

Consultation paper: Anzac Day trading restrictions

September 2023

Acknowledgement of Country

The NSW Department of Customer Service acknowledges the Traditional Custodians of the lands where we work and live. We celebrate the diversity of Aboriginal peoples and their ongoing cultures and connections to the lands and waters of NSW.

We pay our respects to Elders past and present and acknowledge the Aboriginal and Torres Strait Islander people that contributed to the development of this document.

We advise this resource may contain images, or names of deceased persons in photographs or historical content.

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Purpose of this consultation paper

The purpose of this consultation paper is to seek feedback from the public about Anzac Day trading restrictions. The feedback will be used to determine whether the current policy and legislative settings should remain in place or whether changes should be made.

The Department of Customer Service (the Department) is conducting the consultation and will carefully consider all feedback received.

Have your say

We invite you to read this consultation paper and share your views. Your feedback will help inform the NSW Government on potential options for reform. This consultation is an opportunity to ensure that retail trading laws continue to reflect the needs and expectations of business owners and communities.

To provide feedback, you can:

- **upload a written submission** to the NSW Government Have Your Say website haveyoursay.nsw.gov.au/anzac-day-trading
- **email a written submission** to anzacdayretailtrading@customerservice.nsw.gov.au, or
- **post a written submission to:**

Anzac Day Trading Restrictions
Policy & Strategy
Better Regulation Division
Department of Customer Service
4 Parramatta Square, 12 Darcy St
Parramatta, NSW 2150

The closing date for submissions is 5pm Friday 20 October 2023.

All submissions will be published on the NSW Government Have Your Say website after the closing date, unless you request otherwise. When lodging your submission, you can request that all or part of your submission remain confidential. You should give a reason for requesting confidentiality.

Submissions may be referred to in a report on the outcome of the consultation, however any anonymous submissions will be referred to as such.

Please note, there may be circumstances where the Government is required by law to release the information in your submission. For example, in accordance with the requirements of the *Government Information (Public Access) Act 2009*.

Introduction

Anzac Day (25 April) marks the anniversary of the first major military action fought by Australian and New Zealand forces during the First World War. The day is one of Australia's most important occasions and is a core part of the nation's identity.

Anzac Day was first observed on 25 April 1916, as Australians came together to pay tribute to those lost at Gallipoli. By 1927, each State and Territory of Australia had legislated Anzac Day as a public holiday and a national day of commemoration.

Over the course of history, the observance of Anzac Day has expanded to become a day of remembrance and commemoration of those who have served in various conflicts, not just the First World War. It is a day to honour and pay respect to the sacrifice of the men and women who have fought, served, and are currently serving in military and peacekeeping operations, including all those who gave their life in service.

The day is marked by a number of traditions, including dawn and sunset services, veteran marches, and wreath laying ceremonies. Each of these serve as an opportunity for the people of Australia to pay their respects and to reflect on the freedoms and liberties that are enjoyed today, due to the sacrifices made and the ongoing contribution of veterans to their communities and country.

Given the historical significance of the day, some Australian states have imposed Anzac Day trading restrictions. Restricted trading provides workers and businesses the opportunity to participate in commemorative and community events and pay their own respects. In this way it is intended to ensure that the significance of Anzac Day is not detracted from.

This paper outlines the current Anzac Day trading restrictions in NSW and in the other States and Territories of Australia. The NSW Government is seeking feedback on the restrictions in NSW, to inform its views on whether Anzac Day trading restrictions should be amended.

NSW Anzac Day trading restrictions

History of trading restrictions

The *Retail Trading Act 2008* (the Act) regulates shop opening hours, bank trading days and restricted trading days in NSW.

Anzac Day has been a restricted trading day in NSW since the introduction of the *Shops and Industries Act 1962* (Shops and Industries Act), which required shops to remain closed for the entirety of the day¹. Under the Shops and Industries Act, the Minister for Industrial Relations could suspend this restriction through ministerial orders published in the NSW Government Gazette.

