

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 31 January 2025, Dotown Pty Ltd as trustee for Biz Family Trust trading as IGA Menai (**Applicant**) made an application under section 10 of the Act as occupier of a shop at 5-21 Carter Road, Menai NSW 2234 (**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 1 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 the submission from SDA NSW.
8. The Applicant submitted the following as a claim for exceptional circumstances:
- (a) The elderly customers of the local area rely on the Shop for their daily grocery needs.
 - (b) Customers rely on the store to be open on this day as products and services may not be available elsewhere.
 - (c) Customer traffic on previous restricted days indicates a strong demand and dependence on the Shop being able to trade.
 - (d) The Shop provides essential goods and services that are critical for community wellbeing or daily needs, and necessary for customer and community functioning. Shop closure would cause a significant inconvenience.
 - (e) Operating on this day is vital for the Shops economic sustainability; closing would create financial hardship for the business and employees.
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 of elderly customers 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 their daily grocery needs, 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) While there may have been a high demand for these products on previous restricted trading days, this not a circumstance that can be considered out of the ordinary course, or unusual, or special, or uncommon, as would be required when considering exceptional circumstances for the purpose of this Act.
 - (d) 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. While it may be an inconvenience and cause a disruption of access to goods and services for the community, a single day shop closure may be considered a regular, routine or normally encountered circumstance in many areas across NSW.
 - (e) There is no detail provided in the Application to support the claims that a single day closure would impact community wellbeing, the economic sustainability of the Shop overall or create significant financial hardship for both the business and employees.
 - (f) 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 full service supermarket selling groceries, milk products, fruits and vegetables, meat and frozen products.
 - (b) Customers rely on the store to be open on this day as products and services may not be available elsewhere.
 - (c) Strong customer traffic on previous restricted days indicates a strong demand and dependence on the Shop being able to trade during this time.
 - (d) The local economy would benefit as the Shop operates in a small neighbourhood centre and other small businesses will also benefit from the increased foot traffic if an exemption were granted.
 - (e) The employees of the Shop are keen to work on this day and a total of 7 employees will be working at any given point on the restricted trading day.
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 groceries, milk products, fruits and vegetables, meat and frozen products for the general public, even having regard to the claim by the Applicant that goods of this nature are not available elsewhere.
 - (b) No evidence was provided in the Application to support the claim of strong customer traffic and dependence on the Shop on previous restricted days.
 - (c) No submissions were received from other businesses in the area supporting this application for exemption; that there would be increased foot traffic to their businesses.
 - (d) No submissions were received from employees supporting this application for exemption, despite the assertion in the Application that employees were keen to work on this day.
 - (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) Similarly, while the Application cites benefits to 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
Manager, Grade 11/12
NSW Fair Trading
10/03/25