

RETAIL TRADING ACT 2008 DECISION

REASON FOR DECISION

1. I, Jodie McCracken, am an officer delegated by the Secretary under the *Retail Trading Act 2008* to exercise the functions prescribed in that Act.
2. On the 22 November 2021, Send App Pty Ltd (**Applicant**) made an application under section 10 of the Act as occupier of Shop 1, 238 Williams St, Potts Point, 23 Mccauley St, Alexandria and 3/1 Gordon St, Annandale, for the shops to be exempt from the requirement to be kept closed on Christmas Day 2021 (**Application**)
3. The application was placed on public exhibition for a period of no less than 14 days from 23 November 2021 and public comment was sought.
4. I have considered the Application and comments received.
5. On this day I have decided to refuse the Application, as I am not satisfied that it is in the exceptional circumstances of the case in the public interest to grant it, having regard to:
 - (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 having regard to the matters listed above.
7. My reason for this decision is that the circumstances identified in the Applicant's application, including:
 - (a) So the public can have grocery items deliveredare not exceptional relative to other shops which are required to be closed on Christmas Day.

Based on the material presented, I have formed the view that it is not in the public interest for the exemption to be granted as it is evident that it is detrimental to the public that the Shops are closed on Good Friday and Easter Sunday.

A handwritten signature in black ink that reads "Jodie McCracken". The signature is written in a cursive, flowing style.

Jodie McCracken
Team Leader
NSW Fair Trading
9 December 2021