

NOTICE OF FILING

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Details of Filing

Document Lodged: Statement of Claim - Form 17 - Rule 8.06(1)(a)
File Number: VID685/2019
File Title: RILEY GALL v DOMINO'S PIZZA ENTERPRISES LIMITED
Registry: VICTORIA REGISTRY - FEDERAL COURT OF AUSTRALIA



Dated: 25/08/2021 9:55:00 AM AEST

A handwritten signature in blue ink that reads 'Sia Lagos'.

Registrar

Important Information

As required by the Court's Rules, this Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.

The date and time of lodgment also shown above are the date and time that the document was received by the Court. Under the Court's Rules the date of filing of the document is the day it was lodged (if that is a business day for the Registry which accepts it and the document was received by 4.30 pm local time at that Registry) or otherwise the next working day for that Registry.



Rule 8.05(1)(a)

SECOND FURTHER AMENDED STATEMENT OF CLAIM

No. VID685 of 2019

Federal Court of Australia
District Registry: Victoria
Division: Commercial and Corporations

Riley Gall

Applicant

Domino's Pizza Enterprises Limited (ACN 010 489 326)

Respondent

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A. THE PARTIES

1. The applicant, at all material times:

- (a) during the period 17 October 2015 to 28 August 2016, was:
 - (i) employed by Dominoids Pty Ltd (**Dominoids**) in the position of delivery driver; and
 - (ii) performed work as a delivery driver for the Domino's Pizza store located at Central Lakes Shopping Centre, 2/1-21 Pettigrew St, Caboolture, Queensland, 4510 (the **North Caboolture Store**) and which, in this period, was operated by Dominoids as a franchisee of the respondent; and
- (b) during the period 29 August 2016 to 18 March 2018, was:
 - (i) employed by MA CS Pizza Pty Ltd (**MC Pizza**) in the position of delivery driver; and
 - (ii) performed work as a delivery driver for the North Caboolture Store which, in this period, was operated by MC Pizza as a franchisee of the respondent.

2. This proceeding is commenced as a representative proceeding pursuant to Part IVA of the *Federal Court of Australia Act 1976* (Cth) by the applicant on his own behalf and on behalf of all persons at any time in the period from 24 June 2013 to 23 January 2018 (inclusive) (**Relevant Period**):

- (a) who were employed to perform work in Australia by a franchisee of the respondent, such work being that of:
 - (i) delivering takeaway pizzas and other foodstuffs to customers by car, motorbike or bicycle (**Delivery Drivers**); and/or
 - (ii) either:

- A. preparing food, serving customers and taking orders from customers in a store;
- B. supervising employees performing such work or training employees to perform such work; or
- C. a person appointed by the respondent to be in charge of a shop, food outlet or delivery outlet,

(In-Store Workers);

- (b) who were covered by the Fast Food Industry Award 2010 (the **Award**) within the meaning of s 48 of the *Fair Work Act 2009* (Cth) (the **FW Act**);
- (c) to whom the Award applied, within the meaning of s 47 of the FW Act;
- (d) who were not paid the rates applicable under, or who were not afforded terms and conditions of employment in accordance with, the Award; and
- (e) who suffered loss or damage as a result,

(the **Group Members**).

3. Immediately prior to the commencement of this proceeding, there were more than seven Group Members.
4. The respondent (**Domino's**) is and at all material times was:
 - (a) incorporated pursuant to the *Corporations Act 2001* (Cth) and capable of being sued;
 - (b) the holder of the exclusive master franchise rights for the Domino's brand and system in Australia; and
 - (c) a person within the meaning of s 18 of the Australian Consumer Law set out in Schedule 2 of the *Competition and Consumer Act 2010* (Cth) (the **CCA**) as applicable pursuant to:

- (i) s 131 of the CCA;
- (ii) s 7 of the *Fair Trading (Australian Consumer Law) Act 1992* (ACT);
- (iii) s 28 of the *Fair Trading Act 1987* (NSW);
- (iv) s 8 of the *Australian Consumer Law and Fair Trading Act 2012* (Vic);
- (v) s 16 of the *Fair Trading Act 1989* (Qld);
- (vi) s 6 of the *Australian Consumer Law (Tasmania) Act 2010* (Tas);
- (vii) s 19 of the *Fair Trading Act 2010* (WA);
- (viii) s 14 of the *Fair Trading Act 1987* (SA); and/or
- (ix) s 27 of the *Consumer Affairs and Fair Trading Act* (NT),

as in force after 1 January 2011 (individually, or together, the **Australian Consumer Law**).

B. THE DOMINO'S BUSINESS

- 5. At all material times, Domino's operated a business in Australia in the fast food industry selling food, predominantly pizza, from stores trading as 'Domino's Pizza', for consumption by customers.
- 6. In the course of operating the business pleaded in paragraph 5 above, Domino's granted licences pursuant to the terms of franchise agreements (**Franchise Agreements**) under which third parties were licensed to operate 'Domino's Pizza' stores in Australia (**Franchise Operators**) in accordance with the terms of a Franchise Agreement.
- 7. At all material times, stores trading as 'Domino's Pizza' were either:
 - (a) owned and operated by Domino's directly (**Corporate Stores**); or

(b) operated by Franchise Operators pursuant to the terms of a licence granted under a Franchise Agreement (**Franchise Stores**),

(together, the Corporate Stores and the Franchise Stores are referred to as the **Domino's Business**).

8. By no later than November 2017:

(a) the majority of stores in the Domino's Business were Franchise Stores;

(b) approximately 10 percent of stores in the Domino's Business were Corporate Stores; and

(c) a number of Franchise Operators operated more than one Franchise Store in the Domino's Business.

9. At all material times, the stores in the Domino's Business prepared and sold food (predominantly pizza) to customers which was either sold:

(a) to be consumed in a Domino's Pizza store; or

(b) as a takeaway food, able to be either picked up by a customer from the store or delivered to the customer's home or other nominated address.

10. At all material times, Domino's engaged in trade or commerce by operating the Domino's Business, including by:

(a) operating its Corporate Stores and deriving revenue and profit from the sales of fast food made by those Corporate Stores; and

(b) entering into Franchise Agreements with Franchise Operators, pursuant to which those Franchise Operators agreed to pay certain fees, levies, and charges to Domino's in exchange for a licence which granted Franchise Operators the right to operate a Franchise Store.

11. At all material times, Franchise Operators employed persons to perform work in Franchise Stores, including Delivery Drivers and In-Store Workers, whose work was required to be performed in order to make sales of fast food to customers of those Franchise Stores.

C. INDUSTRIAL INSTRUMENTS

12. Between 2001 and 2007, 26 agreements were certified by the Australian Industrial Relations Commission, or were lodged with the Office of the Employment Advocate, pursuant to the terms of the *Workplace Relations Act 1996* (Cth) (the **WR Act**) as in force from time to time, which contained, during their period of operation, the rates of pay and terms and conditions of employment required to be afforded to the Delivery Drivers and In-Store Workers employed to perform work in:

- (a) all Corporate Stores; and
- (b) some Franchise Stores,

(the **WR Act Agreements**).

Particulars

1. The WR Act Agreements were all in substantially the same terms as one another.
2. A list of the WR Act Agreements is in Annexure B to this statement of claim.

13. In the period up to 30 June 2009, the WR Act Agreements bound:

- (a) for WR Act Agreements that were certified by the Australian Industrial Relations Commission:
 - (i) Domino's, where Domino's was an employer which made the relevant agreement; and
 - (ii) each Franchise Operator that was an employer which made the relevant agreement; and
- (b) for WR Act Agreements lodged with the Office of the Employment Advocate, each Franchise Operator that was an employer which made the relevant agreement.

Particulars

1. In relation to the WR Act Agreements certified by the Australian Industrial Relations Commission, the applicant relies on ss 170 MA of the WR Act, as in force up to and including 25 March 2006 and, from 26 March 2006, Schedule 7 to the WR Act.
 2. In relation to the WR Act Agreements lodged with the Office of the Employment Advocate the applicant relies on s 351 of the WR Act.
14. On and from 1 July 2009, the WR Act Agreements:
- (a) continued in existence in accordance with Schedule 3 to the *Fair Work (Transitional Instruments and Consequential Amendments) Act 2009* (Cth);
 - (b) covered the same employers, including Domino's and the Franchise Operators, as were bound by the agreements under the WR Act; and
 - (c) applied to the employers (including, where relevant, Domino's and the Franchise Operators), Delivery Workers and In-Store Workers as were required by the WR Act to comply with their terms or entitled under the WR Act to enforce their terms.

Particulars

1. The applicant relies on Part 2 of Schedule 3 to the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* (Cth).
15. In the period between 2006 and 2017, Domino's and Franchise Operators (as existed at the relevant time) were party to a number of agreements with the Shop Distributive and Allied Employees Association (the **SDA**), pursuant to which Domino's and those Franchise Operators agreed to increase the rates of pay for Delivery Drivers and In-Store Workers to be paid by Domino's Corporate Stores and by the Franchise Operators party to those agreements (the **Agreed Base Rate Increases**).

Particulars

1. The details of the rates agreed under the Agreed Base Rate Increases during the Relevant Period were set out in the following documents:

- (a) National Drivers Wage Rates to apply from 1 July 2013 (DPE.002.002.0007) provided via email on 24 June 2013;
- (b) National In-store Rates to apply from 1 July 2013 (DPE.002.002.0004) provided via email on 24 June 2013;
- (c) National Drivers Wage Rates to apply from 1 July 2014 (DPE.002.002.0003) provided via email on 27 June 2014;
- (d) National In-store Wage Rates to apply from 1 July 2014 (DPE.002.002.0010) provided via email on 27 June 2014;
- (e) National In-store Wage Rates to apply from 1 July 2015 (DPE.002.002.0005) provided via email on 26 June 2015;
- (f) National Drivers Wage Rates to apply from 1 July 2015 (DPE.002.002.0002) provided via email on 26 June 2015;
- (g) National In-store Wage Rates to apply from 1 July 2016 (DPE.002.002.0011) provided via email on 8 July 2016;
- (h) National Drivers Wage Rates to apply from 1 August 2016 (DPE.002.002.0001) provided via email on 8 July 2016;
- (i) Instore Wage Rates to apply from 1 January 2017 (DPE.002.002.0006) provided via email on 28 November 2016;
- (j) Driver Pay Rates to apply from 1 July 2017 (DPE.001.001.0171) provided via email on 30 June 2017;
- (k) Instore Pay Rates to apply from 1 July 2017 (DPE.001.001.0081) provided via email on 30 June 2017;
- (l) Instore Wage Rates to apply from 1 December 2017 (DPE.005.001.0008) provided via email on 27 October 2017;
- (m) Driver Wage Rates to apply from 1 December 2017 (DPE.005.001.0001) provided via email on 27 October 2017;

- (n) Instore Pay Rates to apply from 1 July 2015, 1 July 2016 and 1 July 2017 (DPE.005.001.0002) provided via email on 13 December 2017; and
 - (o) Instore Wage Rates to apply from 1 July 2017 (DPE.002.002.0009) provided via email on 14 December 2017.
 - 2. The agreements were informal, did not take effect as variations to the WR Act Agreements and were not lodged with or approved by Fair Work Australia or the Fair Work Commission.
 - 3. Pursuant to the Agreed Base Rate Increases, new actual or paid rates of pay for Delivery Drivers and In-Store Workers were agreed and were expressed as increases upon the base rates of pay which had been derived from the WR Act Agreements.
 - 16. On 1 January 2010, the Award commenced operation.
 - 17. On and from 1 January 2010, the Award covered, within the meaning of s 48 of the FW Act:
 - (a) among others and subject to certain exclusions, employers throughout Australia in the fast food industry and their employees in the classifications listed in clause 17 of the Award (minimum weekly wages) to the exclusion of any other modern award;
 - (b) Domino's and its employees in the classifications listed in clause 17 of the Award; and
 - (c) the Franchise Operators and their employees in the classifications listed in clause 17 of the Award, with the exception of Franchise Operators that were covered by an enterprise instrument, being either:
 - (i) the Domino's Pizza Delivery Drivers Award 1999; or
 - (ii) the Shop Distributive and Allied Employees Association Domino's Dial a Pizza (WA) Award 2003
- ((i) and (ii) together, the **Enterprise Instruments**).

Particulars

1. A list of the Enterprise Instruments appears in Annexure B to this statement of claim.
18. On and from 1 January 2010, the Award applied, within the meaning of s 47 of the FW Act, to:
- (a) Delivery Drivers and In-Store Workers covered by the Award to whom no enterprise agreement (within the meaning of the FW Act) or WR Act Agreement applied (the **Award Workers**); and
 - (b) the Franchise Operators, in relation to the Award Workers.

Particulars

1. The applicant relies on ss 46, 47 and 57 of the FW Act and Part 5 of Schedule 3 to the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* (Cth).
19. On and from 1 January 2010, by reason of the operation of the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* (Cth) the base rate of pay required to be paid by Domino's and by Franchise Operators to Delivery Drivers and In-Store Workers:
- (a) who were covered by the Award and to whom a WR Act Agreement applied, was not to be less than the base rate of pay that would be payable to those workers under the Award, and the relevant WR Act Agreement had effect in relation to those employees as if the relevant WR Act Agreement rate were equal to the Award rate (the **Award Deemed Base Rates**); and
 - (b) who were not covered by the Award and to whom a WR Act Agreement applied:

- (i) for adult employees, was not to be less than the base rate of pay contained in the national minimum wage order, and the relevant WR Act Agreement had effect in relation to those employees as if the relevant WR Act Agreement rate were equal to the order rate; and
- (ii) for junior employees, deemed to be the base rate of pay contained in the special national minimum wage order, and the relevant WR Act Agreement had effect in relation to the employees as if the relevant WR Act Agreement rate were equal to the order rate (together with 19(b)(i), the **Order Deemed Base Rates**),

(the Award Deemed Base Rates and the Order Deemed Base Rates are together the **Deemed Base Rates**).

20. In 2010, six enterprise agreements were approved under the FW Act which contained, during their period of operation, the rates of pay and terms and conditions of employment required to be afforded to In-Store Workers employed by Domino's and by the Franchise Operators to whom those agreements covered and applied (the **FW Act Agreements**) (together with the WR Act Agreements, the **Agreements**).

Particulars

- 1. The FW Act Agreements were all in substantially the same terms as one another.
 - 2. A list of the FW Act Agreements is in Annexure B to this statement of claim.
21. During the Relevant Period, the Award provided rates of pay and terms and conditions of employment which were more beneficial with respect to Delivery Drivers than were provided by the WR Act Agreements, including by reason that it provided for:
- (a) a 25% casual loading;
 - (b) evening work penalties;

- (c) weekend penalties;
- (d) public holiday penalties;
- (e) a meal allowance;
- (f) a special clothing allowance;
- (g) an excess travelling cost payment;
- (h) a travelling time reimbursement payment;
- (i) a kilometre-based delivery allowance; and
- (j) minimum 3-hour shifts for casual employees.

Particulars

1. Further particulars are set out in Annexure C.
22. During the Relevant Period, the Award provided rates of pay and terms and conditions of employment which were more beneficial with respect to In-Store Workers than were provided by the FW Act Agreements, including by reason that it provided for:
- (a) a 25% casual loading;
 - (b) evening work penalties;
 - (c) weekend penalties;
 - (d) public holiday penalties;
 - (e) a meal allowance;
 - (f) a special clothing allowance;
 - (g) an excess travelling cost payment;
 - (h) a travelling time reimbursement payment; and
 - (i) minimum 3-hour shifts for casual employees.

Particulars

1. Further particulars are set out in Annexure C.
23. On 31 December 2013, the Enterprise Instruments terminated.

Particulars

1. The applicant relies on Schedule 6 to the *Fair Work (Transitional Instruments and Consequential Amendments Act) 2009* (Cth).
24. The effect of the terminations pleaded in paragraph 23 above was that, from 1 January 2014:
- (a) the Award covered all Delivery Drivers and In-Store Workers; and
 - (b) the Award Deemed Base Rates applied to all Delivery Drivers and In-Store Workers to whom a WR Act Agreement applied.
25. From mid-2016 to the end of the Relevant Period, Domino's and at least some of the Franchise Operators (as existed the relevant time) were party to a number of arrangements negotiated with the SDA, pursuant to which Domino's and those Franchise Operators agreed to pay their Delivery Driver employees:
- (a) from about 1 August 2016, an allowance on all ordinary hours of work called the Temporary Transitional Enterprise Agreement Negotiation Allowance (the TTEANA); and
 - (b) from 1 July 2017, a 25% loading for all hours worked on a Sunday, called the Temporary Transitional Enterprise Agreement Negotiation Loading (the **TTEANL**).
- 25A. From 1 January 2017 to the end of the Relevant Period, Domino's and at least some of the Franchise Operators (as existed at the relevant time) were party to a number of arrangements negotiated with the SDA, pursuant to which Domino's and those Franchise Operators agreed to pay their In-Store Worker employees the TTEANL.

26. On 1 November 2017, the Fair Work Commission (**FWC**) terminated with effect from 24 January 2018:
- (a) the WR Act Agreements; and
 - (b) one of the FW Act Agreements, namely the SDA-Domino's Pizza Enterprise Agreement 2009.

Particulars

- 1. The applicant relies on the decision of the Fair Work Commission in [2017] FWCA 5703, dated 1 November 2017.
27. The effect of the terminations pleaded in paragraph 26 above was that on and from 24 January 2018 the Award applied to:
- (a) Domino's and its Delivery Drivers and In-Store Workers; and
 - (b) all Franchise Operators and their Delivery Drivers and In-Store Workers, save for:
 - (i) AV Staff Pty Ltd (T/A Domino's Pizza) and its Delivery Drivers and In-Store Workers in relation to their employment with AV Staff Pty Ltd;
 - (ii) Illawarra Fast Foods Pty Ltd and its Delivery Drivers and In-Store Workers in relation to their employment with Illawarra Fast Foods Pty Ltd;
 - (iii) Competitive Dudes Pty Ltd and its Delivery Drivers and In-Store Workers in relation to their employment with Competitive Dudes Pty Ltd;
 - (iv) Wilbe Pty Ltd T/A Domino's Pizza and its Delivery Drivers and In-Store Workers in relation to their employment with Wilbe Pty Ltd; and

- (v) Natcliffe Investments Pty Ltd and its Delivery Drivers and In-Store Workers in relation to their employment with Natcliffe Investments Pty Ltd.

The North Caboolture Store

- 27A. On 1 November 2010 (**Commencement**) Domino's opened the North Caboolture Store.
- 27B. As at Commencement, the *Fair Work Act 2009* (Cth) was in operation.
- 27C. By reason of the matters in paragraph 14 above, at Commencement, the following agreements applied to the Respondent in relation to the North Caboolture Store:
 - (a) the SDA-Domino's Pizza Agreement 2005; and
 - (b) SDA-Domino's Pizza Agreement 2009.
- 27D. From Commencement, Domino's employed people to work at the North Caboolture Store, including in the position of Delivery Driver and In-store Worker.
- 27E. Between Commencement and 17 December 2012, the North Caboolture Store was operated by the Respondent.
- 27F. On 18 December 2012, the Respondent sold the North Caboolture Store Business to Dominoids pursuant to a sale and purchase agreement dated 18 December 2012 (**First Sale**).
- 27G. In accordance with the requirements of the sale and purchase agreement, Dominoids entered a sub-franchise agreement with the Respondent in respect of the North Caboolture Store Business pursuant to which Dominoids commenced to operate the North Caboolture Store Business from 18 December 2012.
- 27H. Within 3 months of 18 December 2012 (the date of the First Sale), employees of the Respondent working at the North Caboolture Store prior to the First Sale were employed by Dominoids performing the same or substantially the same work as performed by those employees for the Respondent, including Delivery Drivers and In-Store Workers.

- 27I. By reason of the matters in paragraph 27A-27H above, on 18 December 2012, there was a transfer of business within the meaning of 311 of the FW Act from Domino's to Dominoids.
- 27J. On the commencement of his employment with Dominoids on 18 October 2015, the Applicant was a "non-transferring employee" of Dominoids within the meaning of s 314(2) of the FW Act, because he was not employed until three years after the transfer of business.
- 27K. On 28 August 2016:
- (a) Dominoids sold the North Caboolture Store Business to the Respondent pursuant to a sale and purchase agreement dated 28 August 2016; and
 - (b) as consequence of (a), the Respondent terminated its franchise agreement with Dominoids.
- 27L. On 29 August 2016:
- (a) the Respondent entered a Store Asset Rental Management Deed with MC Pizza;
 - (b) pursuant to the Store Asset Rental Management Deed pleaded in (a) above, MC Pizza commenced to operate the North Caboolture Store Business from 29 August 2016.
- 27M. On 10 October 2016, Domino's sold the North Caboolture Store Business to MC Pizza pursuant to a sale and purchase agreement dated 10 October 2016.
- 27N. In accordance with the requirements of the sale and purchase agreement pleaded in 27M above, MC Pizza entered a sub-franchise agreement with Domino's in respect of the North Caboolture Store Business.
- 27O. Within 3 months of 29 August 2016 (the date of the Store Asset Rental Management Deed), employees of Dominoids working at the North Caboolture Store Business prior to that date were employed by MC Pizza performing the same or substantially the same

work as those employees had performed for Dominoids, including Delivery Drivers and Instore Workers.

27P. In the period between 29 August 2016 (the execution date of the Store Asset Rental Management Deed) and 10 October 2016 (the date of the sale and purchase agreement),

(a) MC Pizza employed all the employees who performed work in the North Caboolture Store Business, including the Applicant;

(b) Domino's did not employ any of the employees who performed work in the North Caboolture Store Business, including the Applicant.

27Q. Domino's:

(a) did not, at any time, employ the Applicant; and

(b) has not employed any person as a Delivery Driver or Instore Worker at the North Caboolture Store since 18 December 2012.

D. MISLEADING OR DECEPTIVE CONDUCT

D.1 The Representations

28. Since no later than 1999, Domino's has been required to provide certain information to persons interested in entering into a Franchise Agreement (**Prospective Franchise Operators**) and Franchise Operators, including a "disclosure document" that complied with the Code to help the franchisee to make a reasonably informed decision about the proposed franchise by giving current information that is material to the running of the franchised business (**Franchise Information**), by reason of the operation of each of:

- (a) the *Trade Practices (Industry Codes — Franchising) Regulations 1998* (Cth) (**Pre-2015 Code**); and
- (b) the Franchising Code of Conduct found in Schedule 1 to the *Competition and Consumer (Industry Codes — Franchising) Regulation 2014* (Cth) (**2015 Code**).

Particulars

1. The Pre-2015 Code and the 2015 Code required Domino's to provide the following documents to Prospective Franchisees and Franchisees:
 - (a) Franchise Agreements (within the meaning of cl 4 of the Pre-2015 Code and cl 5 of the 2015 Code);
 - (b) disclosure documents (within the meaning of cls 6, 6A, 18 and 19 of the Pre-2015 Code and cls 8, 16 and 17 of the 2015 Code);
 - (c) written statements and signed statements (within the meaning of cls 11(1) and (2) of the Pre-2015 Code, and signed disclosure documents within the meaning of cl 8(4) of the 2015 Code);
 - (d) information statements (within the meaning of cl 11 of the 2015 Code); and
 - (e) earnings information (within the meaning of Item 20 of Annexure 1 of the 2015 Code).

