

**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 19/02/2025, Sheep 9 Pty Ltd trading as IGA Local Grocer South Kincumber (**Applicant**) made an application under section 10 of the Act as occupier of a shop at 1/10 Kerta Road, South Kincumber, NSW 2251 (**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 25/02/2025 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 NSW and SDA.
8. The Applicant submitted the following as a claim for exceptional circumstances:
  - (a) Local families rely on IGA for fresh food.
  - (b) Visitors to the area will increase and they will need food and beverages for Air BnB stays.
  - (c) The Shop sells Anzac Day products for people to enjoy their day.
  - (d) People may require medication and baby formula for unexpected medical issues.

The Application also made claims relating to the public interest to serve food and groceries on Anzac Day however I have considered these at point 11.

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 local families rely wholly on the IGA for fresh food. There were also no public submissions supporting this claim. Notwithstanding the absence of evidence, these are not circumstances that would be considered out of the ordinary course, or unusual, or special, or uncommon.
  - (b) No evidence was provided by the Applicant in support of the claim that the visitors to the area would increase and they will need food and beverages for AirBnB stays. There were also no public submissions supporting this claim. Notwithstanding the absence of evidence, visitors to an area requiring provisions would not be a circumstance that would be considered out of the ordinary course, or unusual, or special, or uncommon. There is no further detail in the Application noting why these provisions could not be purchased on an unrestricted trading day to support the claim for exceptional circumstances.
  - (c) The sales of Anzac Day products by the Shop could reasonably be considered a regular, routine or normally encountered circumstance in many shops in NSW.
  - (d) While it is noted that people may require medication and baby formula for unexpected medical issues on the restricted trading day, the requirement for these goods would not be a circumstance that would be considered out of the ordinary course, or unusual, or special, or uncommon given there would be instances when this need would arise and be met, at a time when the Shop is closed on an unrestricted trading 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 supermarket sells groceries, fresh food, soft drinks, ice-cream, fresh fruit and vegetables, meat and dairy products, Anzac Day souvenirs, sunscreen and hats.
  - (b) Tourists in the area need to purchase food and drinks.
  - (c) Many local families rely on the Shop for daily supplies to feed their family.
  - (d) Staff are relying on wages to help with “cost of living crisis”.
  - (e) It is a busy weekend for local tourism and these visitors expect to buy groceries for self-catering.
  - (f) The Shop supports local fast food outlets with emergency supplies.
  - (g) Staff of the Shop will purchase food from fast food outlets in the area.
  - (h) Staff are very willing to work on this day and 5 staff will be rostered on for Anzac Day.
  - (i) Staff will be paid public holiday loading and full time staff will be given time in lieu.
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 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 – families relying on the Shop to feed their family, tourists needing to purchase food and drinks, visitors expecting to buy groceries for self-catering.
  - (b) The Application notes granting of an exemption would support fast food outlets in the area with emergency supplies. There were no submissions received from local fast food outlets in the area supporting this application for exemption; that there would be access to emergency supplies, or increased custom to their businesses from staff of the Shop.

- (c) The Application notes that 5 employees who are willing to work will either receive public holiday loading or time in lieu on the restricted trading day, based on their employment status. The Application also states these employees are relying on these wages to help with 'cost of living crisis' 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 provide the opportunity to comment on this Application.
- (d) 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, put pressure on retail employees and their families and impact the ability of many employees to commemorate Anzac Day with their community.
- (e) Notwithstanding the absence of submissions from direct employees of the Shop, or from local takeaway businesses in the area, 'public interest' refers to the interest of the general public, not that of individuals, employees, or employers.
- (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.

Natalia Reed  
Manager, Grade 11/12  
**NSW Fair Trading**  
31/03/2025