

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 26 February 2025, Dunpec Pty Ltd trading as Khans IGA Supermarket Bourke (**Applicant**) made an application under section 10 of the Act as occupier of a shop at Corner Sturt and Oxley St, Bourke NSW 2840 (**Shop**), for the Shop to be exempt from the requirement to be kept closed on Anzac Day for the year 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 10 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)"
7. I have now considered the circumstances raised by the Shop, as well the public submissions received.
8. The Applicant submitted the following as a claim for exceptional circumstances:
 - (a) The Shop is well known in the Bourke community and provides a comprehensive range of goods including groceries, fresh produce, meat and deli items, health and beauty, pet supplies, household items, and liquor.
 - (b) The Shop plays a supportive role in community Anzac Day commemorations by providing access to last-minute supplies and refreshments for those attending dawn services, parades, and related gatherings.

- (c) It was further submitted that trading on Anzac Day would ensure that both residents and visitors, particularly vulnerable community members, retain access to essential items required for the day's events and associated activities.
 - (d) The Shop contributes positively to the local economy through the provision of employment opportunities and by serving as a community hub that supports surrounding businesses by generating foot traffic and stimulating broader commercial activity.
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 customers are wholly dependent on the store for their daily grocery needs, or that there is limited access to other retail options. There were also no public submissions supporting this claim, despite the notice being published both on the Fair-Trading website and instore to raise awareness with customers.
 - (b) 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.
 - (c) While the Shop may play a role in supporting community events and the local economy, these are not circumstances that can be considered out of the ordinary course or uncommon within the context of regional retail operations across NSW.
 - (d) Notwithstanding the Applicant's assertion that trading on Anzac Day would be fair, voluntary and beneficial to staff through penalty rates, these arrangements are commonly cited by retailers and do not elevate the circumstances to a level that meets the threshold of "exceptional".
10. The Applicant submitted the following reasons as to why they believed granting an exemption would be in the public interest:
- (a) The Shop's opening would support Anzac Day events by ensuring access to essential goods and refreshments for residents and visitors.
 - (b) The Shop provides a convenient retail option for residents, including elderly individuals and those with limited mobility, who may rely on the supermarket for access to daily necessities.
 - (c) The Shop's operation would benefit the local economy by maintaining business activity and employment.
 - (d) The Shop could complement other small businesses by increasing foot traffic on the day.
 - (e) Approximately 10–12 staff (across full-time, part-time, and casual roles) would be rostered to work voluntarily and would benefit from public holiday penalty rates.
 - (f) Employees would not be compelled to work, and participation would be on a voluntary basis.
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 a single restricted trading day, with unrestricted trading permitted on both the day immediately before and the day immediately after Anzac Day. This does not indicate a significant restriction of access to the goods sold by the Shop. There is no clear evidence provided by the Applicant to demonstrate that customers would be unable to reasonably obtain supplies on adjacent trading days.
 - (b) A customer base including individuals who may have limited mobility, elderly customers, or people living in remote areas is not a circumstance that can be considered out of the ordinary course, or unusual, or special, or uncommon.
 - (c) The Applicant submitted that trading on Anzac Day would support local Anzac Day events and gatherings; however, there is no evidence provided that the inability to purchase goods

- from the Shop on this day would materially affect the community's participation in such events, or that any increased demand could not be reasonably met before or after the day.
- (d) The Applicant contends that trading would support tourism and the local economy. However, no supporting data or third-party submissions were provided to substantiate the claim that local tourism or business activity would be significantly impacted should the Shop remain closed. Assertions regarding increased foot traffic, enhanced visitor experience or extended stays are speculative and not supported by independent evidence.
 - (e) The Applicant stated that employees rostered on the day would work voluntarily and benefit from penalty rates. While this is noted, no supporting submissions were received from employees themselves. Additionally, voluntary rostering and payment of penalty rates are expected employer practices and do not in themselves establish a broader public interest in favour of the exemption.
 - (f) 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.
 - (g) 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*.

Marty Pollock
Manager, Grade 11/12
NSW Fair Trading
09/04/25