In 2006, the Independent Pricing and Regulatory Tribunal (IPART) reviewed shop trading hours in NSW to investigate whether trading restrictions imposed any unnecessary burden on business and the community. Acknowledging that we live in a 24-hour-a-day, 7-days-a-week economy, the review recommended consideration be given to reforming shop trading hour restrictions in NSW.

The recommendations of the review were implemented by the *Shop Trading Act 2008* (renamed and replaced by the Act), which further deregulated shop trading hours and reduced some public holiday restrictions, including ANZAC Day.

Current trading restrictions

In NSW today, retail businesses are required to remain closed on Anzac Day until after 1pm.² Businesses are restricted from engaging in any of the following during this time:

- selling goods or offering goods for sale
- making goods available for inspection in the shop
- delivering previously sold goods or accepting delivery of goods
- receiving and/or processing orders of goods by a person working at the shop
- receiving, unpacking or otherwise preparing goods for sale at the shop
- stocktaking in respect of goods offered or exposed for sale at the shop

A number of businesses, however, are automatically exempt from Anzac Day trading restrictions. A business that is not automatically exempt may apply for an exemption from NSW Fair Trading if there are 'exceptional circumstances' to operate on Anzac Day and it is in the public interest to do so.

¹ *Shops and Industries Act 1962* (NSW), s 85

² *Retail Trading Act 2008* (NSW), s 4(1)(c)

General exemptions

Businesses of ‘certain kinds’

Section 7 of the Act exempts the following kinds of businesses from Anzac Day trading restrictions, provided that the shop is staffed only by persons who have freely elected to work. These businesses are automatically exempt and do not have to apply for an exemption:

Bazaars, fairs, or markets if conducted for charitable or public fundraising purposes	Pet shops
Book shops	Recorded music, video, or DVD shops
Cake and pastry shops	Restaurants, cafes or kiosks
Chemist shops	Seafood shops
Cooked provision shops	Shops ancillary to venues for playing sport or physical recreation
Florists shops	Souvenir shops
Fruit and vegetable shops	Take-away food and drink shops
Newsagencies	Tobacconists shops
Nurseries	Vehicle shops, vehicle service centres or petrol stations

Small shops

Section 8 of the Act allows smalls shops to open on Anzac Day without applying for an exemption. Small shops are generally defined as employing four or fewer staff (whether working at the same time or different times), and with no more than two owners who share in the shop’s profits.

Premises that hold a hotel or small bar licence

Section 9 of the Act exempts businesses that hold a current hotel or small bar licence if the business offers for sale, in or on those premises, liquor (as defined by the *Liquor Act 2007*), or meals or refreshments.

Businesses exempted under the former Shops and Industries Act

Schedule 2 of the Act allows businesses in some Local Government Areas (LGAs) to trade on certain restricted trading days. These LGAs were granted exemptions under the Shops and Industries Act, and these exemptions are still valid.

No exemptions were granted under the Shops and Industries Act to allow specific LGA’s to trade on Anzac Day³.

³ NSW Fair Trading, *Section 89B Exemptions for the Retail Trading Act 2008*, https://www.fairtrading.nsw.gov.au/_data/assets/pdf_file/0010/435592/89b-exemptions-for-shop-trading-updated-table.pdf

Exemptions by Secretary

Section 10 of the Act allows the Secretary of the Department to exempt a business from Anzac Day trading restrictions if there are ‘exceptional circumstances’ to operate and it is in the public interest to do so.

Application process for an exemption to trade on restricted days

Applications for an exemption to trade on a restricted trading day must be made to NSW Fair Trading at least 28 days before the restricted trading day, otherwise it will not be considered. The application must be supported by certain information, including:

- the business and the restricted trading day the business is seeking to be exempt from
- proposed days and trading hours
- the type of goods sold
- the need for the business to be open on the restricted trading day
- the likely effect of the proposed exemption on the local economy, tourism and other businesses in the area
- the number of employees and the likely effect of the proposed exemption on workers

If a business is seeking an exemption for more than one store location, they must provide supporting information based on each individual location.

