

RETAIL TRADING ACT 2008 DECISION**REASON FOR DECISION**

1. I, Peter Petrovich, 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 9 January 2024, KNP Retail Pty Ltd trading as West Wyalong IGA (**Applicant**) made an application under section 10 of the Act as occupier of a shop at 98 Main Street, West Wyalong (**Shop**), for the Shop to be exempt from the requirement to be kept closed on Easter Sunday in the year 2024, 2025 and 2026 (**Application**).
3. The Application was placed on public exhibition for a period of no less than 14 days from 19 January 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 day or 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(2) 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 Shop has been experiencing challenges due to illicit tobacco sales in the region.
 - b. The Shop is struggling with cost of doing business pressures.
 - c. The Shop wishes to attempt to recover lost profits by opening on Easter Sundays.
8. While I acknowledge the Shop is experiencing cost of business pressures and wishes to open for additional trading days to recoup profit loss, this does 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:
 - The Shop has been experiencing challenges due to illicit tobacco sales in the region.
 - The Shop is struggling with cost of doing business pressures.
 - The Shop wishes to attempt to recover profits by opening on Easter Sundays.
 - Opening the shop on Easter Sundays will benefit travellers to the area who require basic essentials.
10. The public interest refers to the interest of the general public, not that of individuals, employees or employers. Accordingly, the Shop's desire to open on Easter Sunday to recoup profits is not an argument for the public interest. While the Applicant submits that tourists would benefit as the Shop can provide basic essentials, consumers are typically aware of restricted trading days and prepare accordingly, and there are other businesses that receive a general exemption under the Act that can partly fulfil this need. I do not consider the Applicant has sufficiently demonstrated that granting the Shop an exemption is in the public interest in accordance with section 10(2) of the Act.

Yours sincerely,

Peter Petrovich
Manager, Business Relationships
NSW Fair Trading Licensing