

RETAIL TRADING ACT 2008 DECISION

REASON FOR DECISION

1. I, Ibukun Odu, 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 8 October 2024, Ganesha Aus Pty Ltd (**Applicant**) made an application under section 10 of the Act as occupier of a shop at Shop 9 and 12/38 Minchin Drive, Minchinbury (**Shop**), for the Shop to be exempt from the requirement to be kept closed on Christmas Day 2024, Good Friday, Easter Sunday, Christmas Day 2025 & 2026 (**Application**).
3. The Application was placed on public exhibition for a period of no less than 14 days from 16 October 2024 and public comment was sought.
4. I have considered the Application and public comments that were received.
5. 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.
6. 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.

7. The Applicant submitted the following as exceptional circumstances:
 - (a) The area served by the shop has a significant number of residents who rely on the store for daily needs including the elderly, people with disabilities and those without access to private transportation.
 - (b) The store provides perishables, essential products and medical supplies and disruption to access on restricted trading days could lead to food spoilage for customers with limited storage or financial means to buy in bulk.
 - (c) The absence of retail trading may cause undue burden on customers who may not anticipate restricted trading regulations.
8. Whilst I acknowledge the circumstances raised by the shop, these do not qualify as exceptional circumstances in accordance with section 10(2) of the Act.
9. The Applicant submitted the following reasons as to why they believed granting an exemption would be in the public interest:
 - (a) Allowing access to essential items for all members of the community.
 - (b) Remaining open on restricted trading days would allow for continuous economic activity, benefiting both IGA Local Grocer Minchinbury and other small businesses in the supply chain by maintaining supply to their businesses and demand for their products on restricted trading days.
 - (c) Support for tourism in the area through allowing visitors to access essential groceries and supplies, enhancing their experience and encouraging longer stays or repeat visits.
 - (d) Increased consumer spending in the area as residents, tourists and visitors are more likely to shop locally if they know essential services are available.
10. 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.

Yours sincerely,

Ibukun Odu
Project Officer
NSW Fair Trading

04 November 2024