

RETAIL TRADING ACT 2008 DECISION**REASON FOR DECISION**

1. I, Cheryl Grant, 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 27 March 2025, Midhill International Pty Ltd trading as Foodworks Pacific Palms (**Applicant**) made an application under section 10 of the Act as occupier of a shop at 203 Charlotte Bay Street, Charlotte Bay NSW 2428 (**Shop**), for the Shop to be exempt from the requirement to be kept closed on Anzac Day of 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 28 March 2025 and public comment was sought. Six public submissions were received; three from employees of the Shop, one from a member of the community and two from the Shop, Distributive & Allied Employees' Association, New South Wales (SDA NSW) and from the NSW Branch of the Shop, Distributive & Allied Employees' Association (SDA).
7. I have now considered the circumstances raised by the Shop, as well as the submissions from three employees of the Shop, one from a member of the community and two from the Shop, Distributive & Allied Employees' Association, New South Wales (SDA NSW) and from the NSW Branch of the Shop, Distributive & Allied Employees' Association (SDA).
8. The Applicant submitted the following as a claim for exceptional circumstances:
 - (a) The Shop is an important part of the community, and the only full-service supermarket providing essential goods and services in the immediate area and 8 surrounding towns.
 - (b) Locals including the elderly residents depend on the Shop for access to fresh produce, meat, deli items, groceries and liquor.

- (c) For many of the elderly residents, having to travel for essential items can be difficult during busy periods. The Shop is the only one in the area offering two dedicated disabled parking spaces, providing much needed convenience and accessibility.
 - (d) Anzac Day and the surrounding period see a significant increase in population as tourists visit the region. This surge is vital for the local economy as it supports accommodation providers, small businesses and employment for the area.
 - (e) Trading on Anzac Day means the Shop can continue to serve both the residents and visitors with essential goods while playing a part in supporting the well-being and resilience of the local community and economy.
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 an aged 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 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 to 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 the only seller of fresh produce in the area providing essential food items including fruit and vegetables, fresh meat, dairy, deli products, bread and other groceries. In addition, the Shop supplies necessities such as packaged food, frozen goods, cleaning products, personal care items and liquor.
 - (b) As the only full-servicing supermarket in the area, the Shop is a vital source of fresh, healthy and essential goods for both the local community including the elderly and many visitors and tourists who frequent the area especially during the holiday periods.
 - (c) Trading on Anzac Day means the Shop can meet the needs of the local community and the significant number of tourists who visit the area during this period. A 90km round trip to the next town would be an inconvenience for our elderly residents who rely on the Shop for its convenient and accessible shopping with the advantage of the designated disabled parking bays.
 - (d) During this peak tourist period, the population grows significantly, supporting the local accommodation and small business sectors. By remaining open, the Shop ensures that both locals and visitors have access to fresh food and essential supplies which help sustain the community and local economy during this important time.
 - (e) Trading on Anzac Day helps the community and serves residents and visitors without disruption. Access to the Shop means locals and tourists are not forced to travel outside the area, reducing local spending and potentially shortening their stay. This could negatively impact small businesses and accommodation providers who rely on consistent visitor numbers.
 - (f) On Anzac Day, if the exemption was to be granted, 4 employees will be working including the owner who are familiar with the needs of both the locals and the tourists. Staff working

on the restricted trading day will do so voluntarily and will receive the appropriate public holiday penalty rates in line with the award.

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 in the area, daily customers including residents, tourists, elderly people and those with limited mobility, and the Shop as the only supermarket selling fresh produce in the area.
 - (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 9 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 Charlotte Bay would be enhanced if the exemption were granted. Only one public submission supported this claim from a member of the local community.
 - (d) The Application notes granting an exemption would provide higher payments to 3 employees plus the owner of the Shop volunteering to work on the restricted trading day. There were three submissions from employees of the Shop supporting granting of an exemption and one public submission from a local resident, but no further submissions were made 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.

Cheryl Grant
Manager, Grade 11/12
NSW Fair Trading
15/04/25