



Title: **Submission in relation to the Fair Work Amendment (Paid Family and Domestic Violence Leave) Bill 2022**

Submission from: **Master Grocers Australia Ltd.**
Trading as:
MGA Independent Retailers
MGA Timber Merchants Australia

Submission to: **Education and Employment Legislation Committee**

No. of pages: **29**

Date of submission: **19 August 2022**

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I. Introduction

1. The Fair Work Amendment (Paid Family and Domestic Violence Leave) Bill 2022 (**the Bill**) was introduced to the House of Representatives on 28 July 2022. If passed, the Bill would amend the *Fair Work Act 2009* (Cth) (**the Act**) to replace the existing entitlement in the National Employment Standards (**NES**) to five days of unpaid family and domestic violence leave (**FDVL**) with an entitlement to ten days of paid FDVL.
2. The Senate has referred the Bill to the Education and Employment Legislation Committee (**the Committee**) for inquiry and report. In order to assist its inquiry, the Committee has requested submissions on the Bill.
3. In a previous submission to the Fair Work Commission, Master Grocers Australia (**MGA TMA**) opposed the then proposed variation to modern awards to replace the existing unpaid FDVL entitlement with ten paid days of FDVL.
4. MGA TMA acknowledges that family and domestic violence is a society-wide issue which impacts:
 - a. Women's health and safety and economic security;
 - b. Workplace gender equality;
 - c. Women's labour force participation; and
 - d. Unpaid care work undertaken by women, which has been exacerbated by COVID-19.

It is our position that family and domestic violence in any form is unacceptable and we acknowledge that the true extent and impact of such violence is unknown due to underreporting by victim-survivors.

5. In this submission, MGA TMA proposes a number of changes to the Bill. Our proposed variations are made in light of the unique insight MGA offers into the independent retail sector across Australia.

II. About Master Grocers Australia

6. MGA TMA is a national registered employer industry association representing independent grocery, liquor and other retailers including timber and hardware businesses, in all States and Territories of Australia.
7. Nationally and independently owned and operated grocery and liquor supermarkets and timber and hardware merchants play a major role in our retail industry and make a substantial contribution to the communities in which they trade. This is not only demonstrated in the forged relationships between independent businesses and their local communities but also in the strong commitment of independent retailers to support their local communities, through local fundraising initiatives that support schools, kindergartens, hospitals, clubs and so on. Independent retailers also support the businesses of local suppliers and service providers as well as provide employment. Many of their employees include working mothers, tertiary students, trainees, and apprentices.
8. Many MGA TMA members are small to medium family businesses, typically employing 30 or fewer staff. These community businesses account for the employment of more than **120,000** full time, part time and casual employees, who are employed to work across a seven-day working week. MGA TMA members generate retail sales in excess of **\$16 billion**.
9. MGA TMA members include 2,700 branded independent grocery stores, trading under brand names such as Drakes, Farmer Jacks, FoodWorks, Foodland, Friendly Grocers, IGA, IGA Xpress, Supa IGA and SPAR, with a further approximately 1,300 independent supermarkets trading under their

own local brand names. In addition, MGA TMA members also include numerous independent liquor stores operating throughout Australia and trading under names such as Cellarbrations, The Bottle O, Duncans, and Local Liquor, which are either single or multi-store owners. Our members also own independent timber and hardware stores. Our members, being independently owned, are comparatively much smaller when juxtaposed against the large supermarket and hardware chains of Coles, Woolworths and Bunnings, which combined represent approximately 80 per cent of the retail supermarket and liquor industries and 65% of hardware industries.

10. MGA TMA members apply a number of different industrial instruments. As the overwhelming majority of our members are small and medium family-owned businesses, the majority of employees employed by our members are covered by the General Retail Industry Award and the Timber Industry Award. The overwhelming majority of our members are national system employers, and hence would be affected by any amendment to the Act.
11. Our members are independently owned and operated, and generally form the major investment for family or personal enterprises and form a large part of an individual's or group's investment and/or superannuation strategy. Each of the branded stores are small businesses independently owned and operated as sole traders or family-run businesses, and some are partnerships where more than one family has a financial interest in the business. Many member stores are handed down to the next generation as a legacy to continue as a form of family enterprise or asset.



12. MGA TMA issued a survey of four key questions to our members on 28 September 2021. There were 42 respondents to this survey, including numerous multi-store owners. The key questions and results of the survey are outlined in Annexure A. The results of this survey will be referred to in this submission.
13. MGA TMA also extends its advocacy function through its involvement as a member and director of Council of Small Business Organisations Australia (**COSBOA**).

III. Amendments to the Act

14. If passed, the Bill will create the following significant impacts to members:
 - i. Provision of ten paid days of FDVL, which extends to all employees including casual employees;
 - ii. FDVL may be taken by employees where it is impractical for them to do something to deal with the impact of violence outside of any work hours, which includes ordinary and overtime hours;
 - iii. FDVL may be taken in respect of behaviour by a more diverse range of individuals, such as a current or former intimate partner of an employee, or a member of the employee's household, in addition to a close relative;

- iv. Payment for FDVL taken is at the employee's full rate of pay, as if the permanent employee had not taken the period of FDVL or as if the casual employee worked the hours that they were rostered;
 - v. Existing non-small business employees will gain the above entitlement on 1 February 2023 and new non-small business employees will gain the above entitlement on their commencement date;
 - vi. Existing small business employees and small business employees employed before 1 August 2023 will gain the above entitlement in full on 1 August 2023 but will still be able to access the existing unpaid FDVL entitlement until 31 July 2023, and new small business employees employed on or after 1 August 2023 will gain the above entitlement on their commencement date; and
 - vii. Members that apply a pre-commencement enterprise agreement that provides for paid FDVL must ensure that entitlement to FDVL is not detrimental when compared to the paid FDVL entitlement in the amended Act.
15. MGA TMA's position on the above significant impacts are:
- a. Paid leave entitlements for casual employees is unprecedented in the Act;
 - b. Further amendments to the Act that impact casual employees should be avoided in light of recent significant changes to the legislative framework impacting casual employment, due to limited information on the impact of those recent changes on size and makeup of the casual workforce;
 - c. The entitlement provided by the Bill would further exacerbate already-rising costs of inputs, which include labour; and
 - d. Provided that uptake of FDVL increases upon introduction of a new paid leave entitlement, this would increase the administrative burden borne by members.
16. As such, MGA TMA proposes the following amendments to the Bill:
- a. That FDVL remains an unpaid entitlement; and
 - b. A centralised government agency to administer a scheme whereby payments are made to employees that take unpaid FDVL, referring to the precedent set by the current parental leave pay scheme; or
 - c. In the alternative, restrict the entitlement to paid FDVL to permanent employees only and exclude casual employees from entitlement to paid FDVL, although casual employees may access unpaid FDVL; or
 - d. In the alternative, introduction of a moratorium on any entitlement to paid FDVL for casual employees, to permit for collection and assessment of information relating to the impact of recent significant changes to the legislative framework impacting casual employment, including impact on size and makeup of the casual workforce.

