



Retail Trading Act 2008

APPLICATION FORM

Retail Trading on Restricted Trading Days

Use this form to apply for retail trading on restricted trading days.

How to fill in this form

Please type directly into this form. When complete, save a copy before printing. If completing by hand, please print clearly and mark box(es) with a tick where required.

You will need to ensure that all sections of the form are completed. Additional sheets may be included if there is insufficient space on the form to provide your supporting evidence. Please number all additional pages.

For assistance call 13 32 20.

Fees

There are no fees associated with this application.

Lodgement instructions

Email: ftlicensing@finance.nsw.gov.au

Post: NSW Fair Trading, Customer Experience,
Locked bag 2096, Lisarow NSW 2252.

Email or post the application - do not send more than once.

Privacy compliance statement

Information that you voluntarily provide in this form is collected by NSW Fair Trading to assess and process your application. NSW Fair Trading intends to use and disclose the information (including any personal information) you have provided to exercise its functions under the Retail Trading Act 2008, including to administer, monitor and enforce compliance with that Act.

Applicant details

Applicant's name: [name of company / sole trader / partnership]

Woolworths Group Limited

Business / Trading name:

ABN / ACN:

88 000 014 675

Contact details

Person making the application: [contact name]

Position title:

Street address:

Suburb

State

Postcode

NSW

Postal address: [if different to above]

State

Postcode

Telephone number:

Mobile number:

Email

Name and location of the shop/s subject of this application

Important note. In the case of an application for an exemption relating to more than one shop or restricted trading day, the information below should be provided separately for each shop and day. **If insufficient space has been provided, attach additional numbered sheets.**

State the name and full street address (including city/town and postcode) of the shop/s for which you are seeking an exemption:

Name of shop: [in full] Woolworths Jindabyne

Street address:

Shop 1, Nuggets Crossing Shopping Centre

Suburb

State

Postcode

Jindabyne

NSW

2627

Details of exemption being sought

Please identify the restricted trading day/s for which you are seeking an exemption:

Good Friday

Before 1pm on ANZAC Day

Easter Sunday

Christmas Day

Is the exemption for:

a specific day or days [specify the date or dates], or

a specific period of up to three years [specify the period in years]

2020, 2021, 2022

Information required to support the application

Please nominate the proposed trading hours:

Commencing at: (am/pm) 6am

Closing at: (am/pm) 9pm

Exceptional circumstances

An exemption may only be granted if it is, in the exceptional circumstances of the case, in the public interest to do so. "Exceptional circumstances" must be more than "special circumstances" to satisfy the requirements under section 10 (2) of the *Retail Trading Act 2008*. For guidance on the test for "exceptional circumstances" refer to *Dwyer v Department of Services, Technology and Administration and Kmart Australia Limited* [2010] NSWADT 312.

Specify the exceptional circumstances in support of your exemption application for the shop and restricted trading day:

Please see attached supporting information

Public interest

To help determine whether the exemption sought is in the public interest, answer the following questions:

1. What is the nature of the shop and kinds of goods sold?

see attached supporting information

2. Why does the shop need to be kept open on the restricted trading day?

see attached supporting information

3. What is the likely effect on the local economy, tourism, small businesses and other businesses in the area if the exemption is granted?

see attached supporting information

4. What is the likely effect on employees or persons working in the shop if the exemption is granted?

[In your response indicate the number of employees likely to work on the restricted trading day if an exemption is granted, and specify the industrial instrument/s (including agreement number/s), under which employees working on the day will be employed]

see attached supporting information

Applicants declaration

- I am authorised to complete this application on behalf of the organisation.
- I acknowledge that failure to provide all required information may result in refusal of the application.
- I consent to the making of enquiries and the exchange of information with NSW Fair Trading and other authorities in NSW, other states and territories or the banking industry regarding any matter, relevant to this application.
- I declare that the contents of this application including any attachments are true and correct in every particular.
- I am aware the application will be publicly exhibited for a period of at least 14 days for public comment.
- I acknowledge that under section 307A of the *Crimes Act 1900* it is an offence to provide false, misleading or deficient information in this application.
- I understand that specific details I have supplied in this application may be 'personal information' under the *Privacy and Personal Information Protection Act 1998*, and that NSW Fair Trading is collecting personal information to enable processing of the application and may disclose this information to other Government agencies. I also understand that personal information is any information or opinion that identifies an individual, or enables someone to identify an individual.

