



Australian Government

Fair Work

OMBUDSMAN

PRO-ACTIVE COMPLIANCE DEED

Between

Domino's Pizza Enterprises Limited ABN 16010489326

and

The Commonwealth of Australia

(as represented by the Office of the Fair Work Ombudsman)

Details

Parties	Office of the Fair Work Ombudsman (FWO) and Domino's Pizza Enterprises Limited (Domino's)	
FWO	Name	Commonwealth of Australia (as represented by the Office of the Fair Work Ombudsman)
	ABN	43884188232
	Address	The Fair Work Ombudsman GPO Box 9887 Adelaide SA 5001
	Telephone	08 8225 8265
	Fax	02 6204 2824
	Attention	Executive Director – Regional Services and Targeting
	Domino's	Name
ABN		16010489326
Address		"TABBuilding" Level 8, 240 Sandgate Road Albion QLD 4010
Telephone		07 3633 3312
Fax		07 3633 3399
Email		craig.ryan@dominos.com.au
Attention		Craig Ryan General Counsel and Company Secretary
Recitals	A	Domino's and its franchisees operate 455 Domino's pizza outlets and employ approximately 11,000 employees.
	B	From August 2010, the FWO received complaints from 23 employees (16 of which dealt with employees in the position of delivery driver) of various Domino's pizza outlets (some of which are operated by Domino's and some of which are operated by its franchisees) regarding alleged underpayments. Additionally, during this period, the FWO also conducted audits of 3 Domino's stores which disclosed issues with payments to delivery drivers.
	C	In September 2010, the FWO commenced an investigation into whether or not Domino's, its franchisees, or both, had breached Relevant Commonwealth Workplace Laws; as defined in Attachment B (Purported Contraventions).
	D	The Parties agree as follows.
Date of the Deed	The date the parties execute the Deed or, if it is executed on different dates, the date of the last execution. See page 6 of the Deed.	

General terms

1 Acknowledgements

1.1 Domino's acknowledges that:

- (a) there are opportunities for continuous improvement in relation to its and its franchisees' workplace practices to ensure ongoing compliance with Relevant Commonwealth Workplace Laws;
- (b) the promises it has given in this Deed are reasonable in the circumstances;
- (c) the FWO may:
 - (i) make this Deed (and any of the Attachments to it) available for public inspection, including by posting it on the FWO internet site at www.fairwork.gov.au;
 - (ii) release a copy of this Deed (and any of the Attachments to it) pursuant to any relevant request under the *Freedom of Information Act 1982* (Cth);
 - (iii) issue a media release in relation to this Deed (and any of the Attachments to it); and
 - (iv) from time to time, publicly refer to this Deed (and any of the Attachments to it) and its terms;
- (d) if Domino's contravenes any of the terms of this Deed the FWO may commence an investigation into the Purported Contraventions and take any enforcement action the FWO considers appropriate in respect of the outcome of that investigation; and
- (e) for the avoidance of any doubt, this Deed does not confer onto the FWO any additional rights to the Relevant Commonwealth Workplace Laws.

2 Promise to take pro-active compliance activity

Domino's must do or cause to be done all those activities and things set out in Attachment "B" (Pro-active Compliance Activities).

3 Commencement of Pro-active Compliance Deed

This Deed comes into effect when both the FWO and Domino's have executed this Deed.

4 Publicity

- 4.1 The FWO agrees to provide Domino's with 24 hours to view all FWO media releases arising from this Deed (FWO Releases) prior to publication by the FWO.
- 4.2 Notwithstanding 4.1, Domino's agrees and acknowledges that, if Domino's make any suggested edits or amendments to the FWO Releases, the FWO is under no obligation whatsoever to accept any of them.
- 4.3 The FWO Releases will reflect the positive cooperation of Domino's.
- 4.4 Domino's agrees and acknowledges that FWO may publish this Deed including but not limited to placing a copy on FWO's website.
- 4.5 FWO agrees and acknowledges that Domino's may issue its own media releases in relation to this Deed (Domino's Releases).
- 4.6 Domino's agrees to provide the FWO with 24 hours to view all Domino's Releases arising under this Deed prior to publication by Domino's.
- 4.7 Domino's agrees that the Domino's Releases will not contain anything inconsistent with the terms of this Deed.