IV. Costs of a paid FDVL entitlement

17. MGA TMA members, not unlike small and medium businesses in other industry sectors, face a highly competitive environment. Unlike large businesses such as national chains including Coles, Woolworths and Bunnings, MGA TMA's small and medium sized members are not well placed to absorb the increased costs of providing the proposed ten paid FDVL days. Small and medium sized independent businesses, such as those in grocery, supermarket and timber and hardware retail, already face razor-thin margins. Should employment costs increase for small and medium businesses through the introduction of paid FDVL, this will result in decreasing profit margins for independent businesses. This may result in unintended indirect consequences for small business, such as having little option but to terminate staff that they can no longer afford, and reduction of employee hours or business owners working longer hours themselves as profit margins decrease.

Increased employment costs can also pose indirect harm on small and medium sized business owners through impact on their family lives as they work longer hours, on their superannuation nest egg through the devaluation of their business and ensuing health problems.

18. Increased employment costs for small and medium enterprises can extend far beyond decreasing profit margins. Increased employment costs can also contribute to a significant multiplier effect on local businesses that often are the focal point of the communities in which they exist. For example, MGA TMA member independent supermarkets and hardware retailers are often long-standing centres of the community. They contribute to the schools, the local sports clubs and local charities and are recognised as an essential part of the community. Even more importantly, they are major contributors to the local economies. They invariably have strong relationships with local growers and local industries and make a massive contribution to the economic vitality of the areas in which they operate. Increasing employment costs can ultimately irreparably damage the existing multiplier effect that independent businesses have on the national economy.
19. These increased employment costs come from a variety of sources, including annual award wage increases, the 0.5% increase in superannuation guarantee and the new Victorian mental health and wellbeing surcharge of 0.5%. Annual award wage increases alone have resulted in an 13.25% increase in wages during the 2017-2020 period, not including the most recent 4.6% increase on 1 July 2022. Employment costs will continue to increase for many Australian employers as award wages and the national minimum wage increase annually and the superannuation guarantee continues to increase to 12% in the coming years.
20. Small and medium enterprises, including family-operated businesses, require support in order to continue contributing as the hub and drivers of prosperity within their communities. Where community and family-operated businesses thrive, the local community supplies the requisite employment, profits are retained within the community, efficiencies are developed when local businesses interact and young people and juniors are engaged as employees and learn valuable life skills as a result. Small businesses are important to the fabric of local communities as demonstrated in their people-focused personalised approach to business and in the many local fundraising activities they support which only serves to assist local beneficiaries such as schools, hospitals and clubs. It is important to acknowledge that while small and medium businesses have an important role to play in the response to family and domestic violence, it is these very businesses that most require support in executing this role.
21. MGA TMA members were not supportive of the then-proposed provision of ten paid FDVL days for award-covered employees. It follows that members are not supportive of the inclusion of ten paid FDVL days as part of the NES. MGA TMA's member survey indicates that an **overwhelming majority (95%) of members were disagreeable with permanent and casual employees being provided with paid FDVL.**¹
22. MGA TMA is also a council member and director of the COSBOA. COSBOA members, including MGA TMA, are also not supportive of the proposed provision for ten paid FDVL days. **80% of responses to the COSBOA survey of its small business members indicate that small business employers do not agree with a provision of ten paid FDVL days.**²
23. MGA TMA submits that a term providing for paid FDVL will be detrimental to efficient and productive work. Applying assumptions that uptake rates of FDVL may double in the event that a

¹ See Annexure A.

² See Annexure B.

paid entitlement is introduced,³ it follows that the paid entitlement will have an adverse impact on businesses. Should uptake rates and absences increase significantly, there may be adverse impacts on the efficient and productive performance of work through increasing the cost of price of inputs such as the cost of labour or reduced outputs.

24. MGA TMA notes the current widespread staff shortages due to the COVID-19 related absences and border closures. Anecdotal recounts from MGA TMA members in recent months indicate that there are dire labour shortages, with members facing a myriad of related issues such as rostering challenges and difficulties in recruitment. Such issues tend to be more pronounced for members located in rural or regional areas. MGA TMA undertook a further survey of members to gather information on widespread staff shortages.⁴ There were 159 respondents to this survey issued on 20 January 2022. Overwhelmingly, member respondents indicated that **COVID-19 has had a moderate to severe impact on business (85% of members). 72% of members also indicated that staff shortages have presented a moderate to severe impact on business activities.** Increased uptake rates of FDVL because of any provision of a paid entitlement may serve to exacerbate already dire staff shortages faced by many employers.
25. A 2021 report assumes the estimated total cost to employers of providing ten paid FDVL days is \$13.1 million *at its lowest*, and this figure increases to \$13.4 million once adjusted to reflect the most recent minimum wage increase.⁵ This assumes that female employees will access an average of 7.8 days of leave, and male employees 5.9 days. If uptake rates are likely to double upon introduction of a paid entitlement,⁶ the estimated of costs to employers increases to \$34.3 million.⁷ Although there is a lower estimate of \$13.1 million in costs for employers of providing ten paid FDVL days, total costs may be as high as \$34.3 million.⁸ If average utilisation rates eventuate to be higher than 7.8 days for women and 5.9 days for men, which may be the case considering that the presently unknown extent of changes to the size and makeup of the casual workforce as a result to recent changes to the Act, or if they increase to the any predicted extent, this would result in a comparatively significantly higher cost to employers than the estimated \$14.3 million annual cost of employee absenteeism resulting from family or domestic violence.⁹ As such, MGA TMA contends that there will be no aggregate cost savings for employers as a result of providing paid FDVL and instead, providing paid FDVL may actually add significant detrimental costs for business owners. MGA TMA also submits that considering aggregate costs to employers is but one consideration, but increase in costs to individual businesses, particularly small to medium independent enterprises, should be an equally important consideration.
26. The ACTU previously submitted that the provision of paid FDVL could represent an increase in aggregate labour costs of 0.4 cents per hour worked. It is not disputed that small to medium businesses will bear the disproportionate cost of providing the proposed ten paid FDVL days.¹⁰ Although this figure may not sound significant, MGA TMA submits that such an increase to

³Jim Stanford, 'Economic Aspects of Paid Domestic Violence Leave Provisions' (Research Paper 1/2016, Centre for Future Work at the Australian Institute, December 2016) 18.

⁴ See Annexure C.

⁵ Alan Duncan, 'Fair Work Commission Fair Work Act 2009 (Cth) Family and Domestic Violence Leave Review' (final report 2021, Fair Work Commission,) 16.

⁶ Jim Stanford, 'Economic Aspects of Paid Domestic Violence Leave Provisions' (Research Paper 1/2016, Centre for Future Work at the Australian Institute, December 2016) 18.

⁷ Alan Duncan, 'Fair Work Commission Fair Work Act 2009 (Cth) Family and Domestic Violence Leave Review' (final report 2021, Fair Work Commission,) 16.