Signature:



Print name:



Date (dd/mm/yyyy)

SUPPORTING INFORMATION

WOOLWORTHS GROUP LIMITED – APPLICATION FOR RETAIL TRADING – EASTER SUNDAY – JINDABYNE 2020, 2021 & 2022

1. Introduction

We refer to our submission dated 2 March 2018, and 21 February 2019, seeking permission for Woolworths' Jindabyne supermarket store to trade on Easter Sunday. Included with that submission were numerous letters of support from the local Chamber of Commerce, community groups, businesses and other interested parties, copies of which are re-submitted with this application, along with additional letters of support.

Included in this broad level of local community support, we are aware that the Hon John Barilaro MP, Deputy Premier of NSW and Member for Monaro, is supportive of the application for the Jindabyne store to trade on Easter Sunday.

We believe that the overwhelming support received from those in the community and the factors set out below justify the granting of an exemption and we would be very grateful for your reconsideration of this request to trade.

2. Exceptional circumstances in support of the application

A) Holiday resort area

Jindabyne is within the Snowy Monaro Regional Council area, which was formed in 2016 following the amalgamation of the Bombala, Cooma-Monaro and Snowy River regional councils. Prior to the amalgamation, Jindabyne was within the Snowy River Shire Council area. This previous classification meant that Jindabyne was not on the list of legacy resort areas under s89B of the *Retail Trading Act*, allowing for trading to occur on Easter Sunday. However, neighbouring Cooma-Monaro shire (which is now part of the same Snowy Monaro Regional Council area) is included on the s89B exemptions list. Ordinarily, there are a similar number, if not even more, holiday and recreational activities taking place in Jindabyne as there are in Cooma and we consider that there should be a level playing field between the neighbouring towns and the convenient availability of goods and services for residents and tourists to the region.

This submission is therefore designed to demonstrate that the Woolworths Jindabyne store meets the criteria for exceptional circumstances, and should be allowed to open on Easter Sunday.

While Jindabyne has historically been known as a holiday destination during winter, it has become an increasingly popular destination for many families during other months. Jindabyne and Lake Jindabyne offer an array of water activities, mountain biking and hiking, and has seen the numbers of visitors during non-winter months dramatically increase. To support this increase in visitors, Jindabyne offers a wide variety of accommodation such as self contained apartments, hotels, lodges, chalets, motels, holiday letting, caravan parks and camping.

Indeed, the significance of Jindabyne as a major tourist destination has been acknowledged by NSW Planning, with the creation of a dedicated Masterplan ("Go Jindabyne") for this "gateway town to the Snowy Mountains". As NSW Planning states, "Jindabyne is thriving" - it is a region which welcomes more than 1.3 million visitors a year.

¹ These numbers are clearly indicative of Jindabyne being a major tourist area.

In addition to this, we understand that Tourism Australia launched a campaign at the end of January, encouraging Australians to "stay closer to home on their next holiday". With focused government support for Australians to "holiday in their own backyard" this year, along with the significance of Jindabyne as a regional

¹ <https://www.planning.nsw.gov.au/Plans-for-your-area/Jindabyne>

tourist destination in any case, it is anticipated that the Easter long weekend could attract large tourist numbers into and around the area (indeed, that is the objective of the Government's tourism campaign).

We believe it is in the public interest that our Jindabyne store be open on this busy weekend, as it meets public demand for choice and convenience from locals and visitors alike.

Woolworths operates 311 supermarkets in NSW, 78 of which are permitted to trade on Easter Sunday, including in holiday resort areas due to the surge in populations, and which Jindabyne, arguably, should also be included. This demonstrates that this is a reasonable expectation of customers, and a reasonable provision of services to the community in other areas.

B) Special Events

Over the Easter period, a number of events will be held that are expected to bring over 25,000² visitors to the area.

The current population of Jindabyne is approximately 2629³ so the influx from these events represents an increase of approximately 850% over the Easter period. This does not include the usual flow of tourists passing through the town in connection with water sports, camping, mountain biking or other recreational activities in the area.

Events include:

- the Lake Light Festival from 10 April 2020 to 13 April 2020 (www.lakelightsculpture.com.au), which is currently in its 18th year and is the flagship event for the region. The event attracts artists from all over Australia to exhibit sculptures along the lake side by day and illuminated by night.
- the Jindabyne Lions Easter Art Show & Sale, one of the biggest regional art events in NSW⁴ commences on 13 April
- the Camaro Firebird Owners Club of Australia hosts their Camaro and Firebirds National Event in the region over the Easter weekend.
- the John Briscoe Memorial Art Prize event commences on 11 April
- the Adaminaby Easter Fair draws visitors on Easter Saturday, whilst the Easter Family Adventure Festival runs for approximately 2 weeks from April 11.

