

## RETAIL TRADING ACT 2008 DECISION

### REASON 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 17/02/2025, LPJ Trading Pty. Ltd trading as IGA Lalor Park (**Applicant**) made an application under section 10 of the Act as occupier of a shop at 58-60 Freeman Street, Lalor Park, NSW 2147 (**Shop**), for the Shop to be exempt from the requirement to be kept closed on Good Friday, Easter Sunday, Anzac Day & Christmas Day 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 25 February 2025 and public comment was sought. Public submissions were received; from the New South Wales Branch of the Shop, Distributive and Allied Employees' Association (SDA NSW) and from the Shop, Distributive & Allied Employees' Association, New South Wales (SDA), and four members of the public.
7. I have now considered the circumstances raised by the Shop, as well as the public submissions received.
8. The Applicant submitted the following as a claim for exceptional circumstances:
  - (a) Community needs: The Shop serves a critical role in providing foods and essential goods for the community.
  - (b) Economic consideration: Businesses are suffering with high operation costs and affected cash flow. Enabling us to trade will benefit and support our cash flow which will allow us to pay for increased rent, wages, and interest rates on the business.

The Applicant also submitted claims relating to access to essential goods and local economy, however I have considered these under point 10 relating to public interest.

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) A shop providing food and essential goods for the community is not a circumstance that can be considered out of the ordinary course, or unusual or special or uncommon.
  - (b) While it is noted the Shop is required to pay rent, wages and interest rates, the occurrence of high operation costs and affected cash flow are also not circumstances that can be considered out of the ordinary course, or unusual, or special, or uncommon for many shops.
  - (c) 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 supermarket selling fruit, vegetables, milk, bread, tobacco and essential goods for the local community.
  - (b) With the Shop operating on restricted trading days the community will have access to essential goods and allow the local economy to function. The Shop can generate revenue to keep the local community employed.
  - (c) The supermarket is located 5 kilometres away from any other major shopping centre, so the community needs the Shop to remain open. A lot of the locals are elderly and local public transport is affected on restricted trading days therefore if the Shop is closed the customers will not be able to access essential goods.
  - (d) The Shop has requested to remain open to sustain essential revenue to keep the business afloat and pay its expenses. The Shop has suffered a decline in sales due to the rising costs of inflation therefore needs to trade on these days in order to meet the business expenses and maintain local employment.
  - (e) The local community members choose not to use fridges due to high cost of electricity so they buy milk, eggs, bread, etc. daily. These people will not have access to these goods on the restricted trading day.
  - (f) The local economy will be benefited as the Shop brings a lot of foot traffic for other small coffee and takeaway shops.
  - (g) Granting an exemption will avoid people travelling unnecessarily to other shopping centres and losing trade to them, which will affect other small businesses in the community.
  - (h) Granting an exemption would support employment by creating additional work / hours opportunities.
  - (i) Granting an exemption will not create unfair competition as small businesses are doing it tough already competing against Woolworths or Coles and other large retailers and will keep local businesses in the community.
  - (j) Granting an exemption will prevent disruption in supply chain and avoid people buying extra due to closures.
  - (k) The Shop will have the owner and 2-3 employees working throughout the restricted trading days, all of whom will be willing to work these shifts. The staff will receive higher penalty rates which will increase their earnings and job satisfaction. Lunch will also be provided by the business as a reward for hours worked.
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 four single days, with unrestricted trading available under the Act on both the day immediately before, and the day immediately after each restricted trading day. This does not appear to constitute a significant restriction of access to

essential goods sold by the Shop for the public, even having regard to the circumstances raised by the Applicant - closest access to similar products being 5 kms away, elderly customer base, and limited public transport available on restricted trading days.

- (b) As the Application relates to 4 single days, leaving 361 days for unrestricted trading under the Act, it is unclear from the information provided in the Application how this would present a significant disruption to the supply chain or a significant impact on retention of small businesses in the community.
- (c) There is no evidence provided in the Application to support the claim that customers are wholly dependent on the store for essential grocery items daily due to high cost of electricity. No public submissions supported this claim.
- (d) The requirement for customers to travel to other shopping centres or the loss of trade for other small businesses in the area due to this travel will be lessened by the statewide application of the Act.
- (e) There is no evidence provided in the Application that the Shop benefits the local economy by bringing a lot of foot traffic for other small coffee and takeaway shops to support the argument that granting an exemption would be in the public interest, or that extra foot traffic would be available to other businesses in the area if an exemption were to be granted.
- (f) There were also no submissions received from other businesses in the area supporting this application for exemption; that there would be increased foot traffic or other benefits to their businesses.
- (g) The Application notes granting an exemption would support local employment by creating additional work / hours opportunities and provide 2-3 staff the opportunity for higher penalty rates, increasing their earnings and job satisfaction, however there were no submissions from employees of the Shop supporting granting of an exemption.
- (h) By contrast, the SDA submissions refer to the social welfare of employees, their families and society, and note 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.
- (i) While it is recognised that granting of an exemption may assist the Shop in paying its expenses and maintaining local employment, 'public interest' refers to the interest of the general public, not that of individuals, employees, or employers. Similarly, the claim that granting of an exemption will not create unfair competition between the Shop and large retailers does not support an argument for public interest.
- (j) 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**  
29/03/2025