

**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 Trinity IGA (**Applicant**) made an application under section 10 of the Act as occupier of a shop at 13 Marsden Lane, Kelso 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, and the public submissions received.
9. The Applicant submitted the following as a claim for exceptional circumstances:
  - (a) The Shop sells essential grocery items including fresh fruit and vegetables, milk, bread, and meat, and seeks to trade on Anzac Day to ensure continued access to these items for the local community and visitors.

- (b) The Shop is located in a regional centre that attracts tourists, particularly on public holidays such as Anzac Day.
  - (c) The Shop proposes to operate with a skeleton staff of no more than four employees at any given time, to maintain basic service levels while managing staff workload and rostering.
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) The sale of essential goods such as milk, bread and produce are a routine feature of supermarkets and convenience stores across New South Wales and does not amount to a circumstance that is out of the ordinary course, unusual, or uncommon.
  - (b) The presence of tourists in the area on Anzac Day is acknowledged, however, no evidence has been provided to demonstrate that trading on this particular day is necessary to meet demand that could not otherwise be met on surrounding unrestricted trading days.
  - (c) The Shop is permitted to trade without restriction on the days immediately before and after Anzac Day. There is no indication that closure on the restricted day would result in substantial disruption to access or availability of goods.
  - (d) The intention to roster a reduced number of staff and to offer penalty rates is consistent with standard retail sector practices and does not elevate the circumstances to the level required 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) The Shop provides a range of essentials including fruit, vegetables, milk, meat and bread, and indicates that access to these goods on Anzac Day would benefit both local residents and visitors to the area.
  - (b) The Shop is expected to be open by many members of the community and that trading on Anzac Day would assist residents, visitors and other small businesses by ensuring continued access to supplies without inconvenience.
  - (c) Other local businesses may benefit indirectly from the Shop being open on the day, and that no more than four staff would be rostered, working voluntarily and receiving penalty rates.
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 concerns a single restricted trading day. With unrestricted trading permitted under the Act on both the day before and the day after Anzac Day, no compelling evidence has been provided to show that closure on Anzac Day would cause significant inconvenience or impact on the wider community.
  - (b) No data or public submissions were provided in support of the claim that customers expect the Shop to be open or that tourists are significantly disadvantaged by the closure.
  - (c) While it is noted that staff would be rostered voluntarily and benefit from public holiday entitlements, these employment conditions are standard and do not, in themselves, constitute a broader public interest justification.
  - (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 prevailing community sentiment.
  - (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 Shop reflect localised commercial interests which do not outweigh the cultural, legislative and social rationale supporting the continued restriction of trade on Anzac Day.

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**NSW Fair Trading**  
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