

RETAIL TRADING ACT 2008 DECISION**REASON FOR DECISION**

1. I, Javier Yuste, 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, The Trustee for the Pead Family Trust trading as Lollies 'n' Stuff (**Applicant**) made an application under section 10 of the Act as occupier of a shop at 153 George St, Windsor NSW 2756 (**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 1 April 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 the public submissions received.
8. The Applicant submitted the following as a claim for exceptional circumstances:
 - (a) The Shop is a small, family-run business located within the Windsor Mall, a historic precinct that experiences high tourist activity on public holidays.
 - (b) The business relies heavily on public holiday trade to maintain its operations and has opened on all public holidays (excluding Christmas Day) for more than 10 years.
 - (c) The Shop has proposed to trade from 9:00am to 9:00pm on Anzac Day and stated that this trade is necessary for business sustainability.
 - (d) Anzac Day is a significant tourism day for Windsor and that local businesses rely on increased foot traffic during this time.

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 is a mixed retail outlet selling lollies, drinks, groceries, novelties, and souvenirs. While its location in a tourist precinct is acknowledged, the nature of the business is not fundamentally different from other similar retail outlets operating in comparable regional or tourism-focused towns.
 - (b) Reliance on public holiday trade is a common commercial challenge faced by many small businesses and does not, without more, amount to an unusual or out-of-the-ordinary circumstance.
 - (c) The Shop's trading pattern, including previous voluntary trading on public holidays, does not confer entitlement to an exemption. The 2024 amendments to the *Retail Trading Act 2008* clearly established a legislative intent to reinforce the significance of Anzac Day through full-day trading restrictions, even where businesses may have previously opened on that day.
 - (d) No evidence was submitted to demonstrate that the Shop's closure on Anzac Day would result in a genuine hardship for the community or significantly impair access to essential goods or services.
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 located in a busy tourism area and expects high levels of visitor foot traffic on Anzac Day.
 - (b) It provides access to groceries, drinks, novelties, newspapers, and souvenirs, which may be sought by tourists and local residents.
 - (c) The Shop contributes to the local economy and tourist trade and indicated that eight to ten staff may be rostered on the day, subject to voluntary participation.
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 Shop sells a combination of confectionery, drinks, novelties, and general grocery items. These offerings, while appreciated by visitors, do not amount to essential services in a way that would necessitate departure from the trading restriction.
 - (b) The Shop is permitted to operate without restriction on the days immediately before and after Anzac Day, allowing both customers and the Shop to prepare for the closure in advance.
 - (c) The anticipated increase in tourism and local demand during the public holiday period is a well-understood factor across the retail industry. However, the presence of tourism-driven trade does not equate to a public benefit sufficient to override the statutory objectives of the Act.
 - (d) No evidence, such as economic data or public comment was submitted to demonstrate that the Shop's closure would materially harm tourism or the broader community.
 - (e) While the Shop proposed to roster staff on a voluntary basis and allow them to earn penalty rates, such benefit – while important – does not by itself establish a sufficient public interest basis under section 10(2).
 - (f) The SDA NSW submission raises concerns that granting the exemption may place pressure on retail employees to work on a culturally significant public holiday and diminish their ability to rest, participate in commemorations, or spend time with family. The public interest test is not limited to the interests of individual retailers or employees but considers the broader societal and cultural expectations reflected in the legislative framework.

- (g) Having regard to the intention of the Act, which is to preserve a small number of shared public holidays free from general retail trade, I am not satisfied that the exemption would support the public interest. Instead, permitting trade on this day would be inconsistent with the wider legislative and community expectations established through public consultation and reflected in the recent amendments to the *Retail Trading Act 2008*.

Javier Yuste
Manager, Grade 11/12
NSW Fair Trading
16/4/25