

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

1. I, Janet Bailey, 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 February 2025, SVPD Pty Ltd trading as Friendly Grocer Waverton (**Applicant**) made an application under section 10 of the Act as occupier of a shop at 26/102 Bay Road, Waverton 2060 (**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 10 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 SDA and SDA NSW.
8. The Applicant submitted the following as a claim for exceptional circumstances:
 - (a) The Shop is a small family business in their local community.

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 small family supermarket within a town servicing the local community could reasonably be considered a regular, routine or normally encountered circumstance across many areas in NSW.
 - (b) 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 local grocery store selling general groceries and fresh produce.
 - (b) They are the only grocery store in the community.
 - (c) There are quite a few elderly in the community who come daily for their essentials.
 - (d) The community relies on the Shop to get their daily groceries and fresh produce.
 - (e) Business will be as normal for the regular customers who love to support the Shop, day in day out.
 - (f) They are a family-run business and four staff will be employed on the day, all being family members.
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) No evidence was provided by the Applicant in support of the claim that there is limited access to other retail options or that the customers rely on the store for general groceries and fresh produce. 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.
 - (b) The Application relates to one single day, with unrestricted trading available under the Act on days immediately before and after Anzac Day 2025. This does not indicate a significant restriction of access to general groceries and fresh produce needs for the general public, even having regard to the circumstances raised by the Applicant, that is, elderly customers.
 - (c) The Application notes that only family members will be working on the restricted trading day. By contrast the SDA submission cites a growing public perception that public holidays are seen as invaluable days to share with family and friends away from work and that granting the exemption would be against the public interest.
 - (d) It is noted that the 'public interest' refers to the interest of the general public, not that of individuals, employees or employers. 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.

Janet Bailey

Director

NSW Fair Trading

9 April 2025