28A. Domino's provided the Franchise Information to Franchise Operators and Prospective Franchise Operators.

Particulars

1. That Domino's provided the Franchise Information to Franchise Operators and Prospective Franchise Operators is to be inferred from:

- (a) the matters pleaded in paragraph 28 above, and paragraph 31 below, and the particulars thereto;
- (b) the provision of the Disclosure Documents and Sub-Franchise Agreement between Domino's and Dominoids dated 30 November 2012 (DPE.001.001.0266) (**Dominoids Sub-Franchise Agreement**); and
- (c) the provision of the Disclosure Documents and Sub-Franchise Agreement between Domino's and MC Pizza dated 1 September 2016 (DPE.001.001.0158) (**MC Pizza Sub-Franchise Agreement**).

28B. Prior to, or during, the Relevant Period, Domino's provided to Franchise Operators who operated a store during the Relevant Period the following documents that were in substantially similar terms as (**Franchise Agreement Documents**):

- (a) Dominoids Sub-Franchise Agreement and MC Pizza Sub-Franchise Agreement; and
- (b) the Business Sale and Purchase Agreements identified in paragraphs 49A(b)(ii) and 50F(c)(ii) below; and
- (c) the Store Asset Rental Management Deed identified in paragraph 50F(a) below.

28C. Prior to, or during, the Relevant Period, Domino's provided to Franchise Operators who operated a store during the Relevant Period following documents that were the same, or in substantially similar terms as the disclosure documents provided to Dominoids identified in paragraph 49A(a) below and the disclosure documents provided to MC Pizza identified in paragraph 50F(b) below (**Franchise Disclosure Documents**).

29. Since no later than 30 April 2012, Domino's provided information and training to Prospective Franchise Operators and Franchise Operators, including information in relation to prevailing employment laws and compliance with industrial obligations (**Compliance Information**).
- 29A. The Compliance Information comprised the documents pleaded in paragraphs 29B to 29D below.
- 29B. Domino's uploaded to a training and information systems known as 'DOTTI':
- (a) on 2 May 2012 and made available until the end of the Relevant Period to the **Area Manager** target group (being a group for individuals who oversaw corporate stores operated in a specific state) and the **Franchisee/RL** target group (being a group for Franchise Operators and individuals known as "Regional Leaders" who were individuals who oversaw either multiple franchise stores operated by the same Franchise Operator or multiple corporate stores operated in the same region), and on an unknown date as a training module until the end of the Relevant Period to the Area Manager and Franchisee/RL target groups, a document entitled 'Fair Work Laws – Australia' dated 30 April 2012 (DPE.001.001.0131);
 - (b) on 2 May 2012 and made available until the end of the Relevant Period to the Area Manager and Franchisee/RL target groups, a document entitled 'Workplace Law Training Manual' dated 2 May 2012 (DPE.002.002.0015);
 - (c) on 28 October 2014 and made available until the end of the Relevant Period to the Area Manager and Franchisee/RL target groups, a document entitled 'Fair Work Laws: Franchisee Orientation Program' dated 20 May 2014 (DPE.001.001.0087);
 - (d) on 25 June 2015 and made available until on or about 22 September 2017, a document entitled 'Policy – Bookkeeping Services Version 3.1' dated 24 June 2015 (DPE.002.001.0153);
 - (e) on 8 October 2015 and made available until on or about 18 July 2017, a document entitled 'Policy – Employment Law Compliance v1.2' dated 7 October 2015 (DPE.002.001.0229);

- (f) on 21 November 2016 and made available until the end of the Relevant Period to all target groups in Australia (which included the Area Manager target group, the Franchisee/RL target group, and the **Manager** target group (being a group for which Franchise Operators had control over which of their employees were given access)) a document entitled 'My Dominos and Tanda Training Presentation' (DPE.001.001.0169);
- (g) on 29 November 2016 and made available until the end of the Relevant Period to the Franchisee/RL, Area Manager and Manager target groups, a document entitled 'TANDA - Bookkeeper Webinar' dated 13 December 2016 (DPE.001.001.0136);
- (h) on 12 December 2016 and made available until the end of the Relevant Period to the Franchisee/RL, Area Manager and Manager target groups, a document entitled 'TANDA Help Guide' dated 24 February 2017 (DPE.001.001.0172);
- (i) on 16 March 2017 and made available until the end of the Relevant Period to the Franchisee/RL, Area Manager and Manager target groups, a document entitled 'New Instructions for the Sales Report' dated 24 February 2017 (DPE.001.001.0202);
- (j) on 18 May 2017 and made available until the end of the Relevant Period to all target groups a document entitled 'Policy – TANDA Software' dated 18 May 2017 (DPE.001.001.0196);
- (k) on 30 June 2017 and made available until the end of the Relevant Period to all target groups:
 - (i) a document entitled 'Driver Pay Rates to Apply from 1 July 2017' dated 30 June 2017 (DPE.001.001.0171);
 - (ii) a document entitled 'Instore Pay Rates to Apply from 1 July 2017' dated 30 June 2017 (DPE.001.001.0081);
- (l) on 7 July 2017 and made available until the end of the Relevant Period to the Franchisee/RL, Area Manager and Manager target groups, a document entitled 'TANDA Information Kit' dated May 2017 (DPE.001.001.0143);

- (m) on 18 October 2017 and made available until the end of the Relevant Period to all target groups, a document entitled 'Policy – TANDA Timesheet Approvals' dated 12 October 2017 (DPE.001.001.0200);
- (n) on 15 January 2018 and made available until the end of the Relevant Period to the Area Manager and Franchisee/RL target groups, a document entitled 'Re-classifying Team Members' dated January 2018 (DPE.001.001.0197);
- (o) on 18 January 2018 and made available until the end of the Relevant Period to the Franchisee/RL, Area Manager and Manager target groups, a document entitled 'Fast Food Industry Award 2010 TANDA' dated January 2018 (DPE.001.001.0250); and
- (p) on 18 January 2018 and made available until the end of the Relevant Period to the Franchisee/RL and Area Manager target groups, a document entitled 'Reclassifying Staff in TANDA' dated January 2018 (DPE.001.001.0277).

29C. During the Relevant Period, Domino's wage rate notices were provided via email using distribution lists set up to contain the email addresses of Franchise Operator primary contacts (the **Primary Franchisee**). These notices provided an update as to the wage rates agreed with the SDA to be applied to both Delivery Drivers and In-Store Workers for the period provided for in the notice. The distribution lists were set up to contain all Primary Franchisee email addresses although occasionally, if requested, Franchise Operator secondary contacts were added to the distribution lists. The notices were:

- (a) National Drivers Wage Rates to apply from 1 July 2013 (DPE.002.002.0007) provided via email on 24 June 2013;
- (b) National In-store Rates to apply from 1 July 2013 (DPE.002.002.0004) provided via email on 24 June 2013;
- (c) National In-store Wage Rates to apply from 1 July 2015 (DPE.002.002.0005) provided via email on 26 June 2015;
- (d) National Drivers Wage Rates to apply from 1 July 2015 (DPE.002.002.0002) provided via email on 26 June 2015;
- (e) National Drivers Wage Rates to apply from 1 July 2014 (DPE.002.002.0003) provided via email on 27 June 2014;

- (f) National In-store Wage Rates to apply from 1 July 2014 (DPE.002.002.0010) provided via email on 27 June 2014;
- (g) National In-store Wage Rates to apply from 1 July 2016 (DPE.002.002.0011) provided via email on 8 July 2016;
- (h) National Drivers Wage Rates to apply from 1 August 2016 (DPE.002.002.0001) provided via email on 8 July 2016;
- (i) Instore Wage Rates to apply from 1 January 2017 (DPE.002.002.0006) provided via email on 28 November 2016;
- (j) Driver Pay Rates to apply from 1 July 2017 (DPE.001.001.0171) provided via email on 30 June 2017;
- (k) Instore Pay Rates to apply from 1 July 2017 (DPE.001.001.0081) provided via email on 30 June 2017;
- (l) Instore Wage Rates to apply from 1 December 2017 (DPE.005.001.0008) provided via email on 27 October 2017;
- (m) Driver Wage Rates to apply from 1 December 2017 (DPE.005.001.0001) provided via email on 27 October 2017;
- (n) Instore Pay Rates to apply from 1 July 2015, 1 July 2016 and 1 July 2017 (DPE.005.001.0002) provided via email on 13 December 2017; and
- (o) Instore Wage Rates to apply from 1 July 2017 (DPE.002.002.0009) provided via email on 14 December 2017.

29D. During the Relevant Period, in addition to the documents referred to in paragraph 29C above, SDA-agreed wage rates and references to applicable awards/agreements were also included in some of Domino's training materials. The training materials provided to or made available to Franchise Operators at any given time were in the same form. These types of training materials include:

- (a) on 2 May 2012, the following training materials were provided to existing Franchise Operators by email to the Primary Franchisee (and any relevant secondary contacts):
 - (i) Fair Work Laws – Australia dated 30 April 2012 (DPE.001.001.0131)

- (ii) Workplace Laws Training Manual dated 2 May 2012 (DPE.002.002.0015)
- (b) after 2 May 2012, on the dates specified below, the following training materials were provided to new Franchise Operators during induction training:
 - (i) Fair Work Laws – Australia dated 30 April 2012 (DPE.001.001.0131)
 - (ii) Workplace Laws Training Manual dated 2 May 2012 (DPE.002.002.0015)
 - (iii) Industrial Relations Facts dated 8 September 2016 (DPE.001.001.0255)
 - (iv) Fair Work Laws: Franchisee Orientation Program dated 20 May 2014 (DPE.001.001.0087)
- (c) the following training materials were provided on the dates specified below via DOTTI:
 - (i) on 28 October 2014 and made available until the end of the Relevant Period to the Area Manager and Franchisee/RL target groups, document entitled ‘Fair Work Laws: Franchisee Orientation Program’ dated 20 May 2014 (DPE.001.001.0087);
 - (ii) on 2 May 2012 and made available until the end of the Relevant Period to the Area Manager and Franchisees/RL target groups, and on an unknown date as a training module until the end of the Relevant Period to the Area Manager and Franchisees/RL target groups, document entitled ‘Fair Work Laws – Australia’ dated 30 April 2012 (DPE.001.001.0131);
 - (iii) on 2 May 2012 and made available until the end of the Relevant Period to the Area Manager and Franchisees/RL target groups, a document entitled ‘Workplace Law Training Manual’ dated 2 May 2012 (DPE.002.002.0015);
- (d) on the dates set out below, the following PowerPoint slides were typically provided in hardcopy format (and not via email and not uploaded to DOTTI)

and presented in person to new Franchise Operators during any training sessions held during the Relevant Period:

- (i) Bookkeeping Service – Franchise Orientation Program (DPE.001.001.0257) during any training sessions held between approximately 4 March 2014 and 1 April 2014;
- (ii) Bookkeeping Service – Franchise Orientation Program (DPE.001.001.0291) during any training sessions held between approximately 2 April 2014 and 27 April 2014;
- (iii) Bookkeeping Service – Franchise Orientation Program (DPE.001.001.0129) during any training sessions held between approximately 28 April 2014 and 22 May 2014;
- (iv) Bookkeeping Service – Franchise Orientation Program (DPE.001.001.0047) during any training sessions held between approximately 23 May 2014 and 10 June 2014;
- (v) Bookkeeping Service – Franchise Orientation Program (DPE.001.001.0049) during any training sessions held between approximately 11 June 2014 and 4 August 2014;
- (vi) Bookkeeping Service – Franchise Orientation Program (DPE.001.001.0290) during any training sessions held between approximately 5 August 2014 and 11 August 2014;
- (vii) Bookkeeping Service – Franchise Orientation Program (DPE.001.001.0289) during any training sessions held between approximately 12 August 2014 and 25 November 2014;
- (viii) Bookkeeping Service – Franchise Orientation Program (DPE.001.001.0205) during any training sessions held between approximately 26 November 2014 and 21 February 2015;
- (ix) Bookkeeping Service – Franchise Orientation Program (DPE.001.001.0001) during any training sessions held between approximately 22 February 2015 and 17 March 2015;

- (x) Bookkeeping Service – Franchise Orientation Program (DPE.001.001.0044) during any training sessions held between approximately 18 March 2015 and 24 May 2015;
- (xi) Bookkeeping Service – Franchise Orientation Program (DPE.001.001.0182) during any training sessions held between approximately 25 May 2015 and 24 May 2016;
- (xii) Bookkeeping Service – Franchise Orientation Program (DPE.001.001.0219) during any training sessions held between approximately 25 May 2016 and 27 June 2016;
- (xiii) Bookkeeping Service – Franchise Orientation Program (DPE.001.001.0126) during any training sessions held between approximately 28 June 2016 and 28 March 2017.
- (xiv) Domino’s Bookkeeping Service Business School (DPE.001.001.0045) during any training sessions held between approximately 29 March 2017 and 19 September 2017; and
- (xv) Domino’s Bookkeeping Service Business School (DPE.001.001.0173) during any training sessions held between 20 September 2017 and the end of the Relevant Period.

30. From not later than April 2012, Domino’s represented by providing the Franchise Information, the Franchise Agreement Documents, the Franchise Disclosure Documents, and Compliance Information to Franchise Operators and to Prospective Franchise Operators, that:

- (aa) the terms and conditions of all Domino’s employees were governed by two enterprise bargaining agreements, the first of which provided the conditions for Delivery Drivers, and the second of which provided the conditions for In-Store Workers;
- (a) one or more of the Agreements (as affected by the Agreed Base Rate Increases and the Deemed Base Rates) was binding upon all Franchise Operators with respect to the rates of pay required to be paid, and the terms and conditions of employment required to be afforded, to all

Delivery Drivers and In-Store Workers employed by Franchise Operators to perform work in Franchise Stores;

- (b) one or more of the Agreements (as affected by the Agreed Base Rate Increases and/or the Deemed Base Rates) applied to each of the Franchise Operators with respect to the rates of pay required to be paid, and the terms and conditions of employment required to be afforded, to all Delivery Drivers and In-Store Workers employed by Franchise Operators to perform work in Franchise Stores;
- (c) the Agreements (as affected by the Agreed Base Rate Increases and/or the Deemed Base Rates) contained the rates of pay required to be paid, and the terms and conditions of employment required to be afforded, to all Delivery Drivers and In-Store Workers employed to perform work by Franchise Operators in Franchise Stores;
- (d) the rates required to be paid, and the terms and conditions of employment required to be afforded to, all Delivery Drivers and In-Store Workers employed to perform work in Franchise Stores were the same as those required to be paid and afforded to Delivery Drivers and In-Store Workers employed to perform work in Corporate Stores; and/or
- (e) it was lawful to pay Delivery Drivers and In-Store Workers employed to perform work in Franchise Stores, the rates of pay, and to afford them the terms and conditions of employment, set out in the Agreements (as affected by the Agreed Base Rate Increases and/or the Deemed Base Rates),

(together and severally the **Franchise Representations**).

Particulars

1. Each of the Franchise Representations were partly written, and partly to be implied.

2. Insofar as each of the Franchise Representations were in writing they were contained in the documents identified in:
 - (a) the Franchise Agreement Documents and Franchise Disclosure Documents (see Annexure A, Schedule 1);
 - (b) the documents comprising the Compliance Information pleaded in paragraphs 29B to 29D (see Annexure A, Schedule 2);
3. Insofar as the Franchise Representations were to be implied, they were to be implied from all the facts, matters and circumstances, namely:
 - (aa) the fact that the documents described in the particulars to paragraph 30 above were provided to the Prospective Franchise Operators and the Franchise Operators in connection with the entry by them into a franchise agreement, which involved taking on financial and other obligations, being circumstances which conveyed to the Prospective Franchise Operators and the Franchise Operators that the information supplied in the documents was formal advice, described something which was mandatory in nature and constituted a statement of an obligation which applied to franchisees operating a Domino's store;
 - (a) the fact that Domino's provided the documents described in the particulars to paragraph 30 above to Franchise Operators in the course of operating the Domino's Business and in the course of offering terms and conditions to Prospective Franchise Operators for the entry into Franchise Agreements and in the course of providing training in relation to compliance with legal obligations and compliance with workplace laws;
 - (b) the fact that Domino's provided the documents comprising the Compliance Information pleaded in paragraphs 29B to 29D (see Annexure A, Schedule 2) to Franchise Operators in the course of operating the Domino's Business and in the course of assisting those Franchise Operators to comply with their legal obligations;

- (c) the fact that the documents provided by Domino's to Franchise Operators contained the statements identified in
 - (i) Annexure A, Schedule 1;
 - (ii) Annexure A, Schedule 2;

30A. Further and alternatively, by providing the Franchise Information, the Franchise Agreement Documents, the Franchise Disclosure Documents, and/or Compliance Information to Franchise Operators and to Prospective Franchise Operators, Domino's represented that:

- (a) Domino's held the following opinions:
 - (i) the terms and conditions of all Domino's employees were governed by two enterprise bargaining agreements, the first of which provided the conditions for Delivery Drivers, and the second of which provided the conditions for In-Store Workers;
 - (ii) one or more of the Agreements (as affected by the Agreed Base Rate Increases and/or the Deemed Base Rates) was binding upon all Franchise Operators with respect to the rates of pay required to be paid, and the terms and conditions of employment required to be afforded, to all Delivery Drivers and In-Store Workers employed by Franchise Operators to perform work in Franchise Stores;
 - (iii) one or more of the Agreements (as affected by the Agreed Base Rate Increases and/or the Deemed Base Rates) applied to each of the Franchise Operators with respect to the rates of pay required to be paid, and the terms and conditions of employment required to be afforded, to all Delivery Drivers and In-Store Workers employed by Franchise Operators to perform work in Franchise Stores;
 - (iv) the Agreements (as affected by the Agreed Base Rate Increases and/or Deemed Base Rates) contained the rates of pay required to be paid, and the terms and conditions of employment required to

be afforded, to all Delivery Drivers and In-Store Workers employed to perform work by Franchise Operators in Franchise Stores;

- (v) the rates required to be paid, and the terms and conditions of employment required to be afforded to, all Delivery Drivers and In-Store Workers employed to perform work in Franchise Stores were the same as those required to be paid and afforded to Delivery Drivers and In-Store Workers employed to perform work in Corporate Stores;
- (vi) it was lawful to pay Delivery Drivers and In-Store Workers employed to perform work in Franchise Stores, the rates of pay, and to afford them the terms and conditions of employment, set out in the Agreements (as affected by the Agreed Base Rate Increases and/or the Deemed Base Rates)

(the **Franchise Opinion**);

- (b) Domino's held the Franchise Opinion based on reasonable grounds, (together and severally the **Franchise Opinion Representations**).

Particulars

1. That Domino's held the Franchise Opinion was represented by Domino's to Franchise Operators and Prospective Franchise Operators by the fact that:
 - (a) the Franchise Opinion was contained in documents supplied to Franchise Operators and Prospective Franchise Operators, being:
 - (i) the Franchise Agreement Documents and Franchise Disclosure Documents (see Annexure A, Schedule 1);
 - (ii) the documents comprising the Compliance Information pleaded in

paragraphs 29B to 29D (see Annexure A, Schedule 2);

2. That Domino's held the Franchise Opinion based on reasonable grounds was represented by Domino's to Franchise Operators and Prospective Franchise Operators by the fact that:

(a) Domino's was required by law to provide the documents described in the particulars to paragraphs 28 and 28A;

(b) Domino's provided the Franchise Agreement Documents and Franchise Disclosure Documents (see Annexure A, Schedule 1);

to Franchise Operators in the course of operating the Domino's Business and in the course of offering terms and conditions to Prospective Franchise Operators for the entry into Franchise Agreements;

(c) Domino's provided the documents comprising the Compliance Information pleaded in paragraphs 29B to 29D (see Annexure A, Schedule 2);

to Franchise Operators in the course of operating the Domino's Business and in the course of assisting those Franchise Operators to comply with their legal obligations; and

(d) Domino's provided documents to Franchise Operators which contained the statements set out in particular 3(c) to paragraph 30 above.

31. That the Franchise Representations and/or the Franchise Opinion Representations were made by Domino's when it provided the Franchise Information, the Franchise Agreement Documents, the Franchise Disclosure Documents and the Compliance Information to Franchise Operators and Prospective Franchise Operators is to be inferred from the following matters and facts:

(a) from no later than April 2012, all Franchise Operators paid rates of pay, and afforded terms and conditions of employment, to Delivery Drivers and In-Store workers employed by them to perform work in Franchise Stores which were:

- (i) the same as the rates paid, and the terms and conditions of employment afforded, to Delivery Drivers and In-Store Workers employed by Corporate Stores; and
 - (ii) derived from the Agreements (as affected by the Deemed Base Rates and/or the Agreed Base Rate Increases); and
- (b) it is inherently unlikely that the not fewer than 300 Franchise Operators who have been parties to Franchise Agreements during the Relevant Period each independently and simultaneously determined to pay the Delivery Drivers and In-Store Workers the same rates of pay, being the rates of pay contained in the Agreements (as affected by the Deemed Base Rates and/or the Agreed Base Rate Increases), and to afford Delivery Drivers and In-Store Workers the terms and conditions of employment contained in the Agreements, absent information and advice supplied to them by the Franchisor, Domino's, that the Agreements bound them, or applied to them, or otherwise contained the rates of pay required to be paid to Delivery Drivers and In-Store Workers employed by Franchise Stores operated by them;
- (c) Domino's has since no later than 1999 been obliged by the Pre-2015 Code and the 2015 Code to provide Franchise Operators and Prospective Franchise Operators with the Franchise Information and, in the case of:
 - (i) Dominoids, that Franchise Information included the the Dominoids Sub-Franchise Agreement; and
 - (ii) MC Pizza, that Franchise Information included the MC Pizza Sub-Franchise Agreement;
- (d) the Franchise Information was required to include information in relation to revenue, profits and overheads of Franchise Stores, and wages were a significant overhead for Franchise Operators;

- (e) Domino's provided industrial compliance training and support to the Prospective Franchise Operators and Franchise Operators in the course of which it provided Franchise Operators with the documents identified in paragraphs 29B to 29D above.
- (f) since no later than December 2011, Domino's has represented to third parties and the public that one or more of the Agreements applied to all Franchise Stores, as follows:
 - (i) in December 2011, Domino's represented to the Fair Work Ombudsman (**FWO**), in the course of an investigation into compliance with Commonwealth workplace laws and in a document it knew would be made publicly available in the form of a compliance deed, that the Agreements applied to all Franchise Stores;

Particulars

1. The applicant relies on the Pro-active Compliance Deed between Domino's and the FWO dated 19 December 2011.
- (ii) in December 2011, Domino's represented to the FWO, in the course of an investigation into compliance with Commonwealth workplace laws and in a document it knew would be made publicly available in the form of a Compliance Deed, that certain underpayments which were the subject of investigation by the FWO arose because Domino's and its franchisees were paying Delivery Drivers an hourly rate and allowances based on the WR Act Agreements;

Particulars

1. The applicant relies on the Pro-active Compliance Deed between Domino's and the FWO dated 19 December 2011, Attachment A, paragraph [4].

- (iii) in December 2012, Domino's represented to the FWC in a signed document which it filed and served in connection with Commission proceedings, and which it knew would be available to the parties to the Commission proceedings and to anyone who searched the FWC file, that the "industrial arrangements" which applied to Domino's Franchise Stores were constituted by the Agreements for reasons including what it described as "transfers of business" by franchisees; and

Particulars

1. The applicant relies on a document headed "Employer's Response to Application to Terminate an Agreement Based Transitional Instrument", dated 7 December 2012.

