

FILE23/69993

RETAIL TRADING ACT 2008 DECISION

REASON FOR DECISION

1. I, Melissa Gumm, 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 6 February 2024, KMall trading Pty Ltd trading as KMall09 (**Applicant**) made an application under section 10 of the Act as occupier of a shop at Shop 1, 1-7 Rowe Street, Eastwood (**Shop**), for the Shop to be exempt from the requirement to be kept closed on Good Friday and Easter Sunday 2024 (**Application**).
3. The Application was placed on public exhibition for a period of no less than 14 days from 14 February 2024 and public comment was sought.
4. I have considered the Application and public comments that were received.
5. 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.
6. 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.

7. The Applicant submitted the following as exceptional circumstances:
- (a) The grocery store specialises in providing essential living products, fresh vegetables, fresh fruit, and food groceries. Having availability of these on the day would cater to the community's immediate needs and enhance convenience.
 - (b) The Easter holiday period sees an increased demand for fresh produce and allowing the Shop to open would meet the heightened need for these perishable goods.
 - (c) The perishable nature of the inventory may result in a significant amount of unsold fresh produce going to waste if the store remained closed over the Easter holiday period. Opening the shop over the Easter holiday period would minimise this waste and contribute to the Shop's commitment to sustainability.
 - (d) The Shop employees are willing to work over the Easter holiday period and fair compensation packages have been implement.
 - (e) The Shop has received expressions of support from the local community, with may residents expressing a desire for the Shop to remain open over the Easter Holiday period for their convenience.
8. Whilst I acknowledge the circumstances raised by the shop, these do not qualify as exceptional circumstances in accordance with section 10(2) of the Act.
9. The Applicant submitted the following reasons as to why they believed granting an exemption would be in the public interest:
- (a) The grocery store specialises in providing essential living products, fresh vegetables, fresh fruit, and food groceries. Having availability of these on the day would cater to the community's immediate needs and enhance convenience.
 - (b) The Easter holiday period sees an increased demand for fresh produce. Allowing the shop to open would meet the heightened need for these perishable goods and ensure the community has access to high-quality, fresh products during their festive gatherings.
 - (c) The perishable nature of the inventory may result in a significant amount of unsold fresh produce going to waste if the store remained closed over the Easter holiday period. Opening the shop over the Easter holiday period would minimise this waste and contribute to the Shop's commitment to sustainability.
10. 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.

Yours sincerely,

Melissa Gumm
Senior Coordinator
NSW Fair Trading