

FEDERAL COURT OF AUSTRALIA

DOMINO'S CLASS ACTION

Riley Gall v Domino's Pizza Enterprises Limited (VID 685/2019)

NOTICE OF YOUR RIGHT TO REGISTER, OPT OUT OR DO NOTHING

This notice is about the **DOMINO'S CLASS ACTION**. This is not a scam. You can check (and get any copies of relevant documents) by visiting Phi Finney McDonald's website at <https://phifinneymcdonald.com/action/dominos-class-action-form/>, emailing Phi Finney McDonald at dominosclassaction@phifinneymcdonald.com or by telephoning +61 (0)3 9134 7100.

You are getting this notice because you may be a group member in the class action against Domino's Enterprises Limited (ACN 010 489 326) in the Federal Court of Australia (the **class action**). You may have suffered loss or damage and be entitled to compensation if the class action ends in a judgment in the Applicant's favour or settlement.

As explained below, you may do one of three things in response to this notice:

1. **Register:** Registration is not compulsory. You are invited and encouraged to register to enable you to provide and obtain information about the class action proceeding, including whether you are potentially eligible to receive compensation in the event of a successful outcome and the amount of any claim you might have. (You may have to satisfy certain conditions and establish elements of your claim that are relevant specifically to you before your entitlement arises.)
2. **Opt out:** You can exclude yourself from the class action by opting out by 17 May 2022, which will mean you will not be eligible to receive compensation in the event of a successful outcome, but you keep your right to make your own claim.
3. **Do nothing:** You will remain a group member in the class action. In the event of a settlement (subject to Court approval) or a judgment in the Applicant's favour, you may be required to register to determine your eligibility for compensation arising out of the successful class action or in order to participate in and benefit from the settlement or judgment.

You should read this notice carefully. If there is anything in it that you do not understand, you should contact the Applicant's lawyers at Phi Finney McDonald or seek independent legal advice. Do not contact the Federal Court with any questions about this notice.

A. KEY INFORMATION ABOUT THE DOMINO'S CLASS ACTION

1. A class action is a legal proceeding brought by someone on behalf of a group of people with similar claims (called a "class"). The individuals in the class are often referred to as "group members".
2. This class action was commenced on 24 June 2019 in the Federal Court of Australia by Mr Riley Gall (the **Applicant**), a former Domino's delivery driver, against Domino's Pizza Enterprises Limited (**Domino's**). The class action alleges underpayment of delivery drivers and in-store workers employed by Domino's Australian franchisees between 24 June 2013 and 23 January 2018.
3. More specifically, Mr Gall alleges that during 2013 to 2018 Domino's told its Australian franchisees to pay their delivery drivers and in-store workers under enterprise bargaining agreements. Mr Gall alleges that some of those workers were instead covered by the Fast Food Industry Award (**Award**), and were not paid in accordance with the more beneficial terms and conditions of the Award. Mr Gall therefore argues that he and eligible workers are entitled to compensation from Domino's for loss and damage. Domino's denies the allegations made against it and says that the agreements applied and the Award did not apply to workers during that period. Domino's Defence can be accessed at <https://phifinneymcdonald.com/action/dominos-class-action-form/>.
4. The class action claims compensation on this basis. You may be able to claim compensation from Domino's if you:
 - (a) were employed in Australia as a Domino's delivery driver or an in-store worker; and
 - (b) were employed at any time between 24 June 2013 and 24 January 2018 (**claim period**); and
 - (c) worked at a franchised store where the franchise operator:
 - (i). was not a named party to an enterprise agreement or otherwise bound by an enterprise agreement at the relevant times;
 - (ii). and was covered by the Award.
5. If you meet each one of (a), (b) and (c) then you may be a group member but this will ultimately depend on the Domino's franchisee you were employed by and the store or stores you worked at during the claim period and on the Court's determination of the question as to whether any, and if so which, Domino's franchisees were covered by the Award.
6. The solicitors running the case are from the law firm, Phi Finney McDonald. A company called Therium Litigation Finance (**'Therium'**) is funding the case.

B. COSTS OF THE CLASS ACTION

7. Potential or actual group members are not, and will not be, liable for any “out of pocket” legal costs by participating in this class action. The legal costs of Phi Finney McDonald are being paid by Therium.
8. If the class action is unsuccessful, potential or actual group members will have no liability to pay legal costs or any other costs, meaning they will not be required to pay the costs of Phi Finney McDonald or Domino’s legal costs as, in those circumstances, these costs will be paid by Therium.
9. If the class action is successful (that is, if compensation is recovered for group members), there are three types of costs that group members may be required to pay. These are:
 - (a) reimbursement to Therium for its payment of the Applicant’s legal costs which are the reasonable professional fees of Phi Finney McDonald and out-of-pocket expenses (such as barristers and experts) that are paid along the way (**‘legal costs’**);
 - (b) reimbursement of Therium’s litigation expenses, including (but not limited to) any amounts paid in respect of providing security for Domino’s costs (for example, adverse costs insurance premiums), any costs orders in Domino’s favour and other costs incurred (other than legal costs) (**‘litigation expenses’**); and
 - (c) a funding commission payable by each group member to Therium of 15 to 20% of the net amount recovered in the litigation (being the net amount recovered in a settlement or judgment after deduction of legal costs and litigation expenses) in return for funding the class action litigation (**‘funding costs’**).
10. If the class action is successful Mr Gall and/or Therium will ask the Court to make orders for the legal costs, litigation expenses and the funding costs to be deducted on a pro rata basis from any monetary compensation obtained by group members. In particular, with respect to the funding costs, Mr Gall and/or Therium will seek an order for all group members to share the funding costs payable to Therium. Ultimately, if the class action is successful, the Court will make orders regarding the payment of legal costs, litigation expenses and funding costs on the basis of what the Court considers is ‘fair and reasonable’ for all group members.
11. Whilst at this stage it is not possible to estimate what the legal costs, litigation expenses and funding costs will be, if the class action is successful then the combined total of any amounts deducted from the compensation payable to group members will never exceed the amount group members receive. That is, you will never be out of pocket by participating in the class action.