- (iv) in November 2012, Domino's represented to the FWC in oral submissions, in circumstances where it was notorious that the transcript of such submissions was available to anyone who searched the FWC file or the FWC website, that the Agreements applied to a large number, but not all, of employees of Domino's and Franchise Operators, and that Domino's and Franchise Operators had been operating under the same industrial arrangements for over 11 years (since 2001); and

Particulars

1. The applicant relies on the transcript of oral submissions of Maree Skinner, counsel for Domino's, for purposes of a hearing on 22 November 2012 in the FWC in the matter of AG2012/11426.

- (fa) by way of the 2011 Compliance Deed, Domino's was required to facilitate compliance with relevant Commonwealth Workplace Laws (including the Fair Work Act) by developing systems and processes to provide appropriate guidance and training to franchisees, and did so (in part) by promulgating to Franchise Operators:

- (i) the Fair Work Laws – Australia Document;
 - (ii) the Workplace Laws Training Manual;
 - (iii) the Fair Work Laws – Franchise Orientation Program Document;
 - (iv) the Industrial Relations Facts – Australia Document;
- (fb) the 2013 Compliance Deed Final Report records that:
- (i) as part of an audit program required by the 2011 Compliance Deed, Domino’s developed a detailed Excel spreadsheet named the ‘Audit Calculator’ (cl 3.2.1);
 - (ii) for employees employed directly by Domino’s, the specific employee data required for the calculation was drawn from the Domino’s payroll system and entered into the Audit Calculator (cl 3.2.1);
 - (iii) Domino’s provided the Audit Calculator to each franchisee to enable them to perform their own calculations for their employees in accordance with the Deed. A detailed instruction and information pack was provided to each franchisee on how to use the Audit Calculator (cl 3.2.1);
 - (iv) one of the undertakings given by Domino’s as part of the Deed was that it would ensure that it complied at all times and in all respects with relevant Commonwealth workplace laws by developing systems and processes to ensure ongoing compliance (cl 4.3);
 - (v) this commitment was met as Domino’s developed a new comprehensive training program and information pack for franchisees titled “Fair Work Laws – Australia” (cl 4.3); and
 - (vi) the information pack and training are incorporated and presented by the Domino’s training department at franchisee induction seminars which are held quarterly (cl 4.3);

- (fc) by way of the 2014 Compliance Deed, Domino's was required to facilitate compliance with relevant Commonwealth Workplace Laws (including the Fair Work Act) by developing systems and processes to provide appropriate guidance and training to franchisees, and did so (in part) by promulgating one or more of:
- (i) the Fair Work Laws – Australia Document;
 - (ii) the Workplace Laws Training Manual;
 - (iii) the Fair Work Laws – Franchise Orientation Program; and/or
 - (iv) the Industrial Relations Facts – Australia;
- (fd) since 1 September 2012, Domino's required all new Franchise Operators to use (**DBS**) for a period of at least 24 months from the date of commencement of the applicable sub-franchise agreement for services including payroll, bookkeeping, accounting and reports. At all times during the Relevant Period, existing Franchise Operators were permitted to opt-in to use DBS. The payroll services provided by DBS included processing the weekly payroll, provision of payslips to employees, preparing the bank upload file for payroll payment to the Franchise Operator, and ensuring pay rates were updated according to the applicable award. DBS performed functions including calculating the wages to be paid to In-Store Workers and Delivery Drivers, and determining the terms and conditions to be afforded, to In-Store Workers and Delivery Drivers.

Particulars

1. Bookkeeping Service - Franchise Orientation program Document, slide 2.
2. Document entitled 'Policy – Bookkeeping Services' dated 24 June 2015 (**2015 Bookkeeping Services Policy**).
3. The three Booking Services Agreements between Domino's and Dominoids dated 21 November 2014, 20 February 2017, and 20 February 2017

respectively (**Dominoids Bookkeeping Services Agreements**);

4. The Bookkeeping Services Agreement provided to MC Pizza as an annexure to the MC Pizza Sub-Franchise Agreement;
 5. Proforma agreement entitled 'Bookkeeping Services Agreement'.
- (g) since no later than 2016, Domino's and Franchise Operators have used an electronic system known as TANDA which was used to construct rosters, record employee time and attendance, and to interpret the current relevant industrial entitlements and to interact with the payroll and bookkeeping systems (**TANDA**). TANDA was configured around the requirements of the Agreements. Domino's required all Franchise Operators to use TANDA from 1 July 2017;

Particulars

1. The applicant relies on:
 - (a) the statement of Tim van Schyndel to the FWC dated 31 October 2017;
 - (b) the transcript of oral evidence of Tim van Schyndel at a hearing before the FWC in the matter of AG2017/2309 on 1 November 2017.
 2. Document entitled 'TANDA – Bookkeeper Webinar' dated 13 December 2016' (at 11.40-13.00mins);
 3. Document entitled 'TANDA Information Kit' dated May 2017 (at page 8);
 4. Document entitled 'Policy – TANDA Software Implementation' dated 18 May 2017; and
 5. Document entitled 'TANDA Timesheet Webinar' dated 24 May 2017 (at 6.05mins).
- (h) in September 2017, Domino's represented to the Retail and Fast Food Worker's Union (**RAFFWU**) that the Agreements applied to the vast majority of Franchise Operators; and

Particulars

6. The applicant relies on an email from Tim van Schyndel, National Employee Relations Manager of Domino's since 2011, to Josh Cullinan with the

subject 'Domino's 2005 Agreement Coverage',
dated 25 September 2017.

- (i) in October 2017, Domino's represented to the FWC in the form of a submission and sworn evidence which it knew would be tendered in the proceedings and available to anyone who searched the FWC file that the Agreements applied to all Franchise Stores and that Domino's and all Franchise Operators had been operating under the same industrial arrangement for over 16 years (since 2001) as all of the enterprise agreements which were the subject of those proceedings were, with one minor exception, in mirror terms.

Particulars

1. The applicant relies on:
 - (a) a document headed "Outline of Submissions for Domino's Pizza Enterprises Limited" dated 31 October 2017; and
 - (b) a statement of Tim van Schyndel dated 31 October 2017.

D.2 The Franchise Conduct

32. Since no later than December 2011, and in the course of managing the Domino's Business, Domino's engaged in conduct in relation to the performance of compliance and audit activities (the **Compliance and Audit Activities**).

Particulars

1. Since no later than December 2011, Domino's undertook compliance activities pursuant to the terms of two compliance deeds into which Domino's entered with the FWO in 2011 and 2014 respectively.
 2. The compliance activities included conducting audits and reporting on the results of those audits in relation to wages and allowances paid to Delivery Drivers and In-Store Workers employed to perform work in Corporate Stores and in Franchise Stores.
 3. The compliance audits were predicated upon the basis that the rates of pay required to be paid and the terms and conditions of employment required to be afforded to Delivery Drivers and In-Store Workers employed by all Corporate Stores and Franchise Stores were derived from the Agreements.
 4. Since no later than July 2013, Domino's provided Compliance Information to Prospective Franchise Operators and Franchise Operators, and the particulars to paragraph 29 are included.
- 32A. During the Relevant Period, Domino's conducted audits of Franchise Operators. Where an audit established that employees were not being paid by a Franchise Operator in accordance with the relevant Agreements, Domino's stated to those Franchise Operators that those employees should have been paid in accordance with the relevant Agreements

(adjusted as agreed with the SDA) and did not ever state that the Franchise Operators ought to have paid those employees in accordance with the Award.

33. At all material times during the Relevant Period, and in the course of managing the Domino's Business, Domino's engaged in conduct in relation to provision of:
- (a) centralised payroll services through the bookkeeping service, DBS; and
 - (b) services for delivery tracking, roster construction, employee time and attendance and the interpretation of industrial instrument entitlements, including TANDA, Pulse, Payroll Award Interpreter (being a system used prior to the introduction of TANDA to calculate the award applicable to each employee and each shift) and GPS Tracker (being a delivery tracking system),

(the **Payroll Services**).

Particulars

1. At all material times during the Relevant Period, Domino's provided Franchise Operators with access to centralised payroll services hosted, operated or made available by Domino's.
2. The centralised payroll service contained a method of ascertaining the applicable rates of pay and terms and conditions of employment required to be afforded to Delivery Drivers and In-Store Workers and a method for calculating the amounts of pay and the periods of leave or other benefits required to be paid or afforded to those Delivery Drivers and In-Store Workers in each pay period.
3. The rates of pay and terms of conditions of employment upon which calculations were made by the centralised payroll service were derived from and configured around the requirements of the Agreements.
4. Since 1 September 2012, Domino's required all new Franchise Operators to use DBS for a period of at least 24 months from the date of commencement of

the applicable sub-franchise agreement for services including payroll, bookkeeping, accounting and reports. The payroll services provided by DBS included processing the weekly payroll, provision of payslips to employees, preparing the bank upload file for payroll payment to the Franchise Operator, and ensuring pay rates were updated according to the applicable award. DBS performed functions including calculating the wages to be paid to In-Store Workers and Delivery Drivers, and determining the terms and conditions to be afforded, to In-Store Workers and Delivery Drivers.

5. Since no later than 1 July 2017, Domino's required all Franchise Operators to use an electronic rostering, attendance and time system known as TANDA which was configured around the requirements of the Agreements.

33A. As part of the conduct in providing the Payroll Services,

- (a) in relation to DBS, Domino's stated to Franchise Operators in the Bookkeeping Services Agreement that:

- (i) "Domino's represents and warrants to the sub-franchisee that: it has the necessary skills, experience and resources and is properly qualified to complete the Bookkeeping Services to a professional standard"; and

- (ii) "Domino's represents and warrants to the sub-franchisee that: The services to be provided under this Agreement are fit for their intended purpose in accordance with generally accepted accounting practices and principles. Domino's acknowledges that all services provided will be of professional and workmanlike quality and will be provided within a reasonable time"; and

- (b) in relation to TANDA, during the delivery by Domino's of training to Franchise Operators which included:

- (i) the delivery of the "TANDA – Bookkeeper Webinar" dated 13 December 2016, a representative of TANDA stated to Franchise Operators (at 11.40-13.00mins) that "so what TANDA basically

does, it's worked with Domino's to build up the award rules that apply to Domino's users or employees at this stage, we've crafted those rules, we've built them into the TANDA system and they will therefore apply for every employee depending on their circumstances, so that includes higher duties, so a driver that might be acting as an In-Store, it includes overtime ... and certainly we have other allowances and things built into that”;

- (ii) the provision to Franchise Operators of a “TANDA Information Kit” dated May 2017, Domino's stated to Franchise Operators (at page 8) that TANDA has the Domino's award details pre-loaded, and overtime and public holiday rates will automatically be applied to roster calculations and timesheets;
- (iii) the provision to Franchise Operators of a “Policy – TANDA Software Implementation” document dated 18 May 2017, Domino's stated to Franchise Operators that “...every store in Australia and New Zealand will be required to have the program up and running by 1 July 2017... The installation of the TANDA workforce management program will assist DPE and its Franchisees achieve better compliance with employee entitlements”;
- (iv) the delivery of the “TANDA Timesheet Webinar” dated 24 May 2017, Domino's stated to Franchise Operators (at 6.05mins) that “Payroll will be managing all the payroll side of things for you in TANDA, so the pay rates and all that kind of stuff. Just be aware that payrates don't come from Pulse, they actually come from our payroll system.”

33B. During the Relevant Period, the Payroll Services and each of the computer systems that operated from time to time calculated employee entitlement rates and conditions by reference to the relevant Agreements (with adjustments as agreed with the SDA) and a number of other additional payments and not by reference to the Award.

34. The engaging by Domino's in the Compliance and Audit Activities as alleged in paragraph 32 and 32A above and the provision by Domino's to Franchise Operators of the Payroll Services and computer systems with the attributes alleged in paragraphs 33, 33A, and 33B above (together, the **Franchise Conduct**):

(a) constituted an implied representation made by Domino's to Franchise Operators that the minimum rates of pay and the minimum terms and conditions of employment of Delivery Drivers and In-Store Workers employed to perform work in Franchise Stores that could lawfully be paid and afforded were:

(i) those contained in the Agreements; and/or

(ii) the rates of pay and terms and conditions of employment utilised in the Payroll Services which were derived from the Agreements (as affected by the Deemed Base Rates and/or the Agreed Base Rate Increases); and/or

(c) constituted an implied representation made by Domino's to Franchise Operators that by engaging DBS for the provision of services including payroll services, the Franchise Operator would pay Delivery Drivers and In-Store Workers rates of pay, and afford Delivery Drivers terms and conditions of employment, that were compliant with applicable industrial laws; and/or

(d) constituted an implied representation made by Domino's to Franchise Operators that by using the TANDA system, the Franchise Operator would pay Delivery Drivers and In-Store Workers rates of pay, and afford Delivery Drivers terms and conditions of employment, that were compliant with applicable industrial laws.

34A. Further and alternatively, Domino's conduct in engaging in the Compliance and Audit Activities as alleged in paragraph 32 and 32A above and in providing to Franchise Operators the Payroll Services and computer systems with the attributes alleged in paragraphs 33, 33A, and 33B above (together, the **Franchise Opinion Conduct**):

(a) constituted an implied representation to Franchise Operators that:

- (i) Domino's held the opinion that the minimum rates of pay and the minimum terms and conditions of employment of Delivery Drivers and In-Store Workers employed to perform work in Franchise Stores that could lawfully be paid or afforded were:
 - (1) those contained in the Agreements; and/or
 - (2) the rates of pay and terms and conditions of employment provided in the Payroll Services (which were derived from the Agreements); and/or
- (ii) Domino's held the opinion that by engaging DBS for the provision of services including payroll services, the Franchise Operator would pay Delivery Drivers and In-Store Workers rates of pay, and afford Delivery Drivers terms and conditions of employment, that were compliant with applicable industrial laws;
- (iii) Domino's held the opinion that by using the TANDA system, the Franchise Operator would pay Delivery Drivers and In-Store Workers rates of pay, and afford Delivery Drivers terms and conditions of employment, that were compliant with applicable industrial laws,

(together and severally the **Conduct Opinion**); and
- (iv) Domino's held the Conduct Opinion based on reasonable grounds; and/or
- (b) was conduct which conveyed to the Franchise Operators:
 - (i) the Conduct Opinion; and/or
 - (ii) that Domino's held the Conduct Opinion based on reasonable grounds.

D3. **Fair Work Ombudsman**

- 34B. On 7 December 2011, the FWO agreed with Domino's on a Summary of Legal Position in relation to wage rates and entitlements of Delivery Drivers to be used by Domino's and its Franchise Operators in the national self-auditing by Franchise Operators and rectification of underpayment of such wages and entitlements.

Particulars

As to the Summary of Legal Position, the applicant refers to DPE.004.001.0276.

- 34C. The FWO completed its compliance activity audit of Domino's and its Franchisee Operators in 2017 on the basis that the Agreements applied to all Delivery Drivers and In-Store employees employed by Domino's and its Franchise Operators.

Particulars

The findings of the FWO's compliance activity audit are contained in the FWO's Domino's Compliance Activity Report 2018 (DPE.004.001.0256).

E. TRADE OR COMMERCE

35. The Franchise Representations and/or Franchise Opinion Representations were made by Domino's in trade or commerce within the meaning of s 18 of the ACL.

Particulars

1. The Franchise Representations and/or Franchise Opinion Representations were made in the course of Domino's operating the Domino's Business of selling fast food for profit and issuing licences to Franchise Operators under Franchise Agreements.
2. The Franchise Representations and/or Franchise Opinion Representations were made in the course of offering to Prospective Franchise Operators terms and conditions for the entry into Franchise Agreements for the operation of Franchise Stores, pursuant to which Domino's obtained payments in the form of fees, levies and charges from Franchise Operators.
3. The Franchise Representations and/or Franchise Opinion Representations were made in the course of

the provision of the Franchise Information to Prospective Franchise Operators and Franchise Operators and in the course of the provision of business services, information, advice and training to Franchise Operators.

36. The Franchise Conduct and/or Franchise Opinion Conduct was engaged in by Domino's in trade or commerce within the meaning of s 18 of the ACL.

Particulars

1. The Franchise Conduct was engaged in in the course of Domino's operating the Domino's Business of selling fast food for profit and issuing licences to Franchise Operators under Franchise Agreements.
2. The Franchise Conduct was engaged in during the provision of business services, information, advice and training to Franchise Operators.

F. THE TRUE POSITION

The Transmission of Business and Transfer of Business Provisions

36A. Relevantly, the transmission and transfer of business provisions operated as follows:

- (a) prior to 26 March 2006 (the **Pre-Reform WR Act Period**):
 - (i) where an employer was bound by a certified agreement and at a later time a new employer became the successor, transmittee or assignee (whether immediate or not) of the whole or part of the outgoing employer's business then:
 - (A) subject to any order made by the Australian Industrial Relations Commission under s 170MBA(2), the new employer was bound by the certified agreement; and
 - (B) the outgoing employer ceased to be bound by the certified agreement, to the extent that it related to the whole or part of the business;
 - (ii) the transferred certified agreement (until it was terminated or replaced)

provided the terms and conditions of employment for each of:

- (A) employees who transferred from the outgoing employer to the incoming employer; and
 - (B) new employees of the incoming employer; and
 - (C) existing employees of the incoming employer who were not otherwise covered by a certified agreement; and
- (b) subject to paragraph 36A(a) above, during the period 27 March 2006 to 30 June 2009 (the **Post Reform WR Act Period**):
- (i) where a new employer became the successor, transmittee or assignee of the whole, or a part, of a business of an old employer; and
 - (ii) the old employer was an employer within the meaning of s 6(1) of the Post-Reform WR Act; and
 - (iii) immediately before the time of transmission the outgoing employer and employees of the outgoing employer were bound by an agreement certified under the Pre-Reform WR Act or approved under the Post-Reform WR Act; and
 - (iv) there was at least one transferring employee in relation to an agreement certified under the Pre-Reform WR Act or approved under the Post- Reform WR Act;

then, subject to an order of the Commission, the new employer was bound by that agreement:

- (v) with respect to the transferring employees only; and
- (vi) only until the first of the following occurred:
 - (A) the agreement was terminated;
 - (B) there ceased to be any transferring employees;

(C) the new employer ceased to be bound by the agreement in relation to all transferring employees in relation to the agreement; or

(D) a 12-month period following the transmission of the business elapsed (the **sunset period**); and

(c) subject to paragraph 36A(a) above, during the period 1 July 2009 to 1 January 2010, if a transferable instrument covered an old employer and a transferring employee immediately before the termination of the transferring employee's employment with the old employer, then the transferable instrument covered the new employer and the transferring employee in relation to the transferring work after the transfer time (where transferring work means work the employee performs for the new employer which is the same or substantially the same as the work performed for the old employer) and any new employees employed by the new employer before 1 January 2010; and

(d) subject to paragraph 36A(a) above, during the period 1 January 2010 to 23 January 2018, if a transferable instrument covered an old employer and a transferring employee immediately before the termination of the transferring employee's employment with the old employer, then the transferable instrument covered the new employer and the transferring employee in relation to the transferring work after the transfer time (where transferring work means work the employee performs for the new employer which is the same or substantially the same as the work performed for the old employer),

(the period 1 July 2009 to 23 January 2018 referred to in 36A(c) and (d) is the **FW Act Period**).

36B. Where a Franchise Operator which was not otherwise bound by a WR Act Agreement became bound by a WR Act Agreement as the result of a transmission of business in the Post-Reform WR Act Period, that Franchise Operator ceased to be bound by the WR Act Agreement with respect to any of their employees after the sunset period, provided that the sunset period expired on or before 30 June 2009.

Greenfields Stores

36C. In this section “Greenfields Store” means a new franchise store which commenced to be operated for the first time by a Franchise Operator in circumstances where that store had not previously ever been operated by either Domino’s as a corporate store or by a previous Franchise Operator.

Greenfields opened in the Pre-Reform WR Act Period

36D. Where a Franchise Operator started operating a Greenfields Store during the Pre-Reform WR Act Period, there was no transmission of business from Domino’s to that Franchise Operator in respect of that Greenfields Store.

Greenfields Opened in the Post-Reform WR Act Period

36E. Where a Franchise Operator started operating a Greenfields Store during the Post-Reform WR Act Period, there was no transmission of business from Domino’s to that Franchise Operator in respect of that Greenfields Store.

Greenfields opened in the Fair Work Act Period

36F. Where a Franchise Operator started operating a Greenfields Store during the FW Act Period and, within three months of starting to operate the Greenfields Store the Franchise Operator did not employ any transferring employees within the meaning of s 311 of the FW Act, there was no transfer of business from Domino’s to that Franchise Operator in respect of that Greenfields Store.

Coverage and Application of the WR Act Agreements

37. In the Relevant Period, the WR Act Agreements covered and applied to:
- (a) Domino’s and its Delivery Driver employees in Corporate Stores;
 - (b) the Franchise Operators named as an employer in one or more of the WR Act Agreements (the **Original WR Agreement Franchise Operators**), and their Delivery Driver employees;
 - (c) any Franchise Operator, other than an Original WR Agreement Franchise Operator who, in the period prior to 25 March 2006, became

the successor, transmittee or assignee (whether immediate or not) within the meaning of s 170MB of the WR Act of the whole or a part of a business comprised of a Corporate Store or a Franchise Store operated by an Original WR Agreement Franchise Operator, in relation to that business (the **WR Transmission Franchise Operators**), and their Delivery Driver employees in that business;

- (d) any Franchise Operator, other than an Original WR Agreement Franchise Operator or a WR Transmission Franchise Operator, in relation to any franchise in respect of which there was transfer of business within the meaning of s 311 of the FW Act from Domino's, an Original WR Franchise Agreement Operator or a WR Transmission Franchise Operator to that Franchise Operator, and such of their Delivery Driver employees as:
 - (i) were transferring employees within the meaning of s 311 of the FW Act; or
 - (ii) commenced employment in the transferred business in the period 1 July 2009 to 31 December 2009;
- (dd) any Franchise Operator, other than an Original WR Agreement Franchise Operator or a WR Transmission Franchise Operator, in relation to any franchise in respect of which there was transfer of business within the meaning of s 311 of the FW Act from a Franchise Operator to whom a WR Act Agreement applied by reason of a transmission of business that took place prior to 30 June 2009, where the transfer of business took place within 12 months of the transmission of business, to that Franchise Operator, and such of their Delivery Driver employees as:
 - (iii) were transferring employees within the meaning of s 311 of the FW Act; or
 - (iv) commenced employment in the transferred business in the period 1 July 2009 to 31 December 2009; and

- (e) any Franchise Operator, other than an Original WR Agreement Franchise Operator or a WR Transmission Franchise Operator, in relation to any Franchise in respect of which there was transfer of business within the meaning of s 311 of the FW Act from a Franchise Operator to whom one of the WR Act Agreements applied by reason of an earlier transfer of business, and such of their Delivery Driver employees as:
 - (i) were covered by one of the WR Act Agreements at the date of the transfer of business and were transferring employees within the meaning of s 311 of the FW Act; or
 - (ii) commenced employment in the transferred business in the period 1 July 2009 to 31 December 2009.

