

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 28 March 2025, Bernardi Group Pty Ltd trading as Bernardi's Marketplace (**Applicant**) made an application under section 10 of the Act as occupier of a shop at 72 Rankin Street, Bathurst NSW 2795 (**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 2 April 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). One additional submission was received from a member of the public.
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 supports local commemorative activities by supplying goods for Anzac Day events and gatherings, and is essential for immediate access to food, beverages and essentials post commemoration.
 - (b) The Shop is located 550m from the Bathurst Dawn Service Anzac and this, combined with limited capacity of smaller exempt retailers, makes the Shop uniquely positioned to meet this exceptional demand.

The application also included claims related to income for local workers and health and safety of the community which have been included in point 10 relating to public interest.

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 assertion that the Shop supports commemorative events, while commendable, is not an uncommon feature of regional supermarkets and therefore does not meet the threshold of exceptional.
 - (b) Proximity to local commemorative activities is not, of itself, exceptional. No evidence was provided by the applicant in support of the claim that there would be a significant increase in demand to elevate these circumstances to exceptional, or that customers are wholly dependent on the store for essential items due to limited capacity of other retail options. There were also no public submissions supporting this claim, despite the notice being published both on the Fair Trading website and instore to raise awareness with customers.
 - (c) 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 needs to be open to provide unrestricted access to fresh foods, medications, groceries, baby supplies, pet foods, household goods and unexpected adverse weather gear as necessary, and provide visitors to the town the opportunity to gather supplies to enjoy the events the town offers on this day.
 - (b) Trading supports Bathurst's role as a regional hub and honours Anzac Day by ensuring residents and visitors can participate in commemorations without logistical strain and restrictions to daily essentials, limitation on access, cost sacrifices or dietary needs.
 - (c) Visitors may not be familiar with the town, the exempt retailers or the limitations in the town on the day.
 - (d) Providing access to the community and employees ensures their health and safety are being met, by providing access to general medications, hygiene products, baby supplies and a vast range of fresh produce as not all households are in a position to stockpile prior to a holiday.
 - (e) Removing access to a variety of essential needs can bring on unnecessary stress and panic to the community who may not be able to stockpile goods, puts strain on employees that rely on shifts and removes the opportunity to volunteer to earn extra income.
 - (f) Granting an Anzac Day trading exemption for Bernardi's Marketplace Bathurst would likely have a modest positive effect on the local economy by increasing retail activity and worker income, though tempered by low holiday demand.
 - (g) Tourism would see a slight benefit from enhanced convenience for visitors attending commemorative events, without significantly boosting visitor numbers. Small businesses could gain from complementary foot traffic (e.g., nearby cafes) but face competitive pressure if non-exempt, while exempt hospitality businesses like pubs might see indirect benefits from combined patronage.
 - (h) Overall, the exemption would provide a practical service to the Bathurst community, aligning with Bernardi's 50-year legacy of regional support, while respecting Anzac Day's significance through limited, community-focused trading.
 - (i) Trading provides critical income for local workers who will access higher penalty rates if they volunteer to work on Anzac Day, allowing them to increase their earnings and assisting in offsetting the increased cost of living in a regional economy.

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 indicate a significant restriction of access to essential grocery items for the community and visitors, even having regard to the circumstances raised by the applicant – customers gathering supplies to enjoy the events of the day, logistical strain, impacts to cost, dietary needs or health and safety and inability to stockpile. There is no detail provided in the application outlining why customer needs could not be met on adjacent trading days.
 - (b) In considering this single day of restricted trading, no evidence was provided by the Applicant in support of the claim that customers had previously experienced stress and panic in having restricted access to goods sold by the Shop, and no public submissions supported this claim. Restricted trading days have been in place in NSW for some time and represent four standalone days per year.
 - (c) Similarly, while visitors may be unfamiliar with the town, due to the statewide application of the Act it is likely they will be familiar with restricted trading days and arrive prepared with supplies for the day's events.
 - (d) The Application asserts that trading supports Bathurst's role as a regional hub and honours and respects Anzac Day through limited, community-focused trading however public submissions received reflect broader societal expectations regarding the significance of Anzac Day. Broadly, public submissions opposed the Application, noting Anzac Day as a National Day of Commemoration, reflection, and shared rest. The SDA submissions referenced the 2024 amendments to the *Retail Trading Act 2008*, which followed an extensive public consultation process and confirmed strong community support for maintaining full-day trading restrictions on Anzac Day.
 - (d) There is no evidence provided in the Application quantifying benefits to the local economy, small businesses or other businesses to support the argument that granting an exemption would be in the public interest, or that the impact of increased retail activity or worker income would be significant if an exemption were to be granted.
 - (e) There were also no submissions received from the general public, local small businesses or other businesses in the area supporting this application for exemption; that there would be a boost in retail activity, increased foot traffic or other indirect benefits.
 - (f) The Application notes granting an exemption would support local workers with access to higher penalty rates however there were no submissions from employees of the Shop supporting granting of an exemption in order to secure this increased income.
 - (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) In considering 'public interest' for the purposes of the Act, it 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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