

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 18th January, 2025 Hearn Corporation ATF Hearn Family Trust trading as IGA Merrylands (**Applicant**) made an application under section 10 of the Act as occupier of a shop at 11/530 Merrylands Road, Merrylands West, NSW 2160(**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 22nd 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) They are an independent local supermarket serving a 2km radius of local residents.
 - (b) They are not a corporate store; all their customers are local.
 - (c) Their team consists of 4 full-time staff members.
 - (d) The remaining staff are casual employees, all of whom live locally.
 - (e) Many of their casual staff attend local schools, while others are university students.
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) The applicant provided no evidence to support the claim that being an independent local supermarket serving a 2km radius of local residents constitutes an exceptional circumstance. Additionally, no public submissions were received to support this assertion. It is noted that there is a petrol station close by that sells basic amenities.
 - (b) The claim that the supermarket is not a corporate store and that all customers are local has not been substantiated with evidence. No public or staff submissions were made to confirm that this characteristic creates exceptional circumstances that would warrant an exemption.
 - (c) The applicant has not provided evidence to demonstrate that having 4 full-time staff members creates a situation that would be considered exceptional. There were no public or staff submissions supporting the need for an exemption based on the size of the team.
 - (d) The staffing arrangement of casual employees, all of whom live locally, has not been supported by any evidence to show that it constitutes an exceptional circumstance for granting an exemption. No public or staff submissions were received in support of this claim.
 - (e) The fact that many of the casual staff attend local schools or are university students does not provide evidence of exceptional circumstances that would justify an exemption. No submissions from staff or the public were made to suggest that this staffing situation requires special consideration.
10. The Applicant submitted the following reasons as to why they believed granting an exemption would be in the public interest:
 - (a) The supermarket provides essential items such as groceries, bread, milk, and meat, but does not sell alcohol.
 - (b) The supermarket serves local households within a 2km radius, with many customers regularly walking to the store, particularly elderly patrons.

- (c) The supermarket services local residents, is not a corporate entity, and employs local students.
- (d) All rostered staff will be voluntary, with 4-5 staff members expected to cover shifts from 1 pm to 8 pm. Shifts will be shared, with a maximum of 3 hours per shift, offering students the opportunity to earn double time.

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 applicant asserts that the supermarket provides essential items and serves local households within a 2km radius, with many customers walking to the store, particularly elderly patrons. However, no evidence was provided to show that the requested exemption would significantly impact access to essential goods for the public. The Act allows unrestricted trading for 361 days, which suggests that the restriction on just a few days would not cause substantial inconvenience to the general public.
- (b) The applicant claims that the supermarket serves local residents and employs local students, but no evidence was provided to demonstrate a higher than usual number of locals that would support the argument that granting an exemption would benefit the public. Additionally, there was no information provided about the potential impact on other businesses in the area or whether granting the exemption would create any significant benefit or competition for nearby businesses.
- (c) There were no submissions received from other businesses in the area supporting the application for exemption. No indication was given that neighbouring businesses believe the exemption would increase foot traffic to their stores or otherwise serve the public interest.
- (d) While the applicant mentions that all staff will be voluntary and offer students the opportunity to earn double time, the concept of "public interest" refers to the welfare of the general public, not individual employees or employers. The applicant's focus on staff scheduling and potential benefits for students does not address how granting the exemption would positively affect the public as a whole. Therefore, these reasons do not align with the public interest criteria under the Act

Yours sincerely,

Natalia Reed
Manager, Grade 11/12
NSW Fair Trading
28/02/2025