

RETAIL TRADING ACT 2008 DECISION**REASON FOR DECISION**

1. I, Javier Yuste, 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 17 March 2025, Twiga International Pty Ltd trading as IGA Local Grocer Belrose Plus Liquor (**Applicant**) made an application under section 10 of the Act as occupier of a shop at Shop 1, 25 Ralston Avenue, Belrose NSW 2085 (**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 20 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 public submissions received.
8. The Applicant submitted the following as a claim for exceptional circumstances:
 - (a) IGA Local Grocer Belrose Plus Liquor is the only retail store serving the Belrose community, providing essential groceries, fresh produce, and liquor.
 - (b) The Shop plays a vital role in supporting the daily needs of residents. With no other retail options in the suburb, the Shop is a key part of the community, ensuring convenient and reliable access to essential goods.
 - (c) The Shop is the primary provider of groceries and liquor in Belrose, serving not only local residents but also the Belrose Country Club retirement village and Corymbia Aged Care facility, both of which rely on the Shop for their daily and regular supply orders. These

facilities cater to elderly residents who depend on consistent access to fresh food and essential items, making it crucial for us to remain open on ANZAC Day.

- (d) Restricting trade on this day would cause significant inconvenience to the community, particularly for veterans, their families, and those attending ANZAC Day commemorations who require last-minute necessities.
- (e) Granting this exemption would also support local employment, allowing our staff to continue working while ensuring that we operate respectfully in alignment with the spirit of ANZAC Day.

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) A supermarket in a suburb with limited retail options, and a shop providing essential goods and services for customers day to day needs could reasonably be considered regular, routine, or normally encountered circumstances across many areas in NSW.
- (b) A customer base including an aged population or those who may not have means to travel to other towns for supplies could also be considered regular, routine or normally encountered circumstances.
- (c) With regards the Shop contributing to the local economy, providing opportunities for employment and opportunities for increased income through award entitlements, these are all circumstances regularly, routinely, or normally encountered in NSW.
- (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) IGA Local Grocer Belrose Plus Liquor is a full-service supermarket dedicated to meeting the daily needs of the Belrose community. As the only retail store in the suburb, the Shop offers a comprehensive range of groceries, including fresh fruits and vegetables, dairy products, meat, seafood, frozen foods, and pantry staples.
- (b) The Shop provides household essentials, cleaning supplies, personal care products, and a selection of specialty and gourmet items to cater to diverse customer preferences.
- (c) The Shop holds a liquor section that stocks a variety of beer, wine, and spirits, ensuring a convenient shopping experience for our customers.
- (d) The Shop serves the local community, including the Belrose Country Club retirement village and Corymbia Aged Care facility, both of which rely on us for their daily and regular supply orders.
- (e) ANZAC Day is a time when residents and attendees of commemorative events may need last-minute supplies, such as food, beverages, and other necessities. With no alternative stores nearby, closing would cause significant inconvenience and impact the ability of customers, including veterans and their families, to prepare for or participate in ANZAC Day observances.
- (f) While Belrose is not a major tourist hub, visitors attending ANZAC Day services or visiting local families would also benefit from having a reliable place to purchase essential items.
- (g) Trading supports local employment, ensuring staff members who rely on their wages can continue working. Our business remains committed to operating respectfully and in alignment with the spirit of ANZAC Day, providing essential services while maintaining the solemnity of the occasion.
- (h) Allowing the Shop to operate would support local employment, ensuring that staff members continue earning wages, which in turn contributes to the local economy.
- (i) To remain open on the restricted trading day, the likely effect on the employees will be positive in terms of providing work opportunities and income. The Shop anticipates

approximately 4 employees be required to work on ANZAC Day to ensure the store operates smoothly, including staff in the grocery section, liquor section, and general store support roles.

- (j) Allowing employees to work on ANZAC Day would also help to mitigate any potential financial hardship for those who rely on their wages, ensuring they maintain their income during a time when other retail opportunities are limited. The store would continue to operate in a manner that respects the significance of the day while providing fair and equitable working conditions for all employees
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 one single day, with unrestricted trading available under the Act on both the day immediately before, and the day immediately after Anzac Day 2025. This does not indicate a significant restriction of access to the essential items sold by the Shop, even having regard to the circumstances raised by the Applicant – the Shop provides critical access to groceries and household essentials for residents, tourists, elderly people, those with limited mobility and the Shop as the only supermarket available in the event of an emergency on the standalone restricted trading day.
 - (b) Similarly, it is unclear from the Application how a standalone restricted trading day would have a significant impact on local suppliers, or the economic wellbeing and employment opportunities for the community overall given the period for which an exemption is requested is 13 hours.
 - (c) There is no evidence provided in the Application that there would be a higher than usual demand from tourists or other visitors in the area over this period, or that the tourists' experience of Belrose would be enhanced if the exemption were granted. No public submissions supported this claim.
 - (d) The Application notes granting an exemption would provide higher payments to 4 employees volunteering to work on the restricted trading day, however there were no submissions from employees of the Shop supporting granting of an exemption, despite the notice being published both on the Fair Trading website and instore to raise awareness of the opportunity to support or oppose this Application.
 - (e) By contrast, the SDA submission refers to the social welfare of employees, their families and society, and notes the granting of an exemption would be out of step with community expectation, put pressure on retail employees and their families and impact the ability of many employees to commemorate Anzac Day with their community.
 - (f) Notwithstanding the absence of submissions from direct employees of the Shop, 'public interest' refers to the interest of the general public, not that of individuals, employees, or employers.
 - (g) The notion of 'public interest' refers to matters that might affect the public as a whole, which does not appear to be the case in this instance.

Javier Yuste
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NSW Fair Trading
09/04/25