

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

1. I, Cheryl Grant, 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 03 March 2025, Haigh Retail Trust trading as Haighs Chocolates (**Applicant**) made an application under section 10 of the Act as occupier of a shop at 320 Victoria Avenue, Chatswood NSW 2067 (**Shop**), for the Shop to be exempt from the requirement to be kept closed on Anzac Day for the years 2025 to 2027. (**Application**).
3. It should be noted that the Application was submitted for Anzac Day 2025 - 2030, however this decision relates to Anzac Day 2025-2027 only. In accordance with section 10(5) of the Act, an exemption can only have effect for a period not exceeding 3 years.
4. I have considered the Application and public comments which were received.
5. 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.
6. 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.
7. The Application was placed on public exhibition for a period of no less than 14 days from 11 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).
8. I have now considered the circumstances raised by the Shop and 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).
9. The Applicant submitted the following as a claim for exceptional circumstances:
 - (a) The Shop is located in a high tourism area and many visitors will expect specialty retailers to be open. Closure on Anzac Day could negatively impact the local economy by reducing customer spending and would also benefit surrounding cafes, restaurants and other small retailers.

- (b) As a specialty retailer of chocolate, the Shop experiences peak seasonal demand for gifts and premium confectionary for events post commemoration services. The ability to trade on Anzac Day is essential for meeting customer expectations and ensuring business viability. The Shop acknowledges the significance of Anzac Day and proposes to commence trading after the completion of dawn services to ensure operations do not interfere with the commemoration of the day whilst still allowing the Shop to contribute to the local economy.
10. 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 Shop providing confectionary for customers day to day needs could reasonably be considered regular, routine, or normally encountered circumstances across many areas in NSW.
 - (b) With regards to the Shop only staffing three people, this would not be considered out of the ordinary, or unusual, or special or uncommon in many areas across NSW.
 - (c) Shops frequented by tourists passing through would not be considered out of the ordinary course, or unusual, or special, or uncommon in many areas across NSW.
 - (d) With regards the Shop contributing to the local economy, providing opportunities for employment and opportunities for increased income through award entitlements, these are all circumstances regularly, routinely, or normally encountered in NSW.
 - (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.
11. The Applicant submitted the following reasons as to why they believed granting an exemption would be in the public interest:
- (a) The Shop specializes in premium, handcrafted chocolates and confectionary, artisanal confections and gift hampers offering a range of products that cater for every day, to seasonal celebrations. All of which are in exceptionally high demand during event periods.
 - (b) The Shop caters to customers who wish to purchase chocolates and confectionary for gatherings, commemorative events and social occasions held after the dawn service with many families, veterans and community groups hosting gatherings where quality chocolate and gifts are shared as a sign of appreciation and remembrance.
 - (c) The ability to operate on this day would generate significant revenue, contributing to the local economic activity. The closure of the business on these days could negatively impact customer experience potentially discouraging future visits.
 - (d) By remaining open on Anzac Day, the effect will likely be positive on the employees, providing them with additional work opportunities, such as penalty rates, while ensuring full compliance with workplace agreements and entitlements.
 - (e) Employees will be given the option to work voluntarily, ensuring that no one is required to work against their wishes. The Shop anticipates three employees to be rostered on the restricted trading day if the exemption is granted.
12. 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 2025. This does not indicate a significant restriction of access to the essential items sold by the Shop, even having regard to the circumstances raised by the Applicant – visitors and tourists on Anzac Day buying celebratory products for the commemorative event of Anzac Day, that remaining open would create employment stability and employment opportunities, or that operating on this day, Anzac Day, will significantly generate revenue contributing to local economic activity.

- (b) Similarly, it is unclear from the Application how a standalone restricted trading day would have a significant impact on surrounding local businesses, the economy or for the community overall given the period for which an exemption is requested is 4 hours.
- (c) There is no evidence provided in the Application that there would be a higher than usual demand from tourists or other visitors in the area over this period, or that the tourists' experience would be enhanced if the exemption were granted. No public submissions supported this claim.
- (d) The Application notes granting an exemption would provide higher payments to three employees volunteering to work on the restricted trading day, 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 of the opportunity to support or oppose this Application.
- (e) By contrast, the SDA submission refers 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.
- (f) Notwithstanding the absence of submissions from direct employees of the Shop, 'public interest' refers to the interest of the general public, not that of individuals, employees, or employers.
- (g) 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.

Cheryl Grant
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NSW Fair Trading
10/04/25