

# MGA Independent Retailers Timber Merchants Australia

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## Review of changes to casual employment laws

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*Fair Work Amendment (Supporting Australia's Jobs and  
Economic Recovery) Act 2021*

Submission

22 July 2022

## I. Introduction

1. The Attorney-General's Department is conducting a review (**the Review**) of changes made to casual employment arrangements through the *Fair Work Amendment (Supporting Australia's Jobs and Economic Recovery) Act 2021 (Cth)* (**the SAJER Act**).
2. Section 4 of the SAJER Act requires the Minister of Employment and Workplace Relations (**the Minister**) to conduct a review of the SAJER Act as soon as practicable 12 months after its commencement.
3. As part of the Review, the Attorney-General's Department has engaged KPMG to provide an independent review report to the Minister. KPMG is undertaking stakeholder consultations, which include collecting written submissions.
4. We act on behalf of Master Grocers Australia and Timber Merchants Australia (**MGA TMA**). 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. A significant proportion of our Member employers are covered by the General Retail Industry Award and the Timber Industry Award.

## II. About MGA TMA

5. MGA TMA is comprised of nationally and independently owned and operated grocery and liquor supermarkets and timber and hardware merchants. These independent retailers 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 many more. Independent retailers also support the businesses of local suppliers and service providers as well as provide vital local employment. Many of their employees include working mothers, tertiary students, trainees, and apprentices.
6. 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**.
7. 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 hardware stores trading under brand names including Mitre 10, Home Timber and Hardware, Thrifty Link and True Value Hardware. 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.
8. 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 Timber Industry Award.
9. 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.



### III. Objectives of the review

10. The objectives of the review, as stated in the SAJER Act, are to:
  - a. consider whether the operation of the amendments made by the SAJER Act is appropriate and effective in the context of Australia's changing employment and economic conditions;
  - b. identify any unintended consequences of the amendments made by the SAJER Act; and
  - c. consider whether amendments to the *Fair Work Act 2009* (Cth) (**the Act**) and the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* (Cth), or any other legislation, are necessary to:
    - improve the operation of the amendments made by the SAJER Act; or
    - rectify any unintended consequences identified.
  
11. MGA TMA submits the following in relation to the issues for consideration:
  - a. the amendments made by the SAJER Act in respect of the definition of a casual employee are appropriate and effective in the context of previous common law developments;
  - b. the amendments made by the SAJER Act in respect of offers of casual conversion are not appropriate in the context of the nature of highly casualised workforces prevalent in the independent retail industry;
  - c. the amendments made by the SAJER Act in respect of offers of casual conversion are not effective in addressing the increasing casualisation of our workforce;
  - d. the amendments made by the SAJER Act in respect of requests of casual conversion are effective, however they are not appropriate in the context of the nature of highly and increasingly casualised workforces prevalent in the independent retail industry;
  - e. the amendments made by the SAJER Act in respect of the Casual Employment Information Statement (**CEIS**) are effective but not appropriate in the context of the independent retail industry;
  - f. the amendments made by the SAJER Act for the handling of casual conversion disputes is appropriate in the context of the independent retail industry;
  - g. the amendments made by the SAJER Act that provides for offsetting the casual loading in court disputes about entitlements are appropriate;
  - h. the amendments made by the SAJER Act have the unintended consequence of increasing compliance costs and administrative burden for independent business owners; and
  - i. the following amendments to the Act are necessary to improve the operation of the amendments made by the SAJER Act and rectify unintended consequences:
    - i. remove the requirement for employers, irrespective of size, to make offers of conversion;
    - ii. amend the conditions required for employees to be entitled to request conversion, so that this right is no longer a residual right; and
    - iii. amend the requirement for employers to issue the casual employment information statement to new casual employees, so that the Fair Work Information Statement and Casual Employment Information Statement are merged into a single statement.

#### **IV. MGA TMA survey**

12. In order to assist in the preparation of this submission, MGA TMA issued a survey of 13 key questions to our members on 29 June 2022. This survey concluded on 15 July 2022. There were 165 individual retail stores that were respondents to this survey, including numerous multi-store owners. The key questions and results of the survey are outlined in Annexure A.
13. The survey indicated that a total of 7,415 employees were employed across all respondents, comprising 2,597 permanent and 4,818 casual employees. MGA TMA submits that respondents to this survey are a reasonable representative of our membership base as the number of respondents represents approximately 7.37% of the total number of MGA TMA members and single and multi-store respondents are represented in proportion to corresponding proportions within MGA TMA membership.

