

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

1. I, Cheryl Grant, 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 27 March 2025, Bushwel Pty Ltd trading as Nambucca Liquor Supplies (**Applicant**) made an application under section 10 of the Act as occupier of a shop Nambucca Local Liquor at 36 Bowra Street, Nambucca Heads, NSW 2448 (**Shop**), for the Shop to be exempt from the requirement to be kept closed on Anzac Day for the year of 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, 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).
8. The Applicant submitted the following as a claim for exceptional circumstances:
  - (a) There is direct competition from exempt businesses (hotels, clubs, restaurants) in the area who can sell takeaway alcohol on Anzac Day. Bottle shops play an essential community service role during Anzac Day gatherings and commemorations including gatherings of family and friends.
  - (b) There will be a significant economic impact of at least \$15000.00 in gross sales from being forced to close as Anzac Day is one of our busiest trading days.

- (c) Anzac Day falls on a Friday this year and we expect to see a lot of tourists in our area as it becomes a long weekend. Being a small coastal town we rely heavily on our tourist trade.
  - (d) On Fridays the Shop offers a delivery service to approximately 8 - 10 elderly customers who rely on us to deliver goods as they cannot get this service anywhere else.
  - (e) Closure of bottle shop on Anzac Day is highly unfair compared to similar-sized businesses who can trade based on their corporate structure like the local clubs, supermarket and taverns.
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 supermarket in a town with limited retail options, and a shop providing essential goods and services for customers day to day needs could reasonably be considered regular, routine, or normally encountered circumstances across many areas in NSW.
  - (b) A customer base including an aged population or those who may not have means to travel to other towns for supplies could also be considered regular, routine or normally encountered circumstances.
  - (c) With regards the Shop contributing to the local economy, providing opportunities for employment and opportunities for increased income through award entitlements, these are all circumstances regularly, routinely, or normally encountered in NSW.
  - (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 is a licensed packaged liquor retailer providing alcoholic and non-alcoholic beverages and other miscellaneous products such as milk, fruit juices and soft drinks.
  - (b) The Shop is an independent business serving the Nambucca Valley community for almost 40 years offering competitive pricing, established relationships with many local suppliers and producers and are an essential part of the local retail ecosystem.
  - (c) There is community demand for retail liquor services on Anzac Day. The Shop offers a delivery service on Fridays and mainly used by the elderly who cannot get to the premises.
  - (d) A significant portion of annual revenue are traditionally earned on public holidays. Customer expectation of service availability should be aligned with other licensed venues. The Shop wants to prevent customer loss to competing exempt businesses.
  - (e) Staff members who would normally be working on this day, rely heavily on their working hours to survive in this low socio-economic area. To miss a shift on Anzac Day could force them to lose upwards of \$500.00 gross pay. All staff working will be properly compensated with appropriate public holiday penalty rates. Staff have indicated a willingness to work on Anzac Day. Three employees will have the opportunity to work.
  - (f) The Shop supports local tourism. As Anzac Day falls on a Friday this year, the Shop is hopeful it will have an influx of tourists due to it being a long weekend.
  - (g) The Shop contributes to a vibrant local business community and supports associated local businesses and suppliers.
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 2025. This does not indicate a significant restriction of access to the essential items sold by the Shop, even having regard to the circumstances raised by the Applicant – visitors in the area on Anzac Day for the long weekend, daily customers including residents, tourists, elderly people and those with limited mobility, commemorative events on Anzac Day increasing the need for supplies on the standalone restricted trading day.

- (b) Similarly, it is unclear from the Application how a standalone restricted trading day would have a significant impact on local suppliers, or the economic wellbeing and employment opportunities for the community overall given the period for which an exemption is requested is 7 hours.
- (c) There is no evidence provided in the Application that there would be a higher than usual demand from tourists or other visitors in the area over this period, or that the tourists' experience of Nambucca Heads would be enhanced if the exemption were granted. No public submissions supported this claim.
- (d) The Application notes granting an exemption would provide higher payments to 3 employees volunteering to work on the restricted trading day, 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 raise awareness of the opportunity to support or oppose this Application.
- (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) 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.

Cheryl Grant  
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**NSW Fair Trading**  
15/04/25