

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 27 February 2025, Thomleck Pty Ltd, trading as Westpoint IGA (**Applicant**) made an application under section 10 of the Act as occupier of a shop at 9/1 Wark Parade, Windradyne NSW 2795 (**Shop**), for the Shop to be exempt from the requirement to be kept closed on Good Friday, Easter Sunday and Anzac Day for 2025-2027 (**Application**).
3. It should be noted that the Application was submitted for Good Friday, Easter Sunday and Anzac Day 2025-2027, however this decision relates to Anzac Day 2025-2027 only. This is because there is an existing exemption allowing the Applicant to trade on Good Friday and Easter Sunday under Section 89B of the Shops and Industries Act 1962, due to their location in the Bathurst Regional Council local government area, within the former City of Bathurst boundaries. This existing exemption is still valid under Schedule 2, clause 2 of the Retail Trading Act 2008.
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 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).
8. I have now considered the circumstances raised by the Shop, as well the public submissions received.

9. The Applicant submitted the following as a claim for exceptional circumstances:
- (a) The Shop provides a range of essential items including fresh fruit and vegetables, milk, bread and other basic grocery lines that are relied upon by the local community.
 - (b) The Shop is located in a tourist destination, and that Anzac Day typically attracts an influx of visitors to the Bathurst region, many of whom may require access to supplies for camping, picnicking or travelling.
 - (c) The Shop would operate with a skeleton staff on Anzac Day, with no more than four employees rostered on at any given time, to maintain essential service levels while ensuring that workers are given sufficient rest and work-life balance.
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 selling fruit, vegetables, milk and other groceries could reasonably be considered a regular, routine or normally encountered circumstance across many areas in New South Wales.
 - (b) The presence of tourists or a local customer base, including those who may expect the Shop to be open on public holidays, is not a circumstance that can be considered out of the ordinary course, or unusual, or special, or uncommon.
 - (c) No evidence was provided by the Applicant in support of the claim that customers are wholly dependent on the Shop for their daily grocery needs, or that there is limited access to other retail options in the area. There were also no public submissions supporting this claim, despite the notice being published both on the Fair Trading website and in-store to raise awareness with customers.
 - (d) The Application relates to a single restricted trading day, with unrestricted trading permitted under the Act on both the day immediately before and the day immediately after Anzac Day. It is not clear how a single day of 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 essential supplies.
 - (e) While the Applicant states that a small number of staff would be rostered on a voluntary basis and paid according to the General Retail Industry Award 2020, these are standard employment practices and do not elevate the circumstances to the level of being exceptional under the Act.
11. The Applicant submitted the following reasons as to why they believed granting an exemption would be in the public interest:
- (a) That the Shop provides essential grocery items and that it would be in the public interest for residents and tourists to have continued access to these items on Anzac Day.
 - (b) That customers expect the Shop to be open on public holidays and may be inconvenienced if it is closed.
 - (c) That other local businesses may rely on the Shop for goods to support their operations on the day.
 - (d) That employees would be rostered voluntarily, no more than four at any time, and would benefit from public holiday penalty rates under the applicable industrial award.
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 restricted trading day. Given unrestricted trading is permitted on the day immediately before and after Anzac Day, there is no compelling evidence that

community access to essential supplies would be materially disrupted if the Shop were closed on the day.

- (b) No data or evidence was provided to confirm that tourists or other businesses would be significantly impacted, or that there is a demand which cannot be accommodated through regular trading on surrounding days.
- (c) While the Applicant indicated that employees would work voluntarily and benefit financially, no employee submissions were received in support of the exemption. Furthermore, voluntary rostering and payment of penalty rates are standard provisions of the General Retail Industry Award 2020 and do not in themselves demonstrate broader public benefit.
- (d) The SDA NSW submission highlights the broader community and workforce expectations that Anzac Day be preserved as a significant public holiday for commemoration and shared rest. It also refers to the 2024 amendments to the *Retail Trading Act 2008*, which followed extensive public consultation in which many submissions supported the extension of full-day trading restrictions on Anzac Day. Granting the exemption would be inconsistent with this legislative intent and the views of the community.
- (e) The public interest under the Act is to be assessed with reference to the broader public, not the preferences of individual businesses. In this case, the reasons provided by the Applicant reflect localised commercial interests which do not outweigh the cultural, legislative, and social rationale supporting the continued restriction of trade on Anzac Day.

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