

## 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, KSP Group Pty Ltd, trading as Foodworks Kariong (**Applicant**) made an application under section 10 of the Act as occupier of a shop at Unit 5, 4-8 Mitchell Drive, Kariong, NSW 2250 (**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 owner operated and is the only supermarket in the area.
  - (b) The community, general public and the elderly rely on the Shop to trade.
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) The status of the Shop as owner operated and the only supermarket in the area could reasonably be considered a regular, routine or normally encountered circumstance in many areas across NSW.
  - (a) A community customer base including elderly customers who rely on the store is not a circumstance that can be considered out of the ordinary course, or unusual, or special, or uncommon.
  - (b) 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, selling bread, milk, fruit, vegetables, meat, drinks, hot and cold food, sandwiches and various other items.
  - (b) The Shop is an owner operated supermarket and needs to remain open due to elderly and public demand.
  - (c) Granting an exemption would allow the elderly and the community to collect their everyday requirements without worry or stress in waiting for the store to open.
  - (d) There would be minimal staff working on the restricted trading day, the owner and possibly one casual staff member.
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 goods sold by the Shop even having regard to the circumstances raised by the Applicant – owner operated supermarket with elderly and public demand.
  - (b) No evidence was provided by the Applicant in support of the claim that customers had experienced worry or stress in waiting for the store to open on previous restricted trading days and no public submissions supported this claim. Restricted trading days have been in place in NSW for some time, albeit only four single days per year.

- (c) While only the owner and one employee would be rostered to work on the restricted trading day, this does not support the argument for public interest as 'public interest' refers to the interest of the general public, not that of individuals, employees or employers.
- (d) The SDA submission refers to Anzac Day as a day of important cultural and historical significance and notes the restriction of trading on this day is in keeping with community sentiment on the solemn nature of Anzac Day.
- (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**  
17/3/25