

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

1. I, Natalia Reed, 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 24th March 2025, Red Bottle Elizabeth Street Pty Ltd trading as Red Bottle Elizabeth Street (**Applicant**) made an application under section 10 of the Act as occupier of a shop at 181 Elizabeth Street, Sydney, NSW 2000 (**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 27th 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 SDA.
8. The Applicant submitted the following as a claim for exceptional circumstances:
 - (a) Red Bottle is a small family owned business of 12 independently owned and operated stores, however the Application relates to stores located in the Sydney CBD only, which is an internationally acclaimed tourist destination, with the CBD stores unique to these tourist areas.
 - (b) The need to be able to provide a service to tourists visiting Sydney is an exceptional circumstance.
 - (c) The Application notes if stores are not allowed to trade on Anzac Day, it will mean a large number of tourists will be unable to easily purchase a bottle of wine, or any other alcoholic beverage, which they would expect to be able to do in a global city. Being able to trade on

Anzac Day will fulfil the tourist community need as the majority of overseas tourists would not even be aware of Anzac Day until they arrived and therefore will be unprepared.

- (d) The Application notes hotels and clubs are allowed to open and sell takeaway alcohol however claims that majority do not, and for those outlets that do operate a bottle shop, the range available is generally very, very limited, in comparison to the very extensive range of the Shop.
 - (e) Respecting the Anzac Day tradition, the Shop would not open before 1.00 pm should an exemption be granted.
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 location of a bottle shop in the Sydney CBD, or any other tourist destination, is not a circumstance that can be considered out of the ordinary course, or unusual, or special or uncommon.
 - (b) 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. It is not clear how a single day closure would result in significant disruption of access to a service for tourists visiting Sydney, noting the Shop will remain open to service tourists on other days adjacent to the restricted trading day.
 - (c) Similarly, while it is recognised tourists may be unaware of Anzac Day before arriving in Sydney, non-awareness of an Australian public holiday within the visiting tourist community does not constitute a circumstance that is out of the ordinary, unusual, special, or uncommon. There is also no evidence provided in the Application that tourists will be wholly reliant on the Shop for access to goods of this nature on the restricted trading day.
 - (d) The Application includes a list of premises exempt from trading restrictions on this day, noting the range of goods provided in these premises will be limited compared to the Shop if it were allowed to open, however the availability of a broader range of goods does not elevate this circumstance to exceptional.
 - (e) It is noted the Shop would not open before 1pm out of respect for Anzac Day however by contrast, the SDA submission views Anzac Day as a day of important cultural and historical significance and notes the restriction of trading for the whole day is in keeping with Australian community sentiment on the solemn nature of Anzac Day.
 - (f) Having regard to the rationale of the Act, there should be a general presumption against trading on restricted trading days and there appear to be no exceptional circumstances 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) Red Bottle is a group of liquor stores. The product range varies from local & imported wines, craft beers, premix, spirits & Asian spirits, the great majority of which are not stocked, or only stocked in a very limited selection, in the Hotels with bottle shops that are in the CBD and allowed to trade on Anzac Day.
 - (b) Overseas tourists would expect that they would be able to buy alcohol on any day of the week in a city of Sydney's size and reputation.
 - (c) If the exemption were granted it will mean more foot traffic around the Shop, benefitting neighbouring stores, generating revenue in the local economy and penalty rates for staff employed to work. The closure of the business would negatively impact the city's reputation in the mind of tourists.
 - (d) The number of people working in each store will vary from one in some stores, to two in others. Each staff member will be more than willing to work, and will work voluntarily, and be paid the appropriate rate under the General Retail Industry Award 2020. This will generate additional income for staff members.

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 goods sold by the Shop, even having regard to the circumstances raised by the Applicant – limited selection in hotel bottle shops permitted to trade, and overseas tourists expecting to be able to buy alcohol on any day of the week.
 - (b) No submissions were received from other businesses in the area supporting this Application for exemption; that there would be increased foot traffic or other benefits to their businesses.
 - (c) The Application notes staff are willing to work and would benefit from additional income on the restricted trading day however there were no submissions from employees of the Shop supporting granting of an exemption to secure this additional income, despite the notice being published both on the Fair Trading website and instore, to provide the opportunity to support or oppose this application.
 - (d) 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 and put pressure on retail employees and their families.
 - (e) ‘Public interest’ refers to the interest of the general public, not that of individuals, employees, or employers. 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.

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NSW Fair Trading
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