

NSW IR Ref: P16/949

File Number 16/001

**RETAIL TRADING ACT 2008 DECISION
REASONS FOR DECISION**

1. I, Vicki Telfer, am an officer delegated by the Secretary of the Treasury under the *Retail Trading Act 2008* to exercise the functions prescribed in that Act.

On this day I have decided to refuse an application, received on 22 February 2016, by Birchan 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.

2. 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:
- (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.
3. 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, notwithstanding that all labour would be voluntary and appropriate penalty rates would be paid.



Vicki Telfer
Executive Director
NSW Industrial Relations

13 March 2016