

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 17 March 2025, Soon and Seel Pty Ltd trading as Friendly Grocer Yowie Bay (**Applicant**) made an application under section 10 of the Act as occupier of a shop at 52 Forest Road, Yowie Bay NSW 2228 (**Shop**), for the Shop to be exempt from the requirement to be kept closed on Anzac Day for the year of 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 20 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) Yowie Bay Friendly Grocer is the only supermarket in the suburb, making it essential for the local community.
 - (b) The Shop provides critical access to groceries and household essentials, particularly for the elderly and those with mobility challenges.
 - (c) Yowie Bay's demographic includes families, professionals, and individuals requiring flexible shopping hours, making the store's operation vital on restricted trading days.

- (d) The Shop also supports the local economy by providing jobs and sustaining local suppliers. Closure on restricted trading days would cause financial losses for employees and disrupt supply chains, leading to food wastage.
 - (e) In emergencies, such as extreme weather or power outages, local access to food and essential supplies is crucial. The store's operation ensures the community is not left without necessities during such times.
 - (f) Closing Yowie Bay Friendly Grocer on restricted trading days would cause significant inconvenience, economic hardship, and risks to public well-being. As the only supermarket in the area, its role is indispensable. The combination of public interest, economic impact, and geographical limitations makes a strong case for this exemption, ensuring continued access to essential goods and services for the community.
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 a high ageing 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 provides a convenient shopping experience for residents, offering a wide range of essential grocery items. The store stocks fresh produce, dairy products, bakery goods, packaged groceries, frozen foods, and a selection of meats and deli items.
 - (b) Customers can purchase beverages, household essentials, and personal care products, making it a one-stop shop for daily needs.
 - (c) The Shop is a well-regarded establishment that caters to the needs of the local community. The store's compact size allows for a quick and easy shopping experience, making it a great alternative to larger supermarkets.
 - (d) The Shop serves a local community that relies on the store for daily groceries, and closing on restricted days could create difficulties for residents who depend on it for essential items.
 - (e) Trading ensures convenience for customers, allowing them to make last-minute purchases or shop as part of their regular routine. Additionally, by staying open, the Shop can maintain customer satisfaction and loyalty, which is crucial for its success.
 - (f) From an economic standpoint, being open on restricted days can boost sales, providing extra income that is vital for the store's financial health.
 - (g) The Shop can cater to shift workers or people with non-standard schedules who might need to shop when most stores are closed. Keeping the Shop open on restricted days ensures it can better serve the diverse needs of the community.

- (h) For the Shop to remain open on restricted trading days, it could have several positive effects on the local economy, tourism, and small businesses. For the local economy, the store's extended hours would likely increase sales, leading to more economic activity and potentially more job opportunities as the store might need to hire additional staff. For tourism, although Yowie Bay may not be a major tourist destination, the convenience of having a grocery store open on restricted days could enhance visitors' experiences, making the area more attractive to tourists who appreciate accessibility.
 - (i) Regarding small businesses, the exemption could have both positive and negative impacts. The Shop's extended hours could drive more foot traffic to the area, benefiting nearby businesses. If the Shop is the only one open, it could create competition for other small shops with limited trading hours. For other businesses in the area, the increased local economic activity could lead to more opportunities for growth.
 - (j) The Shop has a practise of asking staff who wish work on public holidays. The same practise is used for public holidays around Christmas and Easter. In every case the number of staff wishing to work on public holidays because of the generous pay conditions has exceeded the amount required by the store. On such days around 2 staff are required for morning and afternoon shift meaning 4 people are generally required to run the store throughout the entire day.
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 and the Shop as the only supermarket available in the event of an emergency on the standalone restricted trading day.
 - (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 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 Yowie 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 4 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.

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09/04/25