

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 19th March 2025, JES Hodgkins Pty. Ltd. trading as South West Rocks IGA (**Applicant**) made an application under section 10 of the Act as occupier of a shop at Shop 5 / 102 Gregory Street, South West Rocks NSW 2431 (**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 21st 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). A petition signed by 68 members of the public over the period 4-7 April 2025 supporting the Shop to remain open on Anzac Day was also received.
7. I have now considered the circumstances raised by the Shop, as well the submissions from SDA.
8. The Applicant submitted the following as a claim for exceptional circumstances:
 - (a) South West Rocks IGA is a small family owned and operated supermarket. The Shop provides the local community with access to a wide range of grocery products, fruit and vegetables, deli meats, locally sourced butcher meat, and local bakery bread.
 - (b) The Shop's location in the heart of South West Rocks and focus on serving the community, makes it a convenient and valued local business in the community.
 - (c) Anzac Day is a significant day on the national calendar, acknowledging and commemorating the men and women who have served our nation during times of war. There

is very strong support for Anzac Day services in the community, with many attending both the local dawn service and 11am service. Allowing South West Rocks IGA to trade on Anzac Day supports the community to participate in these services by ensures that the community has access to last minute supplies, food, and refreshments that they need.

- (d) Keeping South West Rocks IGA open on Anzac Day also ensures that all members of the local and regional community have access to essential supplies, particularly those hosting Anzac day events or gatherings that are in need of last-minute supplies, have run out unexpectedly, or have organised to collect bulk orders for community events, such as bread and meat for BBQ fundraisers or veterans' groups.
 - (e) Being located in a regional area, options are limited and on previous Anzac Day's and other public holidays, South West Rocks IGA has served numerous customers who have travelled over 50km specifically to access essential goods when other businesses have been closed or out of stock.
 - (f) The complete closure of South West Rocks IGA on Anzac Day would cause a significant disruption to the community due to the lack of suitable alternative providers within a reasonable distance.
 - (g) The Shop also provides essential support to our local economy by providing direct employment, and by supporting other local businesses by stocking goods from local dairy, meat, and bakery producers, providing secondary employment and income to other local businesses, and supports the local community by providing a valued social hub.
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 Shop's circumstances as a family owned and operated supermarket conveniently located in town with a focus on serving the community and providing a valued social hub would be considered a regular, routine or normally encountered circumstance within retail operations in NSW, particularly in regional areas.
 - (b) 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 prolonged restriction of access to products sold by the Shop, and there is no evidence provided to detail why impact to customers requiring essential supplies, or to pick up bulk orders for community events, could not be minimised by those customers purchasing or collecting orders on adjacent unrestricted trading days.
 - (c) There is no evidence provided by the Applicant in support of the claim that customers are wholly dependent on the Shop due to its location affording no access to alternative options of required products. Notwithstanding the absence of evidence, travelling between retailers due to store closures or products being out of stock could also be considered regular, routine or normally encountered circumstances. It is expected any requirement to travel would also be lessened by the statewide application of the Act.
 - (d) It is noted the Shop provides essential support to the local economy through direct employment, as well as income and secondary employment to other businesses through its supply relationships. These forms of commercial interdependence are characteristic of most retail ecosystems and do not present a circumstance that can be considered out of the ordinary course, or unusual, or special, or uncommon, as would be required when considering exceptional circumstances for the purpose of this Act.
 - (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) South West Rocks IGA is a small, medium-format supermarket that offers a full range of products to meet the needs of the local community, including groceries, fresh produce, meat and deli, bakery, dairy and eggs, frozen foods, beverages, health and hygiene items as well as cleaning and pet supplies.