⁸ Ibid, 41.

⁹ Ibid, 20.

¹⁰ Ibid, 4.

aggregate labour costs per hour worked, even if modest, will be detrimental to small and medium sized businesses, which lack the economies of scale and retained earnings to cushion ever increasing costs. MGA TMA's member survey indicates that **a significant proportion (43%) of members are concerned that their business will be severely impacted, in terms of financial costs, if paid FDVL was provided to employees.**¹¹ Severe adverse increases in financial and labour costs were only one factor of concern shared by MGA TMA members, with other concerns including but not limited to the following:

- a. **A significant proportion (38%) of members indicated concern that their business will be adversely impacted, in terms of lost productivity;**
- b. **A significant proportion (31%) of members indicated concern that their business will be moderately impacted, in terms of financial costs;**
- c. **A significant proportion (31%) of members indicated concern that their business will face non-financial adverse impacts; and**
- d. **A not insignificant proportion (19%) of members indicated concern that their business will be mildly impacted, in terms of financial costs.**

Only **a small minority of members (7%) indicated that their business will be unaffected** by provision of paid FDVL.

27. MGA TMA submits that small and medium business productivity has suffered while employment costs and regulatory burdens have increased as a result of COVID-19. It is MGA TMA's experience that COVID-19 has been detrimental to many community grocers and independent retailers for at least two years. Tourist-driven revenue and business also appears unlikely to recover to pre-COVID-19 levels in the near to intermediate future. The financial costs and regulatory burden of COVID-19 and minimum wage increases are felt acutely throughout Australia, particularly by small and medium businesses and independent retailers. As mentioned previously, small retailers have suffered the brunt in decline of economic activity as they do not possess the economies of scale nor have the luxury of significant retained earnings from previous years to 'cushion' the blow of COVID-19, and more recently suffered from severe staff shortages as COVID-19 case numbers dramatically increased in 2021 and early 2022. This presents another reason why small to medium businesses should not be required to bear the direct costs of providing such a paid FDVL entitlement. Further time is needed to ascertain any necessity of such leave and permit small and medium businesses to recover from challenges posed by COVID-19 without the hurdles posed by further increased employment costs. As such, MGA TMA submits that small to medium sized employers should not be required to bear the costs of paid FDVL but that instead, a centralised government agency should administer a scheme whereby payments are made to employees that take unpaid FDVL. There is precedent for such a scheme as seen in the paid parental leave scheme, whereby employees including eligible casual employees may be entitled to an unpaid leave, but receive payments through their employer from a government agency.
28. As mentioned earlier and later in this submission, MGA TMA submits that further time is required to permit for collection and assessment of information relating to the impact of recent significant changes to the Act in respect of casual employment, including impact on size and makeup of the casual workforce. Centralised and expedient collection and assessment of data could be achieved by a government agency that is responsible for implementing payment for FDVL taken by employees. Such data is necessary to inform on utilisation rates and projected aggregate and individual costs to business of introducing any paid FDVL entitlement, and any required subsequent legislative changes to the NES.

¹¹ See Annexure A.

29. MGA TMA submits that a safety net providing for paid FDVL is likely to have an adverse impact on employment growth, inflation and the sustainability, performance and competitiveness of the national economy. As noted above, MGA TMA contends that there will be no aggregate cost savings for employers as a result of providing paid FDVL and instead providing paid FDVL may actually result in significant added costs for employers and prove detrimental to employment growth and inflation hence affecting the sustainability and competitiveness of our economy. As such, the increased and disproportionate cost pressures on an aggregate and individual-business level necessitates government support in the form of funding for any paid FDVL initiative.
30. MGA TMA also contends that it is inequitable for employers to bear the significant costs of providing paid FDVL. MGA TMA contends as family and domestic violence is a community-wide issue, a whole-of-community response requires federal or state-level support to bear such costs. There is already federal support for provision of parental leave pay. Similarly to FDVL, parental leave is disproportionately accessed by women. MGA TMA supports introduction of payment for FDVL taken if a framework is introduced where the Australian or a state Government makes payment to the employer who then pays the employee. Paid parental leave is crucial in protecting women's workforce participation and this is recognised by the Australian Government through parental leave pay. Likewise, MGA TMA submits that where FDVL is likewise crucial in further safeguarding women's workforce participation, this needs to also be recognised by the Australian Government. It is inequitable that employers not only bear the cost of family and domestic violence through absenteeism and lost productivity, but additionally through paid FDVL. MGA TMA's submission in this regard is mirrored by COSBOA's small business members, with 74% of COSBOA members indicating support **for Federal Government or a purpose-built organisation bearing the responsibility for providing paid family and domestic violence leave to affected employees.**¹²
31. MGA TMA acknowledges that there are already Federal and State Government initiatives and programs aimed at reducing the incidence and impact of family and domestic violence on individuals. If paid FDVL is deemed necessary to address the impact of family and domestic violence on our workers and communities, MGA TMA submits that Government funding for such an initiative is the next practical step.

V. Paid FDVL and casual employment

32. In its Decision dated 16 May 2022 (**Decision**),¹³ the Fair Work Commission provided its preliminary view that paid FDVL does not extend to casual employees.¹⁴
33. In support of its preliminary view, the Fair Work Commission noted that there is no current NES entitlement that provides paid leave to casual employees, although unpaid leave is provided.¹⁵ It is acknowledged that the NES provides no precedent or model for such a paid leave entitlement for casual employees, and examples of long service leave nor pandemic leave were rejected as relevant precedents for the provision of paid leave to casual employees.¹⁶
34. The Fair Work Commission also noted in its Decision that recent significant changes to the legislative framework impacting casual employment provided difficulties in ascertaining any impact

¹² See Annexure B.

¹³ Family and domestic violence leave review 2021 decision [2022] FWCFB 2001.

¹⁴ Ibid, paragraph 818.

¹⁵ Ibid, paragraph 816.

¹⁶ Ibid.

on size and makeup of the casual workforce.¹⁷ It was also noted that the evidence before the Fair Work Commission did not particularise the extent of changes to the size and makeup of the casual workforce as a result of those changes.¹⁸ As such, the Fair Work Commission provided a view against significant changes to minimum leave entitlements for casual employees, at least whilst the impact of recent changes to the NES in respect of casual conversion and the definition of casual employment is unknown.¹⁹

