

**RETAIL TRADING ACT 2008 DECISION****REASON FOR DECISION**

1. I, Janet Bailey, 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 24 February 2025, Mehrotra Pty Ltd trading as IGA Arncliffe (**Applicant**) made an application under section 10 of the Act as occupier of a shop at 32 Firth Street, Arncliffe, NSW 2205 (**Shop**), for the Shop to be exempt from the requirement to be kept closed on Good Friday 2025, Easter Sunday 2025, Anzac Day 2025 and 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 4 March 2025 and public comment was sought. Four public submissions were received; from the Shop, Distributive & Allied Employees' Association, New South Wales (SDA NSW), the NSW Branch of the Shop, Distributive & Allied Employees' Association (SDA), and from two customers of the Shop.
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) The Shop is the only shop in the area serving the local population who require goods such as bread and milk.
  - (b) The Shop has two owners and about four full-time equivalent staff.
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) No evidence was provided by the Applicant in support of the claim that there is limited access to other retail options or that customers are dependent on the store for goods such as bread and milk. There were also no public submissions supporting this claim, despite the notice being published both on the Fair Trading website and instore to raise awareness with customers.
  - (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 supermarket, selling bread, milk, eggs, newspapers and grocery items.
  - (b) The locals rely heavily on the Shop for daily grocery needs. If the shop were to close, they might have to travel around to get their basics.
  - (c) All local businesses support each other. When a customer is out for shopping they shop around and visit multiple shops.
  - (d) The majority of staff are local students and that are willing to work on holidays including public holidays.
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 days in the year, with unrestricted trading available under the Act on days immediately before and after Good Friday, Easter Sunday, Anzac Day and Christmas Day. This does not indicate a significant restriction of access to essential grocery items for the local community.
  - (b) There is no evidence provided in the Application regarding benefits to local businesses to support the argument that granting an exemption would be in the public interest.
  - (c) There were also no submissions received from local small businesses or other businesses in the area supporting this application for exemption; that there would be increased customer traffic or other benefits.
  - (d) The Application notes granting an exemption would support student employees who are willing to work on public holidays, however there were no submissions from employees of the Shop supporting granting of an exemption, despite the notice being published both on the Fair Trading website and instore to raise awareness with staff.
  - (e) By contrast, 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 employees and their families, and impact the ability of many employees to celebrate public holidays with their community.
  - (f) Notwithstanding the absence of submissions from direct employees of the Shop, 'public interest' refers to the interest of the general public, not that of individuals, employees, or employers.

- (g) 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.

Janet Bailey

Director

**NSW Fair Trading**

9 April 2025