

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

1. I, Cheryl Grant, 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 24 March 2025, Labaj Holdings Pty Ltd trading as Friendly Grocer Jindabyne (**Applicant**) made an application under section 10 of the Act as occupier of a shop at Shop 2, Town Centre, 33 Kosciuszko Road Jindabyne NSW 2627 (**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 27 March 2025 and public comment was sought. Two public submissions were received; from the Shop, Distributive & Allied Employees' Association, New South Wales (SDA NSW) and from the NSW Branch of the Shop, Distributive & Allied Employees' Association (SDA).
7. I have now considered the circumstances raised by the Shop, as well as the submissions from the Shop, Distributive & Allied Employees' Association, New South Wales (SDA NSW) and from the NSW Branch of the Shop, Distributive & Allied Employees' Association (SDA).
8. The Applicant submitted the following as a claim for exceptional circumstances:
 - (a) The Friendly Grocer Jindabyne is in the Town centre in Jindabyne, a small country town that experiences a large influx of tourism numbers on and around specialised dates. Often this influx is equal to up to 10 times the local population.
 - (b) The Anzac Day celebrations and march all start from this small-town centre that opened in 1967, and crowds of people gather to watch the procession and then proceed across to Banjo Paterson Park for ceremonies.

- (c) Every year the Shop has provided water, drinks, fruit to people attending and discounted meat for BBQs in the local park for those who have forgotten small items.
 - (d) There is only one other outlet within a 70 km range, Woolworths Jindabyne.
 - (e) Our store would be operated by volunteer owners of the business and family who wish to serve the local community and ensure this service is available.
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 supermarket in a town with limited retail options, and a shop providing essential goods and services for customers day to day needs could reasonably be considered regular, routine, or normally encountered circumstances across many areas in NSW.
 - (b) A customer base including a high influx of tourism on specialized dates could also be considered regular, routine or normally encountered circumstances.
 - (c) 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 very small grocery store selling ice creams, fruit and vegetables, water, soft drinks in the tourist town of Jindabyne in the Snowy Mountains.
 - (b) The Shop would be open as we experience a huge influx of families and tourists the week leading up to Anzac Day. Jindabyne forms one of the major local hubs where people can gather and honour Anzac Day.
 - (c) The Shop is a small grocer that allows people attending the march and ceremonies during the day access to cold drinks, fruit etc.
 - (d) In previous years, the Shop has had numerous patrons, locals and tourists, expressing gratitude that the Shop remained open to ensure customers can access cold water, sunscreen, fruit, ice creams during the day - along with any other items they may have forgotten such as meat or vegetables.
 - (e) Two employees would be working on Anzac Day, the owners, which would be done in shifts (one person working in the morning, one in the afternoon) to allow both to still participate in Anzac Day commemorations. No one would be forced to work or required to work.
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 2025. This does not indicate a significant restriction of access to the essential items sold by the Shop, even having regard to the circumstances raised by the Applicant – the Shop providing access to groceries and household essentials for residents and tourists.
 - (b) Similarly, it is unclear from the Application how a standalone restricted trading day would have a significant impact on local suppliers, or the economic wellbeing and employment opportunities for the community overall given the period for which an exemption is requested is 10 hours.
 - (c) There is no evidence provided in the Application that there would be a higher than usual demand from tourists or other visitors in the area over this period, or that the tourists' experience of Jindabyne would be enhanced if the exemption were granted as no public submissions supported this claim.

- (d) 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.
- (e) 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.
- (f) 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.

Cheryl Grant
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NSW Fair Trading
11/04/25