

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 12 February 2025, Ahmedi IGA Group, trading as Ahmedis IGA Kandos (**Applicant**) made an application under section 10 of the Act as occupier of a shop at 63-65 Angus Avenue, Kandos, NSW 2848 (**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 16 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 the submission from SDA NSW.
8. The Applicant submitted the following as a claim for exceptional circumstances:
 - (a) The Shop is a vital local resource for residents in Kandos and surrounding areas, many of whom are dependent on this local store for essential grocery items. This includes individuals

who may have limited mobility, elderly customers, or people living in remote areas with limited access to alternative retail options.

- (b) There is a challenge in maintaining consistent stock levels at the regional store due to distance from major distribution centres and the increased cost of transportation. Trading on the exempted day would allow for better management of supply chains, ensure residents had access to necessary goods and alleviate any potential scarcity of essential items.
- (c) The Shop maintains high standards of responsible retailing and ensures that their operation on the restricted day would not undermine the spirit of the Retail Trading Act.
- (d) The Shop would implement measures to manage any potential disruption to surrounding businesses.

The Applicant also submitted claims relating to public benefit to vulnerable community members, local economic benefit, and staff benefit however I have considered these under point 11 relating to public interest.

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) No evidence was provided by the Applicant in support of the claim that customers are wholly dependent on the store for their daily grocery needs, or that there is limited access to other retail options. 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) A customer base including individuals who may have limited mobility, elderly customers, or people living in remote areas are not circumstances that can be considered out of the ordinary course, or unusual, or special, or uncommon.
 - (c) 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. While it may be a challenge to maintain consistent stock levels at the Shop due to distance from major distribution centres and the increased cost of transportation, a single day shop closure may be considered a regular, routine or normally encountered circumstance in many areas across NSW.
 - (d) Notwithstanding the Applicants assertion that they would ensure trading on Anzac Day would be fair and responsible, with management of potential disruption to surrounding businesses, there is no detail provided in the Application as to how operation on a restricted trading day would not undermine the spirit of the Act. By contrast, the SDA submission refers to Anzac Day as a day of important cultural and historical significance and notes the restriction of trading on this day is in keeping with community sentiment on the solemn nature of Anzac Day.
 - (e) 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 supermarket, selling fast moving consumer goods; groceries
 - (b) Exemption would allow the community and surrounding suburbs to have access to essential grocery needs.

- (c) In the current economic and social climate, ensuring access to essential supplies on a restricted trading day provides significant public benefit and support for vulnerable members of the community.
 - (d) Exemption would likely positively affect the local economy, small businesses, and other businesses in the area by boosting customer spending, promoting economic activity in the local area, ensuring continued access to essential goods, allowing small businesses to focus on specialised non-essential products by reducing the pressure to provide basic goods and increasing customer foot traffic to other local businesses.
 - (e) Granting of an exemption would enhance the visitor experience by providing convenient access to essential services, making the region more attractive to tourists who would benefit from a reliable grocery supply by having more flexibility to shop on exempt days.
 - (f) Granting an exemption would likely reduce the need for customers to travel to more distant locations, supporting the economic stability of the area.
 - (g) Granting of an exemption would retain or expand job opportunities for staff, support local employment in an area where opportunities can be limited, and provide 10-15 team members a financial incentive based on loadings in the Award, within a collaborative environment.
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 essential grocery items for the community and surrounding suburbs, even having regard to the large elderly or vulnerable population.
 - (b) There is no evidence provided in the Application regarding benefits to the local economy, small businesses or other businesses to support the argument that granting an exemption would be in the public interest, or that the impact on the local economy, small businesses or other businesses in the area would be significant if an exemption were to be granted.
 - (c) There were also no submissions received from the general public, local small businesses or other businesses in the area supporting this application for exemption; that there would be a boost in customer spending, increased economic activity, increased customer traffic or other benefits.
 - (d) The claims made regarding increased attractiveness of the region for tourists or increased economic activity based on the granting of an exemption are not supported with evidence, nor were they supported by public submissions.
 - (e) The requirement for customers to travel to more distant locations to avoid restricted trading will also be lessened by the statewide application of the Act.
 - (f) The Application notes granting an exemption would support local employment, and provide a financial incentive to 10-15 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 raise awareness with staff.
 - (g) 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.
 - (h) 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.

- (i) 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
24/03/25