- (b) Trading on Anzac Day allows the Shop to support the local community in commemorating Anzac Day through supplying goods necessary for commemorative events and gatherings.
 - (c) Providing an exemption would allow the Shop to provide for the needs of the local community by ensuring access to essential goods, especially for the large elderly population, those with limited means of transport or mobility, and other vulnerable members of our community.
 - (d) The Application notes the Shop under its current owner has served the community every single day of the year, through rain, hail, or shine; floods, fires, and a pandemic. The Shop has been a lifeline for many in the community and the community has been able to rely on the Shop to provide for them, both as a member of the local business community but also on a human level.
 - (e) The Shop being kept open also supports the needs of those visiting our community for the Anzac Day public holiday, and the needs of those who are visiting our area when Anzac Day falls within the school holiday period.
 - (f) The Shop supports the local economy by providing employment opportunities and allowing the Shop to source locally produced products and services such as meat, bread, and milk.
 - (g) Keeping the Shop open would support the local economy by maintaining their business activity, providing employment opportunities and turnover, allowing the Shop to continue operating a viable business meeting the needs of the community. It also supports the local suppliers and allows locals and tourists to participate in the local economy, which would not be possible if the Shop were closed.
 - (h) The Application notes South West Rocks is a popular tourist destination on the Mid North Coast of NSW. Keeping the Shop open ensures that tourists, especially families with young children, have access to essential supplies when needed, enhancing their experience of South West Rocks and the Mid North Coast.
 - (i) South West Rocks IGA is located in a small shopping village with several other local businesses. The Shop supports these businesses by providing valuable and reliable foot traffic, increasing their business activity.
 - (j) The Shop would employ around 8 employees on Anzac Day on an entirely voluntary basis. The workforce is predominantly casual. The Shop encourages all of their employees to attend the Anzac Day commemorations as members of the local community, and in previous years (when Anzac Day has fallen within "16 days commencing on the Saturday preceding Easter Saturday and ending on the Sunday following Easter Sunday" as per the exemption granted to Kempsey Shire which allowed the Shop to trade without restriction), the owners have ensured the Shop is closed for the duration of the local dawn service and 11am commemoration. The Shop would continue this practice if an exemption were granted in order to continue allowing both owners and employees to attend the local Anzac Day services.
 - (k) As per the award, employees who choose to work on Anzac Day will benefit from additional income due to their entitlement to penalty rates on public holidays. This provides employees with the opportunity to earn higher than usual wages, which is particularly important given the recent inflation and resulting cost of living crisis.
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 appear to constitute a significant restriction of access to goods sold by the Shop for the public, even having regard to the circumstances raised by the Applicant - support for the local community commemorating Anzac Day through supplying goods for events and gatherings, to ensure access to essential goods for the large elderly population, those with

limited means of transport or mobility, and other vulnerable members of our community, or to allow tourists to participate in the local economy.

- (b) Similarly, while it is noted the Shop has served the community every single day of the year for the past six years, it is not clear how a single restricted trading day would prevent the Shop from remaining a valued community hub, service and support to the local community.
- (c) The Application notes the Shop provides employment opportunities, support to local suppliers and increased business activity to other local businesses however there is no detail provided in the Application quantifying benefits to other businesses to support the argument that granting an exemption would be in the public interest, or that the impact on other businesses in the area would be significant if an exemption were to be granted. No submissions were received from other businesses in the area supporting this Application for exemption; that there would be increased traffic or other benefits to their businesses.
- (a) The claims made regarding an enhanced experience for tourists in the region or increased retention of tourists in the area based on the granting of an exemption are not supported with evidence. Due to the statewide application of the Act, there will be many areas with similar restrictions in trading.
- (b) While it is noted the Shop would only operate after the Dawn and 11am Anzac services are complete, the Retail Trading Amendment (Anzac Day Trading Hours) Act 2024 reflected the outcome of a broad public consultation process and the legislative intent to preserve Anzac Day as a full day of remembrance and community reflection.
- (c) The Application notes granting an exemption would allow approximately 8 employees who volunteer to work to benefit from additional income due to their entitlement to penalty rates on public holidays. By contrast, the SDA submissions refer 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, putting pressure on retail employees and their families.
- (d) Public interest' refers to the interest of the general public, not that of individuals, employees, or employers. The support of the Shop by the local community is clear from the petition submitted by the Shop as part of public comment however while this is commendable, under the Act there is a need for both exceptional circumstances and for the granting of the exemption to be in the public interest which does not appear to be the case in this instance.

Natalia Reed
Manager, Grade 11/12
NSW Fair Trading
14/04/2025