

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

1. I, Javier Yuste, 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, Darton Warners Bay Pty Ltd trading as Anna Bay Spar (**Applicant**) made an application under section 10 of the Act as occupier of a shop at Shop 1, 118 Gan Gan Road, Anna Bay NSW 2316 (**Shop**), for the Shop to be exempt from the requirement to be kept closed on Anzac Day for the year 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) Anna Bay is a small community that relies on our supermarket. Each year after the ANZAC march and ceremony the Shop gets visits from many locals and tourists for their grocery needs.
 - (b) The local community accesses essential daily items including fruit and vegetables, meat, poultry, milk, bread, eggs, nappies and baby needs.
 - (c) Anna Bay has a large community of elderly citizens that access the supermarket from surrounding towns, caravan parks and multiple retirement villages. These community members can walk or ride their mobility scooter to access these essential items.

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 supermarket in a town with limited retail options, and a shop providing essential goods and services for customers day to day needs could reasonably be considered regular, routine, or normally encountered circumstances across many areas in NSW.
 - (b) A customer base including an aged population or those who may not have means to travel to other towns for supplies could also be considered regular, routine or normally encountered circumstances.
 - (c) With regards the Shop contributing to the local economy, providing opportunities for employment and opportunities for increased income through award entitlements, these are all circumstances regularly, routinely, or normally encountered in NSW.
 - (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 is a Supermarket which includes fresh fruit and vegetables, cooked provisions such as pork and chickens, fresh packaged meat and seafood. The Shop also sells bread and essential daily items such as toilet paper, milk, baby formula and nappies.
 - (b) Anna Bay is a small community which provides access to essential items to the residents. The local community includes families as well as a large influx of tourists across public holidays and school holiday periods.
 - (c) Trading would allow for locals and tourists to access essential items without having to travel to larger towns. A large portion of customers are elderly citizens who access the Shop through walking or their mobility scooters.
 - (d) The likely effect of trading would have a positive impact which includes the local community being able to support the local supermarket, therefore supporting the local economy. This could support not only the supermarket but potentially other small businesses in the surrounding shopping complex and area.
 - (e) The Shop experiences a large influx of tourists during public holidays, school holidays and long weekends. Remaining open will further support the local economy.
 - (f) The Shop estimates the total number of staff to work through the day is six. For those who nominate to be available to work can be rostered to work. The positive effect on staff is they are not missing out on a regular day of work or the opportunity to earn wages. Much of the staff are casual staff members and if an exemption is granted these staff would avoid losing income.
 - (g) Staff are concerned about missed work and want to pick up shifts due to financial and income concerns. It would be a positive for staff who choose to work to be given the opportunity.
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 the essential items sold by the Shop, even having regard to the circumstances raised by the Applicant – the Shop provides critical access to groceries and household essentials for residents, tourists, elderly people, those with limited mobility.
 - (b) Similarly, it is unclear from the Application how a standalone restricted trading day would have a significant impact on local suppliers, or the economic wellbeing and employment

opportunities for the community overall given the period for which an exemption is requested is 12.5 hours.

- (c) There is no evidence provided in the Application that there would be a higher than usual demand from tourists or other visitors in the area over this period, or that the tourists' experience of Anna Bay would be enhanced if the exemption were granted. No public submissions supported this claim.
- (d) The Application notes granting an exemption would provide higher payments to 6 employees volunteering to work on the restricted trading day, 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 of the opportunity to support or oppose this Application.
- (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 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.

Javier Yuste
Manager, Grade 11/12
NSW Fair Trading
09/04/25