

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, Nickstac Investments Pty Ltd, trading as Summers Westdale (**Applicant**) made an application under section 10 of the Act as occupier of a shop at 261 Gunnedah Road, Westdale, NSW 2340 (**Shop**), for the Shop to be exempt from the requirement to be kept closed on Anzac Day for the year 2025 (**Application**).
3. In review of this Application, I note the description of the Shop as a *takeaway shop and convenience store*. Under section 7 of the Act, a shop is exempted from a requirement to be kept closed if its predominant business is a business of a kind specified in Schedule 1 of the Act. Publicly available information regarding the Shop, as well as the list of goods provided in the Application do not support the conclusion that the predominant business of the Shop is a take-away food and drink shop as listed in Schedule 1, therefore I do not consider that an existing exemption applies.
4. I have considered the Application and public comments which were received.
5. 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.
6. 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.

7. The Application was placed on public exhibition for a period of no less than 14 days from 12 February 2025, and public comment was sought. One public submission was received; from the Shop, Distributive & Allied Employees' Association, New South Wales (SDA NSW).
8. I have now considered the circumstances raised by the Shop, as well as the submission from SDA NSW.
9. The Applicant submitted the following as a claim for exceptional circumstances:
 - (a) The Shop is a takeaway shop and convenience store, selling food, drinks, cigarettes, fruit and vegetables, newspapers, magazines and lottery products.
 - (b) The Shop employs local staff.
10. 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 selling food, drinks, cigarettes, fruit and vegetables, newspapers, magazines and lottery products could reasonably be considered a regular, routine or normally encountered circumstance in many areas across NSW.
 - (b) Similarly, a business employing staff who live locally is not a circumstance that can be considered out of the ordinary course, or unusual, or special, or uncommon.
 - (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.
11. 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 takeaway shop and convenience store selling takeaway foods, drinks, fruit and vegetables, grocery items, newspapers, magazines, lottery products, bags of ice, cigarettes and liquor.
 - (b) The Shop is family owned and employs local people.
 - (c) The Shop is the only store like this in Westdale with a 10-15 minute drive to the centre of the nearest town, Tamworth.
 - (d) The community needs the services of the Shop.
 - (e) Granting an exemption would keep money local.
 - (f) All staff would be asked if they wanted to work before being rostered.
 - (g) Casual staff rely on public holiday rates to boost their income and would not be paid if the Shop cannot open.
 - (h) There would be 4 employees rostered on the restricted trading day.

12. 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 the goods sold by the Shop even having regard to the circumstances raised by the Applicant – the Shop is the only store like this in Westdale with a 10-15 minute drive to the centre of the nearest town, and the community needing the services of the Shop.
- (b) While the Application notes granting an exemption would keep money local, it is also reasonable to expect that money may be spent locally either the day before or the day immediately after Anzac Day 2025. Due to the statewide application of the Act, there will be many areas with similar restrictions in trading. The retention of spending locally is also supported by the Applicant's assertions that the Shop is the only one of its kind in the area with a 10 minute driving time to the centre of Tamworth.
- (c) The Application notes that casual employees will experience a loss of income due to restricted trading on this day. There were no submissions from employees of the Shop supporting granting of an exemption to avoid this loss of income, despite the notice being published both on the Fair Trading website and instore, to provide the opportunity to support or oppose this Application.
- (d) 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 and put pressure on retail employees and their families.
- (e) While four employees would benefit from public holiday pay rates if an exemption were granted, 'public interest' refers to the interest of the general public, not that of individuals, employees, or employers.
- (f) 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.

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19/3/25