

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 14th March 2025, Nimick Pty Ltd, trading as Holbrook IGA (**Applicant**) made an application under section 10 of the Act as occupier of a shop at 155 Albury Street, Holbrook, NSW 2644 (**Shop**), for the Shop to be exempt from the requirement to be kept closed on Easter Sunday 2025 and 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 18th 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 public submissions received.
8. The Applicant submitted the following as a claim for exceptional circumstances:
 - (a) Holbrook is a small town that has a lot of elderly customers who do not drive, and the Shop provides a service for them to shop each day.
 - (b) Holbrook will be hosting a camp draft around Anzac Day. The event is intended to attract 3000 additional visitors to the region who will need to buy groceries and camp supplies across these days.
 - (c) The Application states Anzac trading hours will be 1pm – 6pm.

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 customer base including elderly customers or those who do not drive are not circumstances that can be considered out of the ordinary course, or unusual, or special, or uncommon.
 - (b) The Application notes Holbrook is hosting a camp draft event around Anzac Day with additional visitors expected in the area, however there is no detail provided in the Application to substantiate why visitors to the area could not purchase supplies on adjacent unrestricted trading days. It would be reasonable to expect that visitors attending a camp draft would arrive either before, or on the first day of the event, with sufficient preparation and this would likely be a regular or routine occurrence across many areas of NSW.
 - (c) While it is noted the Shop only intends to trade 1-6pm on Anzac Day, the SDA submissions refer to Anzac Day as a day of important cultural and historical significance. Permitting trade on this day could be considered inconsistent with the wider legislative and community expectations established through public consultation and reflected in the 2024 amendments to the Retail Trading Act 2008.
 - (d) 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 small grocery/ hardware store selling groceries with a small liquor department which can be closed if necessary.
 - (b) The Shop needs to be open to provide access to elderly customers who cannot drive to Albury which is an hour away.
 - (c) With the planned camp draft around the Anzac Day 2025, closure of the Shop would drive the business from their local community to a bigger town.
 - (d) The community would love for the store to be open to both locals and tourists alike.
 - (e) The Shop would have 6 staff working on the restricted trading days to serve customers and there would be no inbound deliveries on this day.
 - (f) The Shop has surveyed staff and asked who would be interested and/or available to work on the public holidays and received an enthusiastic response from the majority of staff.
 - (g) Staff rely on public holiday trade to bolster their income with public holiday rates as per the Award and have expressed concern over the store being closed on the restricted trading days.
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 both Easter Sunday and Anzac Day 2025. This does not indicate a significant restriction of access to the goods sold by the Shop even having regard to the circumstances raised by the Applicant – customer base including elderly customers who cannot drive to Albury which is an hour away.
 - (b) While the Application notes granting an exemption would prevent business associated with the planned camp draft from moving to a bigger town, it is also reasonable to expect that money may be spent locally either the day before or the day immediately after Anzac Day 2025. Due to the statewide application of the Act, there will be many areas with similar restrictions in trading.
 - (c) The Application notes the community would love for the store to be open for locals and tourists alike however there were no public submissions supporting this claim, despite

the notice being published both on the Fair Trading website and instore to raise awareness with customers.

- (d) The Application also notes that majority of staff have expressed enthusiasm to work on the restricted trading days and rely on public holiday rates to bolster their income, however there were no submissions from employees of the Shop supporting granting of an exemption in order to secure this additional income.
- (e) 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 and put pressure on retail employees and their families.
- (f) 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.
- (g) 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
Manager, Grade 11/12
NSW Fair Trading
10/03/2025