

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

1. I, Natalia Reed, 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 19 March 2025, Aminati Pty Ltd trading as Hill Top Friendly Grocer (**Applicant**) made an application under section 10 of the Act as occupier of a shop at 2/4 Vera Street, Hill Top, NSW 2575 (**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 21 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 public submissions received.
8. The Applicant submitted the following as a claim for exceptional circumstances:
 - (a) Hill Top is a small town, and the Shop has a lot of elderly customers who don't drive, and who shop every day.
 - (b) The Shop is the only shop to provide necessities in town and the next shop is 30 minutes' drive and likely closed on Anzac Day 2025.
 - (c) Over past years locals have asked the Shop to remain open on this day, so they don't have to drive to the next town to get their needs.
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) The Shops location in a small town with a customer base including elderly customers, or those who do not drive is not a circumstance that can be considered out of the ordinary course, or unusual, or special, or uncommon.
 - (b) No evidence was provided by the applicant in support of the claim that these customers are wholly dependent on the store for essential grocery items, or that there is limited access to other retail options. 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.
 - (c) In reference to the 30-minute driving distance between shops, this could reasonably be considered a regular, routine or normally encountered circumstance in many regional areas across NSW. It is expected the requirement to drive between Shops will also be lessened by the statewide application of the Act.
 - (d) No evidence was provided by the applicant in support of the claim that customers requested the shop to open on restricted trading days. There were also no public submissions supporting this claim. Notwithstanding the absence of evidence, customer requests of this nature may be considered a regular, routine or normally encountered circumstance.
 - (e) 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 grocery store that sells fresh meat, fruit and vegetables, milk, bread and other groceries.
 - (b) The Shop needs to be open, so elderly / retired customers don't have to drive to get essentials.
 - (c) If an exemption is granted it will keep locals in town to give them more time to commemorate Anzac Day. There will be no other business open in town.
 - (d) The shop gave their employees the options to work if they need the hours and money and the owner will be working either way. The Shop is not sure who will be willing to work. The Shop only needs one employee to work with the owner but two would be better to catch up with everything the Shop missed doing in the morning.
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 one single day, with unrestricted trading available under the Act on both the day immediately before, and the day immediately after Anzac Day 2025. This does not indicate a significant restriction of access to essential grocery needs for the general public, even having regard to the circumstances raised by the Applicant - for elderly or retired customers to have access to essentials.
 - (b) There is no detail provided in the Application to support the argument that there would be a significant detriment to the public interest through customers having to purchase products on adjacent unrestricted trading days.
 - (c) There is no evidence provided in the application to support the claim that granting of an exemption would keep locals in town and give them more time to commemorate Anzac Day, and no public submissions supported this claim. Due to the statewide application of the Act, there will be many areas with similar restrictions in trading therefore the numbers of customers travelling to more distant locations to avoid restricted trading will likely be reduced.
 - (d) The Application notes employees have been given the option to work if they need the hours and money, 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 with staff.

- (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 commemorate Anzac Day with their community.
- (f) Notwithstanding the absence of submissions from customers or 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

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NSW Fair Trading
15/4/25