

RETAIL TRADING ACT 2008 ORDER**REASONS FOR DECISION**

1. I, Natalia Reed, am an officer holding a delegation from the Secretary under the *Retail Trading Act 2008* (**Act**) to exercise the functions prescribed in that Act.
2. On 07 February 2025, Sardar Group Pty Ltd, trading as Friendly Grocer Cardiff (**Applicant**) made an application under section 10 of the Act as occupier of a shop at 1/15 Gertrude Street, Cardiff South, NSW 2285 (**Shop**), for the Shop to be exempt from the requirement to be kept closed on Anzac Day for the year 2025 (**Application**).
3. I have considered the Application and public comments which were received.
4. On this day I have decided to refuse the Application as I am not satisfied that, as required by section 10(2) of the Act, it is in the exceptional circumstances of the case in the public interest to do so, having regard to the following matters:
 - (a) the nature of the Shop and the kinds of goods sold by the Shop.
 - (b) the need for the Shop to be kept open on the days concerned.
 - (c) the likely effect of the proposed exemption on the local economy, tourism and small businesses and other businesses in the area.
 - (d) the likely effect of the proposed exemption on employees of, or persons working in, the Shop.
5. In making this decision I have taken into account the principles enunciated in a decision of the Administrative Decisions Tribunal (**Shop Distributive and Allied Employees Association v Director General of Services Technology and Administration and K-Mart Australia Limited [2010] NSW ADT 312**) that the test under section 10 is a two-step process, there being a need for both exceptional circumstances and for the granting of the exemption to be in the public interest.
6. The Application was placed on public exhibition for a period of no less than 14 days from 16 February 2025, and public comment was sought. One public submission was received; from the Shop, Distributive & Allied Employees' Association, New South Wales (SDA NSW).

7. I have now considered the circumstances raised by the Shop, as well as the submission from SDA NSW.
8. The Applicant submitted the following as a claim for exceptional circumstances:
 - (a) The Shop is a local store.
9. Whilst I acknowledge the circumstances raised by the Shop, I do not consider these qualify as exceptional circumstances in accordance with section 10(2) of the Act for the following reasons:
 - (a) The status of the Shop as a local store is not a circumstance that can be considered out of the ordinary course, or unusual, or special, or uncommon.
 - (b) Having regard to the rationale of the Act, there should be a general presumption against trading on restricted trading days and there appears to be no exceptional circumstance in place to warrant the granting of an exemption.
10. The Applicant submitted the following reasons as to why they believed granting an exemption would be in the public interest:
 - (a) The Shop is a small grocery store selling milk, bread, newspapers, fruit and vegetables and flowers.
 - (b) The Shop is community based and community oriented store.
 - (c) The Shop has lots of local elderly customers who rely on the Shop for daily needs.
 - (d) Granting an exemption would have a positive effect on the local community as the village has a butcher, café and takeaway shop so it would allow customers a diverse range of goods on the day.
 - (e) There would be 2 people working in the Shop on the restricted trading day, and there is no effect on these employees if they choose to work.
11. I do not consider the reasons provided by the Applicant sufficiently demonstrate that granting the Shop an exemption is in the public interest in accordance with section 10(2) of the Act for the following reasons:
 - (a) The Application relates to one single day, with unrestricted trading available under the Act on both the day immediately before, and the day immediately after Anzac Day 2025. This does not indicate a significant restriction of access to daily needs, even having regard to circumstances raised by the Applicant – community based and oriented store and local elderly customer base.
 - (b) The Application cites no effect on 2 employees should they choose to work on Anzac Day, however the SDA submission refers to the social welfare of employees, their families and society, and notes the granting of an exemption would be out of step with community expectation, put pressure on retail employees and their families and impact the ability of many employees to commemorate Anzac Day with their community.
 - (c) While granting an exemption may contribute to diversity of goods available for the local community on the restricted trading day, 'public interest' refers to the interest of the general public. There is no detail to support the argument that increased diversity of goods in a local area on a single day would be in the public interest, when the same

diversity of goods is available both the day before and the day after the restricted trading day.

- (d) There were also no submissions received from other businesses in the area supporting this Application for exemption; that there would be an increased diversity of goods available for customers on the restricted trading day.
- (e) The notion of 'public interest' refers to matters that might affect the public as a whole, which does not appear to be the case in this instance.

Natalia Reed
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NSW Fair Trading
19/3/25