

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, Rineley Pty Ltd trading as IGA Mascot (**Applicant**) made an application under section 10 of the Act as occupier of a shop at 1169 Botany Road, Mascot, NSW 2020 (**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. 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) as well as nine submissions from customers of the Shop.
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) The Shop should remain open to service elderly people who come to buy groceries once the Anzac March (ceremony) is over.
 - (b) For years local families and the community have come to the store after the marching and rely on the Shop for their grocery needs, especially on Anzac Day.
 - (c) Mascot is a tourist area with hotels nearby.
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 is not a circumstance that can be considered out of the ordinary course or unusual, or special or uncommon. No evidence was provided by the Applicant in support of the claim that elderly people are wholly dependent on the

Shop for their grocery items, or that there is limited access to other retail options. Public submissions received indicate it is convenient due to the proximity to the Mascot Memorial Park on Anzac Day for select customers who may attend the service.

- (b) While local families and the community come to the store after the marching on Anzac Day and rely on the Shop for their grocery needs, the Application relates to two single days, with unrestricted trading available under the Act on both the day immediately before, and the day immediately after Easter Sunday and Anzac Day. This does not indicate a significant restriction of access to essential grocery needs for the general public, or a significant decline in reliability of grocery supply in the area to elevate these circumstances to exceptional.
 - (c) The Shop notes in its Application that Mascot is a tourist area with hotels nearby however tourist visitors to an area requiring provisions, and close proximity to hotels are not circumstances that would be considered out of the ordinary course, or unusual, or special, or uncommon 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.
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 retail supermarket and is the only shop near the Memorial Park on Botany Road, Mascot where the ceremony (Anzac Day) is held.
 - (b) Locals attending the ceremony (Anzac Day) can shop nearby to buy groceries, drinks and necessities. The Shop is the only supermarket in the shopping strip and having the store open would mean that the local people will have the convenience of buying necessities they need for the day.
 - (c) There will be a total of 4 people working on the day.
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 notes that the Shop is the only shop near the Memorial Park on Botany Bay where the (Anzac Day) ceremony is held. However, no evidence was provided by the applicant in support of the claim that its customers are wholly dependent on this Shop for essential grocery items.
 - (b) The Application claims that locals attending the ceremony (Anzac Day) can shop nearby to buy groceries, drinks and necessities at the Shop, however, there is no evidence to support the argument that granting the exemption would be in the broad public interest, rather it is deemed as convenient for select customers attending the ceremony.
 - (c) Similarly, public submissions received from customers of the Shop broadly reference convenience as a reason for the Shop to remain open on these restricted trading days.
 - (d) The Application notes four people will be working on the day. It is noted 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, put pressure on retail employees and their families and impact the ability of many employees to commemorate Anzac Day with their community.
 - (e) 'Public interest' refers to the interest of the general public, not that of individuals, employees or employers. 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
10/04/2025