

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 11 February 2025, YTQL Pty Ltd, trading as Friendly Grocer (**Applicant**) made an application under section 10 of the Act as occupier of a shop, Friendly Grocer Fairlight at 148 Sydney Road, Fairlight, NSW 2094 (**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 12 February 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 Shop is the only convenience shop in Fairlight, with a large population of residents and tourists.
 - (b) The Shop must consider the interests of customers who may be elderly, disabled, ill, pregnant or have newborn babies.
 - (c) Unexpected things can happen at any time for these customers and the Shop is there to provide the necessary support in any situation.
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 sole convenience store within a suburb, and a shop providing support for a customers unexpected occurrence could reasonably be considered regular, routine or normally encountered circumstances.
 - (b) Similarly, a customer base including those who may be elderly, disabled, ill, pregnant or have newborn babies 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 the Shop is in an area with a large resident or tourist population, either over Anzac Day long weekend or otherwise. There were also no public submissions supporting this claim.
 - (d) Notwithstanding the absence of evidence, a large resident or tourist population would not be considered out of the ordinary course, or unusual, or special, or uncommon in many areas across NSW.
 - (e) 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 local community convenience and sells groceries, perishables and fruit and vegetables for daily life.
 - (b) The Shop is the only convenience shop in Fairlight and local people shop here every day.
 - (c) The Shop is close to the beach and many tourists will come on Anzac Day.
 - (d) The tourists need a shop to supply food like bread buns and sausages and also create a huge demand for cold drinks. There will be a significant impact on local interests if no one supplies food and drinks for tourists.
 - (f) If an exemption were granted, the Shop will attract local customers who may also purchase goods from other local businesses.

- (g) Elderly customers will be inconvenienced as they buy milk and food daily and find it difficult to travel elsewhere to buy these things.
 - (h) Employees will receive a higher payment on the restricted trading day to comply with relevant employment legislation.
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 is the only convenience shop in Fairlight, local people shop here for daily needs and elderly customers find it difficult to travel elsewhere.
 - (b) There is no evidence provided in the Application that there would be a higher than usual number of tourists or local residents in the area over this period, or that additional local customers would be attracted to the area to purchase goods from other businesses if an exemption were granted.
 - (c) There were also no submissions received from other businesses in the area supporting this Application for exemption; that there would be additional local customers for their businesses.
 - (d) The Application notes granting an exemption would provide higher payments to employees, 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) While the Application also cites a significant impact on local interests if tourists are not supplied with food and drinks, 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
19/3/25