5 No inconsistent statements

Domino's:

- (a) must not;
- (b) must ensure that each of its officers, employees or agents, do not ; and
- (c) must use its reasonable endeavours to ensure that each of its franchisees do not;

make any statement, orally or in writing, or otherwise which conveys or implies or reasonably conveys or implies anything inconsistent with acknowledgements contained in this Deed.

6 Termination by the FWO

At any time, the FWO may, by notice in writing, terminate this Deed (that is, immediately and without notice) if Domino's commits, in the opinion of the FWO, a serious or persistent breach or non-observance of a term or terms of this Deed.

7 Continuing obligations

The following clauses survive termination of this Deed for whatever reason (including termination by the FWO):

- (a) Clause 1 (Acknowledgements); and
- (b) Clause 5 (No inconsistent statements).

8 Legally binding

The terms of the Deed are intended to have immediate effect on all parties executing this Deed.

9 Entire agreement

9.1 This Deed constitutes the entire agreement of the parties about its subject matter and supersedes all previous agreements, understandings and negotiations on that subject matter.

9.2 No oral explanation or information provided by either party to the other:

- (a) affects the meaning or interpretation of this Deed; or
- (b) constitutes any collateral agreement, warranty or understanding between the FWO and Domino's.

10 Construction

No rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of, or seeks to rely on, this Deed or any part of it.

11 Costs

The parties must pay their own legal and other costs and expenses in connection with the preparation, execution and completion of this Deed and other related documentation.

12 Severance

If the whole or any part of a provision of this Deed is void, unenforceable or illegal in a jurisdiction it is severed for that jurisdiction. The remainder of the Deed has full force and effect and the validity or enforceability of that provision in any other jurisdiction is not affected. This clause has no effect if the severance alters the basic nature of this Deed or is contrary to public policy.

13 Competency

Domino's acknowledges that:

- (a) before executing this Deed, Domino's was given the opportunity to seek independent legal and other advice of its choice;
- (b) in the light of any advice provided to Domino's, Domino's considered its position; and
- (c) Domino's fully understands the effect of this Deed.


14 Governing law

This Deed shall be construed in accordance with the laws for the time being of the State of

New South Wales and the Parties hereby submit to the jurisdiction of the Courts of that State and the Courts empowered to hear appeals from the Courts of that State.

Signing page

EXECUTED by Domino's Pizza Enterprises Limited ABN 16010489326 in accordance with subsection 127(1) of the Corporations Act 2001 (Cth):



(Signature of Secretary/Director)

Craig Anthony Ryan

(Name of Secretary/Director in Full)



(Signature of Director)

Donald Jeffrey Meij

(Name of Director in Full)

Dated:

EXECUTED by the FAIR WORK OMBUDSMAN



NICHOLAS PAUL WILSON
FAIR WORK OMBUDSMAN

In the presence of:

Tom O'SHEA

(Name of Witness)



(Signature of Witness)

Dated:

19/12/2011

ATTACHMENT "A" (BACKGROUND)