It is not unreasonable that locals and visitors to the region would have an expectation of conveniently being able to purchase refreshments and necessities over such a busy and popular weekend in the region.

Unlike the facts in *Dwyer v Department of Dwyer v Department of Services, Technology and Administration and Kmart Australia Limited [2010] NSWADT 312* where the public holiday fell on the first day of an event (which was merely the registration day), Easter Sunday falls on the third day of the Lake Light Festival, for example. Many visitors stay in Jindabyne for the entire Easter long weekend and it is foreseeable that visitors to Jindabyne will need to refresh their grocery supplies by Sunday. Many may not be aware the store would not be open during part of their stay and may have an expectation it would be open during such a busy period.

C) No other Supermarket in Jindabyne

Woolworths is the only supermarket in Jindabyne. The nearest supermarket is in Cooma, a 45 minute drive away, effectively meaning that residents and visitors to Jindabyne would need to make at least a 90 minute round trip if they require grocery purchases on Easter Sunday.

² Lake Jindabyne Chamber of Commerce

³ 2016 census

⁴ <https://www.destinationjindabyne.com.au/jindabyne-lions-easter-art-show-sale/>

Given the number of visitors to the region over the entire long weekend, including the type of accommodation they would be accessing (which for many, requires purchasing groceries over the Easter weekend), as well as the support needed for local businesses and community groups, we believe that a supermarket should be open in the area on Easter Sunday.

Not only would Woolworths opening on the Sunday ensure that the local events can run smoothly, it would also generate positives for other businesses and groups within the area, and support the needs of the visitors and residents of Jindabyne.

3. Public Interest

We are of the view that it is in the public interest for the Jindabyne store to open on Easter Sunday for the reasons set out below.

A) Nature of the business and kinds of goods sold

Woolworths is a leading supermarket retailer, selling groceries including fresh and packaged food, health & beauty products, household, pet and baby supplies and stationery items.

Woolworths Jindabyne employs 90 employees and sells a variety of produce which varies by season and customer. During the non-winter period, the variance in customer purchases is largely driven by the type of activity being engaged in by the visitor. For example, campers and visitors using Lake Jindabyne look to purchase basic necessities on a daily basis, to avoid any products expiring. For bike enthusiasts and hikers, cold drinks, protein bars and other relevant products are purchased on a needs basis over the weekend. For most visitors, however, given the nature of the accommodation that is being accessed, groceries are essential items throughout their stay.

Given that the town is seasonal, sales vary depending on the period of the year. During winter, the Jindabyne store will sell approximately \$1,000,000 worth of products per week. In the off season, this would decrease to \$470,000 per week. In the summer and Easter period, the store would sell approximately \$700,000 worth of products per week.

B) What is the need for the shop to be open on the restricted trading day?

The need for the Woolworths Jindabyne store to be open on Easter Sunday derives from the high volume of visitors, combined with a lack of viable options within a 45 minute driving radius of the area. Unfortunately at this stage, the only options that are available on Easter Sunday include:

- **Service stations in Jindabyne.** In 2017, 2018 and 2019 - when Woolworths was closed - service stations in town became the primary source of groceries on Easter Sunday. However, such stores were unable to stock and support the high volume of visitors requiring groceries. This resulted in such stores running out of stock by 10am in the past. It is also worth noting that, some supplies that people are looking to purchase on Easter Sunday (such as Easter eggs), could not be purchased at such stores.
- **Driving to neighbouring areas.** Based on previous years' experience, the only other option for visitors and residents is to take a 90 minute round trip to other resort areas that have an exemption to trade on Easter Sunday.

If the store were to remain closed, there would be a variety of other negative impacts within the Jindabyne community, including:

- **Restricted supply for other businesses.** Many peripheral businesses in the service industry in Jindabyne have come to rely on Woolworths for supplies. For example, various cafes and restaurants use Woolworths to purchase milk and other fresh produce to service their own customers. In 2017, 2018

and 2019, when Woolworths was not open and other stores ran out of supplies, such businesses were forced to close early. A number of businesses in the Nuggets Crossing Centre chose not to open on Easter Sunday previously because Woolworths was not open.