#### **V. Appropriate and effective operation of the amendments made by the SAJER Act**

14. In conducting the review, the Minister must consider whether the operation of the amendments by the SAJER Act are appropriate and effective in the context of Australia's changing employment and economic conditions.
15. The operation of the amendments made by the SAJER Act include:
  - a. The definition of casual employee inserted at section 15A of the Act;
  - b. The right to convert from casual to permanent employment inserted at Division 4A of the Act, including a process in respect of casual conversion disputes;
  - c. Requirement to provide employees with the new Casual Employment Information Statement, inserted at Division 12 of the Act; and
  - d. Provision at section 545A of the Act for offsetting the casual loading paid to employees in the event of court disputes about entitlements.

#### *Australia's changing employment and economic conditions*

16. MGA TMA submits that Independent small and medium businesses are of highly significant value to the Australian economy and to the communities in which they operate, representing approximately 38.72% of actively trading businesses in the Australian economy.<sup>1</sup> Particularly, they are a key gateway to employment for millions of Australians. This is significant, especially when considering the levels of unemployment and underemployment amongst young Australians (those aged between 15 and 24) who, as an age group, are predominantly employed in award-reliant retail businesses.
17. Our independent business members are small in comparison to the larger chains who are their competitors such as Coles, Woolworths and Bunnings, and larger liquor outlets that are owned by the bigger supermarkets. Nevertheless, independent timber and hardware retailers, supermarkets and liquor stores continue their endeavours to remain viable in difficult market conditions. The combined strength of international chains such as Costco, Aldi and Amazon have had, and continue to have, a devastating effect on small independent retailers. The market share of these larger chains continues to expand, while the market share of independent community-based retailers continues to shrink. For example, the market share of independent community-based supermarkets and grocery retailers are currently 7%, compared to 10% in 2016.
18. 2021 was the year that the catastrophic effects of COVID-19 were first felt in Australia, after the communicable illness was first reported on our shores in early 2020. Our new COVID-19 "normal" became subsequent lockdowns,

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<sup>1</sup> Australian Bureau of Statistics (Reference period: June 2021) [Counts of Australian Businesses, including Entries and Exits](#), ABS Website, accessed 21 July 2022.

particularly in New South Wales and of course, Victoria, who became known as the ‘lockdown capital’ of not only Australia, but the world. No Australian state or territory was left unaffected by these lockdowns, with similar measures taken across the nation. COVID-19 case numbers had increased to an average of 30,000 new cases per day at its peak in late 2021 and early 2022, resulting in essential and critical industries pleading for governments to step in and introduce a relaxation in isolation rules as their workforces became ravaged with staff absenteeism due to being considered a “close contact” or being diagnosed with COVID-19. Worker absences due to COVID-19 illness and isolation obligations imposed by each State and Territory Governments have hindered the ability of the economy to operate at its expected normal capability. Supply chain disruptions continue to be prevalent. The new COVID-19 “normal” has presented the largest source of change to Australian employment and economic conditions in the form of greater uncertainty. Due to uncertain staffing availability posed by testing and isolation requirements and general economic uncertainty posed by fluctuating market conditions, the value of casual workers to small and medium retailers is greater than ever. It is important to recognise the challenges faced by small and medium independent retailers by supporting these retailers in engaging casual workers, who are invaluable in these uncertain times.

19. Government-introduced COVID-19 vaccination mandates were introduced across our members’ industries in order to combat the spread of COVID-19. Whilst the intent and effect of these measures was to improve public health, vaccination requirements created an administrative and financial nightmare for small- to medium-sized businesses. Our members were required to spend a vast amount of additional administration time communicating with and collecting information from their employees regarding their vaccination status and ensuring compliance for unvaccinated or exempt employees. Employers also incurred legal costs as they sought legal advice to ensure that they were compliant with regulations and public health directives, many of which were published less than 24 hours before coming into effect. Additionally, businesses had to consider ‘letting staff go’ due to refusals to comply with the new health directives requiring them to be vaccinated. This led to additional time, cost, and stress to business owners who had to ensure terminations were fair and lawful, as well as dealing with the impact of loss of key staff who helped keep their business running.
20. The unemployment rate in Australia has decreased to 4.2% in January 2022, which was unchanged from December 2021. This represents the lowest unemployment rate since August 2008. It would be tempting to infer from this figure that there is a reasonably high level of employment. However, this is not the case. This figure belies the sharp fall in the size of the national labour force due to COVID-19 related restrictions on international arrivals and immigration. The underemployment level continues to increase, and underemployment is particularly rife in the retail industry. In December 2021 and January 2022, the underemployment rate increased to 6.6% and 6.7% respectively.<sup>2</sup>The increase in these statistics is due to the decline in full-time employment and increase in part-time employment.<sup>3</sup>
21. Generally, most retailers are unable to provide full-time hours to all employees. The Australian Bureau of Statistics (**ABS**) defines the underemployed as those whose “hours of work are below a threshold and are insufficient in relation to an alternative employment situation in which the person is willing and available to engage”.<sup>4</sup> In order to be underemployed, the individual must work less than 35 hours a week but are willing and are available to work more hours. Younger workers between the ages 15 -24 score the highest underemployment rate of 7.3%, other age groups have a ratio of between 2.0% and 6.1%, with those over between 40-44 years having the lowest ratio of 2.0%.<sup>5</sup>
22. Lower skilled employees in industries such as retail and hospitality have one of the highest numbers of underemployment (14.5%)<sup>6</sup>, which is a feature of the retail industry for several reasons. The spread of hours over the working week are at times that often suit certain categories of employees but there will always be those who want to