1. Since August 2010, the FWO received complaints from 23 employees (including 16 delivery drivers) of various Domino's pizza outlets (some of which are operated by Domino's and some of which are operated by its franchisees). Additionally, during this period, the FWO also conducted audits of 3 Domino's stores which disclosed issues with payments to delivery drivers.
2. In September 2010, the FWO commenced an investigation into whether or not Domino's and/or its franchisees had breached Relevant Commonwealth Workplace Laws; as defined in Attachment B.
3. As a result of the investigation, FWO formed the view that certain delivery drivers employed by Domino's and its franchisees had been underpaid.
4. The underpayments arose as a result of Domino's and its franchisees paying delivery drivers an hourly rate and allowances which were based upon the SDA-Domino's Pizza Agreement 2001 (2001 Agreement) and certain other agreement-based transitional instruments that contained similar terms and applied to various stores (Other Agreements), but which were increased each year by agreement with the Shop Distributive and Allied Employees Union.
5. On 1 July 2009, the *Fair Work Act 2009 (FW Act)* and the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009 (Transitional Act)* commenced operation. As part of the commencement of the FW Act and the Transitional Act, a new safety net was introduced for employees covered by agreement-based transitional instruments which were made prior to 27 March 2006 (such as, the 2001 Agreement and the Other Agreements).
6. The new provisions required that, on and from 1 January 2010, Domino's and its franchisees must pay employees covered by the 2001 Agreement and the Other Agreements no less than an applicable minimum base rate of pay.
7. The applicable minimum base rate of pay for Domino's and its franchisees is generally derived from the *Fast Food Industry Award 2010 (Fast Food Modern Award)*. However, the Fast Food Modern Award does not cover employees who are covered by an enterprise instrument, such as, the *Domino's Pizza Delivery Drivers Award 1999* or the *SDA Domino's Dial-a-Pizza (WA) Award 2003*. Where an employee is covered by one of these enterprise instruments the applicable minimum base rate of pay is instead derived from either the national minimum wage order (for adult employees) or the special national minimum wage order (for junior employees).
8. Due to the interactions between legislative requirements and the 2001 Agreement, the Other Agreements and the enterprise instruments referred to above, Domino's and its franchisees were initially unaware of the new minimum base rate of pay obligations which applied from 1 January 2010 and continued to pay employees covered by the 2001 Agreement and the Other Agreements at the agreement rates of pay; which in some cases was below the required minimum base rate of pay.
9. Following the commencement of the investigation by FWO, Domino's sought a meeting with FWO to discuss the Purported Contraventions and the rectification of any underpayment. Representatives of Domino's and FWO met on 17 January 2011 (Initial Meeting).
10. Effective 24 January 2011, Domino's and its franchisees adjusted driver pay rates. Overall, this resulted in a significant increase to driver pay rates. Additionally, from the first full pay period after 1 July 2011, Domino's made further increases to the driver pay rate.
11. At a meeting with representatives of the FWO on 27 October 2011, Domino's agreed to the benefits of Domino's and its franchisees undertaking proactive compliance activities to rectify any underpayments in accordance with the terms of this deed.

ATTACHMENT "B" (PRO-ACTIVE COMPLIANCE ACTIVITIES)

In this attachment, the terms in the first column will have the corresponding meaning set out in the second column:

Column 1	Column 2
Delivery Driver Audit Target Period	1 January 2010 to 8 December 2011
Self-Audit Target Periods	29 March 2010 to 11 April 2010 inclusive and 18 April 2011 to 1 May 2011 inclusive
Employee Reporting Target Period	1 January 2010 to 31 December 2010
Self-Audit Process Period	11 December 2011 to 30 March 2012
Rectification Period	1 April 2012 to 1 May 2012 (subject to any agreements with FWO re payment plans)
Report Compilation Period	2 May 2012 to 30 June 2012
Relevant Commonwealth Workplace Laws	<i>Fair Work Act 2009</i> <i>Fair Work (Transitional Provisions and Consequential Amendments) Act 2009</i> <i>Fair Work Regulations 2009</i> <i>Fair Work (Transitional Provisions and Consequential Amendments) Regulations 2009</i>

In this attachment, wherever the context so requires, the singular shall include the plural and vice versa.

Future workplace relations compliance

1. Domino's must ensure that it complies at all times and in all respects with Relevant Commonwealth Workplace Laws by developing systems and processes to ensure ongoing compliance.
2. Domino's must facilitate compliance with Relevant Commonwealth Workplace Laws by its franchisees by developing systems and processes to provide appropriate guidance and training to franchisees.
3. Domino's must provide, no later than 1 March 2012, the FWO with details of the implementation of systems and processes designed to ensure compliance with the obligations set out in paragraphs 1 and 2 above.
4. Ensure that Dominos and its franchisees have the opportunity to resolve all future workplace complaints about the Relevant Commonwealth Workplace Laws within 28 days of receipt of the complaint and that the results are provided to the FWO for validation within 7 days of the

resolution of the workplace complaint.