38. In the Relevant Period, the WR Act Agreements did not cover or apply to:

- (aa) Franchise Operators, other than Original WR Agreement Franchise Operators, in relation to any franchise that the Franchise Operator commenced to operate in the period prior to 25 March 2006 where the Franchise Operator was not a successor, assignee or transmittee within the meaning of s 170MB of the WR Act of a person to whom a WR Act Agreement applied, and their Delivery Driver employees in that franchise;
- (a) Franchise Operators, other than Original WR Agreement Franchise Operators or WR Transmission Franchise Operators, in relation to any franchise that the Franchise Operator commenced to operate in the period 26 March 2006 to 30 June 2009, irrespective of whether or not there was, in relation to that franchise, a transmission of business within the meaning of the WR Act, or their Delivery Driver employees in that franchise;
- (b) Franchise Operators, other than Original WR Agreement Franchise Operators or WR Transmission Franchise Operators, in relation to any franchise that the Franchise Operator commenced to operate on or after

1 July 2009 in relation to which there was no transfer of business within the meaning of s 311 of the FW Act, or their Delivery Driver employees in that franchise;

- (c) Franchise Operators, other than Original WR Agreement Franchise Operators or WR Transmission Franchise Operators, in relation to any franchise in respect of which there was transfer of business within the meaning of s 311 of the FW Act from Domino's, an Original WR Agreement Franchise Operator or a WR Transmission Franchise Operator, in relation to such of their Delivery Driver employees, and those employees, as:
 - (i) were not transferring employees in relation to the transferred business within the meaning of s 311 of the FW Act; and
 - (ii) commenced employment in the transferred business on or after 1 January 2010; and

- (d) Franchise Operators, other than Original WR Agreement Franchise Operators or WR Transmission Franchise Operators, in relation to any franchise in respect of which there was transfer of business within the meaning of s 311 of the FW Act from another Franchise Operator to whom an WR Act Agreement covered and applied in relation to that franchise by reason of an earlier transfer of business within the meaning of s 311 of the FW Act, in relation to such of their Delivery Driver employees, and those employees, as:
 - (i) were not covered by the WR Act Agreement as at the date of the transfer; or
 - (ii) were not a transferring employee in relation to the transferred business within the meaning of s 311 of the FW Act; or

- (iii) commenced employment in the transferred business after 1 January 2010.

38A. Where a Franchise Operator opened a Greenfield Store in the circumstances described in paragraph 36D above and:

- (a) was not bound by a WR Act Agreement when they started operating the Greenfields Store;
- (b) did not subsequently become bound by a WR Act Agreement during the Pre-Reform WR Act Period; and
- (c) the Franchise Operator continued to operate that Greenfields Store during the Relevant Period;

the Delivery Drivers employed by that Franchise Operator in that Greenfields Store during the Relevant Period were Award Workers.

38B. Where a Franchise Operator opened a Greenfield Store in the circumstances described in paragraph 36D above and:

- (a) was not bound by a WR Act Agreement when they started operating the Greenfields Store;
- (b) did not subsequently become bound by a WR Act Agreement during the Pre-Reform WR Act Period;
- (c) it sold their franchise during the FW Act Period to a Franchise Operator who was not bound by a WR Act Agreement; and
- (d) the incoming Franchise Operator continued to operate that Greenfields Store in the Relevant Period;

the Delivery Drivers employed by the incoming Franchise Operator in that Greenfields Store during the Relevant Period were Award Workers.

38C. Where a Franchise Operator opened a Greenfields Store in the circumstances described in paragraph 36F above and

- (a) no WR Act Agreement applied to the Franchise Operator when it started operating the Greenfields Store; and
- (b) the Franchise Operator continued to operate that Greenfields Store during the Relevant Period;

the Delivery Drivers employed by that Franchise Operator in that Greenfields Store during the Relevant Period were Award Workers.

38D. Where a Franchise Operator opened a Greenfields Store in the circumstances described in paragraph 36F above and:

- (a) no WR Act Agreement applied to the Franchise Operator when it started operating the Greenfields Store;
- (b) the Franchise Operator sold their franchise during the FW Act Period to a Franchise Operator who was not bound by a WR Act Agreement; and
- (c) the incoming Franchise Operator continued to operate that Greenfields Store in the Relevant Period,

the Delivery Drivers employed by the incoming Franchise Operator in that Greenfields Store during the Relevant Period were Award Workers.

38E. In relation to the store at Shop 3, 128 Princes Highway, Ulladulla, NSW, 2539 (the **Ulladulla Store**):

- (a) the Franchise Operator Seagan Pty Ltd commenced to operate the Ulladulla Store on 20 March 2006;
- (b) the Ulladulla store was a greenfields store; and
- (c) there was no transmission of business from Domino's to Seagan Pty Ltd in respect of the Ulladulla Store; and
- (d) Seagan Pty Ltd was not bound, and did not after 20 March 2006 become bound, by a WR Act Agreement ; and

- (e) Seagan Pty Ltd sold the Ulladulla Store to an incoming Franchise Operator, Divenif Pty Ltd, on or about 17 January 2011; and
- (f) the Delivery Drivers of the incoming Franchise Operator Divenif Pty Ltd in the Ulladulla Store were Award Workers.

38F. In relation to the store at Wollumbin Street, Murwillumbah (the **Murwillumbah Store**):

- (a) the Franchise Operator Shree Shiridi Pty Ltd started operating the Murwillumbah Store on 24 December 2014;
- (b) the Murwillumbah Store was a Greenfields Store;
- (c) there was no transfer of business from Domino's to Shree Shiridi Pty Ltd in respect of the Murwillumbah Store;
- (d) no WR Act Agreement applied, or came to apply, to Shree Shiridi Pty Ltd; and
- (e) the Delivery Drivers of Shree Shiridi Pty Ltd in the Murwillumbah Store were Award Workers.

39. By reason of the matters pleaded in paragraphs 36A-36F, 37 and 38 above, in the Relevant Period, Delivery Drivers in the circumstances referred to in 38 – 38F above were:

- (a) Award Workers; and
- (b) entitled to the minimum rates of pay, and terms and conditions of employment, prescribed by the Award.

40. By reason of the matters in paragraph 39 above, the Franchise Representations were misleading and deceptive (or likely to be so) and the Franchise Conduct was misleading and deceptive (or likely to be so) because:

- (aa) enterprise bargaining agreements did not govern the terms and conditions of employment required to be afforded to Delivery Drivers in the circumstances pleaded in paragraph 38 above;

- (a) the WR Act Agreements did not in fact bind Franchise Operators with respect to the rates of pay required to be paid, and the terms and conditions of employment required to be afforded, to Delivery Drivers in the circumstances pleaded in paragraph 38 above;
- (b) the WR Act Agreements did not, in fact, apply to Franchise Operators with respect to the rates of pay required to be paid, and the terms and conditions of employment required to be afforded, to Delivery Drivers in the circumstances pleaded in paragraph 38 above;
- (c) the WR Act Agreements did not contain the rates of pay required to be paid, and the terms and conditions of employment required to be afforded, to Delivery Drivers employed to perform work by Franchise Operators in Franchise Stores in the circumstances pleaded in paragraph 38 above;
- (d) the rates required to be paid, and the terms and conditions of employment required to be afforded, to all Delivery Drivers employed to perform work in Franchise Stores in the circumstances pleaded in paragraph 38 above, were not the same as those required to be paid to Delivery Drivers employed to perform work in Corporate Stores; and/or
- (e) it was not lawful to pay Delivery Drivers, in the circumstances set out in paragraph 38 above, the rates of pay, or to afford them the terms and conditions of employment, set out in the Agreements.

40A. Further and alternatively, by reason of the matters in paragraph 39 above, the Franchise Opinion Representations were misleading and deceptive (or likely to be so) and the Franchise Opinion Conduct was misleading and deceptive (or likely to be so) because:

- (a) of the matters pleaded in paragraphs 40(a) to (e) above; and
- (b) Domino's did not have reasonable grounds for the Franchise Opinion and/or the Conduct Opinion.

Particulars

1. The true position was readily ascertainable by reference to the provisions of the applicable legislation.
2. A reasonable company in the position of Domino's ought to have known, alternatively, ought to have requested and/or received advice to the effect of, the matters pleaded in paragraphs 40(a) to (e) above.

Coverage and Application of the FW Act Agreements

41. In the Relevant Period, the FW Act Agreements covered and applied to, and only covered and applied to:
- (a) Domino's and its In-Store Workers in Corporate Stores;
 - (b) the Franchise Operators the FW Act Agreements were expressed to cover (the **Original FW Agreement Franchise Operators**), and their In-Store Workers;
 - (c) any Franchise Operator, other than an Original FW Agreement Franchise Operator, in relation to any franchise in respect of which there was a transfer of business within the meaning of s 311 of the FW Act from Domino's or an Original FW Agreement Franchise Operator, and such of their In-Store Workers as:
 - (i) were transferring employees within the meaning of s 311 of the FW Act; or
 - (ii) commenced employment in the transferred business in the period 1 July 2009 to 31 December 2009;
 - (d) any Franchise Operator, other than an Original FW Agreement Franchise Operator, in relation to any franchise in respect of which there was transfer of business within the meaning of s 311 of the FW Act from another Franchise Operator to whom one of the FW Act Agreements applied by reason of an earlier transfer of business, and such of their In-Store Workers as:

- (i) were covered by one of the FW Act Agreements at the date of the transfer of business, and were transferring employees within the meaning of s 311 of the FW Act; or
- (ii) commenced employment in the transferred business in the period 1 July 2009 to 31 December 2009.

42. In the Relevant Period, the FW Act Agreements did not cover or apply to:

- (a) Franchise Operators, other than an Original FW Agreement Franchise Operator, in relation to any franchise that the Franchise Operator commenced to operate on or after 1 July 2009 in relation to which there was no transfer of business within the meaning of s 311 of the FW Act, in relation to their In-Store Workers in that franchise and those In-Store Workers;
- (b) Franchise Operators, other than an Original FW Agreement Franchise Operator, in relation to whom there was a transfer of business within the meaning of s 311 of the FW Act from Domino's or an Original FW Agreement Franchise Operator, in relation to such of their In-store Workers, and those In-Store Workers, as:
 - (i) were not a transferring employee in relation to the transferred business within the meaning of s 311 of the FW Act; or
 - (ii) commenced employment in the transferred business on or after 1 January 2010; and
- (c) Franchise Operators, other than an Original FW Agreement Franchise Operator, in relation to any franchise in respect of which there was a transfer of business within the meaning of s 311 of the FW Act from a Franchise Operator bound by a FW Act Agreement in relation to that franchise by reason of an earlier transfer of business in relation to such of their In-Store Workers, and those In-Store Workers, as:

- (i) were not covered by the FW Act Agreement as at the date of the transfer; or
- (ii) were not a transferring employee in relation to the transferred business within the meaning of s 311 of the FW Act; or
- (iii) commenced employment in the transferred business on or after 1 January 2010.

42A. Where a Franchise Operator which opened a Greenfields Store in the circumstances described in paragraph 36D above:

- (a) was not bound by a WR Act Agreement when they started operating the Greenfields Store;
- (b) did not subsequently become bound by a WR Act Agreement during the Pre-Reform WR Act Period; and
- (c) did not become bound by a FW Act Agreement; and
- (d) the Franchise Operator continued to operate that Greenfields Store during the Relevant Period,

the In-Store Workers employed by that Franchise Operator in that Greenfield Store during the Relevant Period were Award Workers.

42B. Where a Franchise Operator which opened a Greenfield Store in the circumstances described in paragraph 36D above:

- (a) was not bound by a WR Act Agreement when they started operating the Greenfields Store;
- (b) did not subsequently become bound by a WR Act Agreement during the Pre-Reform WR Act Period;
- (c) did not become bound by a FW Act Agreement;

- (c) sold their franchise during the FW Act Period to a Franchise Operator who was not bound by a WR Act Agreement or a FW Act Agreement; and
- (d) the incoming Franchise Operator continued to operate that Greenfields Store in the Relevant Period;

the In-Store Workers employed by the incoming Franchise Operator in that Greenfields Store during the Relevant Period were Award Workers.

42C. Where a Franchise Operator opened a Greenfields Store in the circumstances described in paragraph 36F above and:

- (a) no WR Act Agreement or FW Act Agreement applied to the Franchise Operator when it started operating the Greenfields Store; and
- (b) the Franchise Operator continued to operate that Greenfields Store during the Relevant Period,

the In-Store Workers employed by that Franchise Operator in that Greenfields Store during the Relevant Period were Award Workers.

42D. Where a Franchise Operator opened a Greenfields Store in the circumstances described in paragraph 36F above and:

- (c) no WR Act Agreement or FW Act Agreement applied to the Franchise Operator when it started operating the Greenfields Store;
- (d) the Franchise Operator sold that franchise during the FW Act Period to a Franchise Operator to whom a FW Act Agreement did not apply; and
- (e) the incoming Franchise Operator continued to operate that Greenfields Store in the Relevant Period,

the In-Store Workers employed by the incoming Franchise Operator in that Greenfields Store during the Relevant Period were Award Workers.

42E. In relation to the Murwillumbah Store:

- (a) the Franchise Operator Shree Shiridi Pty Ltd started operating the Murwillumbah Store on 24 December 2014;
 - (b) the Murwillumbah Store was a Greenfields Store;
 - (c) there was no transfer of business from Domino's to Shree Shiridi Pty Ltd in respect of the Murwillumbah Store; and
 - (d) no WR Act Agreement applied, or came to apply, to Shree Shiridi Pty Ltd;
 - (e) no FW Act Agreement applied, or came to apply, to Shree Shiridi Pty Ltd; and
 - (f) the In-store Workers of Shree Shiridi Pty Ltd in the Murwillumbah Store were Award Workers.
43. By reason of the matters pleaded in paragraphs 36A-36F, 41 and 42 above, in the Relevant Period, In-Store Workers in the circumstances referred to in 42 – 42E above were:
- (a) Award Workers; and
 - (b) entitled to the minimum rates of pay, and terms and conditions of employment, prescribed by the Award.
44. By reason of the matters in paragraph 43 above, the Franchise Representations were misleading and deceptive (or likely to be so) and the Franchise Conduct was misleading and deceptive (or likely to be so) because:
- (aa) enterprise bargaining agreements did not govern the terms and conditions of employment required to be afforded to In-Store Workers in the circumstances pleaded in paragraph 42 above;
 - (a) the FW Act Agreements did not in fact bind Franchise Operators with respect to the rates of pay required to be paid, and the terms and conditions of employment required to be afforded, to In-Store Workers in the circumstances pleaded in paragraph 42 above;

- (b) the FW Act Agreements did not, in fact, apply to Franchise Operators with respect to the rates of pay required to be paid, and the terms and conditions of employment required to be afforded, to In-Store Workers in the circumstances pleaded in paragraph 42 above;
- (c) the FW Act Agreements did not contain the rates of pay required to be paid, and the terms and conditions of employment required to be afforded, to In-Store Workers employed to perform work by Franchise Operators in Franchise Stores in the circumstances pleaded in paragraph 42 above;
- (d) the rates required to be paid, and the terms and conditions of employment required to be afforded, to all In-Store Workers employed to perform work in Franchise Stores in the circumstances pleaded in paragraph 42 above, were not the same as those required to be paid to In-Store Workers employed to perform work in Corporate Stores; and/or
- (e) it was not lawful to pay In-Store Workers, in the circumstances set out in paragraph 42 above, the rates of pay, or to afford them the terms and conditions of employment, set out in the FW Act Agreements.

44A. Further and alternatively, by reason of the matters in paragraph 43 above, the Franchise Opinion Representations were misleading and deceptive (or likely to be so) and the Franchise Opinion Conduct was misleading and deceptive (or likely to be so) because:

- (a) of the matters pleaded in paragraphs 44(a) to (e) above; and
- (b) Domino's did not have reasonable grounds for the Franchise Opinion and/or the Conduct Opinion.

Particulars

1. The true position was readily ascertainable by reference to the provisions of the applicable legislation.

2. A reasonable company in the position of Domino's ought to have known, alternatively, ought to have requested and/or received advice to the effect of, the matters pleaded in paragraphs 44(a) to (e) above.

G. THE CONTRAVENING CONDUCT

45. By making the Franchise Representations and/or Franchise Opinion Representations, Domino's engaged in conduct which was misleading or deceptive, or likely to mislead or deceive, Franchise Operators and Prospective Franchise Operators:
- (a) described in paragraphs 38 and 42;and/or
 - (b) described in paragraphs 38A – 38F and 42A – 42E above, in relation to the employees described in those paragraphs

Particulars

The applicant relies on the matters in paragraphs 40, 40A, 44, and 44A.

46. By maintaining and/or failing to correct or qualify the Franchise Representations and/or the Franchise Opinion Representations, Domino's engaged in conduct which was misleading or deceptive, or likely to mislead or deceive, the Franchise Operators and Prospective Franchise Operators.
- (a) described in paragraphs 38 and 42; and/or
 - (b) described in paragraphs 38A – 38F and 42 – 42E above, in relation to the employees described in those paragraphs.
47. By engaging in the Franchise Conduct and/or the Franchise Opinion Conduct, Domino's engaged in conduct which was misleading or deceptive, or likely to mislead or deceive, the Franchise Operators:
- (a) described in paragraphs 38 and 42; and/or
 - (b) described in paragraphs 38A – 38F and 42 – 42E above, in relation to the employees described in those paragraphs

Particulars

The applicant relies on the matters in paragraphs 40, 40A, 44, and 44A.

H. CAUSATION

H.1 Award Workers

48. In reliance on the Franchise Representations, and/or the Franchise Opinion Representations, and/or because of the Franchise Conduct and/or Franchise Opinion Conduct, Prospective Franchise Operators and Franchise Operators, in the Relevant Period:

- (a) engaged workers, including Award Workers, to perform work in Franchise Stores;
- (b) paid all Delivery Drivers and In-Store Workers engaged by them, including Award Workers, the rates set out in the Agreements as affected by the Award Deemed Base Rates and/or the Agreed Base Rate Increases;
- (c) afforded Delivery Drivers and In-Store Workers, including Award Workers, the terms and conditions of employment set out in the Agreements and/or the Agreed Base Rate Increases; and
- (d) did not pay or afford the Award Workers the rates of pay and terms and conditions of employment provided for in the Award, including, where applicable:
 - (i) a 25% casual loading;
 - (ii) evening work penalties;
 - (iii) weekend penalties;
 - (iv) public holiday penalties;
 - (v) a meal allowance;
 - (vi) a special clothing allowance;
 - (vii) an excess travelling cost payment;
 - (viii) a travelling time reimbursement payment;

- (ix) a kilometre-based delivery allowance; and
- (x) minimum 3-hour shifts for casual employees.

Particulars

1. It is to be inferred that the Franchise Operators relied on the Franchise Representations and/or the Franchise Opinion Representations, and acted because of the Franchise Conduct and/or Franchise Opinion Conduct, and that the Prospective Franchise Operators relied on the Franchise Representations, by reason of the fact that it is inherently unlikely that the not fewer than 300 Franchise Operators who have been parties to Franchise Agreements during the Relevant Period each independently and simultaneously determined to pay the Delivery Drivers and In-Store Workers the rates of pay contained in the Agreements (as affected by the Deemed Base Rates and/or the Agreed Base Rate Increases) and to afford Delivery Drivers and In-Store Workers the terms and conditions of employment contained in the Agreements (as affected by the Deemed Base Rates and/or the Agreed Base Rate Increases) absent information and advice supplied to them by the Franchisor, Domino's, that the Agreements were binding on them and applied to Franchise Stores operated by them.
 2. Further, in the case of Franchise Operators entering into their first Franchise Agreement on or after 1 September 2012, it is to be inferred that the Franchise Operators relied on the Franchise Representations and/or the Franchise Opinion Representations, and acted because of the Franchise Conduct and/or Franchise Opinion Conduct, and that the Prospective Franchise Operators relied on the Franchise Representations by reason of the terms of the Franchise Agreement which required the Franchise Operator to engage DBS for payroll services for the first 24 months after entering into the relevant Franchise Agreement.
49. By reason of the matters pleaded in paragraph 48 above during the Relevant Period, the Award Workers were paid the rates of pay and afforded the terms and conditions of employment derived from the Agreements as affected by the Deemed Base Rates and/or

the Agreed Base Rate Increases, instead of the rates of pay and terms and conditions of employment which were provided for in the Award, to which they were entitled.

H.2 The Applicant

49A. Domino's provided to Dominoids and/or its director Belinda Kate Smith:

- (a) on or around 30 November 2012, disclosure documents DPE.001.001.0046; DPE.001.001.0209; DPE.001.001.0300; DPE.001.001.0137; DPE.001.001.0139; DPE.001.001.0244; DPE.001.001.0140; DPE.001.001.0206; DPE.001.001.0292; DPE.001.001.0060; DPE.001.001.0002; DPE.001.001.0208; DPE.001.001.0092; DPE.001.001.0174; DPE.001.001.0095; DPE.001.001.0004; DPE.001.001.0005; DPE.001.001.0091; DPE.001.001.0048; DPE.001.001.0175; DPE.001.001.0149; DPE.001.001.0296; DPE.001.001.0176; DPE.001.001.0094; DPE.001.001.0297; DPE.001.001.0216; DPE.001.001.0151; DPE.001.001.0299; DPE.001.001.0096; DPE.001.001.0132; DPE.001.001.0218; DPE.001.001.0007; DPE.001.001.0273; DPE.001.001.0054; DPE.001.001.0275; DPE.001.001.0189; DPE.001.001.0190; DPE.001.001.0055; DPE.001.001.0022; DPE.001.001.0138; DPE.001.001.0259; DPE.001.001.0241; DPE.001.001.0264; DPE.001.001.0130; DPE.001.001.0265; and DPE.001.001.0064;
- (b) on or around 18 December 2012:
- (i) the Dominoids Sub-Franchise Agreement (DPE.001.001.0266); and
- (ii) Business Sale and Purchase Agreement dated 18 December 2012 between Domino's Pizza Enterprises Limited and Dominoids Pty Ltd (DPE.001.001.0070 and DPE.001.001.0071);
- (c) on or around 21 November 2014, Domino's Pizza Enterprises Limited Bookkeeping Services Agreement, Beerwah executed 21 November 2014 between Domino's Pizza Enterprises Limited and Dominoids Pty Ltd (DPE.001.001.0039);

- (d) on or around 25 June 2015, document entitled 'Policy – Bookkeeping Services v 3.1' dated 24 June 2015 (DPE.002.001.0153);
 - (e) on or around 8 October 2015, document entitled 'Policy – Employment Law Compliance v1.2' dated 7 October 2015 (DPE.002.001.0229); and
 - (f) on or around 21 February 2017, Domino's Pizza Enterprises Limited Bookkeeping Services Agreement, Beerwah executed 21 February 2017 between Domino's Pizza Enterprises Limited and Dominoids Pty Ltd (DPE.001.001.0281).
50. No later than 30 November 2011, as part of the Franchise Representations, Domino's represented to Dominoids that:
- (aa) the terms and conditions of all Domino's employees were governed by two enterprise bargaining agreements, the first of which provided the conditions for Delivery Drivers, and the second of which provided the conditions for In-Store Workers;
 - (a) one or more of the Agreements (as affected by the Award Deemed Base Rates and/or the Agreed Base Rate Increases) were binding upon Dominoids with respect to the rates of pay required to be paid, and the terms and conditions of employment required to be afforded, to all Delivery Drivers and In-Store Workers employed to perform work by Dominoids at the North Caboolture Store, including the applicant;
 - (b) one or more of the Agreements (as affected by the Award Deemed Base Rates and/or the Agreed Base Rate Increases) applied to Dominoids with respect to the rates of pay required to be paid, and the terms and conditions of employment required to be afforded, to all Delivery Drivers and In-Store Workers employed to perform work by Dominoids at the North Caboolture Store, including the applicant;
 - (c) the Agreements (as affected by the Deemed Base Rates and/or the Agreed Base Rate Increases) contained the rates of pay required to be paid, and the terms and conditions of employment required to be afforded, to all Delivery Drivers and

In-Store Workers, employed to perform work by Dominoids at the North Caboolture Store, including the applicant;

- (d) the rates required to be paid and the terms and conditions of employment required to be afforded to all Delivery Drivers and In-Store Workers, employed to perform work in all Franchise Stores, including the North Caboolture Store, were the same as those required to be paid to Delivery Drivers and In-Store Workers employed to perform work in Corporate Stores; and/or
- (e) it was lawful to pay the Delivery Drivers and the In-Store Workers employed by Dominoids to perform work in the North Caboolture Store, including the applicant, the rates of pay, and to afford them the terms and conditions of employment, set out in the Agreements (as affected by the Deemed Base Rates and/or the Agreed Base Rate Increases),

(together and severally the **Dominoids Representations**).