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<sup>2</sup> Australian Bureau of Statistics, *Labour Force Statistics*, (February 2022).

<sup>3</sup> Ibid.

<sup>4</sup> Australian Bureau of Statistics, *Underemployed Workers*, (February 2022)

<sup>5</sup> Australian Bureau of Statistics, *Labour Force Australia detailed: table 23b*, (24 March 2022)

<sup>6</sup> Australian Bureau of Statistics, *Labour Force Australia Detailed: table 19* (24 March 2022).

work on a full-time basis. It follows that people employed as casuals have high ratios of underemployment. Those who are underemployed are naturally in competition with unemployed people, often for the same jobs. Underemployment is a serious impediment to economic growth. Small independent retailers constantly find themselves unable to provide additional hours of work to employees despite employees desperately needing extra hours of work. Small, family-operated retail businesses are often forced to replace the hours of work of a loyal hardworking employee with a family member. It is becoming a sad reality for independent business operators when they can no longer afford the wages of their longest-serving employees and they have no choice but to replace them with family members due to the lower costs involved.

23. Young people continue to have trouble finding work. Although the youth unemployment rate has dropped to 9.00% in January 2022 compared to 9.40% in December 2021, this figure had fluctuated throughout 2021 from a high of 13.1% in October 2021. Youth unemployment rates remain significantly higher than the unemployment rate in Australia. Unfortunately, there are many young people that are not working, either because they cannot find a job, or they try a range of jobs and are not able to get into one that offers training. The retail industry remains one of the few entry-level job paths for young people as the economy shifts its focus more on services such as education and knowledge industries including information technology and healthcare. Independent retailers, especially in regional and rural areas are the main source of employment for young people.
24. The above factors have contributed to the growing casualisation in the general retail industry and the economy's growing reliance on casual employees. As the costs of operating business increase, and small to medium employers look to reduce hours available for employees, engaging casual employees becomes more attractive due to the nature of such engagements that permit the employee to work as the employer requires. The continuing economic and employment uncertainty created by the impact of COVID-19 has also increased reliance on casual employees.

*Appropriate and effective operation of the amendments by the SAJER Act*

25. MGA TMA submits that the amendments made by the SAJER Act at section 15A of the Act are appropriate and effective in the context of previous developments of *Skene v WorkPac Pty Ltd*.<sup>7</sup> While MGA TMA declines to summarise these developments, MGA TMA submits that these developments created uncertainty for employers due to changes in the meaning of 'casual employment' at common law, with an emphasis placed on the conduct of either party after the time of offer and acceptance of employment. As there was previously no statutory definition of 'casual employee', changes in the common law definition of 'casual employment' presented a source of concern for business owners in respect of conduct amounting to the 'implied permanency' of otherwise casual employees.
26. Our survey indicates that a significant proportion of members (39%) are afforded certainty by section 15A of the Act. As such, MGA TMA supports the insertion of section 15A to the Act and submits that the amendments made by the SAJER Act in respect of the definition of a casual employee are appropriate and effective to address the uncertainty posed by previous developments in common law.
27. However, our survey also indicates that a significant proportion of members (47%) are unsure as to whether section 15A of the Act provides them with certainty as to the definition of 'casual employee', due to difficulties in understanding and interpreting this section.
28. As noted above and as confirmed by the results of our survey, the general retail industry is reliant on casual employees. This reliance is further exacerbated by the economic and employment conditions imposed by COVID-19. MGA TMA submits that the amendments made by the SAJER Act at Division 4A subdivision B of the Act in respect of offers of casual conversion are not appropriate in the context of highly casualised workforces typical of the

