

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, Bravale Pty. Ltd. trading as The Cellar Bangalow (**Applicant**) made an application under section 10 of the Act as occupier of a shop at 43 Byron Street, Bangalow, NSW 2479 (**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 public submissions received.
8. The Applicant submitted the following as a claim for exceptional circumstances:
 - (a) The Shop is located in the hills behind Byron Bay, which is a unique tourism area and many of the customers are there on holidays so would not be otherwise attending any Anzac Day activities. All local events will be conducted early in the day, with none occurring in the afternoon.
 - (b) The owner of the business is a returned serviceman that served during the Vietnam war who is a member of the Brunswick Heads branch of the Returned and Services League of Australia (RSL) and actively involved in organising morning Anzac Day events at Brunswick Heads. The owner of the business strongly wishes the bottle shop to open in the afternoon so people can choose to purchase drinks after they attend local events that are all conducted relatively early in the day.
 - (c) For these reasons the Applicant requests that the Shop remain open after lunch (1pm to normal public holiday closing time of 8PM).

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 Application notes the Shop's location as being within a unique tourist area, with many customers visiting the area and not attending Anzac Day activities, however this could be considered regular, routine or normally encountered circumstance in many tourist areas across NSW.
 - (b) While the military service of the Shop's owner is recognised and respected, the preference for the Shop to be open for people to purchase drinks after attending local events is not of itself an exceptional circumstance.
 - (c) It is recognised the Shop intends to open after 1pm if the exemption were granted, however the view cited in the SDA submission refers to Anzac Day as a day of important cultural and historical significance and notes the restriction of trading for the whole day on this day is in keeping with community sentiment on the solemn nature of Anzac Day.
 - (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) The Shop sells packaged alcoholic beverages e.g. beer, wine and spirits.
 - (b) As the local events are all conducted relatively early in the day, and the Shop only seeking to open after lunch, there should be no impact on employee's ability to attend Anzac Day services.
 - (c) If the Shop is forced to close all day, the casual staff will miss a day of wages (at public holiday rates) which in a cost of living crisis is a real problem.
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. This does not appear to constitute a significant restriction of access to packaged alcoholic beverages sold by the Shop.
 - (e) There was no information provided in the Application relating to the likely effect of the proposed exemption on the local economy, tourism and small businesses and other businesses in the area, as is required to be considered under 10(2)(c) of the Act.
 - (b) The Application notes that casual staff will experience a loss of income due to restricted trading on this day however there were no submissions from employees of the Shop supporting granting of an exemption to avoid this loss of income, despite the notice being published both on the Fair Trading website and instore, to provide the opportunity to support or oppose this application.
 - (c) While the Applicant sites opening of the Shop after 1pm should not impact on employee's ability to attend Anzac Day services, public submissions received refer to the social welfare of employees, their families and society, and note the granting of an exemption would be out of step with community expectation, putting pressure on retail employees and their families.
 - (d) '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.

Natalia Reed
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NSW Fair Trading
11/04/2025