35. MGA TMA submits that paid FDVL should not extend to casual employees for the same reasons as outlined in the Decision:
- a. that there is no useful precedent in the NES for the provision of paid leave entitlements to casual employees that was used as a workable model for the paid FDVL as outlined in the Bill; and
 - b. that the recent changes to the Act in respect of the definition of ‘casual employee’ and introduction of casual conversion obligations means that changes in the makeup and size of the casual workforce is not unlikely, and there is no evidence before the Committee as to prospective uptake rates of FDVL in light of unknown changes in the makeup and size of the casual workforce. In absence of estimated uptake rates among casual employees and associated estimated costs to employers, it is not prudent for the Committee to permit such a significant change to the minimum safety net.
36. While MGA TMA accepts that economic disadvantage can be suffered by casual employees absent from work due to family and domestic violence and that women are disproportionately represented amongst casual employees, it will also be unfair to extend any paid FDVL to casual employees as the casual loading is intended to compensate for non-entitlement to paid leave received by permanent employees.
37. As such, it is MGA TMA’s position in respect of paid FDVL for casual employees that:
- a. there should be no paid FDVL entitlement in respect of any national system employee, although MGA TMA is supportive of an unpaid NES FDVL entitlement for all employees, including casual employees;
 - b. in the alternative, should there be any entitlement to paid FDVL introduced to the NES, this should be provided to permanent employees only and casual employees should be excluded from entitlement to paid leave forming part of the NES; and
 - c. In the alternative, should there be any entitlement to paid FDVL introduced to the NES, a moratorium of 5 years should be placed on this entitlement accessible by casual employees so as to permit for collection and assessment of data relating to the impact of the recent significant changes to the legislative framework impacting casual employment, including impact on size and makeup of the casual workforce, and of any projected costs to employers of the introduction of such a paid leave entitlement for casual employees

VI. Conclusion

38. MGA TMA concludes with the position that despite the significant impact of family and domestic violence on workers, any entitlement to paid FDVL should not come at the expense of small to medium independent businesses. MGA TMA submits that the disproportionate cost burden and the nature of the issue that paid FDVL seeks to address renders it more appropriate that a

¹⁷ Ibid, paragraph 817.

¹⁸ Ibid.

¹⁹ Ibid.

centralised government agency administers a scheme whereby payments are made to employees that take unpaid FDVL. MGA TMA refers to the parental leave pay scheme as a precedent for a similar scheme in respect of unpaid FDVL.

39. In the alternative, MGA TMA also submits that any paid FDVL forming part of the NES should not extend to casual employees, or that if such an entitlement be introduced for casual employees, a moratorium of five years is required on such an entitlement in reflection of recent changes to the legislative framework impacting casual employment.

40. MGA thanks the Committee for the opportunity to make this submission.



Jos de Bruin
CEO
Master Grocers Australia
19 August 2022



Angeline Lee
Employment Lawyer (Associate)
Master Grocers Australia
19 August 2022

Annexure A

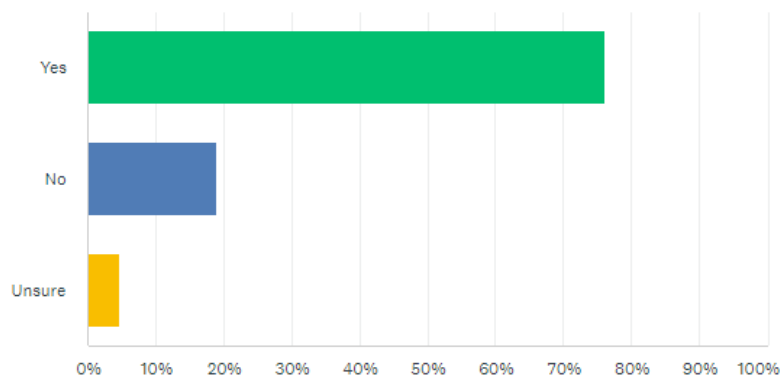
42 MGA TMA members responded to our survey on issued on 28 September 2021 and concluded on 28 January 2022.

Q1



Do you agree with employees being able to access existing entitlements to paid sick/carer's leave to deal with issues relating to family or domestic violence?

Answered: 42 Skipped: 0



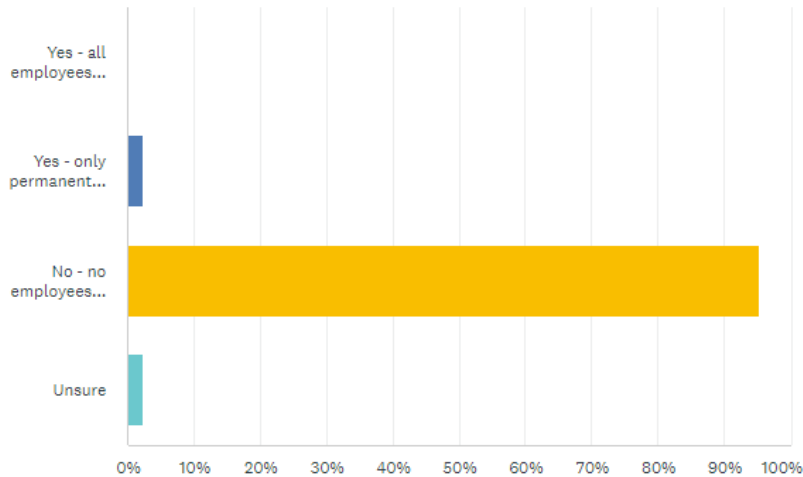
ANSWER CHOICES	RESPONSES	
Yes	76.19%	32
No	19.05%	8
Unsure	4.76%	2
TOTAL		42

Q2



Do you agree with employees being provided with a new type of paid leave in addition to existing leave entitlements, to deal with issues relating to family or domestic violence?

Answered: 42 Skipped: 0



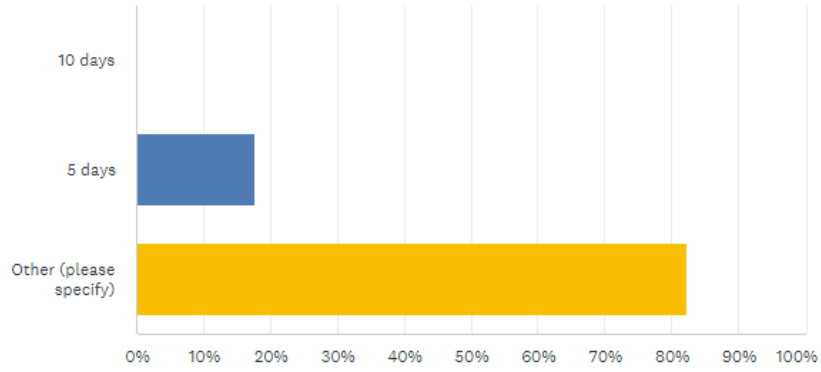
ANSWER CHOICES	RESPONSES
Yes - all employees should be provided with a new type of paid family and domestic violence leave.	0.00% 0
Yes - only permanent employees, not casuals, should be provided with a new type of paid family and domestic violence leave.	2.38% 1
No - no employees should be provided with a new type of paid family and domestic violence leave.	95.24% 40
Unsure	2.38% 1
TOTAL	42

Q3



If you agree with employees being provided with a new type of paid leave in addition to existing leave entitlements, to deal with issues relating to family or domestic violence, how many days is appropriate?

