

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 24 March 2025, KI Retail Pty Ltd trading as Byron Bay IGA (**Applicant**) made an application under section 10 of the Act as occupier of a shop at 18 Bayshore Drive, Byron Bay NSW 2481 (**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 as the submissions from the SDA, the SDA NSW and members of the public.

8. The Applicant submitted the following as a claim for exceptional circumstances:
- (a) The Shop is located in Byron Bay, a very popular tourist destination which brings in thousands of visitors.
 - (b) The Applicant is aware that local accommodation is fully booked out and some of these accommodation venues do not provide essentials such as nappies, medicine, milk, bread and water.
 - (c) The Shop is a small IGA that provides the daily needs for the community and tourists.
 - (d) The Applicant acknowledges that there will likely be a rush on the day prior, however staff numbers are not able to cater for this increase in customers on the day before Anzac Day.
 - (e) More than 70% of the staff are casually employed and renting in the local area, so are willing to attend work to increase their income and afford food, rent and electricity.
 - (f) If exempt, the Shop will be able to meet the public demand on this meaningful day.
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) Shops located in tourist locations and beachside areas and servicing locals and tourists could reasonably be considered regular, routine or normally encountered circumstances in many areas across NSW.
 - (b) No evidence was provided supporting the claims that local accommodation is fully booked out and that some of these accommodation venues do not provide essentials to visitors. Notwithstanding the lack of evidence, increased local presence and booking up of accommodation during a public holiday long weekend could reasonably be considered regular, routine or normally encountered circumstances in many areas across NSW.
 - (c) The Shop is permitted to trade without restriction on the days before and after Anzac Day. No evidence was provided to demonstrate that customer needs could not be reasonably met on those days, or that the one-day closure would result in community disruption or dissatisfaction.
 - (d) The Applicant notes that staff have indicated their willingness to work in order to afford food, rent and electricity. 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 raise awareness with staff.
 - (e) While there may be a strong public demand for services of the Shop on restricted trading days, this not 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. No evidence was provided by the Applicant in support of the claim of strong demand from customers on these days to further support the argument for exceptional circumstances. There were also no public submissions supporting this claim.
 - (f) 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 supermarket offering a wide variety of food and household items including bread, milk, nappies, baby formula, water, fresh fruit and vegetables and grocery lines.
 - (b) The Shop is in a tourist area where the population nearly doubles with the influx of visitors to the area on a public holiday long weekend.
 - (c) The local community will be supportive as many locals attend the shop daily due to rental issues like having small fridges.

- (d) Other business will be supportive of an exemption as they will be able to buy their needs at the Shop while alternative shops are closed.
 - (e) If exemption is not granted, overall tourism in the area will suffer by not having access to essential products.
 - (f) Comments have been made towards staff at accommodation venues about the inconvenience of the inability to purchase any essentials in the area.
 - (g) If exemption is granted, all full-time staff will have the day off and the roster will comprise of 10 casual staff members on rotation.
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) There is no evidence provided in the Application that the population nearly doubles with an influx of visitors. Notwithstanding this lack of evidence, an increase in tourists during a public holiday long weekend could reasonably be considered regular, routine or normally encountered circumstances in many areas across NSW.
 - (b) No public submissions were received from other local businesses supporting the claim that they would be supportive of an exemption for the Shop in order to purchase their needs at the Shop while alternative shops are closed.
 - (c) There is no evidence provided that restricted trading would cause overall tourism in the area to suffer. Further, due to the statewide application of the Act, there will be many areas with similar restrictions in trading.
 - (d) No evidence was provided of the comments made to staff at accommodation venues about the inconvenience of the inability to purchase any essentials in the area, nor were any of these sentiments received in public comment.
 - (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.

Janet Bailey
Director
NSW Fair Trading
16 April 2025