

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 18 March 2025, Louie Cellars trading as Coonamble Cellars (**Applicant**) made an application under section 10 of the Act as occupier of a shop at 83 Aberford Street, Coonamble, NSW 2829 (**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 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) Regulatory inconsistency between the NSW Liquor Act 2007 and NSW Retail Trading Act 2008 creates an unfair trading environment where the Shop must close while direct competitors can sell liquor unrestricted all day.
 - (b) The Shop is the only large format packaged liquor retailer in the region serving a geographically isolated community, resulting in the local community having no access to dedicated packaged liquor retail services within 100km and being forced to purchase in advance, travel long distances to access liquor or to purchase from venues that do not stock the same range.

- (c) Local consumers may face public holiday surcharges of between 10-15% on the same products from other licensed venues able to trade and sell takeaway liquor.
 - (d) The combination of remoteness, lack of alternatives and consumer impact above make the circumstances exceptional.
 - (e) The Shop projects a financial loss of \$25000-\$30000 due to the inability to trade.
 - (f) If customers are repeatedly forced to purchase from competitors, consumer habits may permanently shift causing long term financial damage and market erosion for the Shop.
 - (g) The Shop contends that above quantitative factors are compounded by qualitative factors such as consumer disruption, limited product range, and lack of product knowledge at other licenced venues permitted to trade and sell takeaway liquor.
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 Applicant has raised regulatory inconsistency between the way the Liquor Act 2007 and the Retail Trading Act 2008 treat businesses which hold different types of liquor licences. The application of legislation may differ based on the individual circumstances of a business and accordingly, this is not considered exceptional for the purposes of the Act.
 - (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 2025. This does not indicate a prolonged disruption of access to products sold by the Shop for consumers, and there is no evidence provided to detail why any impact to customers requiring liquor products could not be minimised by those customers purchasing on adjacent unrestricted trading days.
 - (c) There is no evidence provided by the Applicant in support of the claim that customers are wholly dependent on the Shop due to its location affording no access to alternative suppliers of packaged liquor products, or that there would be a significant impact to customers if the product range available at other premises was less than that of the Shop. Notwithstanding the absence of evidence, distance between retailers and difference of range between retailers could be considered a regular, routine or normally encountered circumstance within retail operations in NSW, particularly in regional areas.
 - (d) Similarly, there is no evidence provided in the application that customers would need to travel significant distances to purchase liquor from other outlets, and it is expected any requirement to travel would be lessened by the statewide application of the Act.
 - (e) No evidence of financial loss that could arise from closure was provided. The assertion that patrons would pay more at other licensed venues is a commercial consideration, but not a sufficient basis to establish exceptional circumstances for Anzac Day 2025. It is also noted that the claims relating to long term financial damage and market erosion for the Shop are based on customers being repeatedly forced to purchase from competitors, however the Application relates to one single day of trading.
 - (f) The Shop contends that quantitative factors relating to economic impact and long term financial impact are compounded by qualitative factors such as consumer disruption, limited product range, and lack of product knowledge, and it is the combination which elevates these circumstances to exceptional. As the Application has not provided evidence to substantiate the arguments for economic impact or long term financial impact, I have not considered the combination with qualitative factors.
 - (g) 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) Coonamble Cellars is a large-format, independent packaged liquor retailer, providing a wide range of alcoholic and non-alcoholic beverages, including locally sourced products.

- (b) The Shop provides specialised retail service and product knowledge not available at the surrounding hotels and pubs.
 - (c) The Shop provide the only specialised retail liquor service for a remote community with limited options.
 - (d) Consumers expect to be able to purchase liquor from the store, as they have done historically after 1 :00pm on Anzac Day and the inability to trade will drive customers to exempt businesses creating a permanent shift in consumer behaviour.
 - (e) Many Anzac Day gatherings are held privately, where people prefer to purchase liquor from a packaged liquor store rather than consuming alcohol on-premises at the local hotels. This includes servicing those visitors who stay at the motels and holiday park and those with young families who may want to avoid the raucousness of two-up at the bottle shop joined to the hotel. Without an exemption these customers would need to take a 218km round-trip to Coonabarabran or 320km round-trip to Dubbo to find another dedicated bottle shop.
 - (f) The Shop contributes directly to the local economy, employing 6 - 7 staff members who depend on holiday penalty rates.
 - (g) Anzac Day is a high-traffic day for tourism especially for those, who after ANZAC Day services, use Coonamble as a base to visit the Warrumbungle National Park.
 - (h) Trading restrictions will limit tourism spending within the community.
 - (i) Granting an exemption would prevent economic leakage to other licensed venues that will remain open, support local tourism by ensuring visitors have access to packaged liquor after commemorations and maintain market competition rather than forcing local customers to buy from exempt competitors.
 - (j) Granting an exemption would ensure 6-7 employees retain their earning opportunities while maintaining full compliance with Section 13 of the Retail Trading Act 2008 and the Fair Work Act 2009. Employees have indicated a clear willingness to work, and the exemption would be implemented with strict adherence to voluntary work conditions.
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 goods sold by the Shop even having regard to the circumstances raised by the Applicant – specialised retail service for a remote community with limited options, and product knowledge not available at other venues.
 - (b) There is no detail provided in the Application to support the argument that there would be a significant detriment to the public interest through customers having to purchase products on adjacent unrestricted trading days. No evidence was provided to demonstrate that customer needs could not be reasonably met on those days, or that the one-day closure would result in community disruption or dissatisfaction.
 - (c) In addition, the Shop's offering of a specialised retail service, superior product knowledge and range do not appear to support the argument that restricted trading for a single day would create a permanent shift in consumer behaviour.
 - (d) The claims made regarding increased support for tourism in the region, retention of tourism spending and prevention of economic leakage based on the granting of an exemption are not supported with evidence, nor were they supported with public submissions. Due to the statewide application of the Act, there will be many areas with similar restrictions in trading. The requirement for customers to travel to more distant locations to avoid restricted trading will also be lessened by the statewide application of the Act.
 - (e) While it is noted the business previously traded on Anzac Day after 1pm and that the community expect to be able to do so, there were no submissions received from customers of the Shop requesting that an exemption be granted, despite the Application being

published on the Fair Trading website and instore to raise awareness of the ability to support or oppose this Application. The Retail Trading Amendment (Anzac Day Trading Hours) Act 2024 reflected the outcome of a broad public consultation process and the legislative intent to preserve Anzac Day as a full day of remembrance and community reflection. Prior practice is therefore not considered sufficient to establish an exceptional circumstance in the public interest.

- (f) The Application notes granting an exemption ensures 6-7 employees, who are willing to work and dependent on public holiday rates, would retain their earning opportunities. However there were no submissions from employees of the Shop supporting granting of an exemption in order to secure this earning opportunity.
- (g) 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.
- (h) The matters advanced by the Applicant primarily reflect operational and commercial considerations — including competition, revenue preservation, staffing arrangements, and customer retention — which are routinely encountered in the operation of a business. These factors, while relevant from a business standpoint, do not demonstrate a wider benefit to the community sufficient to confirm public interest.
- (i) Notwithstanding the absence of submissions from direct employees or customers of the Shop, ‘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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16/4/25