

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

1. I, Cheryl Grant, 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 26 March 2025, Appin IGA trading as Vic's Fresh Appin (**Applicant**) made an application under section 10 of the Act as occupier of a shop, Appin IGA at 80-82 Appin Road, Appin NSW 2560 (**Shop**), for the Shop to be exempt from the requirement to be kept closed on Good Friday, Easter Sunday and Anzac Day for the years 2025 – 2027 (**Application**).
3. Under section 11(1)(b) of the Retail Trading Act, an application for an exemption is to be made no later than 28 days before the first date for which the exemption is sought. The application for an exemption for Good Friday, Easter Sunday and Anzac Day 2025 - 2027 was lodged on 26/03/25, which is less than 28 days prior to 18/4/2025, the first date for which the exemption is sought. On this basis, the Application is able to be assessed for Anzac Day 2025 – 2027 and Good Friday and Easter Sunday 2026 – 2027 only.
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 28 March 2025 and public comment was sought. Two public submissions were received; from the Shop, Distributive & Allied Employees' Association, New South Wales (SDA NSW) and from the NSW Branch of the Shop, Distributive & Allied Employees' Association (SDA)
7. I have now considered the circumstances raised by the Shop, as well as the submissions from the Shop, Distributive & Allied Employees' Association, New South Wales (SDA NSW) and from the NSW Branch of the Shop, Distributive & Allied Employees' Association (SDA)
8. The Applicant submitted the following as a claim for exceptional circumstances:
  - (a) The Shop is an independent supermarket which stocks a variety of essential items for local community needs including medical and personal items, baby formula, baby food and nappies as well as freshly made meals, fresh fruit and vegetables, bread and milk.

- (b) A large portion of customers are elderly and vulnerable who have limited ability to travel outside the local area for essential items. If the Shop is to remain closed, this would add significant stress to the elderly community. Many of the elderly community rely on the assistance of the Shop staff when shopping.
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 supermarket in a town with limited retail options, and a shop providing essential goods and services for customers day to day needs could reasonably be considered regular, routine, or normally encountered circumstances across many areas in NSW.
  - (b) A customer base including an aged population or those who may not have means to travel to other towns for supplies could also be considered regular, routine or normally encountered circumstances.
  - (c) With regards the Shop providing opportunities for employment and opportunities for increased income through award entitlements, these are all circumstances regularly, routinely, or normally encountered in NSW.
  - (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) There would be no effects on other businesses in the area as they offer different services in the community.
  - (b) If the exemption was to be granted, it would have a positive effect on the local community allowing essential items to be available in the area.
  - (c) The response from staff to work over this restricted period has been positive if the exemption is to be granted. The staff are aware of the significant service the Shop provides to the local community.
  - (d) The Shop would be staffed with 4-5 employees and will be paid according to the NSW award including penalty rates.
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 three single days, with unrestricted trading available under the Act on both the day immediately before, and the day immediately after Anzac Day, Good Friday and Easter Sunday. This does not indicate a significant restriction of access to the essential items sold by the Shop, even having regard to the circumstances raised by the Applicant –daily customers including residents, elderly people and those with limited mobility, and the Shop as the only supermarket available with the next closest shop located over 15 kilometres away.
  - (b) Similarly, it is unclear from the Application how three standalone restricted trading days would add significant stress to local people given the period for which an exemption is requested is 5 hours on Anzac Day and 10 hours on Good Friday and Easter Sunday.
  - (c) There is no evidence provided in the Application that there would be a higher than usual demand from the community if the exemption were granted. No public submissions supported this claim.
  - (d) The Application notes granting an exemption would provide higher payments to 4-5 employees volunteering to work on the restricted trading day, 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 of the opportunity to support or oppose this Application.

- (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 retail employees and their families and impact the ability of many employees to celebrate Good Friday, Easter Sunday and commemorate Anzac Day 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.

Cheryl Grant  
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**NSW Fair Trading**  
15/04/25