

RETAIL TRADING ACT 2008 ORDER

REASONS 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 December 2024, Sai Hillston Pty Ltd ATF Sundhar Family Trust trading as IGA Wagga on Bourke Street (**Applicant**) made an application under section 10 of the Act as occupier of a shop at Shop 6/231 Bourke Street Tolland, Wagga Wagga, NSW 2650 (**Shop**), for the Shop to be exempt from the requirement to be kept closed on Good Friday, Easter Sunday, ANZAC Day and Christmas Day for three years, 2025 – 2027 (**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 20 January 2025, and public comment was sought. One public submission was received; from the Shop, Distributive & Allied Employees' Association, New South Wales (SDA NSW).
7. I have now considered the circumstances raised by the Shop, as well as the submission from SDA NSW.
8. The Applicant submitted the following as a claim for exceptional circumstances:
 - a. The supermarket is an independent shop located in a low-income area where customers do not have their own transport.
 - b. Customers have requested the shop to apply for an exemption to trade on restricted trading days.
 - c. The shop will be staffed by immediate family members of the owner on restricted trading days, with no staff rostered to work.
 - d. Granting the exemption will assist the community in knowing the shop is open all year for basic needs such as milk, bread, eggs and packaged foods, and there will be no need for customers to panic buy or worry about which stores are open the next day.
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) No evidence was provided by the applicant in support of the claim that their shop is located in a low-income area where customers do not have their own transportation. There were also no public submissions supporting this claim.
 - (b) Notwithstanding the absence of evidence, this is not a circumstance 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 customers requested the shop open for extended hours or on restricted trading. 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.
 - (d) Notwithstanding the absence of evidence, customer requests of this nature may be considered a regular, routine or normally encountered circumstance.
 - (e) The proposed shop staffing arrangements of immediate family members only and no employees would not be unusual or uncommon for a small business.
 - (f) No evidence was provided by the applicant in support of the claim that closing on one-off days throughout the year has resulted in panic buying or worry for customers and no public submission supported this claim. Restricted trading days have been in place in NSW for some time therefore can be considered a normal occurrence, albeit only four single days per year.
 - (g) 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 all supermarket related items including basic essentials (food and groceries) and does not sell liquor.
 - (b) Essential items would be available for locals and travellers.
 - (c) There are no other shops in the area and many customers travel by foot.
 - (d) If an exemption were to be granted, there may be an increase of foot traffic to other small businesses close by including take away food shops and service stations.
 - (e) No employees will be rostered on for these restricted trading days.
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 4 single days, leaving 361 days for unrestricted trading under the Act. This does not appear to constitute a significant restriction of access to basic essentials for the general public, despite the assertion by the applicant that there are no other shops in the area and many customers travel by foot.
 - (b) There is no evidence provided in the application that there would be a higher than usual number of locals or travellers in the area to support the argument that granting an exemption would be in the public interest, or that the impact on other businesses in the area would be significant if an exemption were to be granted.
 - (c) There were no submissions received from other businesses in the area supporting this application for exemption, in order to secure increased foot traffic to their businesses.
 - (d) While no employees will be rostered to work on the restricted trading days, 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