

## 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 21 March 2025, trading as Currans Hill Supermarket Plus Liquor (**Applicant**) made an application under section 10 of the Act as occupier of a shop at 5 lando Way, Currans Hill NSW 2567 (**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 24 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 submissions from the Shop, Distributive & Allied Employees' Association.
8. The Applicant submitted the following as a claim for exceptional circumstances:
  - (a) The Shop provides essential goods and services to the community, including fresh produce, meat, seafood, frozen food, pantry staples, over-the-counter medicines, and liquor. Closure on Anzac Day would inconvenience customers, including shift workers, the elderly, and those with limited mobility or transport access, particularly those returning from Anzac Day events.
  - (b) Trading on Anzac Day would assist its employees, many of whom rely on penalty rates and are seeking additional income to support their financial wellbeing.

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 sale of groceries, general merchandise, and liquor is typical of supermarkets operating across New South Wales and does not constitute a circumstance that is out of the ordinary, unusual or uncommon.
  - (b) The submission that some community members rely on the store for convenience, or that some may not celebrate Anzac Day in a particular way, does not distinguish this case from many other retail environments across the State.
  - (c) Economic hardship and the opportunity for employees to earn penalty rates is understood, however do not constitute exceptional circumstances within the meaning of the Act.
  - (d) That the Shop proposes to trade respectfully or operate limited hours does not elevate the case to being exceptional. Similarly, the circumstances described align with the usual business and customer service considerations faced by other retailers subject to restricted trading obligations.
10. The Applicant submitted the following reasons as to why they believed granting an exemption would be in the public interest:
- (a) Trading on Anzac Day would benefit the local economy, support other nearby businesses, and offer convenience to residents and tourists.
  - (b) The Shop supports economic continuity, tourism activity, and casual staff through voluntary shifts and public holiday rates. Approximately five staff would be rostered to work on a voluntary basis.
  - (c) Trading on Anzac Day would assist its employees, many of whom rely on penalty rates and are seeking additional income to support their financial wellbeing.
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, and no evidence has been provided to demonstrate that closure on Anzac Day would have a significant adverse impact on the local community or economy.
  - (b) While the Shop's operation may support convenience and other small businesses, these are common characteristics of commercial activity and are not sufficient to justify departure from the trading restriction.
  - (c) The submission does not demonstrate a compelling community need for the Shop to be open on Anzac Day. While convenience is acknowledged, customers retain the ability to purchase goods before or after the restricted day.
  - (d) There is no evidence of increased demand specific to Anzac Day or that closure would cause a significant disruption to the broader community.
  - (e) The Shop operating with minimal staffing does not constitute a compelling public interest. No employee submissions were received, and the submission did not indicate that the broader public would derive any significant benefit from the exemption.
  - (f) The SDA NSW submission highlights broader social expectations that Anzac Day and Easter Sunday be preserved as significant cultural and religious holidays. It refers to the 2024 legislative amendments which followed extensive public consultation supporting the retention of full-day trading restrictions. Granting an exemption in this case would be inconsistent with that legislative intent and prevailing community sentiment.
  - (g) The public interest under the Act must be assessed with reference to the broader community, including the preservation of a small number of shared public holidays. In this instance, the benefits advanced by the Shop reflect localised business and convenience interests which do not outweigh the cultural, social and legislative rationale for restricting trade Anzac Day.

Marty Pollock  
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**NSW Fair Trading**  
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