

RETAIL TRADING ACT 2008 DECISION
REASON FOR DECISION

1. I, Janet Bailey, 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 26 March 2025, Jules Jewels trading as Federal General Store (**Applicant**) made an application under section 10 of the Act as occupier of a shop at 445 Federal Drive, Federal NSW 2480 (**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 28 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 SDA and the SDA NSW.
8. The Applicant submitted the following as a claim for exceptional circumstances:
 - (a) The Shop is a general store and post office that is usually open seven days a week.
 - (b) The Shop provides a valuable and necessary service to the local community.
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 general store and post office usually trading seven days a week is not a circumstance that can be considered out of the ordinary course, or unusual, or special, or uncommon.
 - (b) The Application relates to one single day, with unrestricted trading available under the Act on the days immediately before and after Anzac Day. It is not clear how a single day closure would result in significant disruption of access to valuable or necessary goods for residents. No public submissions supported this claim.
 - (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 convenience store selling groceries, fresh produce and alcohol. The Shop is also the local post office.
 - (b) The Shop is the only store in Federal and provides a necessary service to the local community.
 - (c) If the exemption was granted, there would be no effect on other businesses or the local economy.
 - (d) The Shop provides tourist information and maps.
 - (e) If the exemption was not granted, rostered workers will lose wages.
 - (f) If the exemption was granted, rostered employees will earn holiday pay rates.
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) No evidence was provided by the Applicant in support of the claim that the Shop is the only store in Federal and provides a necessary service. 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.
 - (b) Due to the statewide application of the Act, there will be many tourist areas and shops providing tourist information with similar restrictions in trading.
 - (c) The Application notes that employees will experience a loss of wages due to restricted trading on this day. There were no submissions from employees of the Shop supporting granting of an exemption to avoid this loss of wages, despite the notice being published both on the Fair Trading website and instore, to provide the opportunity to support or oppose this application.
 - (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) '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.

Janet Bailey
Director
NSW Fair Trading
15 April 2025