Answered: 34 Skipped: 8



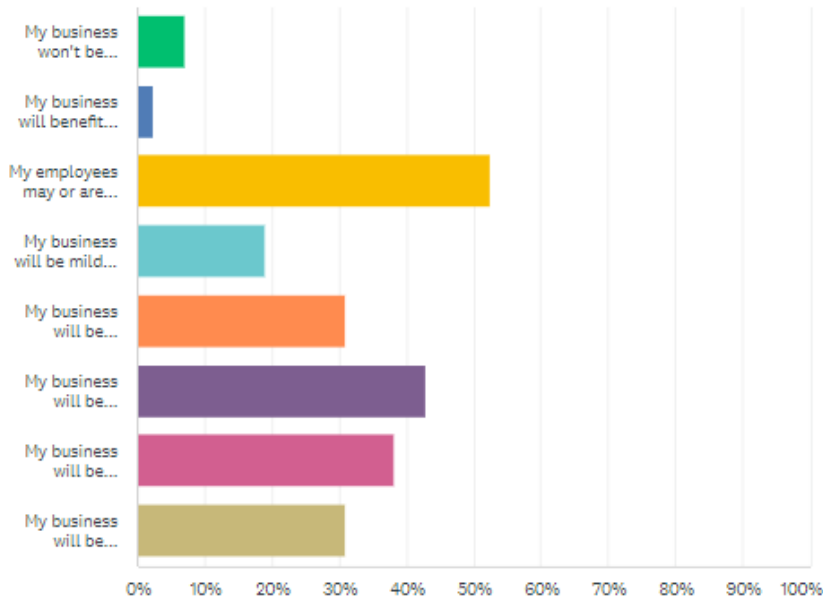
ANSWER CHOICES	RESPONSES	
10 days	0.00%	0
5 days	17.65%	6
Other (please specify)	Responses 82.35%	28
TOTAL		34

Q4



If your employees are provided with a new type of paid leave in addition to existing leave entitlements, to deal with issues relating to family or domestic violence, how will your business be impacted? please tick all that apply

Answered: 42 Skipped: 0



ANSWER CHOICES	RESPONSES
My business won't be impacted.	7.14% 3
My business will benefit in terms of productivity and/or morale.	2.38% 1
My employees may or are likely to take such paid leave dishonestly.	52.38% 22
My business will be mildly adversely impacted in terms of financial costs of such paid leave.	19.05% 8
My business will be moderately adversely impacted in terms of financial costs of such paid leave.	30.95% 13
My business will be severely adversely impacted in terms of financial costs of such paid leave.	42.86% 18
My business will be adversely impacted in terms of productivity.	38.10% 16
My business will be adversely impacted in other non-financial ways.	30.95% 13
Total Respondents: 42	



Domestic and Family Violence Leave

Background document

[COSBOA policy](#)

Domestic and Family Violence (DFV) in all forms is unacceptable. Small business people deal with this compassionately and generously as it arises without legislation or regulation in most cases. The circumstances of DFV and the variety of small business workplaces and structures makes regulation in this sensitive area difficult. Current laws place an unfair legal burden on small business¹. The proposal to amend the Fair Work Act 2009 to provide employees 10 days of paid domestic and family violence leave (DFVL) will place small business people in a position of arbitrators of DFV claims, without the skills, resources, or time to manage the human consequences.

Given the above observations, COSBOA's policy position in respect of Domestic and Family Violence Leave is as follows:

1. Maintenance of the current 5 days unpaid DFVL but formalisation of an offset arrangement where staff can utilise paid personal leave entitlements in lieu of DFVL.
2. SME owners are not equipped to provide affected staff with the complex support and services required to properly support staff with DFV – and therefore these services should be provided by the national welfare and counselling ecosystem in the first instance, with support provided to small business owners in respect of system navigation and employee referral.
3. Investigate the opportunity for the development of a suitable government support scheme (perhaps similar to the paid parental leave scheme) for the support of small business employees affected by DFV

[Current legislation](#)

In 2018 all employees, including part-time and casual, became entitled to 5 days unpaid leave as stipulated in the National Employment Standards (NES) Fair Work Act 2009 s.106A-106E and 107, for DFVL.²

[Proposed legislation](#)

In December 2020, Labor Senator Jenny McAllister tabled the Fair Work Amendment (Ten Days Paid Domestic and Family Violence Leave) Bill. It will raise the existing entitlements in the National Employment Standards from five days unpaid leave to 10 days paid leave in a 12-month period.³

Consultation

COSBOA consulted with its members during a roundtable on 10 September 2021, as well as with its Industrial Relations Expert Panel. Collectively, COSBOA members represent an estimated 1.3 million of the 2.5 million small and family businesses that operate in Australia.

This Policy Brief is the result of the Industrial Relations Expert Panel's deliberations and a precursor to the submission to be made to the Fair Work Commission.

COSBOA Members Poll results

27 COSBOA members were polled during a roundtable on 10 September 2021. 15 small business association leaders responded. The results are below:

On 10 September 2021 COSBOA asked
61 Small Business Association Leaders and 15 answered....

Do your members agree that they should pay 10 days leave for people impacted by family violence?

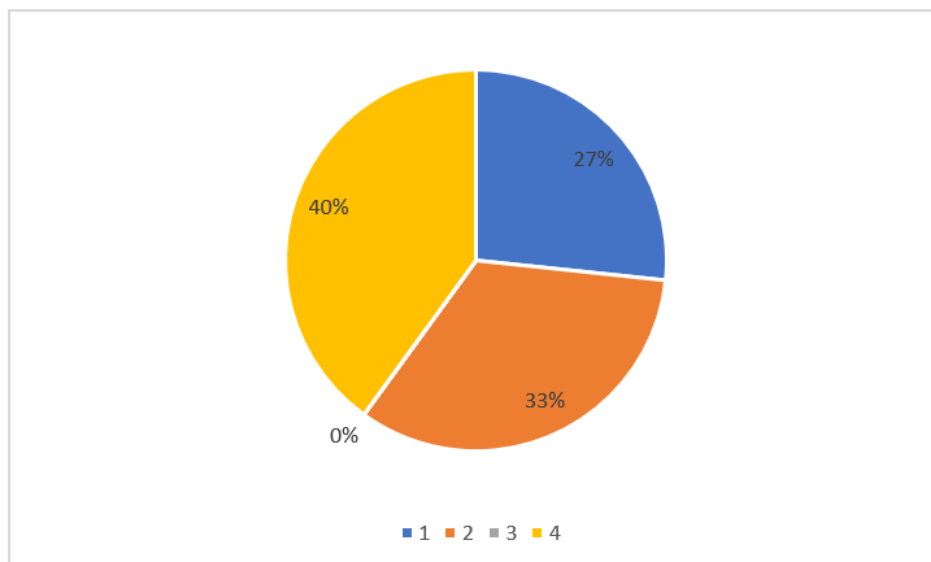
yes 20%

no 80%

Would your members prefer Government subsidy for Family Violence leave ?

- 1 Not necessary, as it makes it more complicated
- 2 The Government should deal directly with the impacted person
- 3 It would help the business deal with a difficult situation 0%

- 4 It creates a world of problems if business get involved in personal issues, even when they see the need. They must be able to refer it to appropriate organisation for proper help.