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<sup>7</sup> [2018] 264 FCR 536.

independent retail industry. Both the considerations in assessing employee eligibility for offers of conversion and the procedural requirements flowing from it present an onerous administrative burden to employers. This is more keenly felt by small- and medium-sized businesses who are less likely to have expertise in interpreting and applying legislation and further are unlikely to have access to dedicated human resource management specialists. These considerations and procedural requirements include the following:

- a. Maintaining knowledge of each casual employee's 12-month anniversary;
- b. Assessing whether, during at least the last 6 months of that 12-month period, the employee has worked a regular pattern of hours on an ongoing basis which, without significant adjustment, could be converted to work as a full-time employee or a part-time employee;
- c. Make a written offer within 21 days of that 12-month anniversary;
- d. Conduct discussions with employees within 21 days after receipt of an acceptance as to whether the employee is converting to full-time or part-time employment, what hours of work after the conversion takes effect the day the employee's conversion to full-time or part-time employment takes effect;
- e. Provide a further written notice within 21 days after receipt of an acceptance of whether the employee is converting to full-time or part-time employment, what hours of work after the conversion takes effect the day the employee's conversion to full-time or part-time employment takes effect; and
- f. If deciding not to make an offer of conversion on reasonable grounds or in the event that the last 6 months of that 12-month period, the employee has not worked a regular pattern of hours on an ongoing basis which, without significant adjustment, could be converted to work as a full-time employee or a part-time employee, provide a written notice within 21 days of the employee's 12-month anniversary.

Further, small- and medium-sized businesses, due to lack in expertise, resources, and access to dedicated human resource management specialists, are likely to face particular difficulty in assessing whether there is sufficient 'regularity' in an employee's 'pattern of hours' as required by section 66B(1)(b) and whether grounds on which to not make an offer of conversion constitute 'reasonable grounds' as required by section 66C. This, and other difficulties, are revealed in our survey:

- a. 69% of respondents indicated that it is administratively burdensome to keep track of and ensure that each casual employee that attains 12 months' employment and has worked a regular pattern of hours within the last 6 months of this 12 months receives a written offer of conversion within 21 days of their 12 month anniversary;
- b. 59% of respondents indicated that it is administratively burdensome to ensure that a further written notice to employees is provided within 21 days after acceptance of an offer, that specifies whether the conversion is to full or part time, what hours of work are after conversion, and the date the conversion takes effect;
- c. 49% of respondents indicated that it is administratively burdensome to ensure to engage in discussions with employees that accept an offer of casual conversion, whether the conversion is to full- or part-time, what hours of work are after conversion, and the date the conversion takes effect;
- d. 44% of respondents indicated that they have difficulty ascertaining whether casual employees have worked a 'regular pattern of hours on an ongoing basis which, without significant adjustment, be converted to full or part-time basis'; and
- e. 38% of respondents indicated that they have difficulty ascertaining whether any grounds to not make an offer of casual conversion are 'reasonable grounds'.

29. Notwithstanding the vast administrative burden created by Division 4A subdivision B of the Act, such burden may be justified and reasonable if this results in de-casualisation of the workforce and reduced dependency on casual workers. However, MGA TMA submits that this is not the case. Significantly, acceptance rates for offers of conversion are low. Our survey indicates that 72% of respondents believe that on the whole, casual employees to whom offers of conversion are made do not accept such offers. Our survey also indicates that out of the approximate 271 offers of conversion made across all respondents, only approximately 43 offers were accepted by employees (approximately

15.87% acceptance rate). As such, MGA TMA submits that Division 4A subdivision B of the Act creates an administrative burden for employers that does not result in significant conversion rates of casual employees, evidencing a lack of appetite amongst casual workers to convert employment status. Our survey indicates probable reasons for this 'lack of appetite' – 71% of respondents indicate that casual workers decline offers of conversion in order to continue receiving the casual loading and 24% of respondents indicate the ability to accept and reject shifts at the employee's discretion is a contributory reason towards declining offers of conversion.

