

## RETAIL TRADING ACT 2008 DECISION

### REASON FOR DECISION

1. I, Anita Crow, 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 27 February 2024, Yogi's IGA Austral (**Applicant**) made an application under section 10 of the Act as occupier of a shop at Shop 5, 255 Edmondson Avenue, Austral, 2179 (**Shop**), for the Shop to be exempt from the requirement to be kept closed on Good Friday 29 March 2024 and Easter Sunday 31 March 2024 (**Application**).
3. The Application was placed on public exhibition for a period of no less than 14 days from 7 March 2024 and public comment was sought.
4. I have considered the Application and public comments that 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 Applicant submitted the following as exceptional circumstances:

- (a) I am writing to request an exemption for our shop's trading on the restricted trading day in accordance with section 10(2) of the Retail Trading Act 2008. We believe that granting this exemption is in the public interest due to exceptional circumstances outlined below.
- Limited Access to Essential Goods: Our shop provides essential groceries, fruit & Vege and drinks to the local community. On the restricted trading day, there are no other supermarkets open within a 3-5km radius that offer the same level of variety and accessibility. Denying our shop's operation on this day would significantly impact the ability of over 2000 residents to access essential goods, thereby compromising their well-being and convenience.
- (b) Public Interest Consideration: It is crucial to consider the public interest in ensuring access to essential items, especially in areas where alternative options are limited. By granting this exemption, authorities can uphold the public interest by facilitating the availability of essential goods, contributing to the overall welfare and satisfaction of the community.
- (c) To support our application, we refer to the precedent set forth in *Dwyer v Department of Services, Technology and Administration and Kmart Australia Limited* [2010] NSWADT 312, which emphasizes the distinction between "special circumstances" and "exceptional circumstances." We firmly believe that the circumstances outlined above qualify as exceptional, warranting an exemption for our shop's trading on the restricted day.
- (d) We are committed to complying with all relevant regulations and ensuring that our operations continue to serve the best interests of the community. Thank you for considering our request.

8. Whilst I acknowledge the circumstances raised by the shop, these do not qualify as exceptional circumstances in accordance with section 10(2) of the Act.

9. The Applicant submitted the following reasons as to why they believed granting an exemption would be in the public interest:

- a. The shop needs to be kept open on the restricted trading day for several reasons:
- i. Accessibility to Essential Goods: Our shop plays a vital role in ensuring that the community has access to essential goods, including groceries, beverages, and other household items. Closing the shop on the restricted trading day would disrupt the regular supply of these necessities, potentially leaving residents without access to vital products.
  - ii. Limited Alternative Options: Within a 3-5km radius, there are no other supermarkets or retail outlets offering the same level of variety and convenience. Therefore, our shop serves as a crucial resource for residents who rely on its diverse range of products, especially on days when alternative options are limited.
  - iii. Service to a Large Population: With over 2000 residents depending on our shop for their daily needs, closing on the restricted trading day would inconvenience a significant portion of the community. Keeping the shop open ensures that

these individuals have the opportunity to purchase essential items when they need them most.

- iv. Public Interest Consideration: Granting an exemption for our shop to operate on the restricted trading day serves the public interest by ensuring access to essential goods and maintaining the convenience and well-being of the community. By providing a reliable source of supplies, we contribute to the overall welfare and satisfaction of residents.

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.

Yours sincerely,

Anita Crow  
Project Officer  
**NSW Fair Trading**