

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

1. I, Marty Pollock, 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 26 February 2025, Khans Supermarket Gerringong Pty Ltd trading as Khans IGA Supermarket Gerringong (**Applicant**) made an application under section 10 of the Act as occupier of a shop at 7/11 Blackwood St, Gerringong NSW 2534 (**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 10 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) The Shop is a well-known and established part of the Gerringong community, providing a broad range of goods including fresh produce, groceries, meat and deli items, beverages, over-the-counter medications, newspapers, and household goods.
 - (b) The Shop is the only full-service supermarket in Gerringong and is relied upon by both residents and tourists for essential supplies, particularly during periods of increased visitation such as the Anzac Day long weekend.

- (c) The Shop is located on a major coastal highway and is said to cater to high volumes of travellers passing through to the South Coast, many of whom attend or participate in local Anzac Day commemorative activities.
 - (d) The Shop is described as contributing to the local economy through the provision of employment and by acting as a commercial anchor that generates foot traffic for surrounding small businesses. The Applicant stated that remaining open on Anzac Day would allow staff to voluntarily work and benefit from public holiday penalty rates, while continuing to serve the broader needs of the community.
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) No evidence was provided in the Application to demonstrate that customers are wholly dependent on the Shop for essential supplies, or that there is a lack of access to other retail options within a reasonable distance. There were also no public submissions supporting this claim, despite the notice being published both on the Fair Trading website and in-store.
 - (b) The Application relates to a single restricted trading day, with unrestricted trading permitted on both the day immediately before and the day immediately after Anzac Day. It is not clear how closure on this single day would result in significant disruption to access to goods and services for residents or visitors.
 - (c) While the Shop plays a role in supporting the local economy and employment, such contributions are typical of regional supermarkets across New South Wales and do not constitute circumstances that rise to the level of being exceptional within the meaning of the Act.
 - (d) The assertion that employees would work voluntarily and receive appropriate penalty rates is noted. However, such arrangements reflect general employment practice and do not, in themselves, meet the threshold of exceptional circumstances.
10. The Applicant submitted the following reasons as to why they believed granting an exemption would be in the public interest:
- (a) The Shop's opening on Anzac Day would support commemorative events by ensuring that residents and visitors have access to essential goods and refreshments.
 - (b) The Shop plays an important role in supporting vulnerable members of the community, including elderly residents and those with limited mobility who may face difficulty accessing alternative retail options.
 - (c) The continued operation of the Shop would benefit the local economy by maintaining business activity and employment during a peak visitation period.
 - (d) The Applicant submitted that opening on Anzac Day would generate additional foot traffic in the town centre, thereby supporting other small businesses operating on the day.
 - (e) Approximately 15 to 18 employees – comprising a mix of full-time, part-time and casual staff – would be rostered to work on a voluntary basis and would benefit from public holiday penalty rates in accordance with the General Retail Industry Award 2020.
 - (f) The Applicant stated that no employee would be compelled to work, and that participation would be entirely voluntary.
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 a single restricted trading day. Given unrestricted trading is available on the days immediately before and after Anzac Day, the need to ensure access to essential goods on Anzac Day itself is not substantiated by evidence indicating a broader community impact.
 - (b) A customer base that includes elderly individuals, persons with limited mobility, or those living in a town with limited public transport, is not a circumstance that can be considered out of the ordinary course, or unusual, or special, or uncommon.

- (c) No evidence was provided to demonstrate that Anzac Day visitation to Gerringong would generate significant demand that could not reasonably be met on surrounding days. Claims regarding increased foot traffic and tourism benefits were not supported by data or public submissions.
- (d) While the Applicant stated that staff would work voluntarily and benefit financially, no employee submissions were received in support of the exemption despite the public notification process.
- (e) The SDA NSW submission raises concerns regarding the erosion of community expectations around Anzac Day as a culturally significant and solemn occasion. It highlights that Parliament recently passed the *Retail Trading Amendment (Anzac Day Trading Hours) Act 2024*, following public consultation in which most submissions supported the closure of general shops all day. The submission argues that granting an exemption would be inconsistent with this legislative intent and out of step with strong community sentiment that Anzac Day is a day of commemoration — not commerce.
- (f) The SDA also raised concerns about the practical effect of exemptions on retail workers, noting that while work may be described as voluntary, employees may still feel pressure to accept shifts on this important public holiday. The broader public interest under the Act includes consideration of the wellbeing of retail employees, the social and cultural significance of shared rest days, and the preservation of a small number of restricted trading days that allow all members of the community—including retail workers—to participate in national commemorations. In this case, the proposed exemption does not demonstrate a sufficiently compelling public benefit to justify departure from the established restricted trading framework.

Marty Pollock
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NSW Fair Trading
09/04/25