

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 31 January 2025, The Trustee for Kumar's Trust trading as Dulhe Raja (**Applicant**) made an application under section 10 of the Act as occupier of a shop at Shop 2, 240 George Street, Liverpool NSW 2170 (**Shop**), for the Shop to be exempt from the requirement to be kept closed on Good Friday, Easter Sunday, Anzac Day and Christmas 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 06 February 2025 and public comment was sought. Five public submissions were received; from the Shop, Distributive & Allied Employees' Association, New South Wales (SDA NSW), and four members of the public.

7. I have now considered the circumstances raised by the Shop, as well as the submissions received in the public comment period.
8. The Applicant submitted the following as a claim for exceptional circumstances:
 - (a) Many customers visit from interstate on public holidays so granting an exemption would make it convenient for both parties.
 - (b) There are hard economic conditions.
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 applicant provided no evidence in the Application that there were an increased number of customers from interstate on public holidays.
 - (b) The Applicant provided no evidence relating to impact of hard economic conditions on the Shop.
 - (c) Notwithstanding the lack of evidence, having interstate customers, or the occurrence of hard economic conditions at times are not circumstances that can be considered out of the ordinary course, or unusual, or special, or uncommon for many shops.
 - (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) The Shop sells Indian ethnic wedding wear, and the months of April and May are auspicious for wedding celebrations among the Indian and Asian communities.
 - (b) The Application notes that most Indian clothing shops on George Street Liverpool open on restricted trading days, and this will be a positive, vibrant situation for the local economy.
 - (c) Most of the employees working on the restricted trading days will be family members and close friends however if other employees come to work, they will be paid as per the requirements of the Award.
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 individual days, with unrestricted trading available under the Act on both the day immediately before, and the day immediately after each restricted trading 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 - the months of April and May being auspicious for wedding celebrations among the Indian and Asian communities.

- (b) Despite the claim that most Indian clothing shops will be open, there have been no applications for exemption received from Indian clothing shops on George Street Liverpool, other than from the Applicant.
- (c) While the Application cites a positive impact on the local economy should the exemption be granted, no evidence was provided by the Applicant in support of this claim.
- (d) The Application notes there may be few employees rostered to work on the restricted trading days outside of immediate family and close friends. 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.
- (e) 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.

Natalia Reed
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NSW Fair Trading
11/03/2025