

RETAIL TRADING ACT 2008 DECISION

REASON 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 17 January 2025, Carlo's IGA trading as Wee Waa Supermarket Pty Ltd (**Applicant**) made an application under section 10 of the Act as occupier of a shop at 88-94 Rose Street, Wee Waa NSW 2388 (**Shop**), for the Shop to be exempt from the requirement to be kept closed on Anzac Day 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 22 January 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 a vital local resource for residents in Wee Waa / Narrabri and surrounding areas, many of whom are dependent on the store for essential grocery items. This includes individuals who may have limited mobility, elderly customers, or people living in remote areas with limited access to other retail options.
 - (b) As a regionally based shop there are challenges in maintaining consistent stock levels due to distance from major distribution centres and increased cost of transportation. Allowing trading on Anzac Day will ensure residents access to necessary goods without disruption and alleviate potential scarcity due to increased demand.
 - (c) Operation on the restricted trading day would not undermine the spirit of the Retail Trading Act, with measures implemented to manage any potential disruption to surrounding businesses.

The Applicant also submitted claims relating to local economic benefit however I have considered these under point 10 relating to public interest.

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 customer base including individuals who may have limited mobility, elderly customers, or people living in remote areas is not a circumstance that can be considered out of the ordinary course, or unusual, or special, or uncommon.
 - (b) No evidence was provided by the applicant in support of the claim that these customers are wholly dependent on the store for essential grocery items, or that there is limited access to other retail options. There were also no public submissions supporting this claim, despite the notice being published both on the Fair Trading website and instore to raise awareness with customers.
 - (c) 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. It is not clear how a single day closure would result in significant disruption of access to necessary goods for residents, or that there would be an increased demand resulting in scarcity of necessary goods. No public submissions supported this claim.
 - (d) There is no detail provided in the application as to how operation on a restricted trading day would not undermine the spirit of the Act. By contrast, the SDA submission refers to Anzac Day as a day of important cultural and historical significance and notes the restriction of trading on this day is in keeping with community sentiment on the solemn nature of Anzac Day.
 - (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) Exemption would allow the community and surrounding suburbs to have access to essential grocery needs.
 - (b) Increased access to essential goods on restricted days would boost consumer spending and promote economic activity in the local community.
 - (c) Extended trading hours would support local employment, retaining or expanding job opportunities, providing 15-25 team members a financial incentive and a collaborative environment.
 - (d) The exemption would enhance the visitor experience during the public holiday by providing convenient access to essential services, making the region more attractive to tourists.
 - (e) Tourists would have more flexibility to shop during public holidays or weekends, benefiting from a reliable grocery supply.
 - (f) Other small businesses in the area could benefit indirectly from increased customer traffic, as shoppers may also visit nearby stores while at the supermarket.
 - (g) Small businesses would be able to focus on specialised or non-essential products, reducing pressure to provide basic goods.
 - (h) Larger or non-local businesses may see a positive effect due to increased foot traffic, especially those in retail and service sectors.
 - (i) The exemption would strengthen the local economy by ensuring continued access to essential goods, supporting both consumers and local businesses during peak periods.
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 needs for the general public, or a significant decline in reliability of grocery supply for tourists in the area.
 - (b) The claims made regarding increased attractiveness of the region for tourists based on the granting of an exemption are not supported with evidence, nor were they supported by public submissions.
 - (c) There is no evidence provided in the application regarding indirect benefits to other businesses to support the argument that granting an exemption would be in the public interest, or that the impact on other businesses in the area would be significant if an exemption were to be granted.
 - (d) There were also no submissions received from other businesses in the area supporting this application for exemption; that there would be increased traffic or other benefits to their businesses.

- (e) The application notes granting an exemption would support local employment, and provide a financial incentive to 15-25 employees, however there were no submissions from employees of the Shop supporting granting of an exemption.
- (f) 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.
- (g) 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.
- (h) Similarly, while the application cites strengthening of the local economy 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
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NSW Fair Trading
26/2/25