

## 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 12 February 2025, Khans Partners Pty Ltd, trading as Khans Supermarket Coonamble (**Applicant**) made an application under section 10 of the Act as occupier of a shop at 43 Aberford Street, Coonamble, NSW 2829 (**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 16 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 an important part of the community, providing essential goods and services.
  - (b) The Shop is located on the main highway, with tourists passing through to Lightning Ridge.
  - (c) The town has a high ageing population, and the Shop serves their day to day needs.
  - (d) Essential services provided by the Shop are crucial for the daily needs of the community, with many residents relying on the store for their primary shopping needs, particularly those who may not have means to travel to other towns for supplies.
  - (e) Coonamble is a small town with limited retail options.
  - (f) The Shop plays an important role in supporting the local economy and also provides employment opportunities.
  - (g) By remaining open on Anzac Day, the Shop can provide employees with the opportunity to earn additional income.
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 a high ageing 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) Shops located on a highway frequented by tourists passing through would not be considered out of the ordinary course, or unusual, or special, or uncommon in many areas across NSW.
  - (d) 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.
  - (e) 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 community focussed store and sells groceries, health and wellness products, beverages, and other convenience items.
  - (b) Remaining open on Anzac Day would allow the community coming together for Anzac Day the opportunity to buy necessities and take these back home.

- (c) The Shop ensures residents and tourists have access to essential goods which is particularly crucial on a restricted trading day when other stores may be closed.
  - (f) Many residents and tourists including the elderly and those with limited mobility rely on the store daily. Keeping the Shop open would ensure vulnerable community members are not left without access to essential supplies.
  - (g) The Shop provides employment opportunities and supports local suppliers. Granting of an exemption would allow the Shop to continue contributing to the economic wellbeing of the community.
  - (h) Anzac Day brings visitors to Coonamble for commemorative events. Granting of an exemption would allow the Shop to cater to the increased demand from tourists and enhance their experience in Coonamble.
  - (i) Anzac Day is a significant day when community gatherings and events may increase the need for readily available supplies.
  - (j) In the event of an emergency or unexpected need, the Shop remaining open would ensure residents could quickly obtain necessary items without delay.
  - (k) 4-6 employees would be scheduled to work on Anzac Day across a mix of full time, part time and casual staff members.
  - (l) Employees who choose to work on Anzac Day would benefit from additional income due to penalty rates applicable on public holidays.
  - (m) No staff member would be compelled to work on Anzac Day 2025.
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 on Anzac Day buying necessities to take home, daily customers including residents, tourists, elderly people and those with limited mobility, commemorative events on Anzac Day increasing the need for supplies, and the Shop as the only supermarket available in the event of an emergency 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 12.5 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 Coonamble 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 4-6 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.

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**NSW Fair Trading**  
24/3/25