C. YOUR THREE OPTIONS

12. The Federal Court has ordered that this Notice be published for the information of persons who may be affected by the Domino’s Class Action. You have a number of options that you may elect to take in response to this Notice.

OPTION 1 – REGISTER

13. Potential or actual group members who register in the class action now will be invited to provide their details to the solicitors, Phi Finney McDonald, together with information about their potential claim. This means that, if there is a mediation or a pre-trial settlement of the class action, the details about your claim can be used to inform any settlement discussions.
14. Registration is not compulsory, but you are invited and encouraged to register. There are a number of reasons you should consider registering for the class action now:
 - (a) those who register will be invited to supply Phi Finney McDonald with information about their claim including any underpaid wages they might be entitled to recover;
 - (b) in the absence of sufficient numbers of group members registering, it may be more difficult to settle the Class Action or any settlement which is reached may be lower, because the absence of detail in relation to the claims of group members may make it more difficult to reliably assess the size of the claim;
 - (c) if the Court approves a settlement of the Class Action, the Court will be likely to require potential or actual group members to register by a certain date if they wish to participate in and benefit from the settlement in any event; and
 - (d) it will enable Phi Finney McDonald to provide you with regular updates in relation to the Class Action and to contact you if you become eligible for compensation.
15. To register, you simply need to complete the online form by visiting the web page <https://phifinneycdonald.com/dominos-registration/> by **17 May 2022**.
16. Please note that when you register, you will also be asked whether you consent to the Applicant's solicitors, Phi Finney McDonald having access (to the extent that this information exists and if determined by agreement between the parties or otherwise by Court Order) to data stored in Domino's databases in relation to the Domino's store/s at which you worked, the entity/entities that employed you, your dates and periods of employment, and your shift and pay data. This data will be used to enable the Applicant to estimate the value of your claim and the claims of all Group Members.

OPTION 2 – OPT OUT AND CEASE TO BE A GROUP MEMBER

17. The Applicant in a class action does not need to seek the consent of group members to commence a class action on their behalf or to identify a specific group member. However, group members can cease to be group members by opting out of the class action.
18. Group members who opt out will not be bound by the outcome of the class action and will not receive any monetary compensation in the event the class action is successful.

19. Group members who opt out of the class action may bring their own individual claim. Because much of the conduct of Domino's occurred a long time ago, you may have a very short period of time remaining in which to bring your own individual claim. The time that has elapsed since the class action was commenced in the Federal Court in June 2019 does not count towards your time limit. However, the time remaining for you to bring your claim will start 'ticking' once you opt out from the class action. **You should seek your own legal advice about your claim and the applicable time limit prior to opting out**
20. To opt out, you must visit the online portal by visiting the webpage <https://phifinneymcdonald.com/dominos-opt-out/> and complete the online opt out form and execute the electronic verification checkbox by no later than **11.59pm (AEDT) on 17 May 2022**. The online opt out form and execution of the electronic verification checkbox must be submitted by this time and you must receive an email confirming that your submission is complete, otherwise your opt out will not be effective. If you do not receive that confirmation email, please re-submit your information.
21. Opt out notices received after 17 May 2022 will not be accepted without leave of the Court and you will be treated as having not responded to this notice.

OPTION 3 – DO NOTHING

22. If you do nothing by **17 May 2022**, you will remain a potential or actual group member (and have an opportunity at a later date to seek to participate in any compensation ordered by the Court) but your claim will not be used to inform any part of any mediation or settlement that occurs prior to the trial of the class action.
23. In the event of a settlement (subject to Court approval) or a judgment in the Applicant's favour, you may be required to register formally to seek any benefit of the class action at a later date. At such time, you will receive a notice notifying you of your rights and obligations.

D. IMPORTANT DOCUMENTS

24. You can obtain relevant documents, including the Amended Originating Application, the Second Further Amended Statement of Claim, Domino's Amended Defence and the Opt Out Notice (some of these documents are redacted for confidentiality and commercial sensitivity), by:
- (a) downloading them from Phi Finney McDonald's website, <https://phifinneymcdonald.com/action/dominos-class-action-form/>;
 - (b) requesting them from Phi Finney McDonald, the applicant's solicitors, by email to dominosclassaction@phifinneymcdonald.com; or
 - (c) contacting a District Registry of the Federal Court and paying the appropriate inspection fee.

E. FURTHER QUESTIONS ABOUT THE ABOVE

25. If there is anything of which you are unsure and you don't want to speak with Phi Finney McDonald (or you want to understand their involvement or the funding agreements or retainer better), you should get independent legal advice.