

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 19/02/2025, Sheep 9 Pty Ltd, trading as Cellarbrations South Kincumber (**Applicant**) made an application under section 10 of the Act as occupier of a shop, Cellarbrations – IGA Local at 1/10 Kerta Road, Kincumber, NSW 2251 (**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 25/02/2025 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 submissions from SDA NSW and SDA.
8. The Applicant submitted the following as a claim for exceptional circumstances:
 - (a) The Shop provides for gatherings after morning celebrations so people can collect drinks for family gatherings and barbecues.
 - (b) Anzac Day is a day of Australian celebration, and it is very Australian to have cold beer and wine available.

The Application also made claims relating to the legal sales and responsible service of alcohol and the 'cost of living crisis' however I have considered these at point 11.

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 provision of drinks by the Shop for family gatherings and barbecues to be held after morning celebrations is not a circumstance that can be considered out of the ordinary course, or unusual, or special, or uncommon. There is no information provided as to why these sales must occur on Anzac Day itself rather than a prior unrestricted trading day therefore it is unclear from the Application how this supports the argument for an exceptional circumstance.
 - (b) With regards the claims that Anzac Day is a day of Australian celebration, the SDA submission refers to Anzac Day as a day of important cultural and historical significance and notes the restriction of trading on this day is in keeping with community sentiment on the solemn nature of Anzac Day. While the Application notes it is very Australian to have cold beer and wine available, it is unclear how this relates to an exceptional circumstance.
 - (c) 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 beer, wine, spirits, chips and soft drinks.
 - (b) Locals need to purchase drinks for family gatherings and barbecues.
 - (c) The Shop provides alternatives to pub and club prices, helping with 'cost of living crisis'.
 - (d) The Shop ensures alcohol is sold legally and responsible service of alcohol.
 - (e) The Shop provides a safe place for the older community to purchase liquor.
 - (f) Allowing the Shop to remain open would support local tourism.
 - (g) It is a very busy weekend on the Central Coast and lots of visitors and locals will be buying drinks.
 - (h) The Shop being open supports local business and gets people out of the house to socialise.
 - (i) Staff are very willing to work on this day and 3 staff will be rostered on for Anzac Day
 - (j) Staff will be paid public holiday loading and full time staff will be given time in lieu.
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 goods sold by the Shop for the public, even having regard to the circumstances raised by the Applicant – locals need to purchase drinks for family gatherings, it is a very busy weekend on the Central Coast and the Shop providing an alternative to pub and club prices to help with cost of living.
 - (b) It is noted the Application cites the Shop as a safe place for older community to purchase liquor and that the Shop ensures the legal and responsible service of alcohol. The regulation and control of liquor sales is achieved through legislative schemes outside of the Retail Trading Act 2008. While illegal sales or irresponsible service of alcohol would be of concern, there are other compliance tools in place to minimise this risk and the granting of a retail trading exemption should not be considered as such.
 - (c) The Application notes granting of an exemption would support local tourism and local business. There is no evidence provided in the Application that there would be a higher than usual number of locals socialising, or tourists in the area to support the argument that granting an exemption would be in the public interest, or that the impact on other businesses in the area would be significant if an exemption were to be granted. There were

also no submissions received from other businesses in the area supporting this application for exemption; that there would be benefits to their businesses.

- (d) The Application notes that 3 employees who are willing to work will either receive public holiday loading or time in lieu on the restricted trading day, based on their employment status, 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 provide the opportunity to comment on this Application.
- (e) By contrast, the SDA submissions refer 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.

Natalia Reed
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NSW Fair Trading
31/03/2025