

RETAIL TRADING ACT 2008 DECISION**REASON 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 28 March 2025 Podium Enterprises Pty Ltd trading as Campbells Store Morpeth (**Applicant**) made an application under section 10 of the Act as occupier of a shop at 175 Swan Street, Morpeth NSW 2321 (**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 2 April 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 public submissions received.
8. The Applicant submitted the following as a claim for exceptional circumstances:
 - (a) Morpeth is a small historic village on the banks of the Hunter River in the Hunter Valley, population 963 people. It hosts a large ANZAC march and commemoration.
 - (b) Each year the ANZAC committee ask Campbells store owners to open up the toilets for use by the marchers and the large crowd who attend.
 - (c) Campbell's store contains a cafe which is used by marchers and the general public before and after the service.
 - (d) Campbell's Store also operates a registered Militaria Museum which needs to be manned by paid team members because of the extensive collection and the value of the collection.

- (e) Morpeth Gallery operates an art exhibition featuring paintings of scenes by Jennifer and Ron Marshall from Queensland who specialise in Light Horse paintings and this exhibition has opened to the public on Anzac Day in past years, but it needs to be supervised by paid team members.
 - (f) Campbell's Store also sponsors the Bell UH-1 Iroquois (nicknamed "Huey") helicopter fly over as well as the historic vehicle display which is part of the service and march. Each of these exhibits will be closed without an exemption.
 - (g) Morpeth is a tourist destination of some note, and the public become very abusive to our business when they do not have access to it given that they often travel a long distance to participate in the march and service.
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 nature of the business — a specialty store operating in a historic village — is not uncommon and does not reflect circumstances that are out of the ordinary, unusual or exceptional for the purposes of section 10(2) of the Act.
 - (b) While the Shop's contribution to the visitor experience in Morpeth is acknowledged, retail participation in local tourism activity is a common feature of businesses situated in similar regional towns across New South Wales.
 - (c) Similarly, the use of the Shop's toilet facilities by the public may be considered a regular, routine or normally encountered circumstance for many similar shopping precincts across NSW. There was no evidence provided with the Application that the Anzac Day marchers or other visitors to the area would be wholly dependent on the Shop for toilet facilities in order to elevate these circumstances to exceptional.
 - (a) No evidence was provided by the Applicant in support of the claim that customers become abusive to the business if access is restricted. Restricted trading days have been in place in NSW for some time and many areas and retailers are subject to similar restrictions in trading. While visitors may be unfamiliar with the town, due to the statewide application of the Act it is likely they will be familiar with restricted trading days and arrive prepared for the day's events.
 - (d) The Application notes the operation of a Militaria Museum and art exhibition within the Shop. Public information available via the ABN presented with the Application notes a separate business name registered for the Morpeth Militaria Museum and Resource Centre, however there is no other reference to this museum available via the Shop website or otherwise, to indicate that this would be the predominant business activity of the premises. The Shop's website does however promote sales of military memorabilia and Australian art gifts, among many other items for sale. Restricted trading under the Act is intended for premises that are used wholly or predominantly for the retail sale of goods, and in or at which goods are sold, or exposed, or offered for sale by retail on one or more occasions, which appears to be the case in this instance.
 - (e) The Application also notes operation of a café within the Shop. Public information available via the ABN presented with the Application does not provide a separate business name presenting as a café. The Shop's website references The Servant's Quarters Tearoom; however, it is not clear if this café operates independently from the Shop. Publicly available information shows The Servant's Quarters Tearoom operates under a separate ABN which has not been provided as part of this Application; therefore, it has not been considered in this decision.
 - (f) The Shop's sponsorship of the Bell UH-1 Iroquois helicopter fly over and the historic vehicle display as part of the Anzac Day service and march is commendable, however it is unclear from the Application how these would be required to be closed if an exemption were not granted given neither would appear to take place within the retail premises.
 - (g) 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 has a cafe, Art Gallery, and Militaria Museum and sells, food, coffee and other drinks as well as paintings, and antiques to museums across Australia including the Sydney Jewish Museum and the Holocaust Museum in Melbourne and the public.
 - (b) The Shop needs to be kept open to allow the public access to food, drinks, toilets, the militaria museum and Light Horse art exhibition. It also supplies parking for 24 vehicles off street.
 - (c) Campbell's Store and Morpeth Gallery is the key business in Morpeth, described as the Myers of the village in Maitland City Council reports and documents on tourism, the drawcard, for visitors, it has operated for 39 years including supporting ANZAC Day at Morpeth for the past 29 years.
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:
- (b) The Application relates to a 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 appear to constitute a significant restriction of access to products sold by the Shop.
 - (a) While the Shop may play a role in enhancing the tourist experience through its heritage value and specialty offerings, no supporting data or independent evidence was submitted to demonstrate that closure on Anzac Day would materially impact tourism outcomes, inhibit the delivery of commemorative activities, or disrupt the economic viability of surrounding businesses.
 - (b) There were no submissions from other local businesses supporting this Application in order to secure increased traffic for their businesses on this restricted trading day, or from museums across Australia in order to secure uninterrupted access to paintings and antiques.
 - (c) There was no information provided in the Application as to the likely effect of the proposed exemption on employees of, or persons working in, the Shop, as is required to be regarded under Section 10(2) of the Act, and no public submissions were received from employees of the Shop.
 - (d) The SDA submission considered the social welfare of employees, their families and society, and noted 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. It also recognised Anzac Day as a day of important cultural and historical significance and notes the full day restriction of trading on this day is in keeping with community sentiment on the solemn nature of Anzac Day.
 - (e) Notwithstanding the absence of submissions from direct employees of the Shop, or other businesses in the area, 'public interest' refers to the interest of the general public, not that of individuals, employees, or employers.
 - (f) Similarly, while the Application states the Shop could provide coffee, food and other drinks to attendees at the local Anzac Day commemorations should the exemption be granted, 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

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