30. Further, it is members' experience that it is particularly difficult to ascertain whether junior casual employees have worked a 'regular pattern of hours on an ongoing basis which, without significant adjustment, be converted to full or part-time basis', due to complications surrounding rostering to accommodate for schooling and school holidays. It is also members' experience that junior and younger employees have difficulty in understanding written offers of conversion and are the least likely to accept offers of or request conversion.
31. For the above reasons, MGA TMA submits that the amendments made by the SAJER Act in respect of offers of casual conversion are not appropriate in the context of the nature of highly casualised workforces prevalent in the independent retail industry nor are they effective in addressing the increasing casualisation of workforces.
32. MGA TMA submits that the amendments made by the SAJER Act in respect of requests of casual conversion are effective but not entirely appropriate in the context of the highly and increasingly casualised workforces prevalent in the independent retail industry. MGA TMA understands the need for particular casual workers to be provided with means to convert their employment to permanent status, and that it is in the interests of employers and employees both to reduce dependency on a casual workforce. However, MGA TMA does not support the prescriptive test for determining an employee's eligibility to request conversion nor does MGA TMA support the extensive procedural requirements of handling such requests as these create additional administrative burden for employers. Similarly to the provisions in respect of offers of conversion, MGA TMA submits that small- and medium-sized businesses, due to a lack of expertise, resources and access to dedicated human resource management specialists, are likely to face particular difficulties in assessing whether there is sufficient 'regularity' in an employee's 'pattern of hours' as required by section 66F(1)(b) and whether grounds on which to not make an offer of conversion constitute 'reasonable grounds' as required by section 66H. This, and other difficulties, are revealed in our survey:
  - a. 47% of respondents indicated that it is administratively burdensome to ensure that a further written notice to employees is provided within 21 days after acceptance of an offer, that specifies whether the conversion is to full or part time, what hours of work are after conversion, and the date the conversion takes effect;
  - b. 47% of respondents indicated that they have difficulty ascertaining whether casual employees have worked a 'regular pattern of hours on an ongoing basis which, without significant adjustment, be converted to full or part-time basis';
  - c. 39% of respondents indicated that it is administratively burdensome to ensure to engage in discussions with employees that accept an offer of casual conversion, whether the conversion is to full- or part-time, what hours of work are after conversion, and the date the conversion takes effect; and
  - d. 32% of respondents indicated that they have difficulty ascertaining whether any grounds to not grant a request of casual conversion are 'reasonable grounds'.
33. Notwithstanding the administrative burden created by Division 4A subdivision C of the Act, such burden may be justified and reasonable if this results in de-casualisation of the workforce and reduced dependency on casual workers. However, MGA TMA submits that this is not the case as the number of requests of casual conversion have been on the whole, low. Our survey indicates that 4818 casual employees engaged across all respondents, only 35 requests for conversion were made to members (0.73% of employees requested conversion in accordance with the amended Act). As such, MGA TMA submits that there is a similar lack of appetite amongst casual workers to request



conversion of their employment status. However, MGA TMA understands that it is in the interests of employers and employees both to provide for a mechanism for particular casual employees to request conversion.

34. MGA TMA submits that the amendments made by the SAJER Act in respect of the CEIS are effective but not entirely appropriate. MGA TMA understands the importance of an information statement to explain complex legislation that affects casual employment but submits that the requirement to provide two separate information statements to casual employees is administratively burdensome and onerous to employers. This is reflected in our survey, where 39% of respondents indicated that it is administratively burdensome to ensure the CEIS is provided to all new casual employees, in addition to the Fair Work Information Statement.
35. MGA TMA submits that the amendments made by the SAJER Act for the handling on casual conversion disputes is appropriate in the context of the independent retail industry, and declines to provide a submission on its effectiveness.
36. MGA TMA submits that the amendments made by the SAJER Act that provides for offsetting the casual loading in court disputes about entitlements is appropriate, and declines to provide a submission on its effectiveness.

#### **VI. Unintended consequences of the amendments made by the SAJER Act**

37. In conducting the review, the Minister must identify any unintended consequences of the amendments made by the SAJER Act.
38. As noted above, MGA TMA submits that the amendments made by the SAJER Act in respect of offers and requests of casual conversion and the requirement to provide the CEIS has resulted in increased compliance and administrative burden for employers. Unsophisticated small to medium independent retailers often lack the expertise or experience and often have insufficient resources to dedicate towards ensuring compliance with complex legislation. Our survey reflects this sentiment, with a not insignificant proportion of members (36%) indicating that they needed to seek assistance from a business advisor or lawyer to assist in understanding casual conversion obligations, or to obtain resources to assist with compliance with casual conversion laws.
39. This compliance and administrative burden is jarring in comparison to uptake rates. As noted above, the proportion of accepted offers of and number of requests for casual conversion are comparatively low, evidencing a lack of appetite amongst casual employees to convert to permanent status.

