

RETAIL TRADING ACT 2008 DECISION
REASON FOR DECISION

1. I, Janet Bailey, 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 March 2025, Clarence Town Unit Trust trading as Clarence Town IGA (**Applicant**) made an application under section 10 of the Act as occupier of a shop at 47 Grey Street, Clarence Town NSW 2321 (**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 28 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 submissions from the SDA and the SDA NSW.
8. The Applicant submitted the following as a claim for exceptional circumstances:
- (a) The Shop is a small supermarket in regional NSW that is a 20-minute drive from the nearest town.
 - (b) Clarence Town is not serviced by any form of public transport.
 - (c) The Shop supplies the local ANZAC committee with all food requirements for free. This allows the committee to raise much needed funds by charging for breakfast after the dawn service.
 - (d) The Shop has been owned by the same owner for 30 years who has regularly traded on Anzac Day over this period of time.
 - (e) The Shop is the centre of the local business community and is relied on by residents to supply grocery needs.
 - (f) The town also benefits from tourists at Williams River Caravan Park and Reserve that is walking distance from the Shop.
 - (g) The town will be left without essential services if the exemption is not granted.
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) A 20-minute driving distance between towns could reasonably be considered a regular, routine or normally encountered circumstance in many regional areas across NSW.
 - (b) No evidence was provided by the Applicant in support of the claim that the local area is not serviced by any form of public transport. There were also no public submissions supporting this claim. Notwithstanding the absence of evidence, due to the statewide application of the Act, there will be many shops in neighbouring areas with similar restrictions in trading.
 - (c) While the Applicant's support and contributions to the local ANZAC committee are acknowledged, there is no detail provided in the Application as to how operation on a restricted trading day would not undermine the spirit of the Act. By contrast, 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.
 - (d) While it is claimed that the business previously traded on Anzac Day and that this met community expectations, this practice ceased following the *Retail Trading Amendment (Anzac Day Trading Hours) Act 2024*. That amendment reflected the outcome of a public consultation process and the legislative intent to preserve Anzac Day as a full day of remembrance and community reflection. Prior practice, therefore, is not sufficient to establish current exceptional need.
 - (e) Independent shop ownership (non-corporate) and a customer base of local residents and tourists are not circumstances that can be considered out of the ordinary course, or unusual, or special, or uncommon.
 - (f) 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 is a small supermarket/bottle shop selling groceries, dairy, milk, frozen goods meat, bakery goods, deli items, general merchandise and alcohol. The Shop is also a newsagent.

- (b) The Shop is requesting an exemption to open at 1pm after festivities, allowing local residents to celebrate Anzac Day with the traditional dawn service. The Applicant advises that the Shop works closely with the ANZAC committee to ensure the day is a success.
 - (c) Granting an exemption will allow the local community to replenish any essential food items that they have run short of.
 - (d) Granting an exemption will allow the tourists to obtain supplies.
 - (e) No other local shops supply essential food requirements.
 - (f) The Shop needs to be open to fulfill newsagency obligations.
 - (g) If the exemption was granted, there would be a great benefit to the local business community that rely on tourism.
 - (h) If the exemption was granted this would have a positive influence on the local business community by assisting businesses such as the local hotel and Bowling Club with products if required and the ANZAC committee with goods if required, local residents by selling required food items and tourism by serving local tourist needs.
 - (i) If the exemption was granted, the Shop would open for five hours and roster seven staff. This will allow staff members to participate in Anzac Day celebrations without impacting their ability to work. The roster will be made up of employees who have volunteered to work which will provide them opportunity for extra income which will be paid under the General Retail Award (MA00004).
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) Having regard to the rationale of the Act, there should be a general presumption against trading on restricted trading days even with providing employees the opportunity to celebrate Anzac Day with the traditional dawn service.
 - (b) The Application relates to one single day, with unrestricted trading available under the Act on both the days immediately before and after Anzac Day. This does not indicate a significant restriction of access to essential food items or newsagency services for the general public or tourists, or a significant impact to the local business community.
 - (c) There is no evidence provided in the Application regarding the positive influence on other businesses 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 was to be granted.
 - (d) The Application notes granting an exemption would allow seven staff to both celebrate Anzac Day and work while providing extra income, however there were no submissions from employees of the Shop supporting granting of an exemption.
 - (e) 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.
 - (f) '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.

Janet Bailey
Director
NSW Fair Trading
15 April 2025