Particulars

1. Each of the Dominoids Representations were partly written, and partly to be implied.
2. Insofar as each of the Dominoids Representations were in writing they were contained in:
 - (a) the documents identified in paragraph 49A (see Annexure A, Schedule 1 and Schedule 3;
3. Insofar as the Dominoids Representations were to be implied, they were to be implied from all the facts, matters and circumstances, namely:
 - (aa) the fact that the documents described in the particulars to paragraph 50 above were provided to Dominoids in connection with the entry by Dominoids into a franchise agreement, which involved taking on financial and other obligations, being circumstances which conveyed to Dominoids that the information supplied in the documents was formal advice, described something which was mandatory in nature and constituted a statement of an obligation which applied to franchisees operating a Domino's store;

- (a) the fact that Domino's provided the documents described in the particulars to paragraph 50 above in the course of operating the Domino's Business and in the course of offering terms and conditions to Dominoids for the entry into Franchise Agreements and in the course of providing training in relation to compliance with legal obligations and compliance with workplace laws;
- (b) the fact that Domino's provided the documents identified in Annexure A Schedule 3 to Dominoids in the course of operating the Domino's Business and in the course of assisting Dominoids to comply with its legal obligations;

50A. Further and alternatively, no later than 30 November 2011, as part of the Franchise Opinion Representations, Domino's represented to Dominoids that:

- (a) it was of the opinion that:
 - (i) the terms and conditions of all Domino's employees were governed by two enterprise bargaining agreements, the first of which provided the conditions for Delivery Drivers, and the second of which provided the conditions for In-Store Workers;
 - (ii) one or more of the Agreements (as affected by the Award Deemed Base Rates and/or the Agreed Base Rate Increases) were binding upon Dominoids with respect to the rates of pay required to be paid, and the terms and conditions of employment required to be afforded, to all Delivery Drivers and In-Store Workers employed to perform work by Dominoids at the North Caboolture Store, including the applicant;
 - (iii) one or more of the Agreements (as affected by the Award Deemed Base Rates and/or the Agreed Base Rate Increases) applied to Dominoids with respect to the rates of pay required to be paid, and the terms and conditions of employment required to be afforded, to all Delivery Drivers and In-Store Workers employed

to perform work by Dominoids at the North Caboolture Store, including the applicant;

- (iv) the Agreements (as affected by the Deemed Base Rates and/or the Agreed Base Rate Increases) contained the rates of pay required to be paid, and the terms and conditions of employment required to be afforded, to all Delivery Drivers and In-Store Workers, employed to perform work by Dominoids at the North Caboolture Store, including the applicant;
- (v) the rates required to be paid and the terms and conditions of employment required to be afforded to all Delivery Drivers and In-Store Workers, employed to perform work in all Franchise Stores, including the North Caboolture Store, were the same as those required to be paid to Delivery Drivers and In-Store Workers employed to perform work in Corporate Stores;
- (vi) it was lawful to pay the Delivery Drivers and the In-Store Workers employed by Dominoids to perform work in the North Caboolture Store, including the applicant, the rates of pay, and to afford them the terms and conditions of employment, set out in the Agreements (as affected by the Deemed Base Rates and/or the Agreed Base Rate Increases).

(the **Dominoids Opinion**);

- (b) Domino's held the Dominoids Opinion based on reasonable grounds, (together and severally the **Dominoids Opinion Representations**).

Particulars

1. That Domino's held the Dominoids Opinion was represented by Domino's to Dominoids by the fact that:
 - the Dominoids Opinion was contained in documents supplied to Dominoids, including the documents identified in

paragraph 49A (see Annexure A, Schedule 1 and Schedule 4);

3. That Domino's held the Dominoids Opinion based on reasonable grounds was represented by Domino's to Dominoids by the fact that:

- (a) Domino's was required by law to provide the documents described in the particulars to paragraphs 28 and 28A;
- (b) Domino's provided the Dominoids Sub-Franchise Agreement to Dominoids in the course of operating the Domino's Business and in the course of offering terms and conditions to Dominoids for the entry into the Dominoids Sub-Franchise Agreement; and
- (c) Domino's provided the documents identified in paragraph 49A (see Annexure A, Schedule 1 and Schedule 3) to Dominoids in the course of operating the Domino's Business and in the course of assisting Dominoids to comply with its legal obligations; and
- (d) Domino's through DBS provided to Dominoids for a period of at least 24 months from 29 June 2014 services including payroll, bookkeeping, accounting and reports, and where DBS has, at all times, provided the calculation inputs for the rates of pay and terms and conditions of employment provided to employees of Dominoids.

50B. Throughout the period that Dominoids held the franchise for the North Caboolture Store Business, Dominoids used information systems provided by Domino's in the conduct of its business, including:

- (a) a point of sale system known as Pulse;
- (b) DOTTI; and
- (c) GPS Tracker (from its commencement in 2015).

50C. As part of the Payroll Services:

- (a) from approximately 1 November 2015 to 28 August 2016, Domino's provided bookkeeping and payroll services to Dominoids at the North Caboolture Store Business through DBS; and
- (b) Dominoids also utilised the Payroll Award Interpreter during the period it held the North Caboolture Store Business.

50D. As part of the Compliance and Audit Activities:

- (a) in or about October 2016, as part of the Compliance and Audit Activities, Domino's required an external audit be conducted of Dominoids' payment of its employees at the North Caboolture Store (**2016 Audit**); and
- (b) on 10 December 2016, Domino's issued a rectification notice to Dominoids requiring it to rectify underpayment of wages which were identified in the 2016 Audit on the basis that an Agreement applied.

50E. By reason of the matters pleaded in paragraphs 50B to 50D above, Domino's made the implied representations which constituted the Franchise Conduct and the Franchise Opinion Conduct to Dominoids.

50F. Domino's provided to MC Pizza and/or its directors Casey Sebastian Benson and/or Mark Adam Glynn:

- (a) on or around 29 August 2016, the Store Asset Rental Management Deed dated 29 August 2016 (DPE.001.003.0036);
- (b) on or about 14 September 2016, disclosure documents DPE.001.001.0269; DPE.001.001.0303; DPE.001.001.0164; DPE.001.001.0166; DPE.001.001.0167; DPE.001.001.0280; DPE.001.001.0301; DPE.001.001.0080; DPE.001.001.0119; DPE.001.001.0109; DPE.001.001.0187; DPE.001.001.0247; DPE.001.001.0160; DPE.001.001.0111; DPE.001.001.0181; DPE.001.001.0188; DPE.001.001.0248; DPE.001.001.0249; DPE.001.001.0073; DPE.001.001.0162; DPE.001.001.0240; DPE.001.001.0027; DPE.001.001.0068; DPE.001.001.0201; DPE.001.001.0178; DPE.001.001.0032; DPE.001.001.0033; DPE.001.001.0298; DPE.001.001.0114; DPE.001.001.0192; DPE.001.001.0074; DPE.001.001.0270; DPE.001.001.0128; DPE.001.001.0163;

DPE.001.001.0076; DPE.001.001.0115; DPE.001.001.0077;
DPE.001.001.0036; DPE.001.001.0116; DPE.001.001.0117;
DPE.001.001.0279; DPE.001.001.0278; DPE.001.001.0037;
DPE.001.001.0217; DPE.001.001.0118;

- (c) on or around 10 October 2016:
 - (i) the MC Pizza Sub-Franchise Agreement; and
 - (ii) Business Sale and Purchase Agreement dated 10 October 2016 between Domino's Pizza Enterprises Limited and MA CS Pizza Pty Ltd (DPE.004.001.0001);
- (d) on or around 13 December 2016, document entitled 'TANDA - Bookkeeper Webinar' dated 13 December 2016 (DPE.001.001.0136);
- (e) on or around 20 December 2016, document entitled 'Follow Up TANDA Webinar Bookkeeping Info Rostering' dated 20 December 2016 (DPE.001.001.0304);
- (f) on or about 6 January 2017:
 - (i) document entitled 'New Sales Report and TANDA Instructions' dated 6 January 2017 (DPE.001.001.0042);
 - (ii) document entitled 'Instruction for the Sales Report' dated 6 January 2017 (DPE.001.001.0075); and
 - (iii) document entitled 'TANDA – Bookkeeper Webinar – Session 1' dated 6 January 2017 (DPE.001.001.0165);
- (g) on or about 9 January 2017, document entitled 'Sales Report Update' dated January 2017 (DPE.001.001.0035);
- (h) on or around 24 February 2017:
 - (i) document entitled 'TANDA Help Guide' dated 24 February 2017 (DPE.001.001.0172);
 - (ii) document entitled 'New Instructions for the Sales Report' dated 24 February 2017 (DPE.001.001.0202);

- (iii) document entitled 'Pay Rates in TANDA' dated 24 February 2017 (DPE.001.001.0243);
- (i) on or around 25 February 2017, document entitled 'New Location of Labour' dated 24 February 2017 (DPE.001.001.0312);
- (j) on or about 3 May 2017, document entitled 'TANDA – Paying Multi Site Working Employees dated 3 May 2017 (DPE.001.001.0078)';
- (k) on or around 18 May 2017:
 - (i) document entitled 'TANDA New Policy' dated 18 May 2017 (DPE.001.001.0203);
 - (ii) document entitled 'Policy – TANDA Software' dated 18 May 2017 (DPE.001.001.0196);
- (l) on or around 24 May 2017, document entitled 'TANDA Timesheet Webinar' dated 24 May 2017 (DPE.001.001.0302);
- (m) on or about 15 June 2017, document entitled 'IMPORTANT PPI (Time Clock)' dated 15 June 2017 (DPE.001.001.0314);
- (n) on or about 30 June 2017:
 - (i) document entitled 'Driver Pay Rates to Apply from 1 July 2017' dated 30 June 2017 (DPE.001.001.0171);
 - (ii) document entitled 'Instore Pay Rates to Apply from 1 July 2017' dated 30 June 2017 (DPE.001.001.0081);
 - (iii) document entitled 'New Wage Rates in TANDA' dated 30 June 2017 (DPE.001.001.0121);
- (o) on or about 3 July 2017, document entitled 'New Wage Rates' dated 3 July 2017 (DPE.001.001.0085);
- (p) on or around 8 August 2017:
 - (i) document entitled 'TANDA Information Kit' dated May 2017 (DPE.001.001.0143); and
 - (ii) document entitled 'TANDA Common Topics' dated May 2017 (DPE.001.001.0124);

- (q) on or about 12 October 2017, document entitled ‘Policy – TANDA Timesheet Approvals dated 12 October 2017’ (DPE.001.001.0200);
- (r) in or around January 2018, document entitled ‘TANDA and Domino’s New Enterprise Agreement’ dated January 2018 (DPE.001.001.0285);
- (s) on or around 10 January 2018, document entitled ‘Re-classifying Team Members’ dated January 2018 (DPE.001.001.0197);
- (t) on or around 24 January 2018:
 - (i) document entitled ‘Fast Food Industry Award 2010 TANDA’ dated January 2018 (DPE.001.001.0250);
 - (ii) document entitled ‘Reclassifying Staff in TANDA’ dated January 2018 (DPE.001.001.0277); and
 - (iii) email with subject ‘Re-classifying Staff in TANDA’ (DPE.001.001.0286).

51. No later than August 2016, as part of the Franchise Representations, Domino’s represented to MC Pizza that:

- (aa) the terms and conditions of all Domino’s employees were governed by two enterprise bargaining agreements, the first of which provided the conditions for Delivery Drivers, and the second of which provided the conditions for In-Store Workers;
- (a) one or more of the Agreements (as affected by the Award Deemed Base Rates and/or the Agreed Base Rate Increases) were binding upon MC Pizza with respect to the rates of pay required to be paid, and the terms and conditions of employment required to be afforded, to all Delivery Drivers and In-Store Workers employed to perform work by Dominoids at the North Caboolture Store, including the applicant;
- (b) one or more of the Agreements (as affected by the Award Deemed Base Rates and/or the Agreed Base Rate Increases) applied to MC Pizza with respect to the rates of pay required to be paid, and the terms and conditions of employment required to be afforded, to all Delivery Drivers and In-Store Workers employed

to perform work by Dominoids at the North Caboolture Store, including the applicant;

- (c) the Agreements (as affected by the Deemed Base Rates and/or the Agreed Base Rate Increases) contained the rates of pay required to be paid, and the terms and conditions of employment required to be afforded, to all Delivery Drivers and In-Store Workers, employed to perform work by MC Pizza at the North Caboolture Store, including the applicant;
- (d) the rates required to be paid and the terms and conditions of employment required to be afforded to all Delivery Drivers and In-Store Workers, employed to perform work in all Franchise Stores, including the North Caboolture Store, were the same as those required to be paid to Delivery Drivers and In-Store Workers employed to perform work in Corporate Stores; and/or
- (e) it was lawful to pay the Delivery Drivers and the In-Store Workers employed by MC Pizza to perform work in the North Caboolture Store, including the applicant, the rates of pay, and to afford them the terms and conditions of employment, set out in the Agreements (as affected by the Deemed Base Rates and/or the Agreed Base Rate Increases),

(together and severally the **MC Pizza Representations**).

Particulars

1. The MC Pizza Representations were partly written, and partly to be implied.
2. Insofar as the MC Pizza Representations were in writing they were contained in the documents identified in paragraph 50F (see Annexure A, Schedule 1 and Schedule 4);
3. Insofar as the MC Pizza Representations were to be implied, they were to be implied from all the circumstances, including the fact that:
 - (a) Domino's provided the MC Pizza Sub-Franchise Agreement in the course of operating the Domino's Business and in the course of offering terms and conditions to MC Pizza for the entry into the MC Pizza Sub-Franchise Agreement;

- (c) Domino's provided the documents identified in paragraph 50F (see Annexure A, Schedule 4) to MC Pizza in the course of operating the Domino's Business and in the course of assisting MC Pizza to comply with its legal obligations.

51A. Further and alternatively, no later than August 2016, as part of the Franchise Representations, Domino's represented to MC Pizza that:

- (a) it was of the opinion that:
 - (i) the terms and conditions of all Domino's employees were governed by two enterprise bargaining agreements, the first of which provided the conditions for Delivery Drivers, and the second of which provided the conditions for In-Store Workers;
 - (ii) one or more of the Agreements (as affected by the Award Deemed Base Rates and/or the Agreed Base Rate Increases) were binding upon MC Pizza with respect to the rates of pay required to be paid, and the terms and conditions of employment required to be afforded, to all Delivery Drivers and In-Store Workers employed to perform work by MC Pizza at the North Caboolture Store, including the applicant;
 - (iii) one or more of the Agreements (as affected by the Award Deemed Base Rates and/or the Agreed Base Rate Increases) applied to MC Pizza with respect to the rates of pay required to be paid, and the terms and conditions of employment required to be afforded, to all Delivery Drivers and In-Store Workers employed to perform work by MC Pizza at the North Caboolture Store, including the applicant;
 - (iv) the Agreements (as affected by the Deemed Base Rates and/or the Agreed Base Rate Increases) contained the rates of pay required to be paid, and the terms and conditions of employment required to be afforded, to all Delivery Drivers and In-Store Workers,

employed to perform work by MC Pizza at the North Caboolture Store, including the applicant;

- (v) the rates required to be paid and the terms and conditions of employment required to be afforded to all Delivery Drivers and In-Store Workers, employed to perform work in all Franchise Stores, including the North Caboolture Store, were the same as those required to be paid to Delivery Drivers and In-Store Workers employed to perform work in Corporate Stores;
- (vi) it was lawful to pay the Delivery Drivers and the In-Store Workers employed by MC Pizza to perform work in the North Caboolture Store, including the applicant, the rates of pay, and to afford them the terms and conditions of employment, set out in the Agreements (as affected by the Deemed Base Rates and/or the Agreed Base Rate Increases).

(the **MC Pizza Opinion**);

- (b) Domino's held the MC Pizza Opinion based on reasonable grounds, (together and severally the **MC Pizza Opinion Representations**).

Particulars

1. That Domino's held the MC Pizza Opinion was represented by Domino's to MC Pizza by the fact that:
 - (a) the MC Pizza Opinion was contained in documents supplied to MC Pizza, including the documents identified in paragraph 50F (see Annexure A, Schedule 1 and Schedule 4);
 - (b) Domino's provided the MC Pizza Sub-Franchise Agreement to MC Pizza in the course of operating the Domino's Business and in the course of offering terms and conditions to MC Pizza for the entry into the MC Pizza Sub-Franchise Agreement;

(c) Domino's provided the documents identified in paragraph 50F (see Annexure A, Schedule 4) to MC Pizza in the course of operating the Domino's Business and in the course of assisting MC Pizza to comply with its legal obligations.

2. That Domino's held the MC Pizza Opinion based on reasonable grounds was represented by Domino's to MC Pizza by the fact that:

(a) Domino's was required by law to provide the documents described in the particulars to paragraphs 28 and 28A;

(b) Domino's provided the MC Pizza Sub-Franchise Agreement to MC Pizza in the course of operating the Domino's Business and in the course of offering terms and conditions to MC Pizza for the entry into the MC Pizza Sub-Franchise Agreement; and

(c) Domino's provided the documents identified in paragraph 50F (see Annexure A, Schedule 4) to MC Pizza in the course of operating the Domino's Business and in the course of assisting MC Pizza to comply with its legal obligations.

51B. Throughout the entire period that MC Pizza held the franchise for the North Caboolture Store Business while the Applicant was employed (29 August 2016 to 18 March 2018), MC Pizza did not use DBS but did use information systems provided by Domino's in the conduct of its business, including:

(a) Pulse;

(b) DOTTI; and

(c) GPS Tracker.

51C. As part of the Payroll Services, by 1 July 2017, MC Pizza used TANDA.

51D. By reason of the matters pleaded in paragraphs 51B and 51C above, Domino's made the implied representations which constituted the Franchise Conduct and the Franchise Opinion Conduct to MC Pizza.

51E. During his employment with Dominoids and MC Pizza, the Applicant was required to log in to, and log out of, Pulse at the commencement and end of each shift that he worked, whereby:

- (a) Pulse had the functionality to record when a Delivery Driver leaves and returns to a store after completing a delivery order; and
- (b) the Applicant's log in, log out and delivery data recorded in Pulse was accessible by Domino's.

52. During the Relevant Period:

- (a) no Agreement covered Dominoids Delivery Driver employees who were Award Workers;
- (b) no Agreement MC Pizza Delivery Driver employees who were Award Workers; and
- (c) the applicant was an Award Worker.

Particulars

1. As to the matters pleaded in subparagraphs 52(a), 52(b) and 52(c), the applicant refers to and repeats the matters pleaded in paragraphs 1, 37 to 39, and 41 to 43.
2. As to paragraph 52(c), the applicant refers further to the following matters:
 - (a) the fact that Dominoids and MC Pizza were not Original WR Agreement Franchise Operators;
 - (b) when Dominoids commenced operating the North Caboolture Store in November 2011, it was a national system employer within the meaning of s 14 of the FW Act;
 - (c) as at October 2015, the Award covered Dominoids and applied to it in relation to such of its employees as were not covered by an enterprise agreement and who were employed in a classification set out in cl 17 of the Award;

- (d) the applicant was employed by Dominoids in a classification set out in cl 17 of the Award, being that of Fast Food Employee Level 1 (employee engaged in the delivery of meals);
- (e) the Award therefore covered the applicant in his employment with Dominoids;
- (f) the applicant was not a transferring employee with respect to Dominoids within the meaning of s 311 of the FW Act (by reason of the fact that he had not been employed by Domino's prior to Dominoids commencing to operate the North Caboolture store) and, accordingly, no transferable instrument applied to him;
- (g) any transferable instrument that applied to Dominoids did not cover the applicant because at the time he was employed, a modern award covered Dominoids and the applicant (and s 314(2) of the FW Act therefore did not apply);
- (h) the Award therefore applied to the applicant in his employment with Dominoids;
- (i) as at 29 August 2016, MC Pizza was covered by the Award;
- (j) when the applicant came to be employed by MC Pizza, he was a transferring employee within the meaning of s 311 of the FW Act;
- (k) however, no transferable instrument applied to him and, consequently, there was no instrument capable of transferring from Dominoids to MC Pizza in relation to the applicant;
- (l) alternatively, there was no transfer of business from Dominoids to MC Pizza within the meaning of s 311 of the FW Act and, as such, s 311 did not operate in relation to the transfer of the North Caboolture Store from Dominoids to MC Pizza.

53. The Dominoids Representations, Dominoids Opinion Representations, MC Pizza Representations, and/or MC Pizza Opinion Representations were made by Domino's in trade or commerce within the meaning of s 18 of the ACL.

Particulars

1. The applicant refers to and repeats the particulars to paragraph 35 above.
54. By reason of the matters pleaded in 52 above, by making the Dominoids Representations and/or the MC Pizza Representations, Domino's engaged in conduct which was misleading or deceptive, or likely to mislead or deceive, Dominoids and/or MC Pizza.

Particulars

1. The applicant relies on the particulars to paragraph 45 above.
- 54A. Further and alternatively, by reason of:
- (a) the matters pleaded in 52 above; and
 - (b) that Domino's did not have reasonable grounds for the Dominoids Opinion and/or the MC Pizza Opinion,
- by making the Dominoids Opinion Representations and/or the MC Pizza Representations, Domino's engaged in conduct which was misleading and deceptive, or likely to mislead or deceive.

Particulars

1. A reasonable company in the position of Domino's ought to have known, alternatively, ought to have requested and/or received advice to the effect of, the matters pleaded in paragraph 52 above.
55. By reason of the matters pleaded in 52 above, by maintaining and/or failing to correct or qualify the Dominoids Representations and/or MC Pizza Representations, Domino's engaged in conduct which was misleading or deceptive, or likely to mislead or deceive Dominoids and/or MC Pizza.
- 55A. Further and alternatively, by reason of:
- (a) the matters pleaded in 52 above; and

- (b) that Domino's did not have reasonable grounds for the Dominoids Opinion and/or the MC Pizza Opinion,

by maintaining and/or failing to correct or qualify the Dominoids Representations and/or MC Pizza Representations, Domino's engaged in conduct which was misleading or deceptive, or likely to mislead or deceive Dominoids and/or MC Pizza.