#### **VII. Legislative amendments to improve the operation of the amendments made by the SAJER Act or to rectify any unintended consequences**

40. In conducting the review, the Minister must consider whether amendments to the Act and the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009*, or any other legislation, are necessary to improve the operation of amendments made by the SAJER Act or rectify any identified unintended consequences.
41. MGA TMA submits that in order to improve the operation of the amendments made by the SAJER Act or to rectify unintended consequences, the following legislative amendments are required:
  - a. Division 4A subdivision B of the Act must be removed in its entirety, so that there are no obligations on employers, irrespective of size, to offer casual conversion to employees;
  - b. If the above amendment is made, Division 4A subdivision C of the Act must be amended so that any references to previous offers of conversion are removed;

- c. In the alternative, Division 4A subdivision B of the Act must be amended so that it applies only to adult casual employees, for the reasons noted in paragraph 29 above; and
- d. Combine the CEIS and the FWIS into a singular information statement.

## VIII. Conclusion

42. MGA makes this submission to KPMG as part of its stakeholder consultations. We wish to thank the Attorney-General's Department, the Minister and KPMG for the opportunity to contribute to the review of changes to casual employment laws.



Jos de Bruin  
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22 July 2022



Angeline Lee  
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Master Grocers Australia  
22 July 2022

## EXHIBIT A

### Q1 Approximately how many offers of casual conversion have you made since 27 March 2021?

Answered: 37 Skipped: 2

#	RESPONSES	DATE
1	0	7/14/2022 12:35 PM
2	2	7/14/2022 9:55 AM
3	30	7/13/2022 4:55 PM
4	0	7/13/2022 3:09 PM
5	3	7/11/2022 10:38 AM
6	25	7/8/2022 8:11 AM
7	3	7/7/2022 10:42 AM
8	4	7/5/2022 5:55 PM
9	0	7/5/2022 8:16 AM
10	0	7/4/2022 5:28 PM
11	1	7/4/2022 4:21 PM
12	4	7/4/2022 10:48 AM
13	0	7/1/2022 6:53 PM
14	4	7/1/2022 1:13 PM
15	5	7/1/2022 12:33 PM
16	30	7/1/2022 8:03 AM
17	40	6/30/2022 12:53 PM
18	1	6/30/2022 10:44 AM
19	0	6/30/2022 7:01 AM
20	10	6/29/2022 6:11 PM
21	10	6/29/2022 5:08 PM
22	0	6/29/2022 3:05 PM
23	0	6/29/2022 2:45 PM
24	20	6/29/2022 1:57 PM
25	20	6/29/2022 1:37 PM
26	2	6/29/2022 1:16 PM
27	8	6/29/2022 1:08 PM
28	1	6/29/2022 12:44 PM
29	0	6/29/2022 12:18 PM
30	0	6/29/2022 12:16 PM
31	20	6/29/2022 12:15 PM

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32	5	6/29/2022 12:02 PM
33	4	6/29/2022 12:01 PM
34	2	6/29/2022 11:58 AM
35	12	6/29/2022 11:58 AM
36	5	6/29/2022 11:55 AM
37	0	6/29/2022 11:53 AM

## Q2 Of these offers of casual conversion, approximately how many offers were accepted by employees?

Answered: 37 Skipped: 2

#	RESPONSES	DATE
1	none	7/14/2022 12:35 PM
2	1	7/14/2022 9:55 AM
3	2	7/13/2022 4:55 PM
4	0	7/13/2022 3:09 PM
5	1	7/11/2022 10:38 AM
6	1	7/8/2022 8:11 AM
7	1	7/7/2022 10:42 AM
8	0	7/5/2022 5:55 PM
9	0	7/5/2022 8:16 AM
10	0	7/4/2022 5:28 PM
11	0	7/4/2022 4:21 PM
12	0	7/4/2022 10:48 AM
13	0	7/1/2022 6:53 PM
14	1	7/1/2022 1:13 PM
15	1	7/1/2022 12:33 PM
16	zero	7/1/2022 8:03 AM
17	3	6/30/2022 12:53 PM
18	0	6/30/2022 10:44 AM
19	20	6/30/2022 9:50 AM
20	0	6/30/2022 7:01 AM
21	0	6/29/2022 6:11 PM
22	0	6/29/2022 5:08 PM
23	0	6/29/2022 3:05 PM
24	0	6/29/2022 1:57 PM
25	nil	6/29/2022 1:37 PM
26	0	6/29/2022 1:16 PM
27	0	6/29/2022 1:08 PM
28	0	6/29/2022 12:44 PM
29	0	6/29/2022 12:18 PM
30	0	6/29/2022 12:16 PM
31	6	6/29/2022 12:15 PM

