

RETAIL TRADING ACT 2008 DECISION

REASON FOR DECISION

1. I, Melissa Gumm, 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 30 January 2024, Kang & Gill Investments Pty Ltd t/as Tighes Hill Cellars (**Applicant**) made an application under section 10 of the Act as occupier of a shop at 1 Tighes Terrace, Tighes Hill (**Shop**), for the Shop to be exempt from the requirement to be kept closed on Easter Sunday for the years 2024, 2025 and 2026 (**Application**).
3. The Application was placed on public exhibition for a period of no less than 14 days from 14 February 2024 and public comment was sought.
4. I have considered the Application and public comments that were received.
5. 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.
6. 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.

7. The Applicant submitted the following as exceptional circumstances:
 - (a) The Shop specialises in craft beer which is not ordinarily available in all bottle shops.
 - (b) Many customers in the Newcastle region look to shop for craft beer on Easter Sunday for family get-togethers and barbeques.
8. Whilst I acknowledge the circumstances raised by the shop, these do not qualify as exceptional circumstances in accordance with section 10(2) of the Act.
9. The Applicant submitted the following reasons as to why they believed granting an exemption would be in the public interest:
 - (a) Opening the shop on Easter Sunday would benefit customers looking to shop for products the Shop sells, for get-togethers and family events.
10. 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.

Yours sincerely,

Melissa Gumm
Senior Coordinator
NSW Fair Trading