

RETAIL TRADING ACT 2008 DECISION

REASONS FOR DECISION

1. I, Fiona Hayman, 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 21 February 2019, Woolworths Group Limited (**Applicant**) made an application under section 10 of the Act as occupier of a shop at Shop 1, Nuggets Crossing Shopping Centre, Jindabyne (**Shop**), for the Shop to be exempt from the requirement to be kept closed on Easter Sunday in the years 2019, 2020 and 2021 (**Application**).
3. The Application was placed on public exhibition for a period of no less than 14 days from 22 February 2019 and public comment was sought.
4. I have considered the Application, the accompanying submissions and the public comments that were received.
5. On this day I have decided to refuse the Application, as I am not satisfied that it is in the exceptional circumstances of the case in the public interest to grant it, having regard to:
 - 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 having regard to the matters listed above.
7. My reason for this decision is that the circumstances identified in the Applicant's application, including:
 - a. that the Shop is located in a tourist destination which receives a substantial increase in population over the Easter period,
 - b. that a number of special events will be held in the area over the Easter period, and

- c. that there is no other supermarket in the area which will be open on Easter Sunday (the nearest being a 45-minute drive away),
are not exceptional relative to other shops which are required to be closed on Easter Sunday under the Act.
8. Based on all of the material presented, I have formed the view that it is not in the public interest for the exemption to be granted as it is not evident that it is detrimental to the public that the Shop is closed on Easter Sunday.

Fiona Hayman
Authorisations Manager, Customer Experience
NSW Fair Trading
29 March 2019