

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 21 February 2025, The trustees for P & V Summers Discretionary Trust & Pikey Summers Trust trading as Summers IGA (**Applicant**) made an application under section 10 of the Act as occupier of a shop at 5 Denman Avenue, Kootingal NSW 2352 (**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 25 February 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), as well as a submission from the Applicant as a local resident.
7. I have now considered the circumstances raised by the Shop, and the public submissions received.
8. The Applicant submitted the following as a claim for exceptional circumstances:
 - (a) The Shop is a long-established, locally owned supermarket which plays a central role in supporting the Kootingal community. It was submitted that the business has been operated by the Summers family since the 1950s and that the family has consistently provided essential goods and services, particularly to elderly and vulnerable customers.
 - (b) The Shop contributes actively to community events, including Anzac Day, where it supplies food and refreshments to local organisations such as the Lions Club, the RSL and church groups. The Shop also proposed to trade only after the conclusion of formal commemorative activities, to respect the solemnity and importance of Anzac Day.

- (c) The Shops staff are familiar with customers' individual needs, often responding to personal circumstances such as medical concerns or changes in behaviour that may indicate vulnerability. It was further submitted that this personal connection and community vigilance represent an exceptional circumstance.
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 provision of essential goods by a well-established, locally owned supermarket is a common and regularly encountered circumstance in many regional communities.
 - (b) While the Shop's community engagement and local reputation are acknowledged, these are not, on their own, circumstances which depart from the ordinary course of retail activity in a way that is considered exceptional.
 - (c) A customer base including individuals who are elderly or may have limited mobility is not a circumstance that can be considered out of the ordinary course, or unusual, or special, or uncommon.
 - (d) The Shop is permitted to trade without restriction on the days immediately before and after Anzac Day. It has not been demonstrated that closure on the restricted day would cause significant hardship or disruption, 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 supports the local economy and community wellbeing through the provision of essential goods and its role as a hub for social connection and assistance.
 - (b) The Shop supports other local enterprises as well as individual households.
 - (c) The Shop would operate with reduced hours and staffing on a voluntary basis and that its activities on Anzac Day would be respectful of the significance of the day.
 - (d) The Shop provides support for Anzac Day events, including the donation of supplies and refreshments to community groups, and described its Application as being consistent with local expectations and appreciation for its service on the 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 public interest test requires consideration of broader societal, cultural and legislative impacts. The benefits described are largely localised and do not outweigh the overarching purpose of the trading restrictions.
 - (b) While the Applicant stated that staff would work voluntarily, no employee submissions were received in support of the exemption despite the public notification process.
 - (c) While voluntary rostering and community support are commendable, these practices are common across many businesses and do not establish a sufficient case for an exemption on public interest grounds.
 - (d) The Applicant submitted that trading on Anzac Day would support local Anzac Day events and gatherings; however, there is no evidence provided that the inability to purchase goods from the Shop on this day would materially affect the community's participation in such events, or that any increased demand could not be reasonably met before or after the day.
 - (e) The public submission received from the Applicant, while reflective of long-term dedication to the community, focused on individual examples of assistance and social care. These, while important, do not support the argument for broad public interest, as matters that might affect the public as a whole.
 - (f) The SDA NSW submission raises concerns regarding the erosion of community expectations around Anzac Day as a culturally significant and solemn occasion. It highlights that

Parliament recently passed the *Retail Trading Amendment (Anzac Day Trading Hours) Act 2024*, following public consultation in which most submissions supported the closure of general shops all day. The submission argues that granting an exemption would be inconsistent with this legislative intent and out of step with strong community sentiment that Anzac Day is a day of commemoration – not commerce.

- (g) The SDA also raised concerns about the practical effect of exemptions on retail workers, noting that while work may be described as voluntary, employees may still feel pressure to accept shifts on this important public holiday. The broader public interest under the Act includes consideration of the wellbeing of retail employees, the social and cultural significance of shared rest days, and the preservation of a small number of restricted trading days that allow all members of the community—including retail workers—to participate in national commemorations. In this case, the proposed exemption does not demonstrate a sufficiently compelling public benefit to justify departure from the established restricted trading framework.

Natalia Reed
Manager, Grade 11/12
NSW Fair Trading
07/04/25