Particulars

- 1. A reasonably company in the position of Domino's ought to have known, alternatively, ought to have requested and/or received advice to the effect of, the matters pleaded in 52 above.
56. In reliance on the Dominoids Representations, the Dominoids Opinion Representations, the Franchise Conduct and/or the Franchise Opinion Conduct, Dominoids:
- (a) employed workers including the applicant and other Award Workers to perform work in the Caboolture Store;
 - (b) paid all Delivery Drivers and In-Store Workers employed by it, including the applicant and other Award Workers, the rates set out in the Agreements (as affected by the Award Deemed Base Rates and/or the Agreed Base Rate Increases) and afforded Delivery Drivers and In-Store Workers including the Applicant and Award Workers the terms and conditions of employment set out in the Agreements and/or the Agreed Base Rate Increases; and
 - (c) did not pay or afford the applicant and Award Workers the rates of pay and terms and conditions of employment provided for in the Award, including, where applicable:
 - (i) a 25% casual loading;
 - (ii) evening work penalties;
 - (iii) weekend penalties;
 - (iv) public holiday penalties;

- (v) a meal allowance;
- (vi) a special clothing allowance;
- (vii) an excess travelling cost payment;
- (viii) a travelling time reimbursement payment;
- (ix) a kilometre-based delivery allowance; and
- (x) minimum 3-hour shifts for casual employees.

Particulars

1. It is to be inferred that Dominoids relied on the Dominoids Representations, the Dominoids Opinion Representations, the Franchise Conduct and/or the Franchise Opinion Conduct by reason of the fact that it is inherently unlikely that the not fewer than 300 Franchise Operators who have been parties to Franchise Agreements during the Relevant Period (including Dominoids) each independently and simultaneously determined to pay the Delivery Workers and In-Store Workers the rates of pay contained in the Agreements (as affected by the Deemed Base Rates and/or the Agreed Base Rate Increases) and to afford Delivery Workers and In-Store Workers the terms and conditions of employment contained in the Agreements (as affected by the Deemed Base Rates and/or the Agreed Base Rate Increases) absent information and advice supplied to them by the Franchisor, Domino's, that the Agreements were binding on them and applied to Franchise Stores operated by them.
57. In reliance on the MC Pizza Representations, the MC Pizza Opinion Representations, the Franchise Conduct and/or the Franchise Opinion Conduct, MC Pizza:
- (a) employed workers including the applicant and other Award Workers to perform work in the Caboolture Store;
 - (b) paid all Delivery Drivers and In-Store Workers employed by it, including the applicant and other Award Workers, the rates set out in the Agreements (as affected by the Deemed Base Rates and/or the

Agreed Base Rate Increases) and afforded Delivery Drivers and In-Store Workers including the Applicant and Award Workers the terms and conditions of employment set out in the Agreements and/or the Agreed Base Rate Increases; and

- (c) did not pay or afford the Applicant and Award Workers the rates of pay and terms and conditions of employment provided for in the Award, including, where applicable:
 - (i) a 25% casual loading;
 - (ii) evening work penalties;
 - (iii) weekend penalties;
 - (iv) public holiday penalties;
 - (v) a meal allowance;
 - (vi) a special clothing allowance;
 - (vii) an excess travelling cost payment;
 - (viii) a travelling time reimbursement payment;
 - (ix) a kilometre-based delivery allowance; and
 - (x) minimum 3-hour shifts for casual employees.

Particulars

1. It is to be inferred that MC Pizza relied on the MC Pizza Representations and/or the MC Pizza Opinion Representations, the Franchise Conduct and/or the Franchise Opinion Conduct by reason of the fact that it is inherently unlikely that the not fewer than 300 Franchise Operators who have been parties to Franchise Agreements during the Relevant Period (including MC Pizza) each independently and simultaneously determined to pay the Delivery Drivers and In-Store Workers the rates of pay contained in the Agreements (as affected by the Deemed Base Rates and/or the Agreed Base Rate Increases) and to afford Delivery Drivers and In-Store

Workers the terms and conditions of employment contained in the Agreements (as affected by the Deemed Base Rates and/or the Agreed Base Rate Increases) absent information and advice supplied to them by the Franchisor, Domino's, that the Agreements were binding on them and applied to Franchise Stores operated by them.

58. Because of the matters pleaded in paragraphs 56 and/or 57 above during the Relevant Period, the applicant was paid the rates of pay (as affected by the Award Deemed Base Rates and/or the Agreed Base Rate Increases), and afforded the terms and conditions of employment, derived from the Agreements, instead of the rates of pay and terms and conditions of employment which were provided for in the Award, to which he was entitled.

I. CONTRAVENTIONS

59. By reason of the matters pleaded in paragraphs 30, 35 and 45 to 46 above, on and from April 2012, Domino's contravened s 18 of the Australian Consumer Law (**Misleading Representation Contravention**).
- 59A. Further and alternatively, by reason of the matters pleaded in paragraphs 30A, 35 and 45 to 46 above, on and from April 2012, Domino's contravened s 18 of the Australian Consumer Law (**Misleading Opinion Representation Contravention**).
60. By reason of the matters pleaded in paragraphs 34, 36 and 47 above, on and from April 2012, Domino's contravened s 18 of the Australian Consumer Law (**Misleading Conduct Contravention**).
- 60A. By reason of the matters pleaded in paragraphs 34A, 36 and 47 above, on and from April 2012, Domino's contravened s 18 of the Australian Consumer Law (**Misleading Opinion Conduct Contravention**).
61. By reason of the matters pleaded in paragraphs 50, 53, 54 and 55 above, on and from May 2017, Domino's contravened s 18 of the Australian Consumer Law (**Dominoids Misleading Representation Contravention**).

- 61A. Further and alternatively, by reason of the matters pleaded in paragraphs 50A, 53, 54A and 55A above, on and from May 2017, Domino's contravened s 18 of the Australian Consumer Law (**Dominoids Misleading Opinion Representation Contravention**).
62. By reason of the matters pleaded in paragraphs 51, 53, 54 and 55 above, on and from May 2017, Domino's contravened s 18 of the Australian Consumer Law (**MC Pizza Misleading Representation Contravention**).
- 62A. Further and alternatively, by reason of the matters pleaded in paragraphs 51A, 53, 54A and 55A above, on and from May 2017, Domino's contravened s 18 of the Australian Consumer Law (**MC Pizza Misleading Opinion Representation Contravention**).

J. LOSS AND DAMAGE

63. By reason of the conduct pleaded in paragraphs 30, 30A, 34, 34A, 48, 49, 50, 50A, 51 and 51A above, the Award Workers (that is, the Group Members) have suffered loss and damage as a result of the contraventions by Domino's.

Particulars

1. The loss and damage suffered by the Award Workers (that is, the Group Members) because of the contravening conduct engaged in by Domino's is the harm to the economic interests of the Award Workers by reason of the fact that they:
 - (A) were not paid the wages to which they were entitled during the period of their employment by Franchise Operators as and when those wages fell due to be paid and were required to be paid, namely at no less than weekly intervals (as is required by clause 9 of the Award), being:
 - (i) the loss of the opportunity to pay for goods or services the Award Workers needed or wanted to buy during their period of employment by a Franchise Operator; and
 - (ii) the loss of the opportunity to pay for goods or services of superior quality than those which the Award Workers in fact bought during their

period of employment by a Franchise Operator.

And

(B) were paid less than the wages to which they were entitled pursuant to the terms of the Award and were afforded conditions of employment of lesser value than those to which they were entitled pursuant to the terms of the Award during the period of their employment by Franchise Operators, namely:

- (i) the difference between the rates of pay to which the Award Workers were entitled under the Award and the rates the Award Workers were in fact paid by Franchise Operators, being the rates derived from the Agreements as affected by the Deemed Base Rates and/or Agreed Base Rate Increases;
- (ii) the difference in the value of the terms and conditions of employment to which they were entitled under the Award and the terms and conditions of employment in fact afforded to them by Franchise Operators derived from the Agreements and/or Agreed Base Rate Increases.
- (iii) interest in relation to (i) and (ii) above.

And

(C) were not afforded the conditions of employment to which they were entitled pursuant to the Award during each shift that they worked during their period of employment with Franchise Operators, including the failure to roster Award Workers for shifts of a minimum of three hours duration, namely the loss of one hour's pay at the Award rate each time the Award Workers worked a two hour shift, rather than a three hour shift as required by the Award.

64. By reason of the conduct pleaded in paragraphs 50, 50A, 50E, 51D, 51, 51A, 56, 57 and 58 above, the applicant has suffered loss and damage as a result of the contraventions by Domino's.
65. The loss and damage suffered by the applicant because of the contravening conduct engaged in by Domino's is the harm to the economic interests of the applicant by reason of the fact that he was paid less than the wages to which he was entitled pursuant to the terms of the Award and was afforded conditions of employment of lesser value than those to which he was entitled pursuant to the terms of the Award during the period of his employment by Dominoids and MC Pizza, namely:
- (a) the difference between the rates of pay to which the applicant was entitled under the Award and the rates the applicant was in fact paid by Dominoids and MC Pizza, being the rates derived from the Agreements as affected by the Deemed Base Rates and/or Agreed Base Rate Increases;

Particulars

The applicant's loss accruing from the difference between the rates of pay under the Award and the terms and conditions afforded by Dominoids and MC Pizza is approximately \$10,484.31, being:

1. \$6,274.78, being the approximate value of the 25% casual loading payable in accordance with clause 13.2 of the Award;
2. \$77.20, being the approximate value of the evening work penalties payable in accordance with clause 25.5(a) of the Award;
3. \$2,435.89, being the approximate value of the weekend penalties in accordance with clause 25.5(b) and (c) of the Award;
4. \$994.54, being the approximate value of the public holiday penalties in accordance with clause 30.4 of the Award; and
5. \$701.90, being the approximate value of the base rate payable in accordance with clause 17 (as affected by clause 18 from time to time) of the Award.

Further particulars may be provided following discovery and the return of subpoenas.

- (b) the difference in the value of the terms and conditions of employment to which the applicant was entitled under the Award and the terms and conditions of employment in fact afforded to him by Dominoids and MC Pizza derived from the Agreements and/or Agreed Base Rate Increases; and

Particulars

The applicant's loss accruing from the difference between the terms and conditions of employment under the Award and the terms and conditions afforded by Dominoids and MC Pizza is approximately \$940.50.

1. \$193.00, being the value of the special clothing reimbursement as per clause 19.2(a) of the Award; and
2. \$747.50, being the value of the laundry allowance as per clause 19.2(b) of the Award.

Further particulars may be provided following discovery and the return of subpoenas.

- (c) interest in relation to (b) and (c) above; and

Particulars

The applicant relies on ss.51A and 52 of the *Federal Court of Australia Act 1976* (Cth), as well as r.39.06 of the *Federal Court of Australia Rules 2011* (Cth) and the Interest on Judgments Practice Note (GPN-INT).

Further particulars may be provided following discovery and the return of subpoenas.

- (d) the conditions of employment he was not afforded to which he was entitled pursuant to the Award during each shift that he worked during his period of employment with Dominoids and MC Pizza, including the failure to roster the

applicant for shifts of a minimum of three hours duration, namely the loss of one hour's pay at the Award rate each time the applicant worked a two hour shift, rather than a three hour shift as required by the Award.

Particulars

The applicant's loss accruing from the failure to roster the applicant for shifts of a minimum of three hours duration was approximately \$3,947.00.

Further particulars may be provided following discovery and the return of subpoenas.

66. The loss and damage suffered by the applicant because of the contravening conduct engaged in by Domino's is the harm to the economic interests of the applicant by reason of the fact that he was not paid the wages to which he was entitled during the period of his employment by Dominoids and by MC Pizza as and when those wages fell due to be paid and were required to be paid, namely at no less than weekly intervals (as is required by clause 9 of the Award), being:
- (a) the loss of the opportunity to pay for goods or services the applicant needed or wanted to buy during his period of employment by Dominoids and MC Pizza; and

Particulars

1. During his period of employment, the applicant wished to purchase, but could not afford to purchase the following goods:
 - (i) a second child car seat, for use in his partners' vehicle;
 - (ii) a third child car seat, for use in his father's vehicle to replace a car seat that had been gifted for this purpose but which had a lower safety rating than newer models;
 - (iii) a new laptop to assist the applicant with his University studies;
 - (iv) a new mattress for his bed;

During his period of employment, the applicant wished to purchase but could not afford to purchase the following services:

- (v) weekly swimming lessons for his son;
- (vi) regular maintenance services for his RAV4 vehicle, which (had they been purchased) may have prevented the vehicle from falling into such a state of disrepair that the applicant ultimately sold it for scrap, rather than being in a position to instead sell it for a higher price as a functioning second vehicle;
- (vii) babysitting services to allow the applicant and his partner to socialise together.

Further particulars of the loss suffered by the applicant will be provided following discovery and the return of subpoenas.

- (b) the loss of the opportunity to pay for goods or services of superior quality than those which the applicant in fact bought during his period of employment by Dominoids and MC Pizza.

Particulars

During his period of employment, the applicant wished to purchase a removable 6-12 month child car capsule capable of being taken out of car and attached to a stroller. Instead, he could only afford to purchase a fixed car seat, being a cheaper priced alternative.

Date: 24 August 2021



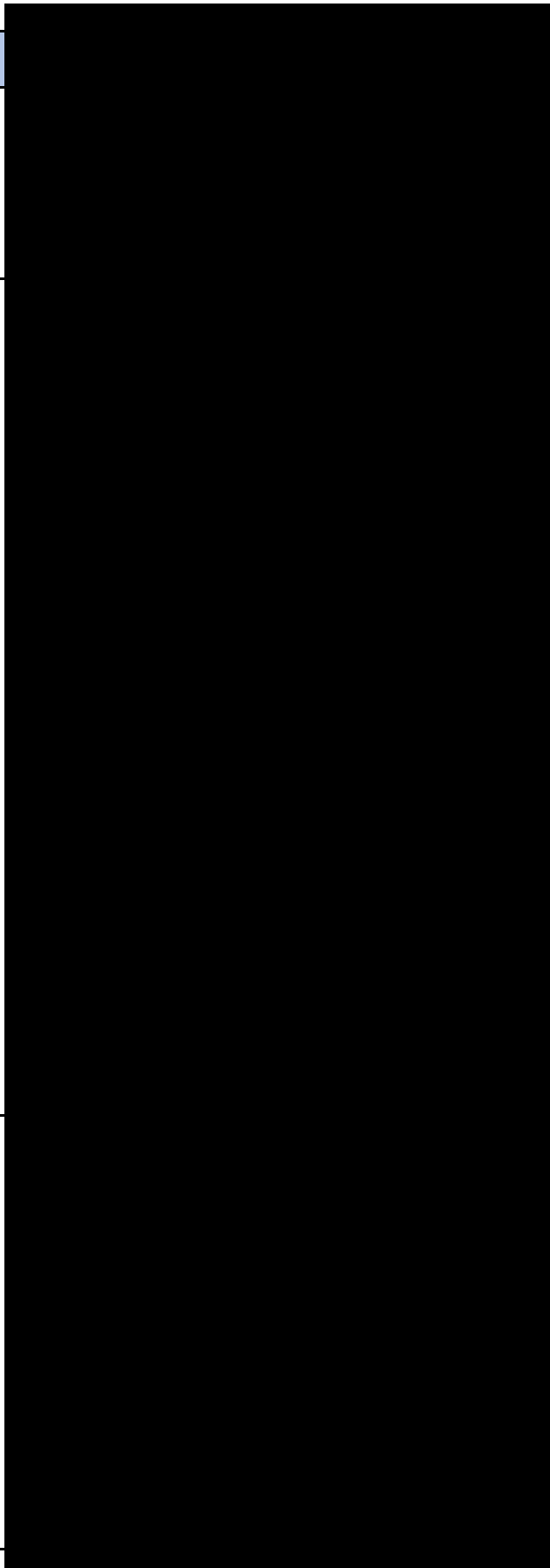
Signed by Brett David Spiegel
Lawyer for the Applicant

This amended pleading was prepared by Rachel Doyle of Senior Counsel, and Dion Fahey and Siobhan Kelly of Counsel.

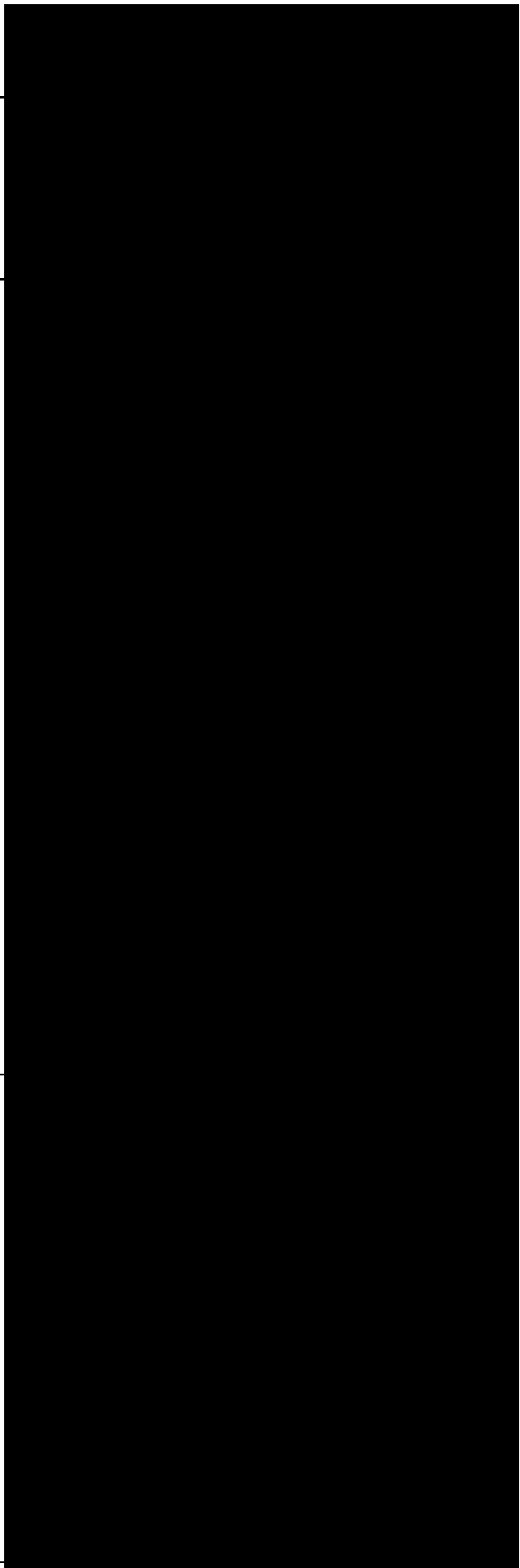
ANNEXURE A

Schedule 1 – Sub-Franchise Agreement Documents and Disclosure Documents

Document ID	Document Name	Document Date	Pinpoint Reference
DPE.001.001.0266	Sub-Franchise Agreement – Dominoids	18 December 2012	cl. 2.4.2
			cls. 16.5.2 and 16.5.7 read with definition in clause 1.36
			cls. 19.2.1 and 19.2.15



DPE.001.001.0046	Disclosure Document – Dominoids	30 November 2012	cl. 22.3
DPE.001.001.0158	Sub-Franchise Agreement – MC Pizza	10 October 2016	cls. 16.5.2 and 16.5.7 read with definition in cl 1.39
			cls. 19.2 and 19.2.14

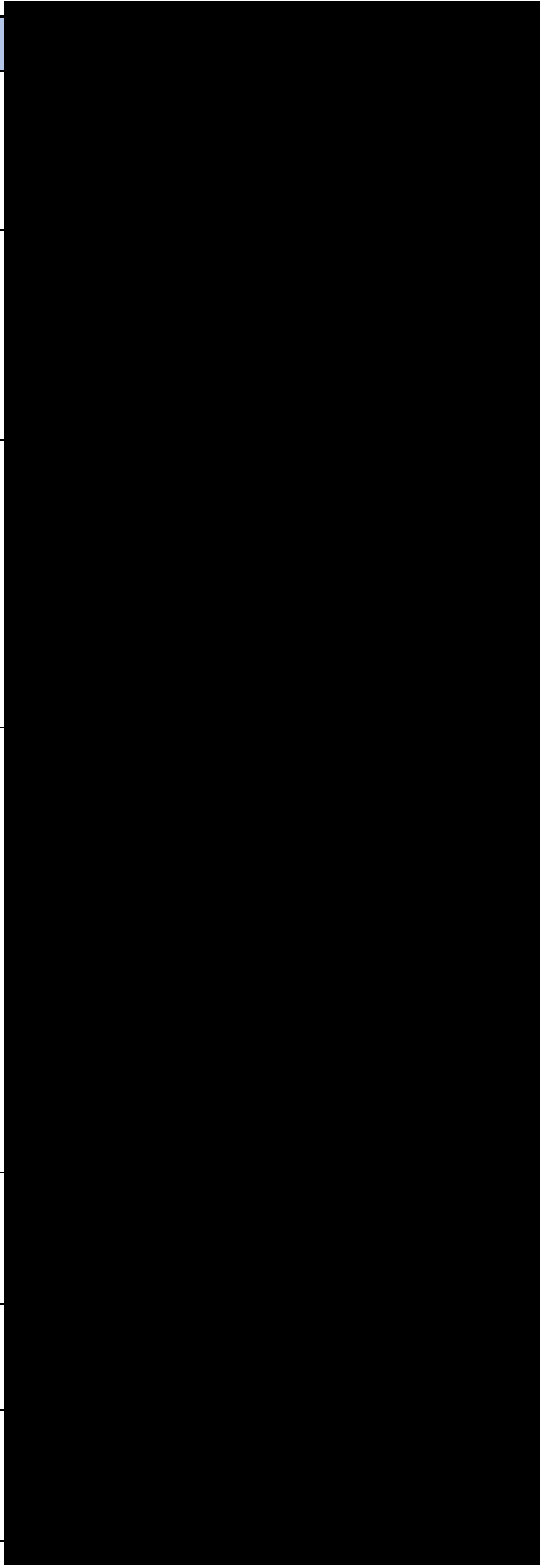


DPE.001.003.0036	Store Asset Rental Management Deed (MA CS Pizza Pty Ltd)	29 August 2016	cl. 13.1
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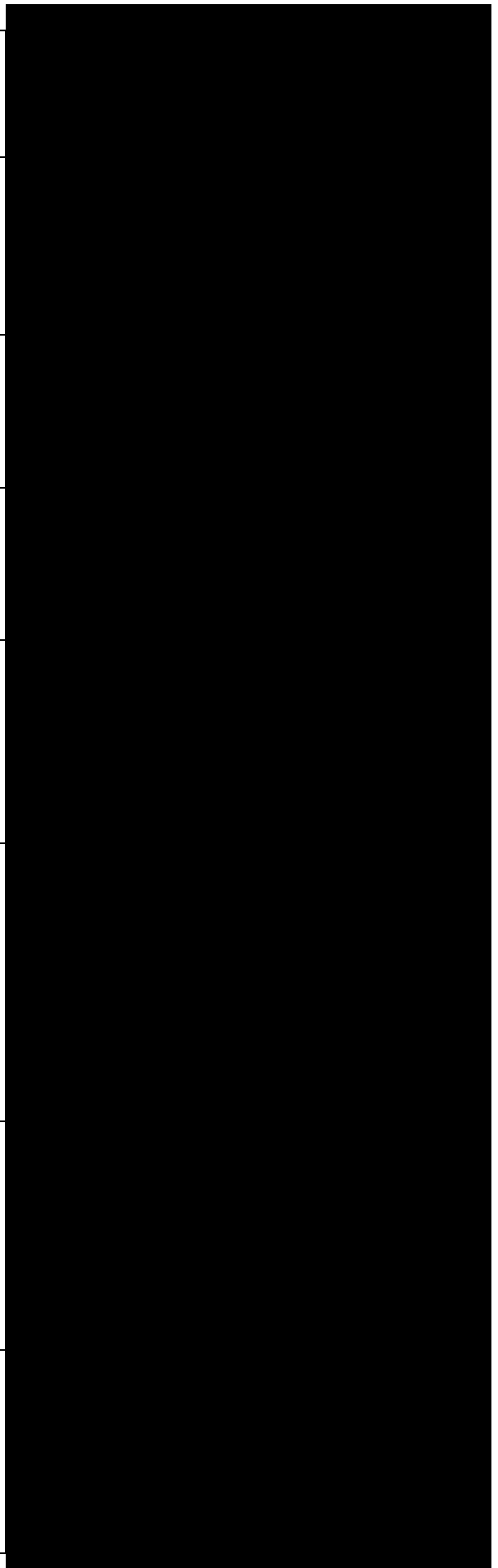


