

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 18/02/2025, Alstro Investech Pty. Ltd, trading as Friendly Grocer West Wallsend (**Applicant**) made an application under section 10 of the Act as occupier of a shop at 6/6 Withers St, West Wallsend, NSW 2286 (**Shop**), for the Shop to be exempt from the requirement to be kept closed on ANZAC 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 19/02/2025 and public comment was sought. Two public submissions were received; from the New South Wales Branch of the Shop, Distributive and Allied Employees' Association (SDA NSW).
7. I have now considered the circumstances raised by the Shop, as well the submissions from SDA NSW.
8. The Applicant submitted the following as a claim for exceptional circumstances:
 - (a) The Shop serves as a vital local resource for residents in West Wallsend and surrounding areas, many of whom are dependent on the store for essential grocery items. This includes individuals who may have limited mobility, elderly customers, or people living in the area with limited access to other retail options.
 - (b) The Shop maintains a high standard of responsible retailing and would ensure that operation on the restricted day would not undermine the spirit of the Retail Trading Act.

The Applicant also submitted claims relating to public benefit to vulnerable community members and local economic benefit, 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 customer base including individuals who may have limited mobility, elderly customers, or people living in an area with limited retail access are not circumstances that can be considered out of the ordinary course, or unusual, or special, or uncommon
 - (b) No evidence was provided by the Applicant in support of the claim that these customers are wholly dependent on the store for essential grocery items, or that there is limited access to other retail options. 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
 - (c) There is no detail provided in the Application as to how operation on a restricted trading day would not undermine the spirit of the Act. By contrast, the SDA submission refers to Anzac Day as a day of important cultural and historical significance and notes the restriction of trading on this day is in keeping with community sentiment on the solemn nature of Anzac Day.
 - (d) 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 fast moving consumer goods.
 - (b) Exemption would allow the community and surrounding suburbs to have access to essential grocery needs.
 - (c) In the current economic and social climate, ensuring access to essential supplies on a restricted trading day provides significant public benefit and support for vulnerable members of the community.
 - (d) Broader access to the Shops goods would likely reduce the need for customers to travel to more distant locations, further supporting economic stability of the area.
 - (e) If the exemption is granted, the likely effect on the local economy, tourism, small businesses and the other businesses in the area would be positive.
 - (f) Increased access to essential goods on the restricted days would boost consumer spending and promote economic activity in the local community.
 - (g) Extended trading hours would support local employment, retailing or expanding job opportunities for staff at Friendly Grocer West Wallsend.
 - (h) Tourists would have more flexibility to shop during public holidays, or weekends, benefiting from a reliable grocery supply.
 - (i) The exemption would strengthen the local economy by ensuring continued access to essential goods, supporting both consumers and local businesses during peak periods.
 - (j) A trading day for the supermarket during exempted hours could have a significant positive impact on the team members for several reasons. Firstly, it provides them with an opportunity to earn additional income through the loadings specified under the General Retail Award, which boosts overall earnings. Secondly, by engaging team members, the business fosters a collaborative environment where staff can work together, enhancing team cohesion and morale.
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. It is not clear how a single-day closure would result in significant disruption of access to essential grocery needs, even having regard to the circumstances raised by the Applicant – current economic and social climate, vulnerable population within the community and support for economic stability of the area overall.

- (b) While the Application cites a positive impact on the local economy should the exemption be granted, no evidence was provided by the Applicant in support of this claim.
- (c) There is no evidence provided in the Application regarding a boost to consumer spending or additional support for local businesses to support the argument that granting an exemption would be in the public interest, or that the impact on other businesses in the area would be significant if an exemption were granted. It is also reasonable to expect that there may be a boost to consumer spending locally either the day before or the day immediately after, in recognition of the restricted trading day.
- (d) The Application notes there would be more flexibility and a reliable grocery supply for tourists, however no evidence was provided that the Shop is in an area with a large tourist population, either over Anzac Day long weekend or otherwise, to support the argument for public interest. There were also no public submissions supporting this claim.
- (e) The requirement for customers to travel to more distant locations to avoid restricted trading will be reduced by the statewide application of the Act.
- (f) The Application notes granting an exemption would support employment of local residents and provide the opportunity for increased income through public holiday loadings, however there were no submissions from employees of the Shop supporting granting of an exemption.
- (g) It is also unclear from the Application how the collaborative environment fostered by the business where staff work together, enhancing team cohesion and morale, would differ between a standard trading day or a restricted trading day, should an exemption be granted.
- (h) 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 retail employees and their families and impact the ability of many employees to commemorate Anzac Day with their community.
- (i) Notwithstanding the absence of employee submissions, 'public interest' refers to the interest of the general public, not that of individuals, employees, or employers.
- (j) Similarly, while the Application cites strengthening of the local economy should the exemption be granted, 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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NSW Fair Trading
29/03/2025