

RETAIL TRADING ACT 2008 DECISION

REASON FOR DECISION

1. I, Natasha Mann, as the Commissioner for Fair Trading, am authorised to exercise the functions prescribed in the *Retail Trading Act 2008 (Act)*.
2. On 20 February 2025, Retail Drinks Australia (**Applicants' Representative**) made an application under section 10 of the Act on behalf of all NSW Packaged Liquor Licensees, for their shops to be exempt from the requirement to be kept closed on Anzac Day 2025 (**Application**). The Application listed the names and addresses of 3,163 NSW packaged liquor licence holders and indicated that 600 of these shops may be considered 'small shops' and therefore exempt under section 8 of the Act.
3. The Application was placed on public exhibition for at least 14 days from 6 March 2025 and public comment was sought. Two public submissions were received; from the NSW Branch of the Shop Distributive & Allied Employees Association (SDA) and the Shop, Distributive & Allied Employees' Association, New South Wales (SDA NSW).
4. I have considered the Application and the submissions from the SDA and SDA NSW.
5. Both SDA and SDA NSW submitted that the Application should be refused on the basis that it was not validly made, because it had not been made by the occupier of a shop.
6. Under Section 11(2) of the Act, an application may be made in respect of more than one shop, and the Act does not specifically preclude an application being made by an agent on behalf of the occupier of a shop. For this reason, I have considered the Application is capable of being characterised as having been made by the occupier of a shop or occupiers of shops.
7. Under Section 11(3) of the Act, additional information was requested from the Applicants' Representative:

3 March 2025 - Request to confirm which licence holders have an existing exemption in place to ensure these details are excluded from the application published for public comment.

On 5 March 2025, the Applicants' Representative responded that it was unable to provide this further information.

20 March 2025 – Request for information on the particular circumstances of each shop listed in the Application.

The Applicants' Representative did not provide information about the particular circumstances of each shop by the requested deadline of 24 March 2025, and did not request an extension.

8. On this day, I have decided to refuse the Application for the following reasons:
Section 10 of the Act enables an exemption to be granted based on the circumstances of an individual shop. It does not provide for an exemption to be granted to an industry

sector or class of shops without consideration of the circumstances of each shop in that industry sector or class.

The Application lists 3,163 shops. In submitting the Application, the Applicants' Representative indicated approximately 600 of these shops may be considered small shops and therefore exempt under section 8 of the Act. As the Applicants' Representative has not identified these exempt shops in its Application, or in response to requested additional information, the Applicants have not been identified, nor could their identity be deduced from the information available. This also provides sufficient doubt that the Applicants' Representative has in fact been authorised to make the application on behalf of a defined set of Applicants.

Notwithstanding the difficulty in identifying the individual applicants, there is insufficient information provided in the Application regarding the particular circumstances of each individual shop in order to be 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 day or 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.

Natasha Mann

Commissioner for Fair Trading

1 April 2025