

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 29 January 2025, Hojo Supermarkets Pty Ltd trading as Market Central Drummoyne, IGA Drummoyne (**Applicant**) made an application under section 10 of the Act as occupier of a shop at 211 Victoria Road, Drummoyne NSW 2047 (**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 01 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 an independent local market.
 - (b) The Shop services a 2km radius of local residents.
 - (c) The Shop is not a corporate store and all customers are local.
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) Independent shop ownership (non-corporate) and a customer base of local residents within 2km are not circumstances that can be considered out of the ordinary course, or unusual, or special, or uncommon.
 - (b) 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 sells fruit and vegetables, groceries, bread, milk and meat.
 - (b) The Shop has a high patronage of elderly customers and many customers who regularly walk to store.
 - (c) The Shop delivers to residents of a local retirement village who shop locally and do not want to do online ordering.
 - (d) If the exemption were granted, local residents will have basic necessities available from a local business, with local residents employed in the Shop.
 - (e) Only 4-5 staff will be required to work on the restricted trading day, all of whom will volunteer to work and will receive public holiday pay rates.
 - (f) Shifts will be a maximum of 3 hours and opening the Shop at 1pm will not limit staff from attending the Anzac March in the city.
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 fruit and vegetables, groceries, bread, milk and meat even having regard to the circumstances raised by the Applicant - elderly customer base, customers travelling by foot and customers who do not want to shop via online ordering.
 - (b) The Application notes granting an exemption would support employment of local residents, and provide public holiday rates to 4-5 employees, however there were no submissions from employees of the Shop supporting granting of an exemption,

despite the notice being published both on the Fair Trading website and instore, to provide the opportunity to comment on this Application.

- (c) I acknowledge the assertion by the Applicant that shifts will be a maximum of 3 hours and will not prevent rostered staff from attending the Anzac March in the city, however 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 and put pressure on retail employees and their families.
- (d) While the Shop may provide local residents with basic necessities, 'public interest' refers to the interest of the general public, not that of individuals, employees, or employers. 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
07/03/2025