Change Rationale and Position statements

In an environment of persistent DFV issues, no one should have to choose between employment and safety. Some vulnerable people must make this choice and they should be offered protection in these circumstances.

COSBOA members have indicated the following:

- Small business often deals with DFV even though it does not have the resources, skills, or time to become involved. We handle it, even though it's not the law.
- Making small business people comply with laws creates a world of problems for small business to navigate, including evidence and confidentiality.
- There are issues around evidence and confidentiality in a small business workplace that are not recognised in the current or proposed legislative amendments.⁴
- COSBOA members understand that those impacted by DFV are in no state to be interviewed by their employers about the situation, however such a situation opens the law to be gamed, with small business having little recourse and bearing the burden.
- Small business people in Australia, post natural disasters and still impacted by COVID-19, are not able to provide what normally would be classed as social welfare obligations.
- Laws already exist that protect people from losing employment because they are attending to issues arising from DFV.
- If fully utilised, this provision increases paid leave for employees by 33%. This is difficult to fund in the current economic downturn, which has been unfairly borne by small business people.
- With 35% of business owners ⁵ being female, paid leave for employees doesn't assist them when they face DFV. They too need support, especially if their business cannot afford additional leave payments, or if the impacted sole-trader or micro business person is the main income generator.
- The proposal doesn't recognise the complexity, diversity and variety of situations that arise in small businesses regarding DFV, nor does it provide clarity to small business people on how they may navigate these challenges.
- The proposed legislation doesn't address the cause of DFV in Australia; instead, it transfers risk, as well as legal, social, and financial responsibility to small business people.
- Apart from consultation as part of the Inquiry into Family, Domestic and Sexual Violence, small business people have not had a voice on the practicalities of implementing this law. Further evidence and consultation should be priorities.
- COSBOA members are aware of how deeply and personally impacted their members are when staff or employers face DFV issues and are committed to being part of solutions and initiatives that work for all Australian people.

Background

In December 2020 COSBOA participated in the Inquiry into Family, Domestic and Sexual Violence. This Inquiry was initiated in June 2020 by the Minister for Women, Senator the Hon. Marise Payne, and the Minister for Families and Social Services, Senator the Hon. Anne Ruston, who jointly referred terms of reference to a Federal Government Committee for an inquiry into family, domestic and sexual violence.

In a media release announcing the inquiry, Minister Payne stated that the “challenging start to 2020 with the pandemic and associated restrictions required renewed consideration of how we reduce family, domestic and sexual violence in Australia.”⁶ The inquiry made 88 recommendations. Regarding 10 days of paid leave for FDVL, it handed that issue to a pending Fair Work Commission review.

COSBOA called on the Government to adequately resource DFV, as did the report. COSBOA rejected 10 days of paid DFVL.⁷

Consultation is being sought by the Fair Work Commission, which is responding to a call from the ACTU in April 2021 to review access to paid personal/carer's leave for DFVL.⁸ Parties were asked to contribute by various means, survey, submissions, and variations to modern awards. Parties opposing the variation have until 5 November to file evidence and written submissions. The matter will be heard by the end of November.

In December 2020 the ALP tabled the Fair Work Amendment being (ten days paid Domestic and Family Violence Leave) Bill 2020, (Senator Jenny McAllister). A Bill for an Act to amend the law relating to fair work entitlements for workers experiencing domestic and family violence, and for related purposes.

Attachment 1 -10 days Paid DFVL Bill summary

The following paragraph has been taken from the Explanatory Memorandum for the Fair Work Amendment (Ten Days Paid Domestic and Family Violence Leave) Bill 2020. The Bill was presented to the Senate by Labor Senator Jenny McAllister on 9 December 2020.

The improved entitlement in the Bill would:

- provide ten days of paid domestic and family violence leave in a 12-month period;
- provide for employees to access paid domestic and family violence at their base pay rate for usual hours of work in the period the leave was taken;
- enable an employee and employer to agree additional paid or unpaid leave can be taken in addition to the 10 days paid domestic and family violence leave; and
- clarify and expand the reasons for which a person can take paid domestic and family violence leave to make sure people can take practical and necessary steps to protect their immediate and future safety;
- tighten the confidentiality provisions to remove any uncertainty about the handling of personal employee information in the workplace.

The improved entitlement continues to be available to employees of all types, including casual employees, and is available in full at the beginning of each 12-month period of the employee's employment, and does not accumulate year to year. The entitlement will be pro-rated for part-time or casual employees.

[\(Source: Fair Work Amendment \(Ten Days Paid Domestic and Family Violence Leave\) Bill 2020 Explanatory Memorandum, available online here\).](#)

Attachment 2 – Current Evidence and Confidentiality Requirements

Under the Fair Work Act 2009, current evidence requirements are as follows:

Evidence requirements

An employer can ask their employee for evidence that shows the employee took the leave to deal with family and domestic violence. If the employee doesn't provide the requested evidence, they may not get family and domestic violence leave.

The evidence has to convince a reasonable person that the employee took the leave to deal with the impact of family and domestic violence.

Types of evidence

Types of evidence can include:

- documents issued by the police service
- documents issued by a court
- family violence support service documents, or
- a statutory declaration.

Employers can ask employees to provide evidence for as little as 1 day or less off work.

(Source: Fair Work Ombudsman 2021, *Notice & evidence for family and domestic violence leave*. Available online [here](#)).

In a small business, employees may ask for DFV leave with none of this evidence. This places the employer in an impossible position of having to subjectively assess a situation where they do not have full information. If they say “no, I must have proof,” and subsequently an employee is hurt, there is a cascading impact of responsibilities, both moral and legal.

Current confidentiality requirements are as follows:

Confidentiality

Employers have to take reasonably practicable steps to keep any information about an employee's situation confidential when they receive it as part of an application for leave. This includes information about the employee giving notice that they're taking the leave and any evidence they provide. Employers are not prevented from disclosing information if:

- it's required by law, or
- is necessary to protect the life, health or safety of the employee or another person.

Employers need to be aware that any information about an employee's experience of family and domestic violence is sensitive. If information is mishandled, it could have adverse consequences for their employee. Employers should work with their employee to discuss and agree on how this information will be handled.

For information about workplace privacy, including best practice guidance on privacy principles, obligations about providing information to third parties and privacy in relation to email and the internet, read our [Workplace privacy best practice guide](#).

Source reference: [Fair Work Act 2009 s.106C and 107](#) 

If there are fewer than 5 people in a business, these sort of corporate confidentiality standards, delineation and demarcation practices are difficult to apply. This is especially so when you consider that over 70% of businesses are family businesses. Much of these requirements are well intentioned and can be challenging in their practical application, presenting all sorts of difficulties, especially for small business people.

Attachment 3 - Current employer Guide advice from the Fair Work Ombudsman

The Fair Work Ombudsman's *Employer Guide to Family and Domestic Violence* provides the following practical tip:

Practical tip

Two employees are in a relationship with each other and both of them separately request to take family and domestic violence leave.