Schedule 2 – Compliance Information

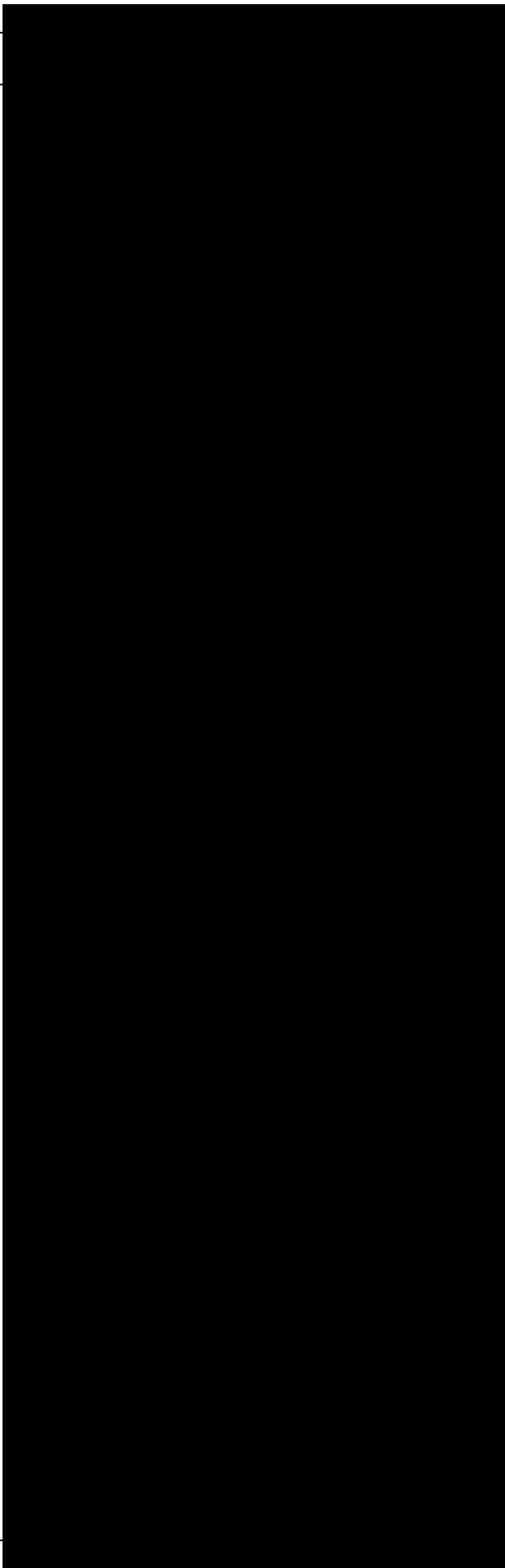
Document ID	Document Name	Document Date	Pinpoint Reference
DPE.001.001.0131	Fair Work Laws – Australia	30 April 2012	Slide 32
			Slide 33
			Slide 34
			Slide 35
DPE.002.002.0015	Workplace Laws Training Manual dated 2 May 2012	2 May 2012	Page 8
			Page 8
			Page 9



DPE.001.001.0255	2 - Industrial Relations Facts.PPTX	8 September 2016	Slide 21
			Slide 22
DPE.001.001.0087	Fair Work Laws Franchisee Orientation Program	20 May 2014	Slide 32
			Slide 33
			Slide 34
			Slide 35
			Slide 36



DPE.001.001.0126 DPE.001.001.0129 DPE.001.001.0182 DPE.001.001.0205 DPE.001.001.0219 DPE.001.001.0257 DPE.001.001.0289 DPE.001.001.0290 DPE.001.001.0291 DPE.001.001.0049 DPE.001.001.0001 DPE.001.001.0044 DPE.001.001.0182	Bookkeeping Service – Franchisee Orientation Program (multiple versions)	– 4 March 2014-1 April 2014 (DPE.001.00 1.0257); – 2 April 2014-27 April 2014 (DPE.001.00 1.0291); – 28 April 2014-22 May 2014 (DPE.001.00 1.0129); – 23 May 2014-10 June 2014 (DPE.001.00 1.0047) – 11 June 2014-4 August 2014 (DPE.001.00 1.0049); – 5 August 2014-11 August 2014 (DPE.001.00 1.0290) – 12 August 2014-25 November 2014 (DPE.001.00 1.0289); – 26 November 2014-21 February 2015 (DPE.001.00 1.0205); – 22 February 2014-17 March 2015 (DPE.001.00 1.0001); – 18 March 2015-24 May 2015 (DPE.001.00 1.0044); – 25 May 2015-24 May 2016	Slide 3

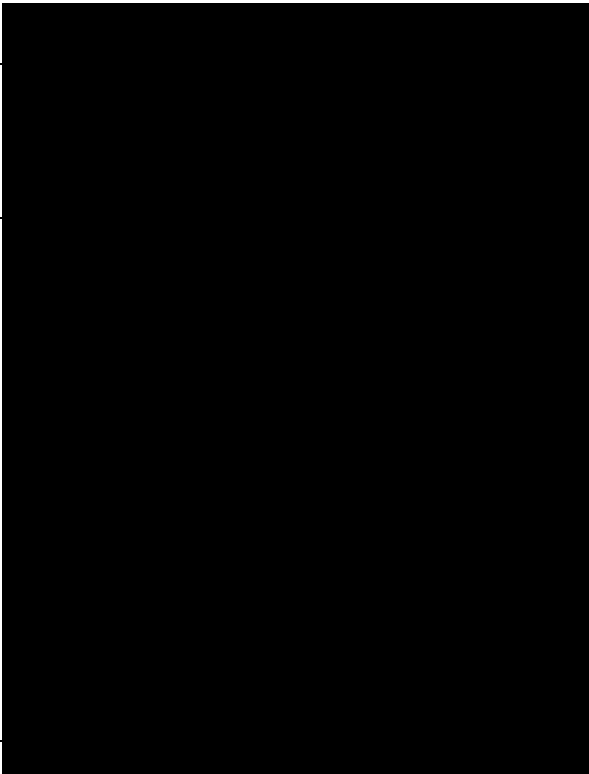


		(DPE.001.001.0182); – 25 May 2016-27 June 2016 (DPE.001.001.0219); – 28 June 2016-28 March 2017 (DPE.001.001.0126).	
DPE.001.001.0045 DPE.001.001.0173	Domino's Bookkeeping Service Business School SB's version	27 March 2017-19 September 2017 (DPE.001.001.0045) and 2 September 2017-23 January 2018 (DPE.001.001.0173)	Slide 2
DPE.002.002.0007	National Drivers Wage Rates to apply from 1 July 2013	24 June 2013	n/a
DPE.002.002.0004	National In-store Rates to apply from 1 July 2013	24 June 2013	n/a
DPE.002.002.0003	National Drivers Wage Rates to apply from 1 July 2014	27 June 2014	n/a
DPE.002.002.0010	National In-store Wage Rates to apply from 1 July 2014	27 June 2014	n/a
DPE.002.002.0005	National In-store Wage Rates to apply from 1 July 2015	26 June 2015	n/a
DPE.002.002.0002	National Drivers Wage Rates to apply from 1 July 2015	26 June 2015	n/a
DPE.002.002.0011	National In-store Wage Rates to apply from 1 July 2016	8 July 2016	n/a

DPE.002.002.0001	National Drivers Wage Rates to apply from 1 August 2016	8 July 2016	n/a
DPE.002.002.0006	Instore Wage Rates to apply from 1 January 2017	28 November 2016	n/a
DPE.001.001.0171	Driver Pay Rates to apply from 1 July 2017	30 June 2017	n/a
DPE.001.001.0081	Instore Pay Rates to apply from 1 July 2017	30 June 2017	n/a
DPE.005.001.0008	Instore Wage Rates to apply from 1 December 2017	27 October 2017	n/a
DPE.005.001.0001	Driver Wage Rates to apply from 1 December 2017	27 October 2017	n/a
DPE.005.001.0002	Instore Pay Rates to apply from 1 July 2015, 1 July 2016 and 1 July 2017	13 December 2017	n/a
DPE.002.002.0009	Instore Wage Rates to apply from 1 July 2017	14 December 2017	n/a
DPE.001.001.0169	My Dominos and Tanda Training Presentation (1)	Undated	Slide 26
DPE.001.001.0136	TANDA - Bookkeeper Webinar	13 December 2016	12.14-12.50

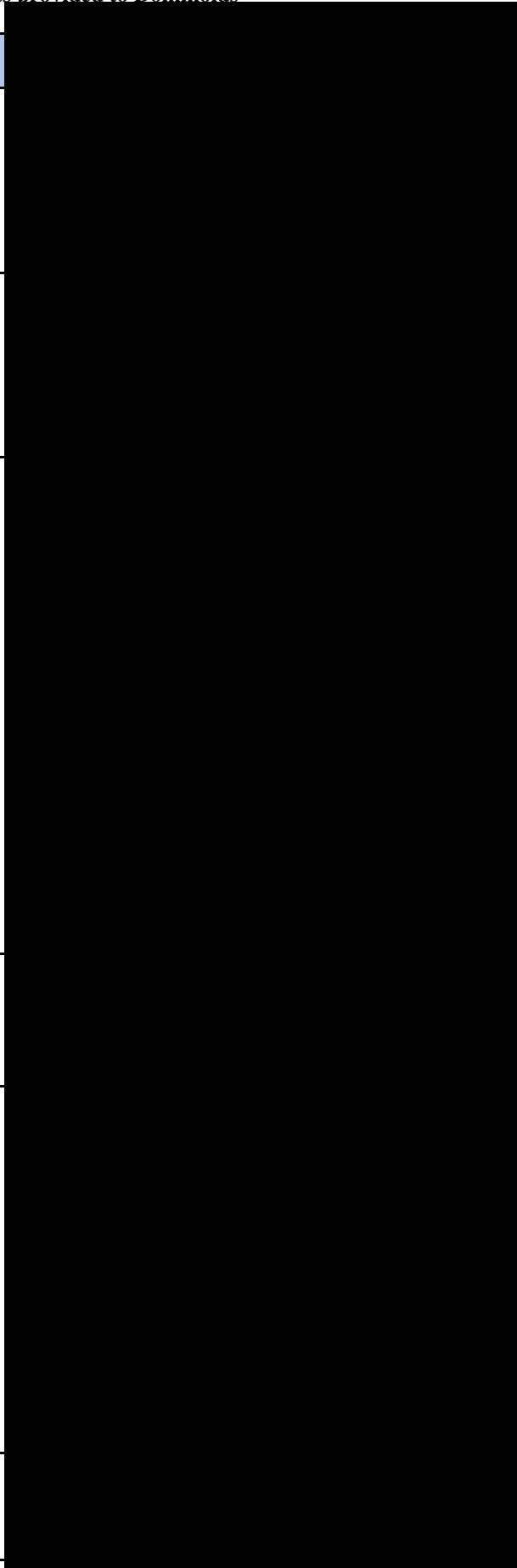
DPE.001.001.0172	TANDA Help Guide	24 February 2017	Page 7
			Page 16
DPE.001.001.0143	TANDA Information Kit	May 2017	Page 8
DPE.001.001.0196	Policy – TANDA Software	18 May 2017	Page 1
DPE.001.001.0197	Re-classifying Team Members	January 2018	Page 4
DPE.001.001.0202	New Instructions for the Sales Report	24 February 2017	Pages 1-2
DPE.001.001.0250	Fast Food Industry Award 2010 TANDA	January 2018	Pages 1-24
DPE.001.001.0277	Re-classifying Staff in TANDA	January 2018	Pages 1-10

DPE.002.001.0229	Policy – Employment Law Compliance v1.2	7 October 2015	Page 1
			Page 2

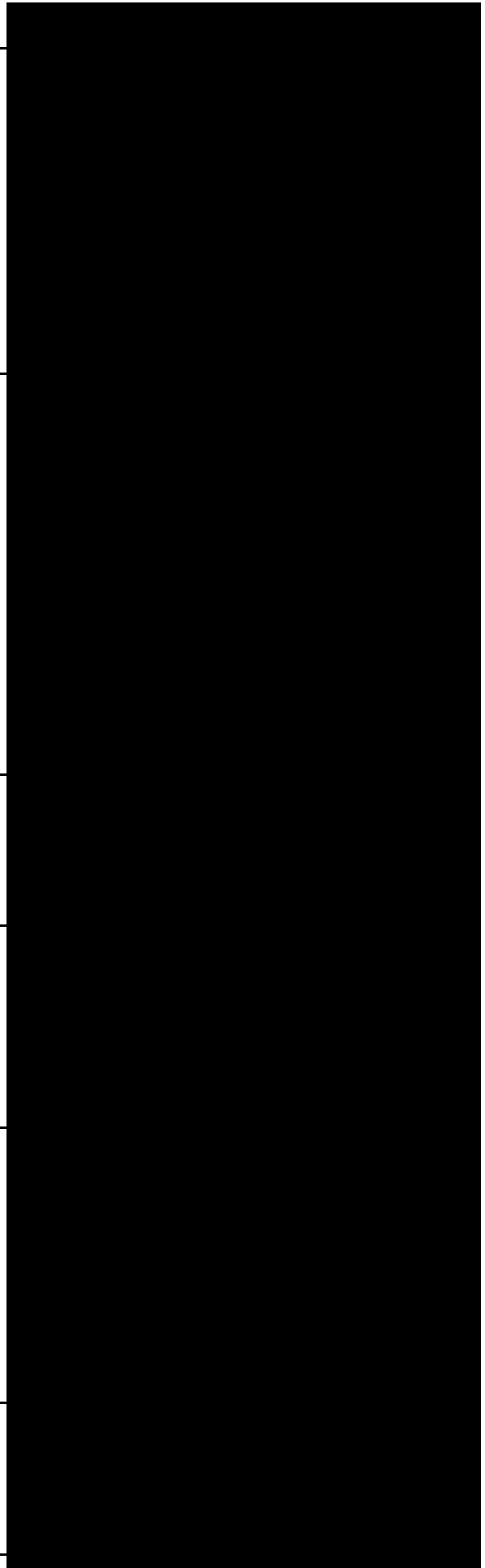


Schedule 3 – Statements made in documents provided to Dominoids

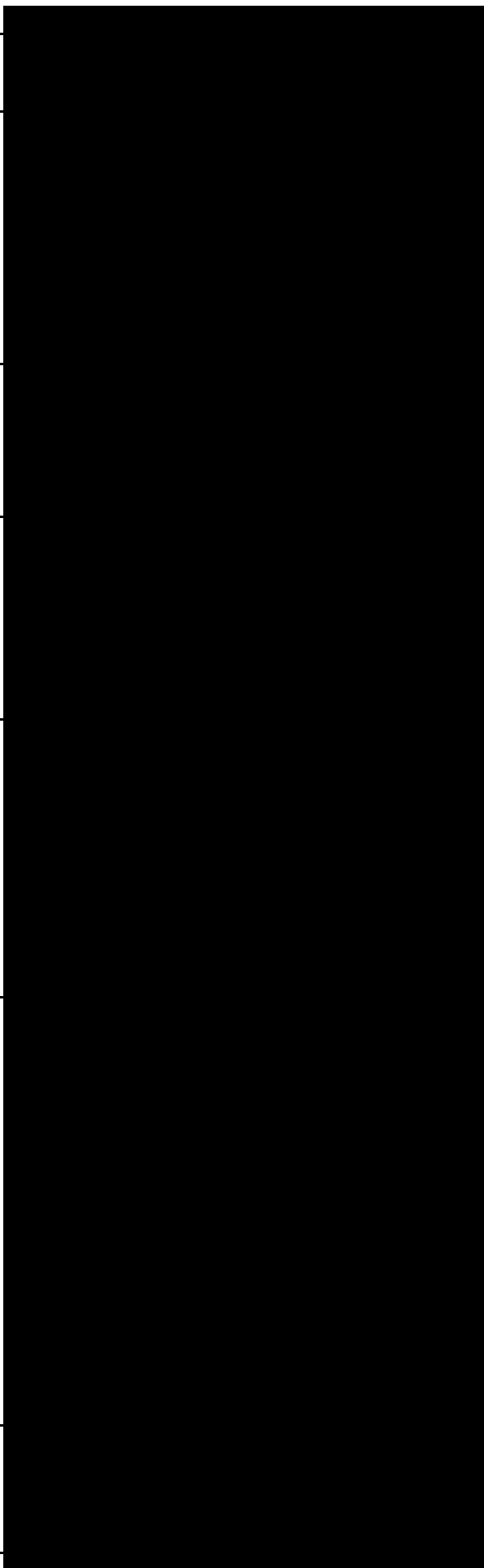
Document ID	Document Name	Document Date	Pinpoint Reference
DPE.001.001.0046	Disclosure Document – Dominoids	30 November 2012	cl. 22.3
DPE.001.001.0266	Sub-Franchise Agreement – Dominoids	18 December 2012	cl. 2.4.2
DPE.002.001.0229	Policy – Employment Law Compliance v1.2	7 October 2015	Page 1
			Page 2
DPE.001.001.0039	Domino's Pizza Enterprise Limited Bookkeeping	21 November 2014	cl. 2.1.1



	Services Agreement, Beerwah		
			cls.16.1.2 and 16.1.3
DPE.001.001.0087	Fair Work Laws Franchisee Orientation Program	20 May 2014	Slide 32
			Slide 33
			Slide 34
			Slide 35



			Slide 36
DPE.001.001.0131	Fair Work Laws – Australia	30 April 2012	Slide 31/32
			Slide 33
			Slide 34
			Slide 35
DPE.002.002.0015	Workplace Laws Training Manual dated 2 May 2012	2 May 2012	Page 8



			Page 8
			Page 8
			Page 9
DPE.002.002.0007 ¹	National Drivers Wage Rates to apply from 1 July 2013	24 June 2013	n/a
DPE.002.002.0004 ²	National In-store Rates to apply from 1 July 2013	24 June 2013	n/a
DPE.002.002.0003 ³	National Drivers Wage Rates to apply from 1 July 2014	27 June 2014	n/a
DPE.002.002.0010 ⁴	National In-store Wage Rates to apply from 1 July 2014	27 June 2014	n/a
DPE.002.002.0005 ⁵	National In-store Wage Rates to apply from 1 July 2015	26 June 2015	n/a
DPE.002.002.0002 ⁶	National Drivers Wage Rates to apply from 1 July 2015	26 June 2015	n/a
DPE.002.002.0011 ⁷	National In-store Wage Rates to apply from 1 July 2016	8 July 2016	n/a
DPE.002.002.0001 ⁸	National Drivers Wage Rates to	8 July 2016	n/a

¹ Relevant to the employment of persons by Dominoids Pty Ltd at the North Caboolture store.

² Relevant to the employment of persons by Dominoids Pty Ltd at the North Caboolture store.

³ Relevant to the employment of persons by Dominoids Pty Ltd at the North Caboolture store.

⁴ Relevant to the employment of persons by Dominoids Pty Ltd at the North Caboolture store.

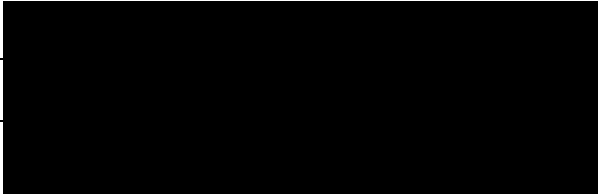
⁵ Relevant to the employment of persons by Dominoids Pty Ltd at the North Caboolture store.

⁶ Relevant to the employment of persons by Dominoids Pty Ltd at the North Caboolture store.

⁷ Relevant to the employment of persons by Dominoids Pty Ltd at the North Caboolture store.

