

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 24 March 2025, AMX Superstores Pty Ltd trading as AMX Superstores Penrith (**Applicant**) made an application under section 10 of the Act as occupier of a shop at 4/233 Mulgoa Road, Penrith NSW 2750 (**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. Four public submissions were received; from the Shop, Distributive & Allied Employees' Association, New South Wales (SDA NSW), from the NSW Branch of the Shop, Distributive & Allied Employees' Association (SDA) and from members of the public.
7. I have now considered the circumstances raised by the Shop, as well as the submissions from the SDA, the SDA NSW and members of the public.

8. The Applicant submitted the following as a claim for exceptional circumstances:
- (a) Exemption will allow the Shop to serve loyal customers and positively contribute to the community through the provision of essential goods and services.
 - (b) The Applicant acknowledges the importance of Public Holidays and the intent of regulations regarding business operations. However, they have identified a demand for their products and services during the exempt day.
 - (c) The Applicant believes the operation of the Shop will benefit both customers and employees willing to work on Anzac Day.
 - (d) To ensure compliance, the Applicant is committed to adhering to specific guidelines outlined by local government, providing fair compensation to employees and implementing health and safety measures to protect staff and consumers.
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) No evidence was provided by the Applicant in support of the claim that the goods and services they provide are essential or positively contribute to the community. There were also no public submissions supporting this claim despite the notice being published both on the Fair Trading website and instore to raise awareness with customers.
 - (b) Demand for products and services on Public Holidays are not circumstances that would be considered out of the ordinary course, or unusual, or special, or uncommon.
 - (c) There is no detail provided in the Application as to how operation on a restricted trading day, even with compliance to local government guidelines, fair compensation for employees and health and safety measures would not undermine the spirit of the Act. By contrast, 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. An additional two submissions from members of the public also opposed granting of the exemption on this basis.
 - (d) 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 sells vehicle parts and accessories.
 - (b) The Shop is considered an essential service for the local community.
 - (c) The Shop normally trades seven days a week.
 - (d) The employees of the Shop have expressed their interest in the public holiday loading that would increase their pay if exemption was granted.
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 claims made regarding the store providing an essential service to the local community are not supported with evidence, nor were they supported by public submissions.
 - (b) 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 trading despite normally trading seven days a week.
 - (c) The Application notes granting an exemption would support and provide a financial incentive to employees, however there were no submissions from employees of the Shop supporting granting of an exemption.

- (d) 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.
- (e) '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
14 April 2025