Only employees who are experiencing family and domestic violence are entitled to take this leave. If you're dealing with this situation in your workplace, it is important to get legal advice to help you understand your legal rights and obligations.

(Source: Fair Work Ombudsman 2020, *Employer Guide to Family and Domestic Violence*, p11. Available online [here](#)).

This “practical tip” is a good example of the variety of situations a small business person must interpret. Such “advice” places an unfair legal burden on the small business person who is poorly resourced to seek advice on what are complex, personal, and sensitive issues.

Attachment 4 – Recommendation 87 of the Inquiry into Family, Domestic and Sexual Violence

“Workplace issues

8.211

The Committee recognises the importance of stable employment to victim-survivors of FDSV, as well as the significant economic impact of FDSV on businesses and workplaces, in relation to lost productivity and absent or departed staff.

Recommendation 87

8.212

The Committee recommends that the Australian Government, in conjunction with state and territory governments, ensure that the next National Plan recognises that family, domestic and sexual violence impacts upon workplaces.⁹

(Source: Australian Government, Inquiry into Family, Domestic and Sexual Violence 2021, available online here:

Attachment 5 – COSBOA Position at Federal Government Committee Inquiry December 2020

The following passage has been taken from page 335 of the Inquiry:

“Chief Executive Officer of the Council of Small Business Organisations of Australia (COSBOA), Mr Peter Strong stated that the organisation was not in favour of mandated paid family violence leave: There will be a lot of unintended consequences. There will be perpetrators who will ask for domestic violence leave because they’ve been unfairly accused—and some people are unfairly accused. There are so many situations we’ll have to get ready for that, instead of focusing on the real issue, we will be talking about the rules around proof, the rules around when you get it, the rules around how many days, the rules around pay. It is not something any employer I know wants to get involved with in small business.¹⁰⁷¹

8.153

Instead, Mr Strong suggested that Centrelink could shoulder the costs of paid leave for FDSV: Our solution is to give the experts a greater role in this. Give the women’s health services and all those very fine organisations around the country the capacity to go to Centrelink and say, ‘This person has no leave. This person has an issue.’ You have some capacity to give that person access to Centrelink funds, if that’s what they need.¹⁰⁸¹

8.154

Other concerns raised by COSBOA were that formalising the process of paid family violence leave might complicate a process which is best handled informally in smaller businesses and that business owners were already legally responsible for their employee’s health and wellbeing.”

Attachment 6 - Inquiry Background

On 26 March 2018, the Full Bench of the Fair Work Commission varied all modern awards to include a new entitlement to five days’ unpaid family violence leave ¹⁰⁹¹

8.139

Following the decision by the Fair Work Commission, the *Fair Work Act 2009* was amended to insert an entitlement to the National Employment Standards for five days of unpaid family violence leave in an annual period. ¹⁰⁰¹

8.140

The Commission indicated that it would undertake a review of unpaid family violence leave in 2021 with consideration as to whether further unpaid leave should be granted, whether employees should be given greater rights to access personal and carer’s leave in order to assist with family violence and whether paid family violence leave entitlements should be revisited.

8.141

Some state and territory governments voluntarily offer paid family violence leave to their employees, as do some large employers such as Price Waterhouse Coopers and Qantas.

8.142

In cases where organisations do offer paid family violence leave, there are a range of ways a victim-survivor can provide proof of abuse to an employer. For example, under the Victorian State Government public enterprise agreement: Evidence of family violence may be required and can be in the form of an agreed document issued by the Police Service, a Court, a registered health practitioner, a Family Violence Support Service, district nurse, maternal and health care nurse or Lawyer.^[101]

8.143

The Committee heard from union groups and service providers advocating that the present five days' unpaid family violence leave should be increased to ten days' paid leave, as has occurred in some other jurisdictions internationally.

8.144

Groups in favour of paid leave asserted that it was extremely important in enabling victim-survivors (predominantly women) to maintain their employment, access services and escape from dangerous home circumstances.

8.145

The National Tertiary Education Union argued that, regardless of their mode of employment, every worker should have access to paid leave 'to deal with issues around family and domestic violence/intimate partner violence':

This should be available as a discrete form of paid leave without limit, to ensure that employees facing domestic violence are not forced into resignation or loss of income at a time of crisis. Such leave should cover all matters arising from or as a result of domestic violence, including but not limited to:

Seeking safe housing.

Attending medical/counselling appointments.

Attending court hearings and accessing legal advice.

Organising alternate care or education arrangements for children.

Rebuilding support networks with children, family or others.^[102]

8.146

In its submission the ASU stated that:

The evidence is very clear that paid domestic violence leave provides survivors with an opportunity to undertake legal and medical appointments, relocation of home, school, childcare and other essential measures to address their situation without the risk of losing their job or income at a time when access to reliable income has been proven to be one of the most significant determinants in the decision to leave a violent relationship and remain away.^[103]

8.147

The ASU also highlighted a study by Dr Jim Stanford from the Centre for Future Work that:

... did some economic modelling on the cost of providing paid family violence leave as a universal entitlement to all workers. That research identified that it would cost just 5c per worker per day across our economy if we provided paid family violence leave for all workers.^[104]

8.148

ASU representatives also made the point that:

Most domestic violence services only operate during business hours, so women do need to take time off work to access that support.^[105]

8.149

White Ribbon Australia and Communicare submitted:

Until 10 days paid FDV leave is a universal minimum employment standard, vulnerable employees will have to make an unacceptable choice between their safety and having a regular income.^[106]

8.150

To gauge broader support for paid family violence, leave the Committee heard from witnesses representing Australian business interests.

8.151

None of the business groups that appeared before the Committee were at that time prepared to support the introduction of paid family violence leave entitlements.

Annexure C

MGA STAFF & SUPPLY SURVEY REPORT AS OF THURSDAY 26 JANUARY 2022

1. THE SUPPLY SURVEY REPORT

- 1.1. On Thursday, 20 January 2022, MGA circulated a survey to MGA members regarding the issues around staff shortages and supply chains as a result of the impact of the COVID-19 pandemic.
- 1.2. The survey contained 14 questions which consisted of the following:

	Questions
1.	Where is your store located?
2.	Are you located in metropolitan or country?
3.	In the past 4 weeks how has your store been impacted by COVID-19?
4.	How has your store been impacted by staff shortages?
5.	How many staff are unable to work at present due to having COVID-19, having to isolate, or having to care for someone with COVID-19
6.	What percentage does this represent of your staff?
7.	What departments have been most impacted by out-of-stock products?
8.	On average how many hours are your deliveries being delayed?
9.	What about the availability of Rapid Antigen Tests?
10.	What impact to sales have you had as a result of these out-of-stock products and delays?
11.	The specific details of the impacts mentioned in question 10.
12.	Have you reduced your trading hours as a result of dealing with COVID-19 disruptions?
13.	If so, how many trading hours have been reduced per week?
14.	What can Government do to support small business right now?