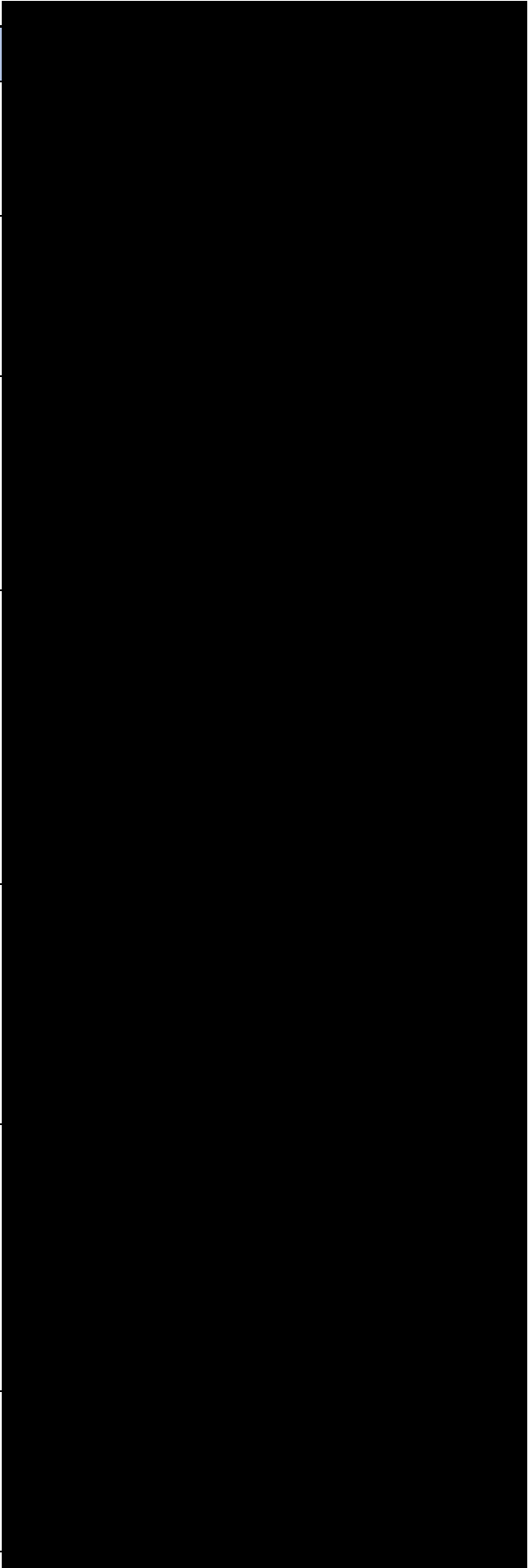
⁸ Relevant to the employment of persons by Dominoids Pty Ltd at the North Caboolture store.

	apply from 1 August 2016		
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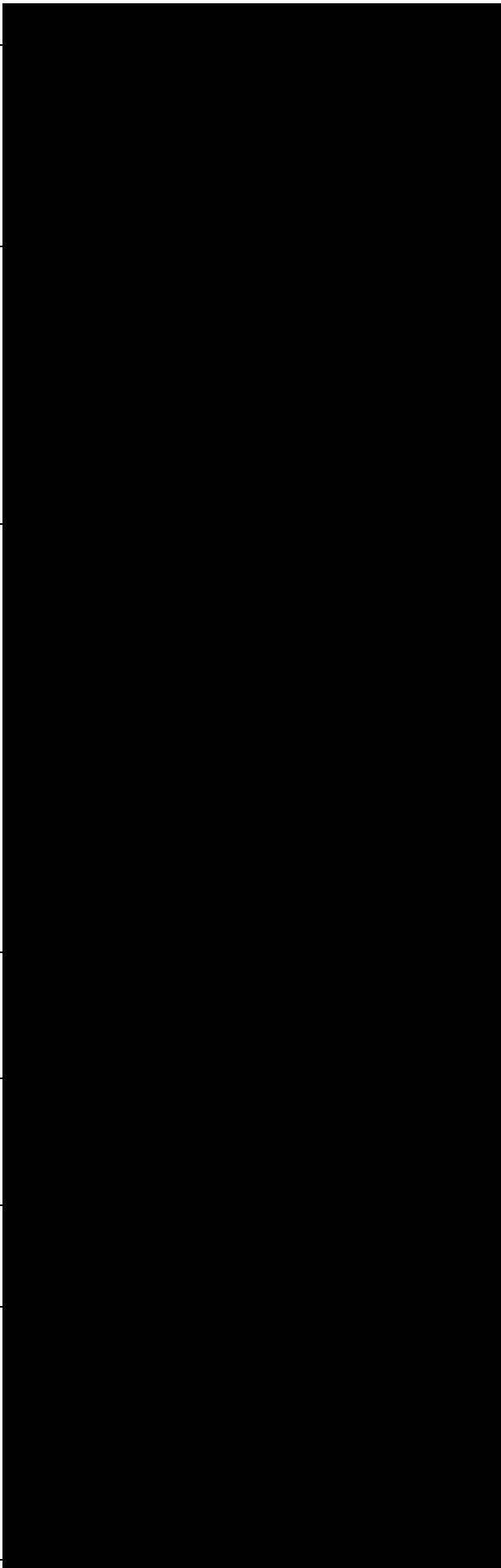


Schedule 4 – Statements made in documents provided to MA CS Pizza Pty Ltd

Document ID	Document Name	Document Date	Pinpoint Reference
DPE.001.001.0158	Sub-Franchise Agreement – MA CS Pizza	10 October 2016	cl. 2.4.2
DPE.001.001.0087	Fair Work Laws Franchisee Orientation Program	20 May 2014	Slide 32
			Slide 33
			Slide 34
			Slide 35
			Slide 36
DPE.001.001.0131	Fair Work Laws – Australia	30 April 2012	Slide 31/32



			Slide 33
			Slide 34
			Slide 35
DPE.002.002.0015	Workplace Laws Training Manual dated 2 May 2012	2 May 2012	Page 8
			Page 8
			Page 8
			Page 9

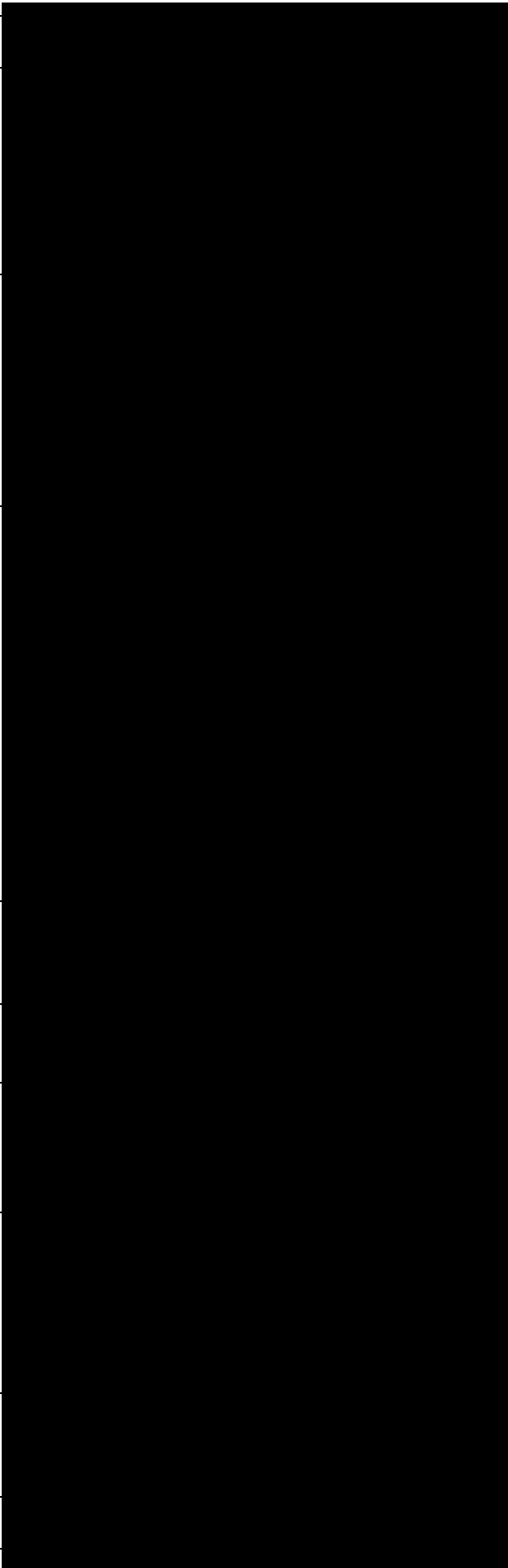


DPE.002.002.0006 ⁹	Instore Wage Rates to apply from 1 January 2017	28 November 2016	n/a
DPE.001.001.0171 ¹⁰	Driver Pay Rates to apply from 1 July 2017	30 June 2017	n/a
DPE.001.001.0081 ¹¹	Instore Pay Rates to apply from 1 July 2017	30 June 2017	n/a
DPE.005.001.0008 ¹²	Instore Wage Rates to apply from 1 December 2017	27 October 2017	n/a
DPE.005.001.0001 ¹³	Driver Wage Rates to apply from 1 December 2017	27 October 2017	n/a
DPE.005.001.0002 ¹⁴	Instore Pay Rates to apply from 1 July 2015, 1 July 2016 and 1 July 2017	13 December 2017	n/a
DPE.002.002.0009 ¹⁵	Instore Wage Rates to apply from 1 July 2017	14 December 2017	n/a
DPE.002.001.0229	Policy – Employment Law Compliance v1.2	7 October 2015	Page 1
			Page 1-2

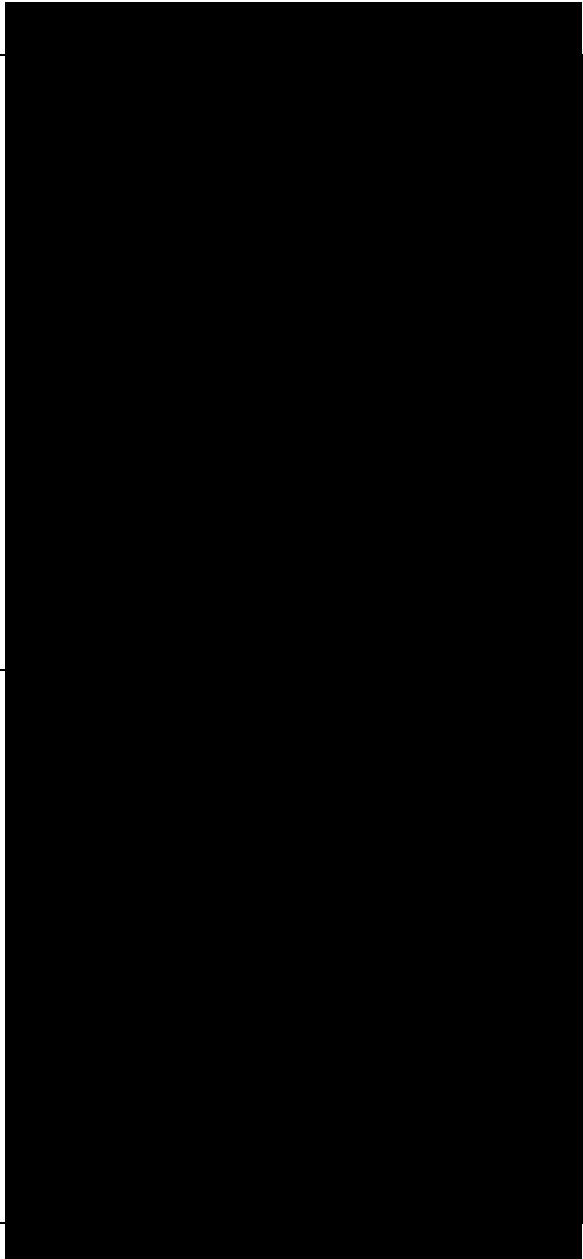
⁹ Relevant to the employment of persons by MA CS Pizza Pty Ltd at the North Caboolture store.
¹⁰ Relevant to the employment of persons by MA CS Pizza Pty Ltd at the North Caboolture store.
¹¹ Relevant to the employment of persons by MA CS Pizza Pty Ltd at the North Caboolture store.
¹² Relevant to the employment of persons by MA CS Pizza Pty Ltd at the North Caboolture store.
¹³ Relevant to the employment of persons by MA CS Pizza Pty Ltd at the North Caboolture store.
¹⁴ Relevant to the employment of persons by MA CS Pizza Pty Ltd at the North Caboolture store.
¹⁵ Relevant to the employment of persons by MA CS Pizza Pty Ltd at the North Caboolture store.

DPE.001.001.0136	TANDA - Bookkeeper Webinar	13 December 2016	12.14- 12.50
DPE.001.001.0304	Follow Up TANDA Webinar Bookkeeping Info Rostering	20 December 2016	6.28-7.58
DPE.001.001.0172	TANDA Help Guide	24 February 2017	Page 7
			Page 16
			Page 19
DPE.001.001.0143	TANDA Information Kit	May 2017	Page 8
DPE.001.001.0285	TANDA and Domino's New Enterprise Agreement	January 2018	n/a

DPE.001.001.0196	Policy – TANDA Software	18 May 2017	Page 1
DPE.001.001.0197	Re-classifying Team Members	January 2018	Page 4
DPE.001.001.0202	New Instructions for the Sales Report	24 February 2017	Pages 1-2
DPE.001.001.0250	Fast Food Industry Award 2010 TANDA	January 2018	Pages 1-24
DPE.001.001.0277	Re-classifying Staff in TANDA	January 2018	Pages 1-10
DPE.001.001.0165	TANDA – Bookkeeper Webinar – Session 1	6 January 2017	3.25-3.54
			13.10-14.00
			14.40-14.52
			38.18-38.28



DPE.001.001.0298	Annexure J – Bookkeeping Services	30 November 2012	2.1.1
			cls. 15.1.2 and 15.1.3



Annexure B

WR Act Agreements and FW Act Agreements

WR Act Agreements

1.	SDA - Domino's Pizza Agreement 2001	AG811150
2.	SDA - Domino's Pizza Agreement NO. 2 2001	AG812393
3.	SDA - Domino's Pizza Agreement NO. 3 2001	AG812392
4.	SDA - Domino's Pizza Agreement NO. 4 2001	AG813288
5.	SDA - Domino's Pizza Agreement NO. 5 2002	AG819139
6.	SDA - Domino's Pizza Agreement NO. 6 2002	AG819083
7.	SDA - Domino's Pizza Agreement NO. 7 2002	AG819137
8.	SDA - Domino's Pizza Agreement NO. 8 2002	AG819138
9.	SDA - Domino's Pizza Agreement NO. 9 2002	AG819136
10.	SDA - Domino's Pizza Agreement NO. 10 2002	AG833541
11.	SDA - Domino's Pizza Agreement NO. 11 2002	AG820445
12.	SDA - Domino's Pizza Agreement NO. 12 2002	AG821442
13.	SDA - Domino's Pizza Agreement No. 13 2003	AG825310
14.	SDA - Domino's Pizza Agreement NO. 14 2003	AG828358
15.	SDA - Domino's Pizza Agreement NO. 15 2003	AG829011
16.	SDA - Domino's Pizza Agreement NO. 16 2003	AG830237
17.	SDA - Domino's Pizza Agreement NO. 17 2003	AG830236
18.	SDA - Domino's Pizza Agreement NO. 18 2003	AG830234
19.	SDA - Domino's Pizza Agreement NO. 19 2003	AG830235
20.	SDA - Domino's Pizza Agreement No. 20 2004	AG832120
21.	SDA - Domino's Pizza Agreement No. 21 2004	AG833540
22.	SDA - Domino's Pizza Agreement 2005	AG843924

23.	Mt Pritchard Pizza Pty Ltd ACN 122 700 672 Operating as Domino's Pizza at Mt Pritchard	AC305174
24.	Delisi Pty Ltd ACN 076 189 715 operating as Domino's Pizza at Mill Park	AG301077
25.	Sarah Kate Investments Pty Ltd ACN 118 801 371 operating as Domino's Pizza at Hampton Park	AC301291
26.	Cultura Pty Ltd ACN 120 126 632 Operating as Domino's Pizza at Ramsgate	AC302341

FW Act Agreements

27.	SDA - Domino's Pizza Agreement 2009	AE878035
28.	SDA – Domino's Pizza Agreement 2009 (AV Staff Pty Ltd)	AE878036
29.	SDA – Domino's Pizza Agreement 2009 (Illawarra Fast Foods Pty Ltd)	AE878066
30.	SDA – Domino's Pizza Agreement 2009 (Competitive Dudes Pty Ltd)	AE878067
31.	SDA – Domino's Pizza Agreement 2009 (Wilbe Pty Ltd)	AE878068
32.	SDA – Domino's Pizza Agreement 2009 (Natcliffe Investments Pty Ltd)	AE878069

Enterprise Instruments

33.	Domino's Pizza Delivery Drivers Award 1999	AT779695
34.	Shop Distributive and Allied Employees Association Domino's Dial a Pizza (WA) Award 2003	AT830034

Annexure C

Terms of the WR Act Agreements, FW Act Agreements and 2010 Award

- B1. There were terms of the WR Act Agreements, and each of them, that, or to the effect that:
- (a) the rates of pay for casual Delivery Drivers were:
 - (i) \$9.40 per hour for the first three months of employment;
 - (ii) \$9.91 after 3 months and up to 12 months of employment;
 - (iii) \$10.58 after 12 months and up to 24 months of employment; and
 - (iv) \$11.14 after 24 months of employment (cl 6.2.1);
 - (b) in addition to the hourly rate of pay, a Delivery Driver was entitled to be paid for each delivery in accordance with a prescribed scale as follows:
 - (i) for deliveries at a distance less than 7 kilometre radius from the store (Zone A) - \$1.28 per delivery;
 - (ii) for deliveries at a distance of 7 to 10 kilometre radius from the store (Zone B) - \$1.74 per delivery; and
 - (iii) for deliveries at a distance of over 10 kilometre radius from the store (Zone C) - \$1.98 per delivery (cl 6.2.2);
 - (c) a Delivery Driver was guaranteed at least 1 delivery or 1 Zone A delivery payment for each hour worked (cl 6.3);
 - (d) notwithstanding anything else in the Agreement, the minimum wage payable to a full time Delivery Driver on average over a four week period was to be no less than the adult minimum wage as prescribed by the Australian Industrial Relations Commission from time to time (cl 6.4);

- (e) a casual employee would be engaged for a minimum of 2 consecutive ordinary hours per shift and up to a maximum of 10 ordinary hours per shift (cl 10.2); and
- (f) any employee required to work overtime for more than two hours on any day, without being notified on the previous day or earlier of the requirement to work overtime, would be supplied with a meal by the Company or be paid \$8.40 meal money (cl 15);
- (g) new employees were to purchase uniforms and the Company was entitled to withhold an up-front deposit of \$12 in the first week and \$5.00 per week for the next four weeks from new employee's wages (cl 17); and
- (h) on termination, an employee could return their uniform to the Company and receive a \$32 refund, save that the employer could deduct \$32.00 from the final pay of employee who had not returned the uniform in a clean condition subject only to fair wear and tear (cl 17).

B2. There were terms of the FW Act Agreements, and each of them, that, or to the effect that:

- (a) the minimum ordinary rates of wage payable to employees covered by the Agreement were as set out in Schedule B, save that Safety Net adjustments applied by the Minimum Wage Panel of Fair Work Australia on or about 1 July in each year were to be applied to the rates of wages set out in Schedule B in the manner described in Schedule B (cl 7.1);
- (b) a casual employee (within the meaning of the FW Act Agreements) could be engaged for a minimum of 2 consecutive ordinary hours per shift and up to a maximum of 10 ordinary hours per shift (cl 11.2);
- (c) an employee required to work overtime for more than two hours on any day, without being notified on the previous day or earlier of the requirement to work overtime, would be supplied with a meal by the

Employer or be paid \$9.25 meal money, provided that the allowance would be adjusted by 3.5% a year on the anniversary of the relevant Agreement in each of 2010, 2011 and 2012 (cl 16);

- (d) new employees were to purchase uniforms and the Company was entitled to withhold an up-front deposit of \$12 in the first week and \$5.00 per week for the next four weeks from new employee's wages (cl 18); and
- (e) on termination, an employee could return their uniform to the Company and receive a \$32 refund, save that the employer could deduct \$32.00 from the final pay of employee who had not return the uniform in a clean condition subject only to fair wear and tear (cl 18).

B3. In the period 2012 to 2017, there were terms of the 2010 Award that, or to the effect that:

- (a) a casual was an employee engaged as such (cl 13.1);
- (b) a casual employee would be paid both the ordinary hourly rate paid to a full-time employee and an additional 25% of the ordinary hourly rate for a full-time employee (cl 13.2);
- (c) the minimum daily engagement of a casual was three hours (cl 13.4);
- (d) an employee required to work more than one hour of overtime after the employee's ordinary time of ending work, without being given 24 hours' notice, would be either provided with a meal or paid a meal allowance of a fixed amount, provided that where such overtime work exceeded four hours a further meal allowance of a fixed amount would be paid and further provided that no meal allowance would be payable where an employee could reasonably return home for a meal within the period allowed (cl 19.1);
- (e) where an employee was required to launder any special uniform, dress or other clothing, the employee would be paid the following applicable allowance:

- (i) for a full-time employee – a fixed amount per week;
 - (ii) for a part-time or casual employee – a fixed amount per shift (cl 19.2);
- (f) where an employee was required by their employer to move temporarily from one branch or shop to another for a period not exceeding three weeks, all additional transport costs so incurred would be reimbursed by the employer (cl 19.3);
- (g) an employee who on any day was required to work at a place away from their usual place of employment, for all time reasonably spent in reaching and returning from such place (in excess of the time normally spent in travelling from their home to their usual place of employment and returning), was to be paid travelling time and also any fares reasonably incurred in excess of those normally incurred in travelling between their home and their usual place of employment (cl 19.4(a)), provide that where the employer provided transport from a pick up point, an employee was to be paid travelling time for all time spent travelling from such pick up point and return thereto (cl 19.4(b));
- (h) the rate of pay for travelling time was the ordinary time rate except on Sundays and public holidays when it was time and a half (cl 19.4(c));
- (i) where an employee was engaged primarily to perform delivery duties of the employer's products to customers using their own motor vehicle, such employee would be paid an allowance of a fixed amount per kilometre (cl 19.6(b));
- (j) a loading of 10% would apply for ordinary hours of work within the span of hours between 9.00pm and midnight (changing to 10.00pm and midnight on and from 1 July 2017), and for casual employees this loading would apply in addition to their 25% casual loading (cl 25.5(a)(i));

- (k) a loading of 15% would apply for ordinary hours of work after midnight (from the first pay period on or after 1 July 2017 between midnight and 6.00am), and for casual employees this loading would apply in addition to their 25% casual loading (cl 25.5(a)(ii));
- (l) until the first pay period on or after 1 July 2017, a loading of 25% would apply for ordinary hours of work within the span of hours on a Saturday, and for casual employees an additional 25% on top of the casual rate (cl 25.5(b));
- (m) from the first pay period on or after 1 July 2017:
 - (i) a loading of 25% would apply for all hours of work on a Saturday for full-time and part-time employees (cl 25.5(b)(i));
 - (ii) a loading of 50% would apply for all hours of work on a Saturday for casual employees, inclusive of the casual loading (cl 25.5(b)(ii));
- (n) a 50% loading would apply for all hours of work on a Sunday for full time and part-time Level 1 employees (cl 25.5(c)(i));
- (o) a 75% loading would apply for all hours of work on a Sunday for casual employees, inclusive of the casual loading (cl 25.5(c)(ii));
- (p) from the first pay period on and from 1 July 2017:
 - (i) A 45% loading would apply for all hours of work on a Sunday for full-time and part-time Level 1 employees;
 - (ii) a 70% loading will apply for all hours of work on a Sunday for casual Level 1 employees (inclusive of the casual loading) (cl 25.5(c)(i));

- (q) work on a public holiday would be compensated by payment at the rate of 250% (reducing to 225% on and from 1 July 2017) for full time and part time employees (cl 30.3); and
- (r) work on a public holiday would be compensated by payment at the rate of 275% (reducing to 250% on and from 1 July 2017, inclusive of the casual loading) for casual employees (cl 30.3).

B4. By reason of the matters in particulars B3 and B1 and/or B2 above, the Award contained terms and conditions of employment which were more beneficial than the Agreements in relation to terms and conditions of employment including the following:

- (a) the base rate of pay for casual Delivery Drivers;
- (b) the 25% casual loading payable under cl 13.2;
- (c) the minimum engagement for casual employees of three hours under cl 13.4;
- (d) the meal allowance payable under cl 19.1;
- (e) the special clothing allowance payable under cl 19.2;
- (f) the excess travelling costs payable under cl 19.3;
- (g) the travelling time reimbursement payable under cl 19.4;
- (h) the delivery allowance under cl 19.6(b);
- (i) the loading for ordinary hours between 9pm and midnight payable under cl 25.5(a);
- (j) the loading for ordinary hours after midnight payable under cl 25.5(a);
- (k) the loading for all hours of work on a Saturday payable under cl 25.5(b);
- (l) the loading for all hours of work on a Sunday payable under cl 25.5(c);
and
- (m) the loading for work on a public holiday payable under cl 30.3.

Certificate of lawyer

I, Brett David Spiegel, certify to the Court that, in relation to the statement of claim filed on behalf of the Applicant, the factual and legal material available to me at present provides a proper basis for each allegation in the pleading.

Date: 24 August 2021

A handwritten signature in black ink, appearing to read 'BDS', is written above a horizontal line.

Signed by Brett David Spiegel
Lawyer for the Applicant

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