

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 04 February 2025, John Efkarpidis, trading as Cannons IGA Googong (**Applicant**) made an application under section 10 of the Act as occupier of a shop at Cnr Caragh & Aprasia Street, Googong, NSW 2620 (**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 06 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 supermarket in the Googong area, which also includes the rural areas of Googong and Burra NSW.
 - (b) If an exemption were granted the Shop would be the only grocer open within a 10km radius.
 - (c) There are a large number of customers who come to the store on a daily basis, including elderly customers and families with young children.
 - (d) There is limited public transport available on a public holiday.
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) In reference to the location of the Shop as the only supermarket in the area and supporting rural communities, this could reasonably be considered a regular, routine or normally encountered circumstance in many regional areas across NSW.
 - (a) Similarly, the limited public transport options available on a public holiday would also be a regular, routine or normally encountered circumstance in many areas across NSW.
 - (b) A customer base who visit the store daily, including elderly individuals and families with young children are not a circumstances that can be considered out of the ordinary course, or unusual, or special, or uncommon.
 - (c) 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 family run supermarket, selling supermarket grocery items, café goods and takeaway food.
 - (b) Local customers who visit the store are accustomed to it being open every day.
 - (c) The Shop is in close walking proximity to many households, particularly those of the elderly.
 - (d) There is a high patronage of the Shop by residents of surrounding rural communities.
 - (e) If permitted to trade, the Shop could provide coffee and food to the local households who attend the Googong Dawn Service Memorial.
 - (f) The closest supermarket out of the area is a 15minute drive away.
 - (g) There is limited public transport available on public holidays.
 - (h) Granting an exemption would allow access to essential grocery items within close proximity of the Googong area and surrounding rural areas.
 - (i) The Shop employs many local students.
 - (j) Granting an exemption would provide more local traffic for surrounding small businesses.

- (k) Granting an exemption would provide 15 staff the opportunity to earn additional income for working on a public holiday.
 - (l) A large number of employees are casuals, who will incur a loss of income if the store remains closed.
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. This does not indicate a significant restriction of access to essential grocery items for the general public, even having regard to the circumstances raised by the Applicant – local customers accustomed to visiting daily, customers within walking distance or from surrounding rural areas, closest supermarket being a 15 minute drive away and limited public transport options available on a public holiday.
 - (b) There is no evidence provided in the Application that there would be increased local traffic to surrounding small businesses to support the argument that granting an exemption would be in the public interest. There were also no submissions received from other businesses in the area supporting this application for exemption; that there would be increased local traffic to their businesses.
 - (c) The Application notes granting an exemption provides the opportunity for 15 staff (some local students) to earn additional income if the exemption were granted, rather than incur a loss of income if the Shop was closed. There were no submissions from employees of the Shop supporting granting of an exemption, either to secure additional income or avoid this loss of income, despite the notice being published both on the Fair Trading website and instore to raise awareness with staff.
 - (d) 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.
 - (e) 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.
 - (f) Similarly, while the Application states the Shop could provide coffee and food to the local households who attend the Googong Dawn Service Memorial should the exemption be granted, 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
Manager, Grade 11/12
NSW Fair Trading
14/3/25