



Domino's Pizza Enterprises Limited  
ACN: 010 489 326  
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[www.dominos.com.au](http://www.dominos.com.au)

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### **Announcement - Class Action Proceeding**

Domino's Pizza Enterprises Limited (ASX:DMP) (**Domino's**) notes yesterday's judgment of the Federal Court of Australia in the long-running Gall class action commenced against it on 24 June 2019. The trial took place in November 2022.

Domino's announced the commencement of the Gall class action proceedings to the ASX on 25 June 2019.

Between 24 June 2013 and 23 January 2018, Domino's relied on enterprise agreements certified by the Australian Industrial Relations Commission and Fair Work Commission as applying to all corporate and franchised stores. Investigations in 2009 by the Workplace Ombudsman and in 2011 by the Fair Work Ombudsman accepted and applied those agreements.

In yesterday's judgment, the Court took a contrary view and held that a coverage clause in a 2005 enterprise agreement was invalid. As a result, the Court found that Domino's historical representations about the application of those certified agreements constituted misleading and deceptive conduct.

The Court's 560-page Reasons for Judgment (**Reasons**) describe the proceeding as 'novel', noting that the claims were made under the *Australian Consumer Law* rather than under the *Fair Work Act*.

The Court assessed Mr Gall's loss to be in the order of \$11,869.33 (plus interest). In doing so, the Court considered the expert evidence submitted by the parties and noted that the assessment was decided on the evidence and by inference as to what it was more likely than not Mr Gall would have been paid if the Award rates had applied, and it was not simply a matter of calculating the difference between the rates of pay and terms and conditions between the certified agreements and the Award.

Domino's is carefully reviewing the Reasons to assess its position, including any grounds of appeal that may be available.

As the Court's findings of causation and loss were only in respect of Mr Gall's claim, Domino's potential wider exposure to other alleged group members remains highly uncertain and unquantifiable. This depends on a separate hearing and determination in relation to the members of the group, the number of those members, each member's individual claim of causation and the individual calculation of loss, and the exhaustion of all avenues of appeal available to Domino's or other group members. Domino's will keep the market informed in accordance with its disclosure obligations.

As the matter remains before the courts, it is not appropriate to comment further.

No orders were made in the Reasons and the Court instead gave directions to the parties as to what the proposed orders should address, and directed the parties to file short minutes of order within seven days in view of Justice Murphy's impending retirement. The Court indicated an intention to make an order referring the balance of the proceeding to mediation.



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## Background

Mr Gall commenced the proceeding as lead applicant on behalf of an alleged group of Australian franchisee employees who worked as delivery drivers or in-store workers between 24 June 2013 and 23 January 2018.

The proceeding concerned historical certified enterprise agreements that were applied instead of the *Fast Food Industry Award 2010 (Award)*. Mr Gall alleged that those certified agreements did not apply to some franchise stores whose employees should have been paid under the Award. Mr Gall alleged that Domino's contrary representations to franchisees causing them to pay their employees in accordance with the certified agreements rather than the Award were misleading and deceptive conduct which caused Mr Gall to suffer loss. The alleged representations were characterised as representations of fact or alternatively representations of opinion.

The Reasons set out the evidence in detail in anticipation that the matter will go on appeal and so that all of the relevant evidence is before the Full Court.

The Court found that Domino's conduct constituted representations of fact, however, in the alternative case that Domino's conduct were representations of opinion Mr Gall failed to establish that Domino's did not have reasonable grounds for its opinions.

The Court further found that by reason of its legal construction of the certified agreements, the representations of fact constituted misleading and deceptive conduct, and that conduct caused Mr Gall to suffer loss in the form of an underpayment. However, Mr Gall's claim for loss of opportunity failed.

The questions of causation and loss were only decided in relation to Mr Gall's claim. All other alleged group members will need to establish causation and loss at a future hearing. Not all of the 35 Common Questions were decided in the Reasons. Additionally, the identification of the franchise stores that are alleged to be subject to the Award, and the identification of employees of those stores, were not determined at the trial or decided in the Reasons.

This release has been authorised for release by the Board of Directors.

## ENDS

For further information, contact Nathan Scholz, Group Chief Communications & Investor Relations Officer, at [investor.relations@dominos.com.au](mailto:investor.relations@dominos.com.au) or on +61-419-243-517.