Applications for an exemption are displayed on the [NSW Fair Trading website](#) and available for public comment for a minimum of 14 days. NSW Fair Trading must consider any public comment received during this time.

Outcome of application

If a business is granted an exemption to trade on Anzac Day, the exempted business must only be staffed by workers that have freely elected to work on that day, unless that business is a small shop. A fine of up to \$11,000 per employee may apply for any employer who is found to have coerced an employee into working on a restricted trading day.

If an application is declined, applicants can appeal by requesting an internal review within 28 days of the published outcome. NSW Fair Trading must complete this review within 21 days from lodgement. Appeals may be lodged with the NSW Civil and Administrative Tribunal (NCAT) if the business is not satisfied with the initial decision or the internal review.

Anzac Day trading restrictions in other Australian States and Territories

Anzac Day trading restrictions are different across each State and Territory in Australia, as shown in Table 1 below.

Victoria and Tasmania, like NSW, require non-exempt businesses to be closed only part of the day. In Victoria, businesses are required to remain closed between the hours of 12.01am and 1.00pm on Anzac Day, unless the business is exempt.⁴ In Tasmania, businesses are required to remain closed until 12.30pm, unless the business is exempt.⁵

In South Australia, businesses are required to remain closed on Anzac Day unless the business is in the central business district or is a business engaged in the retail sale of hardware, furniture, floor coverings or motor vehicle parts and accessories (such businesses may trade from 12pm to 5pm), or the business is exempt.⁶

In Queensland, businesses are required to remain closed on Anzac Day unless the business is one of the following:⁷

- exempt under section 36(2) of the *Trading (Allowable Hours) Act 1990* (unrestricted trading hours);
- an independent retail shop, other than a food or grocery shop (must remain closed until 1pm); or
- a place of public amusement (must remain closed until 1.30pm).

In Western Australia, businesses are required to remain closed on Anzac Day unless the business is one of the following:⁸

- a small retail shop (unrestricted trading hours);
- a 'special retail shop' i.e. Pharmacy (may trade from 6am to 11.30pm); or
- a filling station (unrestricted trading hours).

There are no trading restrictions on businesses in the Northern Territory and the Australian Capital Territory and therefore businesses are not required to close on Anzac Day.

⁴ *Shop Trading Reform Act 1996 (VIC)*.

⁵ *ANZAC Day Observance Act 1929 (TAS)*.

⁶ *Shop Trading Hours Act 1977 (SA)*.

⁷ *Trading (Allowable Hours) Act 1990 (QLD)*.

⁸ *Retail Trading Hours Act 1987(WA)*.

Table 1: Summary of restrictions in Australian States and Territories

NSW	VIC	TAS	SA
<p>No restrictions from 1pm</p> <p>*unless a small shop, certain licenced premises, or an 'exempt shop'</p>	<p>No restrictions from 1pm</p> <p>*unless an 'exempt shop'</p>	<p>No restrictions from 12.30pm</p> <p>*unless exempt</p>	<p>Closed</p> <p>*unless in the CBD, a hardware, furniture, floor coverings or Motor Vehicle parts & accessories shop or an 'exempt shop'</p>
WA	QLD	NT	ACT
<p>Closed</p> <p>*unless a small shop, special retail shop or filling station</p>	<p>Closed</p> <p>*unless exempt, independent retail or a place of public amusement</p>	<p>No restrictions</p>	<p>No restrictions</p>

Note this is a summary only. Please refer to the retail trading legislation specific to each jurisdiction for more detail.

Feedback on current laws and possible reform

We are seeking feedback on whether the current restrictions on Anzac Day trading remain appropriate and fit-for-purpose. Comment is sought as to whether any changes should be made to Anzac Day trading restrictions under NSW retail trading laws and, if so, what those changes should be.

Next steps

We will carefully consider all feedback received in response to this consultation paper. This feedback, along with other relevant information, will inform the findings and recommendations of this review submitted to the Minister for Industrial Relations.

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