- 1.3. The survey is expected to end on 8 March 2022.

2. SUMMARY OF MEMBER RESPONSES

- 2.1. From the date in which the survey was circulated (that is, 20 January 2022) to Thursday 27 January 2022, MGA received responses from 158 responses members.
- 2.2. A summary of the responses is outlined below:

	Question	Summary of responses
1.	Where is your store located? (159 responses)	<ul style="list-style-type: none">• VIC: 25.32% (40 members)• NSW: 22.78% (36 members)• QLD: 21.52% (34 members)• NT: 0.63% (1 member)

		<ul style="list-style-type: none"> • WA: 17.72% (28 members) • TAS: 2.53% (4 members) • SA: 8.23% (13 members) • ACT: 1.90% (3 members)
2.	Are you located in metropolitan or country? (156 responses)	<ul style="list-style-type: none"> • Metropolitan: 44.87% (70 members) • Country: 55.13% (86 members)
3.	In the past 4 weeks how has your store been impacted by COVID-19? (156 responses)	<ul style="list-style-type: none"> • Low impact (have hardly been impacted/no impact at all): 14.74% (23 responses) • Medium impact (impacted a few times per week): 43.59% (68 responses) • Severe impact (impacted on a daily basis): 41.67% (65 responses)
4.	How has your store been impacted by staff shortages? (156 responses)	<ul style="list-style-type: none"> • Low impact (have hardly been impacted/no impact at all): 28.21% (44 responses) • Medium impact (impacted a few times per week): 39.74% (62 responses) • Severe impact (impacted on a daily basis): 32.05% (50 responses)

5.	<p>How many staff are unable to work at present due to having COVID-19, having to isolate, or having to care for someone with COVID-19? (156 responses)</p>	<ul style="list-style-type: none"> • 0-5: 66.03% (103 members) • 6-10: 17.95% (28 responses) • 11-20: 5.77% (9 responses) • Other: 10.26% (16 responses) <p>Other individual responses include:</p> <ul style="list-style-type: none"> • 0 staff • 5 staff • 8 staff • 25 staff • 36 staff • 140 staff
6.	<p>What percentage does this represent of your staff? (155 responses)</p>	<ul style="list-style-type: none"> • <10%: 34.84% (54 responses) • 10-15%: 29.03% (45 responses) • 20-30%: 21.29% (33 responses) • 30+%: 9.03% (14 responses) • Other: 5.81% (9 responses) <p>Other individual responses include:</p> <ul style="list-style-type: none"> • 0% (1 member) • 10% – 15% (1 member) • 50% (3 members) • 100% (1 member)

<p>7.</p>	<p>What departments have been most impacted by out-of-stock products? (150 responses)</p>	<ul style="list-style-type: none"> • Grocery: 88.67% (133 responses) • Meat: 47.33% (71 responses) • Fresh produce: 23.33% (35 responses) • Deli: 30.67% (46 responses) • Bakery: 15.33% (23 responses) • Liquor: 13.33% (20 responses) • Other (please specify): 67% (40 responses) <p>Other individual responses included:</p> <ul style="list-style-type: none"> • Checkout • Dairy/ Chiller/ Freezer • Tobacco: • Perishables • Store management • Liquor deliveries • All departments • Toilet rolls • General Merchandise
<p>8.</p>	<p>On average how many hours are your deliveries being delayed? (150 responses)</p>	<ul style="list-style-type: none"> • < 8 hours: 18.00% (27 responses) • 10-24 hours: 14% (21 responses) • 24-48 hours: 42% (63 responses) • Other responses: 26% (39 responses) <p>Other individual responses included:</p> <ul style="list-style-type: none"> • 96 hrs plus • 48 – 72 hours • 4-5 days • 72+ hours • 48 to 60 hours • 10 days • Up to 1 week
<p>9.</p>	<p>What about the availability of Rapid Antigen Tests? (146 responses)</p>	<ul style="list-style-type: none"> • Available: 0.68% (1 response)

		<ul style="list-style-type: none"> • Limited stock available: 20.55% (30 response) • No stock available: 75.66% (109 responses) • Other responses: 4.11% (6 responses) <p>Other individual responses included:</p> <ul style="list-style-type: none"> • Limit one per customer, sell out within 5-10 minutes once received • Last order was for 20 boxes and was reduced to 4 boxes,
10.	<p>What impact to sales have you had as a result of these out-of-stock products and delays?</p> <p>(143 responses)</p>	<ul style="list-style-type: none"> • Little to no impact: 27.27% (39 responses) • Lost business to competitors: 16.08% (23 responses) • Loss of sales: 48.95% (70 responses) • Other: 7.69% (11 responses)
11.	<p>The specific details of the impacts mentioned in question 10.</p> <p>(75 responses)</p>	<ul style="list-style-type: none"> • Low stock levels results in customer purchasing at another store • Trading well above normal • Reduced customer spending • Overall sales not impacted, because there has been some panic buying in lines still available; but lots of customer dissatisfaction due to out of stock lines • Sales are up 10-15% because everyone is staying home

<p>12.</p>	<p>Have you reduced your trading hours as a result of dealing with COVID-19 disruptions? (133 responses)</p>	<ul style="list-style-type: none"> • Opening later: 3.76% (5 responses) • Closing earlier: 9.77% (13 responses) • Closing to cover staff lunch break: 2.26% (3 responses) • No change to trading hours: 84.96% (113 responses) • Other: 7.52% (10 responses) <p>Other individual responses included:</p> <ul style="list-style-type: none"> • Closing certain departments • Closing entire store due to staff shortages • Random closes during day to receive deliveries and restock with only 1 staff on • Running on Skeleton staff with owners working 80+ Hours per week • Closing some days to give staff a break
<p>13.</p>	<p>If so, how many trading hours have been reduced per week? (47 responses)</p>	<ul style="list-style-type: none"> • <10 hours: 46.81% (22 responses) • 20-30 hours: 17.02% (8 responses) • 30+ hours: 6.38% (3 responses) • Other: 29.79% (14 responses) <p>Other individual responses included:</p> <ul style="list-style-type: none"> • None • Between 12 to 18 Hours per week
<p>14.</p>	<p>What can Government do to support small business right now? (120 responses)</p>	<ul style="list-style-type: none"> • Payroll tax relief, commercial tenancy etc: 76.67% (92 responses) • Other: 37.50% (45 responses) <p>Other individual responses included:</p> <ul style="list-style-type: none"> • Provide free rat for small businesses for staff • give cash bonuses to all essential workers/ reward those who are working • Stop incentivising people (staff) to stay home. Incentivise "work". • Stop lockdowns, stop restrictions,

		<ul style="list-style-type: none"> • Change the close contact rules • Stop mandatory vaccination • Reduce days of isolating (to 5 days) • Stop paying workers who won't come into work • Stop making it easy for workers to access covid payments • Allow international students into the country ASAP to fill the void left by people that do not want to work. • Reduced penalty rates • Payroll tax & other taxes • Tenancy relief
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