

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

1. I, Janet Bailey, 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 3 March 2025, P&MJ Cox Pty Ltd trading as Dorrigo Cellars (**Applicant**) made an application under section 10 of the Act as occupier of a shop at 24 Hickory Street, Dorrigo, NSW 2453 (**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 10 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 submissions from SDA and SDA NSW.

8. The Applicant submitted the following as a claim for exceptional circumstances:
- (a) Dorrigo is a tourist destination which is serviced by a hotel and a club which supply very limited take-away alcohol.
 - (b) The Shop employs five local staff whose income is derived solely from the Shop.
 - (c) The Shop is requesting limited opening hours for Anzac Day 2025 with one employee working at one time.
 - (d) The Shop not only sells take-away alcohol but soft drinks and tobacco.
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 tourist destination serviced by a hotel and club with limited take-away alcohol provisions is not a circumstance that can be considered out of the ordinary course, or unusual, or special, or uncommon.
 - (b) A business employing staff who live locally and whose income is derived solely from the business is not a circumstance that can be considered out of the ordinary course, or unusual, or special, or uncommon.
 - (c) Similarly, a shop selling take-away alcohol, soft drinks and tobacco could reasonably be considered a regular, routine or normally encountered circumstance in many areas across NSW.
 - (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.
 - (e) As I have found that exceptional circumstances do not exist for the entirety of Anzac Day, I have not considered the adjustment of trading hours.
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 an off licence Retail Liquor Store selling alcohol, ice, soft drinks, confectionery and tobacco.
 - (b) The Shop would supply their regular trade as well as tourist trade and ensure consistent employment for local staff.
 - (c) The exemption would allow the Shop to supply local requirements for a few hours and have no downturn effect on the town.
 - (d) The Shop will be employing up to two casuals on the day, paying them the Public Holiday Award Rate as listed under the General Retail Award.
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 the days immediately before and after Anzac Day. This does not indicate a significant restriction of access to the trade of alcohol, ice, soft drinks, confectionery and tobacco for the community.
 - (b) The Application notes granting an exemption would support consistent employment for local staff, however there were no submissions from employees of the Shop supporting granting of an exemption.
 - (c) The claim made regarding supporting tourist trade based on the granting of an exemption is not supported with evidence, nor was it supported by public submissions.

- (d) Notwithstanding the absence of employee submissions, while the Shop may provide opportunities for local staff, 'public interest' refers to the interest of the general public, not that of individuals, employees, or employers.
- (e) 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.
- (f) 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.

Janet Bailey
Director
NSW Fair Trading
9 April 2025