

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 4 March 2025, Callala Bay Holdings Pty Ltd trading as IGA Callala Bay (**Applicant**) made an application under section 10 of the Act as occupier of a shop at 5-55 Emmett Street Callala Bay, NSW 2540 (**Shop**), for the Shop to be exempt from the requirement to be kept closed on Good Friday and Anzac Day in 2025-2029 (**Application**).
3. It should be noted that the Application was submitted for Good Friday and Anzac Day 2025-2029, however this decision relates to Anzac Day 2025-2027 only. In accordance with section 10(5) of the Act, an exemption can only have effect for a period not exceeding 3 years.
4. There is also an existing exemption allowing the Applicant to trade on Good Friday under Section 89B of the *Shops and Industries Act 1962*, due to their location in the City of Shoalhaven local government area. This existing exemption is still valid under Schedule 2, clause 2 of the Act.
5. I have considered the Application and public comments which were received.
6. 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.
7. 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.

8. The Application was placed on public exhibition for a period of no less than 14 days from 12 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).
9. I have now considered the circumstances raised by the Shop, as well as the submissions from SDA and SDA NSW.
10. The Applicant submitted the following as a claim for exceptional circumstances:
 - (a) The Shop predominantly services elderly customers on motorised scooters from local aged care facilities.
 - (b) The local community rely on the Shop for their daily essentials including pharmaceutical and medical needs as well as home cooked hot meals.
 - (c) If the Shop were not exempt, it would cause unnecessary stress to the regular elderly customers.
11. 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) No evidence was provided by the Applicant in support of the claim that customers are wholly dependent on the store for their daily essentials and medical needs or that the Shop predominantly serves elderly customers. 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) A customer base including individuals who may have limited mobility or elderly customers, are not circumstances that can be considered out of the ordinary course, or unusual, or special, or uncommon.
 - (c) No evidence was provided by the Applicant in support of the claim that not granting an exemption would cause unnecessary stress to the regular elderly customers. There were also no public submissions supporting this claim.
 - (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
12. 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 medical supplies, batteries, hot meals, distilled water, fresh fruit and vegetables, fresh bread and other typical supermarket essentials.
 - (b) The Shop is the only local shop for the elderly customers where their scooters would travel to in distance and safety, and would avoid crossing busy roads.
 - (c) If the Shop were not exempt, it would cause upset to the regular elderly customers who have very set routines.
 - (d) The elderly customers have very regimented/patterned routines and rely heavily on the Shop as part of their everyday routine including hot home cooked meals as well as urgent medical supplies.
 - (e) If exempt, the Shop will roster four staff total who will be paid at the required government rate. The staff have indicated that they are happy to work and have offered to volunteer out of kindness to the regular customers.

13. 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 the days immediately before and after Anzac Day. This does not appear to constitute a significant restriction of access to goods sold by the Applicant for the public, even having regard to the circumstances raised by the applicant - elderly customer base and proximity to local aged care facilities.
 - (b) No evidence was provided by the Applicant in support of the claim that the Shop is the only local shop at a safe travelling distance by motorised scooter. There were also no public submissions supporting this claim.
 - (c) No evidence was provided by the Applicant in support of the claim that not granting an exemption would cause upset to the regular elderly customers. There were also no public submissions supporting this claim.
 - (d) No evidence was provided by the Applicant in support of the claim that the elderly customers rely on the Shop for meals or urgent medical supplies. There were also no public submissions supporting this claim.
 - (e) The Application notes that employees have indicated their willingness to work if an exemption was granted, however there were no submissions from employees of the Shop supporting granting of an exemption.
 - (f) '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