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32	0	6/29/2022 12:02 PM
33	1	6/29/2022 12:01 PM
34	1	6/29/2022 11:58 AM
35	4	6/29/2022 11:58 AM
36	0	6/29/2022 11:55 AM
37	0	6/29/2022 11:53 AM

### Q3 Approximately how many requests for casual conversion have you received since 27 March 2021?

Answered: 38 Skipped: 1

#	RESPONSES	DATE
1	none	7/14/2022 12:35 PM
2	0	7/14/2022 9:55 AM
3	1	7/13/2022 4:55 PM
4	0	7/13/2022 3:09 PM
5	0	7/11/2022 10:38 AM
6	0	7/8/2022 8:11 AM
7	1	7/7/2022 10:42 AM
8	0	7/5/2022 5:55 PM
9	0	7/5/2022 8:16 AM
10	0	7/4/2022 5:28 PM
11	0	7/4/2022 4:21 PM
12	0	7/4/2022 10:48 AM
13	2	7/1/2022 6:53 PM
14	0	7/1/2022 1:13 PM
15	2	7/1/2022 12:33 PM
16	zero	7/1/2022 8:03 AM
17	3	6/30/2022 12:53 PM
18	0	6/30/2022 10:44 AM
19	10	6/30/2022 9:50 AM
20	0	6/30/2022 7:01 AM
21	0	6/29/2022 6:11 PM
22	1	6/29/2022 5:08 PM
23	1	6/29/2022 3:05 PM
24	0	6/29/2022 2:45 PM
25	0	6/29/2022 1:57 PM
26	5	6/29/2022 1:37 PM
27	0	6/29/2022 1:16 PM
28	0	6/29/2022 1:08 PM
29	0	6/29/2022 12:44 PM
30	0	6/29/2022 12:18 PM
31	0	6/29/2022 12:16 PM

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32	6	6/29/2022 12:15 PM
33	0	6/29/2022 12:02 PM
34	0	6/29/2022 12:01 PM
35	1	6/29/2022 11:58 AM
36	2	6/29/2022 11:58 AM
37	0	6/29/2022 11:55 AM
38	0	6/29/2022 11:53 AM



## Q4 Of these requests for casual conversion, approximately how many requests have you granted?

Answered: 38 Skipped: 1

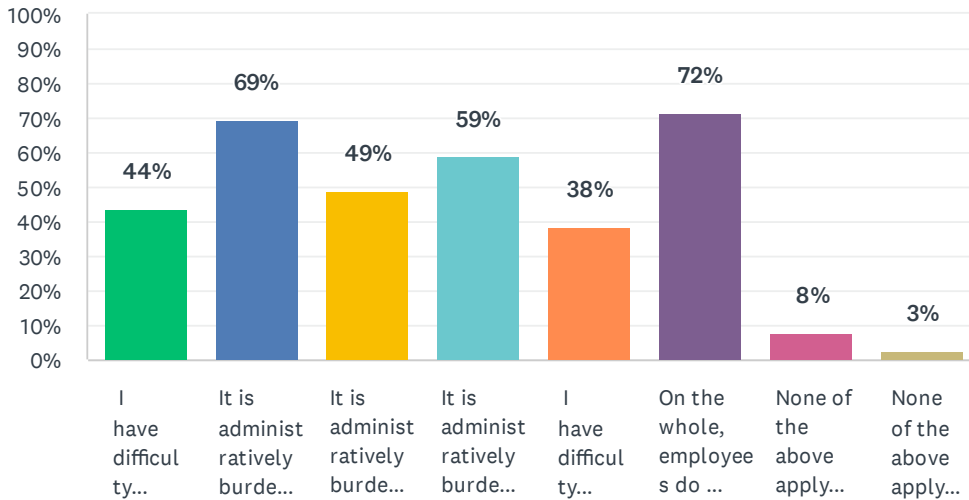
#	RESPONSES	DATE
1	n/a	7/14/2022 12:35 PM
2	0	7/14/2022 9:55 AM
3	1	7/13/2022 4:55 PM
4	0	7/13/2022 3:09 PM
5	0	7/11/2022 10:38 AM
6	0	7/8/2022 8:11 AM
7	0	7/7/2022 10:42 AM
8	0	7/5/2022 5:55 PM
9	0	7/5/2022 8:16 AM
10	0	7/4/2022 5:28 PM
11	0	7/4/2022 4:21 PM
12	0	7/4/2022 10:48 AM
13	2	7/1/2022 6:53 PM
14	0	7/1/2022 1:13 PM
15	2	7/1/2022 12:33 PM
16	zero	7/1/2022 8:03 AM
17	2	6/30/2022 12:53 PM
18	0	6/30/2022 10:44 AM
19	5	6/30/2022 9:50 AM
20	0	6/30/2022 7:01 AM
21	0	6/29/2022 6:11 PM
22	None of our staff have wanted part time rates. They are happy with flexibilty. And most of these workers have been with us from 5yrs to 10years service.	6/29/2022 5:08 PM
23	1	6/29/2022 3:05 PM
24	0	6/29/2022 2:45 PM
25	0	6/29/2022 1:57 PM
26	100%	6/29/2022 1:37 PM
27	0	6/29/2022 1:16 PM
28	N/A	6/29/2022 1:08 PM
29	0	6/29/2022 12:44 PM
30	0	6/29/2022 12:18 PM
31	0	6/29/2022 12:16 PM