- **Negatively impacting fundraising efforts.** Many local community groups take advantage of the increase in visitors over the Easter break to raise money, selling various supplies and running barbecues. These groups rely on Woolworths to stock and replenish such supplies in order to keep raising funds throughout the weekend, which is adversely affected if they are unable to use the local Woolworths.
 - **Long term impact on successful events.** The influx of visitors over the Easter period is not only positive for the local community and tourism industry, but is also heading in an upwards trajectory year on year. There is some concern, however, that if visitors are significantly inconvenienced on a yearly basis, that the attraction of attending annually may decline.
 - **Availability of essential items.** Whilst we don't believe this should be a predominant driver, we have seen a recent surge in the demand for essential items. As the only supermarket in the area, we would like to ensure those in Jindabyne over that weekend have access to products available in store.
- C) **What is the likely effect on the local economy, tourism, small businesses and other businesses in the area if the exemption is granted?**

There is an abundance of community support for Woolworths Jindabyne to open on Easter Sunday. Attached to last year's submission were notes of support from the Lake Light Festival, Snowy Monaro Regional Council, and Chambers of Commerce among others, who strongly urge for the Woolworths store to be open over the entire Easter period. The various letters of support indicate the following:

- The 2019 Lake Light Sculpture event attracted in excess of 20,000 visitors and that number is expected to again increase in 2020 based on what we understand to be year on year increases;
- There is a recognition that, not only is Woolworths the only supermarket that is open over that period, but it has been the only store that sells Easter eggs for Easter Sunday;
- Previous closures of Woolworths generated considerable negative feedback from both locals of Jindabyne and visitors to the area;
- Recognition from all stakeholders that the success of the events on an annual basis requires Woolworths to be open to meet basic needs of locals and visitors; and
- The influx of visitors means that the Easter period is incredibly important for fundraising at local clubs. The ability to have supplies on hand for the fundraising is contingent on Woolworths being open.

Over the week including Easter in 2018 (without being open on Easter Sunday), Woolworths sold \$709,000 worth of products, with \$198,492 sold on Saturday. If the store were to open on the Sunday, it is expected that sales for Easter Sunday would be approximately \$100,000. It is worth noting that the overall sales would not drastically increase, as we assume that some consumers would modify their purchasing behaviour if they knew that the store would be open for the entire weekend.

This should also demonstrate that the total sales benefit for opening on Easter Sunday for Woolworths is marginal and is not the driver of opening during this period. The key focus for opening relates to the needs of the community given the exceptional circumstances.

D) What is the likely effect on employees or persons working in the shop if the exemption is granted?

If the exemption is granted, we would expect approximately 30 employees to volunteer to work on Easter Sunday. A permanent level 1 employee can expect to earn \$47.36 per hour, compared with \$21.05 per hour⁵ which they would earn on a day that is not a public holiday. This is in line with the *Woolworths Supermarkets Agreement 2018*, which states that employees are entitled to be paid a public holiday loading of:

- 125% with a minimum engagement of 4 hours for full-time employees⁶;
- 125% with a minimum engagement of 3 hours for part-time employees⁷; and
- 150% with a minimum engagement of 3 hours for casual employees⁸.

When it comes to the voluntary staffing of team members, Woolworths takes the following steps in NSW that is in line with the *Retail Trading Act*:

- Prior to the Easter weekend, Team Leaders will advise team members of the store's opening hours and ask whether any team member would like to work during that period.
- As per standard practice, full-time and part-time team members are prioritised over casual employees.
- After all employees have been consulted, rosters for shifts are developed and shared with the relevant employees.
- At any point between being originally asked to the commencement of the shift, all employees have the ability to opt out of work without being penalised.

The above practice has been in place across all Woolworths stores during public holiday periods and to the best of our knowledge, there have been no complaints from full-time, part-time or casual employees regarding the process, or allegations that they have been forced to work or discriminated against for choosing not to work. Rather, shifts usually fill very quickly, as a substantial number of employees volunteer to work due to the financial incentives.

We have previously conducted a poll of approximately 50% of Jindabyne store employees and 90% of polled employees indicated that they would be happy to voluntarily work on Easter Sunday.

E) Letters of support

Provided with this application are copies of letters of support from:

- Nuggets Crossing Centre Management
- Lake Light Sculpture Event
- Ash First Tracks Snowboards
- Discovery Parks Jindabyne
- Jindabyne Mitre 10

In addition, letters of support from previous submissions are also included from:

- John Barilaro MP, Member for Monaro
- The NSW Business Chamber
- Regional Development Australia Southern Inland
- Snowy Monaro Regional Council
- The Lake Jindabyne Chamber of Commerce

⁵ Woolworths Supermarkets Agreement 2018, clause 4.1(a).

⁶ Woolworths Supermarkets Agreement 2018, clauses 8.2(b) and 19.2(a).

⁷ Woolworths Supermarkets Agreement 2018, clauses 8.3(a) and 19.2(a).

⁸ Woolworths Supermarkets Agreement 2018, clauses 8.6(a) and 19.2(a).