

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 26 February 2025, Jofuti Pty Ltd trading as Warren Bottle Shop (**Applicant**) made an application under section 10 of the Act as occupier of a shop at 8 Burton Street, Warren, NSW 2824 (**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 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 as the submissions from SDA and SDA NSW.

8. The Applicant submitted the following as a claim for exceptional circumstances:
- (a) Warren is a small country community in Western NSW and the Warren Bottle Shop has serviced the community for 30 years.
 - (b) The Warren community attend the dawn service, the morning service and then spend the afternoon celebrating a memorable day in Australia's history.
 - (c) Being a small town, Warren does not have the luxuries of the more populated towns/cities, so the Shop also provides essentials such as bread and milk.
 - (d) The Shop provides an important service to the local community.
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 length of time since the Shop opening and its services to a small country community are not circumstances that can be considered out of the ordinary course, or unusual, or special, or uncommon.
 - (b) The local community attending the dawn service, the morning service and then celebrating in the afternoon of Anzac Day could reasonably be considered a regular, routine or normally encountered circumstance in many areas across NSW on 25 April 2025.
 - (c) No evidence was provided by the Applicant in support of the claim that customers are dependent on the store for goods such as bread and milk. 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.
 - (d) 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 will give tourists a place to shop in the small town of Warren especially being a long weekend.
 - (b) The Shop is a drive-through bottle shop selling takeaway alcohol, bread, milk, chips, chocolates, soft drink, ice creams and cigarettes.
 - (c) Warren is a small town and does not have a lot of retail options on Anzac Day, which this Shop has provided the community over the past 30 years.
 - (d) Warren is a popular location for camping and fishing so providing takeaway alcohol along with the service station and coffee shop, will give visitors another reason to stop and support the Warren community.
 - (e) No employees will be impacted as the Applicant will be doing the shift himself.
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) 'Public interest' refers to the interest of the general public, not that of individuals, employees or employers.
 - (b) The Application relates to one single day, with unrestricted trading available under the Act on the days immediately before and after Anzac Day 2025. This does not indicate a significant restriction of retail options or access for locals to goods such as alcohol, bread, milk, chips, chocolates, soft drink, ice creams and cigarettes.

- (c) The claim made regarding giving visitors another reason to stop and support the Warren community based on the granting of an exemption is not supported with evidence.

Janet Bailey

Director

NSW Fair Trading

9 April 2025