National Self-Audit Program

5. On 15 December 2011, Domino's must communicate to all its staff, and use reasonable endeavours to ensure that its franchisees communicate with their staff, via a message on the payroll system and/or placing a notice on a notice board in the outlet as follows:

"Domino's and its franchisees have taken the proactive step of beginning a National Self-Audit Program (Program), to ensure that all of our employees are receiving their correct pay. Under the Program:

1. *Domino's and its franchisees will audit payments made to delivery drivers in the period from 1 January 2010 to 8 December 2011 to determine that correct wages, loadings, allowances and penalties have been paid and met, and if not, your employer will rectify this (Delivery Driver Audit Process);*
2. *Domino's and its franchisees will audit payments made in two fortnightly time periods (29 March 2010 to 11 April 2010 inclusive and 18 April 2011 to 1 May 2011 inclusive) to a selection of in-store employees to determine that correct wages, loadings, allowances and penalties have been paid and met, and if not, your employer will rectify this (Self-Audit Process); and*
3. *all employees are invited to contact Tim Van Schyndel on (07) 3326-5447 or Tim.VanSchyndel@dominos.com.au] by 5pm on 31 January 2012 if they have any concerns about the payment of wages or believe there may be underpayment of wages, loadings, allowances and penalties owed to them for any work performed in the period 1 January 2010 to 31 December 2010 Domino's or the applicable franchisee will review each report and if there are any breaches identified, these will be rectified by your employer (Employee Reporting Process).*

You are also able to access information about your entitlements and rights at work by [insert e.g. visiting the Fair Work Ombudsman website at www.fairwork.gov.au or speaking to a Fair Work Advisor on 13 13 94].

If you have any questions, please contact Tim Van Schyndel on (07) 3326-5447 or Tim.VanSchyndel@dominos.com.au"

6. During the Self-Audit Process Period Domino's must, and Domino's must facilitate its franchisees to:
- (a) identify each contravention of the Relevant Commonwealth Workplace Laws relating to underpayment of wages, loadings, allowances and penalties of 10% of employees engaged by 20 employing entities (selected by FWO) within the network of Domino's and Domino's franchisees in Australia that occurred during the Self-Audit Target Periods while the employee was employed by Domino's or the relevant Domino's franchisee, as applicable; and
 - (b) identify each contravention of the Relevant Commonwealth Workplace Laws relating to underpayment of wages, loadings, allowances and penalties of any employees engaged as delivery drivers by Domino's or Domino's franchisees in Australia that occurred during the Delivery Driver Audit Target Period while the driver was employed by Domino's or the relevant Domino's franchisee, as applicable; and
 - (c) identify each contravention of the Relevant Commonwealth Workplace Laws relating to underpayment of wages, loadings, allowances and penalties of any employees that occurred during the Employee Reporting Target Period while the employee was employed by Domino's or the relevant Domino's franchisee, as applicable and that has been identified as a result of the Employee Reporting Process; and
 - (d) identify each contravention of the Relevant Commonwealth Workplace Laws relating to underpayment of wages, loadings, allowances and penalties as a result of the Purported Contraventions.

(Identified Contraventions).

7. During the Rectification Period, Domino's must, and Domino's must facilitate its franchisees to, rectify any Identified Contraventions affecting their respective employees in relation to the period the employee has been employed by them, by:

- (a) back-paying the affected individuals; and
 - (b) if the underpaid employees cannot be located, paying any outstanding amounts into the consolidated revenue of the Commonwealth of Australia (through the FWO) to be held on trust for the relevant underpaid employee/employees.
8. During the Report Compilation Period, Domino's must, and Domino's must facilitate its franchisees to, provide the FWO with a written report, certified by a Certified Practising Accountant, containing details of:
 - (a) the methodology, implementation and progress of the Employee Reporting Process, Delivery Driver Audit Process and the Self-Audit Process; and
 - (b) results of the Employee Reporting Process, Delivery Driver Audit Process and the Self-Audit Process including, but not limited to, the nature and quantum of each Identified Contravention, whether the Identified Contravention arose from the Employee Reporting Process, Delivery Driver Audit Process or the Self-Audit process, the employer to which each Identified Contravention related and all action taken to rectify each of the Identified Contraventions.
9. Following the written report referred to in paragraph 8 above, Domino's must, and Domino's must facilitate its franchisees to, provide to the Executive Director – Regional Services and Targeting of the FWO such further written information of the Employee Reporting Process, Delivery Driver Audit Process and the Self-Audit Process as is requested within 14 days of such request.

Resources

10. Domino's must, and Domino's must facilitate its franchisees to, commit all necessary resources, financial or otherwise, and meet all necessary expenses associated with the effective implementation of the Program.
11. Domino's will make available specified personnel to act as liaison officers for all queries from Domino's outlets and employees of Domino's or its franchisees which concern the Program.
12. Identify a single national contact person to whom all queries from the FWO which concern the implementation of the Program can be directed.