

NSW IR Ref: P17/2288

File Number 17/032

RETAIL TRADING ACT 2008 DECISION

REASONS FOR DECISION

1. I, Matt Roberts, am an officer delegated by the Secretary of the Treasury under the *Retail Trading Act 2008* to exercise the functions prescribed in that Act.
2. On this day I have decided to refuse an application, received 27 March 2017, by Factory X Pty Ltd pursuant to section 10 of the *Retail Trading Act 2008*, as I am not satisfied that the applicant has demonstrated the existence of exceptional circumstances as required by the section.
3. In making this decision I have taken into account the principles enunciated in a decision of the NSW Civil and Administrative 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:
 - (a) Nature of the shop and the kinds of goods sold by the shop
 - (b) Need for the shop to be kept open on the day concerned
 - (c) Likely effect of the proposed exemption on the local economy, tourism and small businesses and other businesses in the area, and
 - (d) Likely effect of the proposed exemption on employees of, or persons working in, the shop.
4. My reasons for this decision include the following:
 - (a) the applicant's submissions (reasons in its application) have not demonstrated exceptional circumstances; and
 - (b) the applicant submits no evidence to support the contention that it is in the public interest for the employees of the occupier to work on the restricted trading day, or that all labour would be voluntary and appropriate penalty rates would be paid.



Matt Roberts
A/Executive Director
Industrial Relations Group NSW Treasury

10 May 2017