, Carnival will assess each of those cases. This practice has been reflected in the terms of the exemption granted by this decision.

As noted above, during the 2013 Exemption period, Carnival received 19 applications for waiver of the Responsible Adult Requirement of which 13 were approved and six were denied. In the 2017 Exemption period, Carnival received 15 waiver applications, of which five were approved and ten were denied. The applications denied were based on Carnival's assessment of risk, and Carnival provides the example of cases where it was concerned about the risk of the secondary supply of alcohol to minors where the bookings included 18 year old guests with 17 year old guests.

The ability to waive the Responsible Adult Requirement 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.

4. Allows for a process of review

Under the terms of the exemption granted by this decision, Carnival will facilitate and engage in a review process that allows a potential passenger, who has applied to be exempt from the Responsible Adult Requirement policy, to further engage with Carnival if they are dissatisfied with Carnival's initial assessment of their waiver application.

The 2017 Exemption required Carnival to adapt its existing complaints handling mechanism to allow applicants who were dissatisfied with Carnival's initial assessment on a waiver application to further engage with Carnival on the matter. In the 2017 Exemption period, two applicants utilised the complaints handling process to engage with Carnival further on waiver application decisions. These two applicants were ultimately granted waiver approval. These two cases were escalated to Carnival's Head of Customer Service for further assessment, and where necessary, assurances from parents/legal guardians were sought prior to a waiver being approved. It appears that Carnival participated in that review process in good faith.

5. Allows for greater transparency

In the interest of providing the public with a greater level of information on the operation of the Responsible Adult Requirement, Carnival will state in its advertising and online booking system that it can waive the Responsible Adult Requirement. Carnival will also state that prospective passengers can apply for a waiver and will provide information about that process.

The terms of this exemption also require Carnival to provide clear publicly available information regarding the factors it considers when making decisions about waiver applications. This will allow for a greater level of transparency around Carnival's decision making considerations.

This information is to be collectively provided at the time of booking.

As in the 2017 Exemption, in the interest of making Carnival's review mechanism transparent and accessible, Carnival will state in its advertising materials and online booking system, that queries or requests for review in relation to a waiver application decision can be made through its complaints handling process and will publish information that is easily and readily accessible about this process.

(b) *Carnival's policy is a reasonable measure having regard to the objects of the ADA*

In making a determination on a temporary exemption application under the ADA, the Commission has regard to the objects of the ADA. 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 or facilities.

The Commission recognises that Carnival's policy allows conduct which is inconsistent with the objects of the ADA. While this is a factor weighing against the grant of the exemption sought,⁶ it does not mean that the Commission cannot grant the exemption. In line with the Commission's Guidelines on the granting of a temporary exemption under the ADA, the Commission has assessed:

1. the reasonableness of Carnival's policy, weighing up the nature and extent of the discriminatory effect against the reasons advanced in favour of the exemption
2. whether the exemption could be granted subject to terms and conditions which further the objects of the ADA.

In undertaking this assessment, the Commission has considered the following:

1. Carnival's concerns about controlling the consumption of alcohol on-board its cruises and its previous difficulties in managing the health, safety and security issues associated with Schoolies celebrations.
2. Carnival's submissions regarding the effectiveness of the Initial Exemption, 2013 Exemption and 2017 Exemption in reducing security incidents on-board its cruises.
3. Carnival has minimised the discriminatory impact of its policy by making it appropriately targeted in its application (noting the parameters of the Responsible Adult Requirement, and the introduction of an adjustable quota in the 1 November to 7 January period such that there is no discrimination against 20 passengers under the age of 19 years on any cruise in the relevant period, discussed above).
4. Carnival's application of the Responsible Adult Requirement during the Initial Exemption, 2013 Exemption, and 2017 Exemption periods show that Carnival has:
 - a) in relation to the 1 November to 7 January period, exercised its discretion to waive the Responsible Adult Requirement for people under the age of 19
 - b) in relation to the 8 January to 31 January period, increased the quota in one case.

This indicates that Carnival has, at least in some cases, accommodated the individual circumstances of particular young people and this contributes to the reasonableness of the policy.

5. The terms of this exemption, that:

⁶ Australian Human Rights Commission, *Temporary Exemptions Under the Age Discrimination Act: Commission Guidelines* (2010), section 3(b).

- a) Carnival will state in its advertising and online booking system that it can decide to waive the Responsible Adult Requirement, and that prospective passengers can apply for a waiver
- b) Carnival will provide information regarding the factors it considers when making decisions about waiver applications

will further reduce the discriminatory impact of the exemption as young people will be aware of the flexible operation of Carnival's age restriction policy and will be aware that they can apply to be exempt from the operation of the policy.

6. The terms of this exemption, that:

- a) Carnival will facilitate a process of review to allow potential passengers who are dissatisfied with an initial assessment on a waiver application to further engage with Carnival on the matter
- b) Carnival will publish information about this process in its advertising and online booking system

will further reduce the discriminatory impact of the exemption as young people will be able to engage with Carnival, in good faith, which will promote a more transparent and flexible operation of Carnival's age restriction policy.

(c) *The period of exemption*

The Commission notes that Carnival has had an age restriction policy in place since the grant of the Initial Exemption in 2010.

As outlined above, Carnival has provided persuasive data showing that over the course of the Initial Exemption, 2013 Exemption and 2017 Exemption periods there has been a significant decrease in alcohol-fuelled and other security incidents on board Carnival cruises during the Schoolies Period. The Commission accepts that the Responsible Adult Requirement has had a significant impact on bringing about this result, and this may be particularly so in the early years of its operation.

The Commission notes that there is no current data to show whether the restrictions allowed by the exemptions continue to be the only factor, or the predominant factor, in the decrease of security incidents on board the cruises operating in the Schoolies Periods. There could feasibly be other factors contributing to the results provided by Carnival. The Commission understands that it is difficult, in practice, for Carnival to test whether factors outside of the Responsible Adult Requirement and quota restrictions have contributed to the decrease in alcohol-related security incidents.

Relative to previous exemptions granted, this exemption is granted subject to terms and conditions that require a narrower operation of Carnival's age restriction policy during the 1 November to 7 January period, with a view towards further minimising its discriminatory impact. This exemption is granted for a period of three years. The Commission requires Carnival, over the course of this exemption period, to consider whether there is an ongoing need for an exemption from section 28

of the ADA, and whether there are other means of achieving its purpose at the conclusion of this exemption period.

(d) *Conclusion*

The Commission concludes that Carnival's policy is a reasonable measure which should be permitted for a period of three years, having weighed up the nature and extent of the discriminatory effect against the reasons in favour of the exemption.

8 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 17th day of October 2019.

A handwritten signature in black ink that reads "Rosalind Croucher". The signature is written in a cursive, flowing style.

Signed by the President, Emeritus Professor Rosalind Croucher AM, on behalf of the Commission.