

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

1. I, Marty Pollock, 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 13 March 2025, Bellingen Retail Pty Ltd trading as Bellingen IGA (**Applicant**) made an application under section 10 of the Act as occupier of a shop at 69–71 Hyde Street, Bellingen NSW 2454 (**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 17 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)" and four public submissions were received from employees of the Shop.
7. I have now considered the circumstances raised by the Shop, and the public submissions received.
8. The Applicant submitted the following as a claim for exceptional circumstances:
 - (a) The Shop is the only supermarket in the Bellingen township, serving a diverse and regionally dispersed population, including many elderly customers and residents who live up to 30 kilometres away without access to public transport. It was submitted that closure on Anzac Day would significantly impact vulnerable customers who depend on the Shop for affordable groceries and basic medical supplies.
 - (b) The Shop also cited operational challenges associated with regional infrastructure, including traffic congestion, limited parking and small premises, noting that full-day closures increase customer pressure on surrounding days, further compounding those difficulties.

- (c) The Shop plays a central role in supporting community access to essential services during peak periods such as long weekends, and that staff would be rostered on a voluntary basis.
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) The nature of the Shop as a regional supermarket providing groceries, household supplies and medical items, while important, is a regularly encountered circumstance across many towns in New South Wales and does not amount to an unusual or uncommon situation.
 - (b) While the Shop services a broad catchment area including customers with mobility and transport limitations, these circumstances are not unique to Bellingen and do not, in themselves, meet the threshold for exceptionality.
 - (c) 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. It is not clear how a single day closure would result in significant disruption of access to necessary goods for residents, or that there would be an increased demand resulting in scarcity of necessary goods.
 - (d) The Shop's reliance on voluntary staffing and its regional infrastructure limitations are acknowledged, however similar considerations apply to many other regional businesses subject to the same restrictions.
10. The Applicant submitted the following reasons as to why they believed granting an exemption would be in the public interest:
- (a) Continued operation on Anzac Day would provide community access to essential food items, medical supplies and general merchandise. It was also stated that fresh bread could be delivered on the day and that the local RSL had indicated support for the Shop opening from 1:00 PM, following the conclusion of official commemorations.
 - (b) The Shop is located on Waterfall Way, a well-travelled tourist route linking the Pacific Highway to the Northern Tablelands and submitted that Bellingen is regularly used as a rest stop. The closure may result in reduced tourist spend and adversely affect the local economy, particularly given limited alternative food options in the town.
 - (c) Closure would negatively impact the Shop's workforce, the majority of whom are casual employees. Ten staff would be rostered voluntarily and that working after 1:00 PM would not prevent participation in Anzac Day ceremonies. It was further noted that those working would receive public holiday penalty rates, while those not wishing to work would not be compelled to do so.
 - (d) Four public submissions were received from casual staff raising concerns about financial hardship should the Shop remain closed. Several noted that Anzac Day falling on a Friday would lead to a loss of critical weekly earnings, and referenced bills, mortgages and cost-of-living pressures.
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 concerns a single restricted trading day. With unrestricted trading permitted on both the day before and after Anzac Day, no compelling evidence has been submitted to show that community or tourist needs could not be accommodated without trading on the day.
 - (b) The Shop's contribution to the regional economy and local employment is noted. However, these are common characteristics of general retail shops and do not, in themselves, support a finding that it would be in the public interest to override the restriction.
 - (c) While staff would be rostered voluntarily and public submissions raised genuine financial concerns, employment hardship does not on its own satisfy the public interest test,

particularly where public holiday pay entitlements and voluntary work arrangements are standard across the retail sector.

- (d) The SDA NSW submission raises concerns that granting the exemption may place pressure on retail employees to work on a culturally significant public holiday and diminish their ability to rest, participate in commemorations, or spend time with family. The public interest test is not limited to the interests of individual retailers or employees but considers the broader societal and cultural expectations reflected in the legislative framework.
- (e) Having regard to the intention of the Act, which is to preserve a small number of shared public holidays free from general retail trade, I am not satisfied that the exemption would support the public interest. Instead, permitting trade on this day would be inconsistent with the wider legislative and community expectations established through public consultation and reflected in the recent amendments to the *Retail Trading Act 2008*.
- (f) Public interest must be assessed with reference to the broader public, not solely based on business-specific or financial concerns. In this case, the reasons provided by the Shop reflect localised operational and economic factors which do not outweigh the cultural, legislative and social rationale for retaining full-day trading restrictions on Anzac Day.

Marty Pollock
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NSW Fair Trading
08/04/25