

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

1. I, Janet Bailey, 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 25 March 2025, Garrett Zhang trading as FoodWorks Rockdale (**Applicant**) made an application under section 10 of the Act as occupier of a shop at 6 King Ln, Rockdale NSW 2216 (**Shop**), for the Shop to be exempt from the requirement to be kept closed on Anzac Day 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. Two public submissions were received; 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 the SDA and the SDA NSW.

8. The Applicant submitted the following as a claim for exceptional circumstances:
- (a) The Shop experiences a significant increase in demand for essential items and specialty products during restricted trading days.
  - (b) Customers of the Shop have expressed a need for more flexible trading hours during the holidays to accommodate shopping schedules.
  - (c) If the exemption was granted, extended trading hours will allow customers to purchase essential goods when other businesses may be closed or operating at reduced capacity. This is especially relevant for non-traditional workers like medical professionals, shift workers and first responders.
  - (d) If the exemption was granted, extended trading hours during high-demand periods, will allow the Shop to increase sales, which in turn helps the local economy.
  - (e) Local businesses like the Shop play a key role in maintaining the vibrancy of the community by providing a reliable service to both residents and visitors.
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) While there may be a strong demand for services of the Shop on restricted trading days, this is not a circumstance that can be considered out of the ordinary course, or unusual, or special, or uncommon, as would be required when considering exceptional circumstances for the purpose of this Act. No evidence was provided by the Applicant in support of the claim of strong demand from customers on these days to further support the argument for exceptional circumstances. There were also no public submissions supporting this claim.
  - (b) No evidence was provided by the Applicant in support of the claim of needing more flexible trading hours during the holidays to further support the argument for exceptional circumstances. There were also no public submissions from non-traditional workers or otherwise supporting this claim.
  - (c) While the Application cites a positive impact on the local economy should the exemption be granted, no evidence was provided by the Applicant in support of this claim.
  - (d) While it is acknowledged that local businesses are important pillars in the community, the application relates to one single day, with unrestricted trading available under the Act on the days immediately before and after Anzac Day. This does not appear to constitute a significant restriction on trading or access to goods sold by the applicant for the public.
  - (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 grocery store selling fresh produce, dairy items, meats, packaged foods, frozen foods, snacks, beverages, cleaning supplies and essential products.
  - (b) The Shop is a critical provider of essential affordable goods, particularly food and household items, to the local community. It particularly caters to the low socioeconomic members of the community through competitive pricing.
  - (c) The local community comprises of families with young children, elderly residents, people with disabilities, and individuals who rely on public transportation. Many of these individuals have limited mobility or access to transportation, making it difficult for them to travel to further retail options.
  - (d) The Shop is a vital part of the supply chain for residents, many of whom rely on it for daily necessities, especially those working non-traditional hours, including shift workers, healthcare professionals, and first responders.

- (e) Denying the ability to operate on restricted trading days could create undue hardship for these individuals who have limited access to supermarkets or who rely on the Shop for last-minute or emergency purchases
  - (f) The Shop is in an area with limited retail options. While larger stores are present in neighbouring suburbs, they are not easily accessible to all residents.
  - (g) If the exemption was granted, it would support the continued operation of the supermarket, which plays a key role in meeting the daily shopping needs of the local community.
  - (h) If the exemption was granted, there would be a positive contribution to the local economy by ensuring the store's financial health, maintaining jobs for local employees, and encouraging spending within the community.
  - (i) If the exemption was granted, there would be an increase in foot traffic and sales to nearby smaller businesses, such as cafes or shops, further boosting local economic activity.
  - (j) If the exemption was granted, it would benefit visitors or tourists who are in the area by providing them with more convenient access to basic supplies. This could enhance the overall appeal of the area for people traveling or staying longer.
  - (k) If the exemption was granted, it would increase the number of shifts available, which will provide more work opportunities for current employees meaning additional hours or a more stable income. Therefore, the exemption will improve job security for those currently employed at the supermarket.
  - (l) If the exemption was granted, five individuals (family members) would be rostered and entitled to higher wages benefitting the employees financially.
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 the days immediately before and after Anzac Day. This does not indicate a significant restriction of access to essential affordable goods, grocery needs or last-minute emergency purchases for the general public, even having regard to the circumstances raised by the applicant – catering particularly to lower socioeconomic members of the local community.
  - (b) A customer base including families, individuals who may have limited mobility, elderly customers, or people with disabilities is not a circumstance that can be considered out of the ordinary course, or unusual, or special, or uncommon. Notwithstanding, the statewide application of the Act will mean that the alternative further retail options will experience similar restrictions in trading.
  - (c) No evidence was provided by the Applicant in support of the claim that the Shop was a vital part of the supply chain for residents and non-traditional workers. There were also no public submissions from residents, non-traditional workers or otherwise supporting this claim.
  - (d) While the Application cites a positive impact on the local economy should the exemption be granted, no evidence was provided by the Applicant in support of this claim.
  - (e) There were also no submissions received from other businesses in the area supporting this application for exemption; that there would be increased traffic or other benefits to their businesses.
  - (f) The claims made regarding increased appeal of the region for tourists based on the granting of an exemption are not supported with evidence, nor were they supported by public submissions.
  - (g) The Application notes granting an exemption would increase the number of shifts available, provide more work opportunities and increase job security. 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 with staff.

- (h) The Application also notes that the five employees that will be rostered to work on the restricted trading days are family members. However, the SDA submission cites a growing public perception that public holidays are seen as invaluable days to share with family and friends away from work and that granting the exemption would be against the public interest
- (i) 'Public interest' refers to the interest of the general public, not that of individuals, employees or employers. 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.

Janet Bailey  
Director  
**NSW Fair Trading**  
15 April 2025