

RETAIL TRADING ACT 2008 ORDER

REASONS FOR DECISION

1. I, Natalia Reed, 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 06 February 2025, Mirah Holdings Pty Ltd, trading as Foodworks Urunga (**Applicant**) made an application under section 10 of the Act as occupier of a shop at 6 Bowra Street, Urunga, NSW 2455 (**Shop**), for the Shop to be exempt from the requirement to be kept closed on Anzac Day for the year 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 12 February 2025, and public comment was sought. One public submission was received; from the Shop, Distributive & Allied Employees' Association, New South Wales (SDA NSW).

7. I have now considered the circumstances raised by the Shop, as well as the submission from SDA NSW.
8. The Applicant submitted the following as a claim for exceptional circumstances:
 - (a) The Shop is located in a small beachside town, population approximately 3100.
 - (b) The town has a growing elderly population with limited transport available.
 - (c) The Shop is located adjacent to the Anzac parade and Cenotaph and will close its doors for the 11am service.
 - (d) Members of the public will visit the Shop for refreshments and a cup of tea.
 - (e) The Shop is a mother and son partnership with 2 full time employees, supported by casual and part time employees.
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 shop located in a small beachside town with a growing elderly population and limited transport available could reasonably be considered a regular, routine or normally encountered circumstance in many areas across NSW.
 - (b) Similarly, a location in close proximity to Anzac day commemorative events or provision of refreshments to customers are not circumstances that can be considered out of the ordinary course, or unusual, or special, or uncommon.
 - (c) The business structure and employment of full time, part time and casual employees is a regular, routine or normally encountered circumstance for many shops 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 supermarket supplying essential food and grocery items to all members of Urunga and surrounding areas.
 - (b) The Shop has a local customer base and is often a local meeting place for the town.
 - (c) The Shop can provide local school children in the Anzac parade with cool drinks, refreshments and Anzac biscuits.
 - (d) There is a positive advantage to being open in a tourist town on the beach.
 - (e) Staff working on the day will have volunteered to work.
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 essential food and grocery items, or to the Shop providing a meeting place for local customers.

- (a) The Application notes there is a positive advantage to being open in a tourist town on the beach, however there is no detail provided as to the specific nature of this advantage or how it supports the argument for public interest.
- (b) There were also no submissions received supporting granting of an exemption, despite the notice being published both on the Fair Trading website and instore, to raise awareness with employees or customers.
- (c) 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 and put pressure on retail employees and their families.
- (d) While granting an exemption may allow the Shop to provide refreshments to local school children, and any staff working on the day would have elected to do so, 'public interest' refers to the interest of the general public, not that of individuals, employees, or employers.
- (e) 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.

Natalia Reed
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NSW Fair Trading
19/3/25