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32	6	6/29/2022 12:15 PM
33	0	6/29/2022 12:02 PM
34	0	6/29/2022 12:01 PM
35	1	6/29/2022 11:58 AM
36	all	6/29/2022 11:58 AM
37	0	6/29/2022 11:55 AM
38	0	6/29/2022 11:53 AM

## Q5 The new National Employment Standard for casual conversion requires you to offer casual conversion to eligible employees. Do any of the following apply to your store(s)?

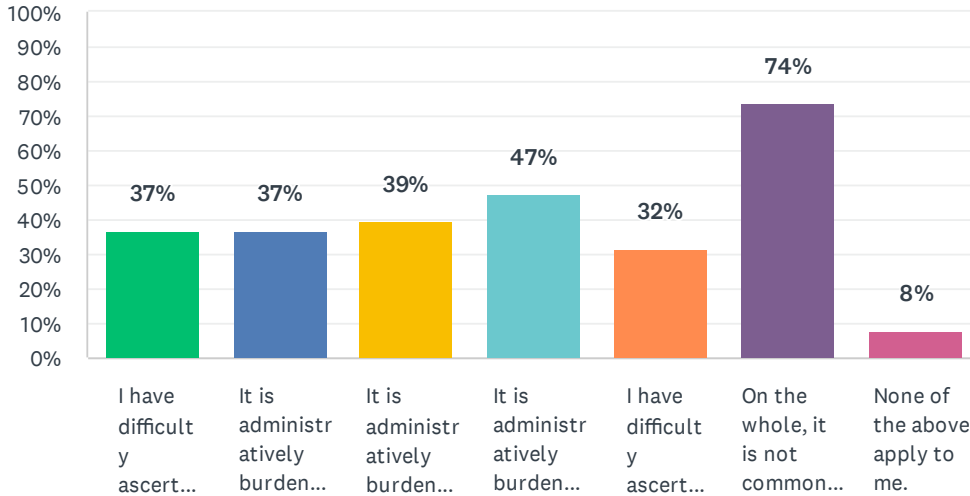
Answered: 39 Skipped: 0



ANSWER CHOICES	RESPONSES	
I have difficulty ascertaining whether my casual employees have worked a 'regular pattern of hours on an ongoing basis which, without significant adjustment, be converted to full or part-time basis'.	44%	17
It is administratively burdensome to keep track of and ensure that each casual employee that attains 12 months' employment and has worked a regular pattern of hours within the last 6 months of this 12 months receives a written offer of conversion within 21 days of their 12 month anniversary.	69%	27
It is administratively burdensome to ensure that I engage in discussions with employees that accept an offer of casual conversion, whether the conversion is to full or part time, what hours of work are after conversion, and the date the conversion takes effect.	49%	19
It is administratively burdensome to ensure that I give a further written notice to employees within 21 days after acceptance of an offer, that specifies whether the conversion is to full or part time, what hours of work are after conversion, and the date the conversion takes effect.	59%	23
I have difficulty ascertaining whether any grounds that I have to not make an offer of casual conversion are 'reasonable grounds'.	38%	15
On the whole, employees do not accept the offers of casual conversion that I make.	72%	28
None of the above apply to me because I am small business employer that is not required to make an offer of conversion to employees.	8%	3
None of the above apply to me.	3%	1
Total Respondents: 39		

**Q6 The new National Employment Standard for casual conversion requires you to accept requests for casual conversion made by eligible employees. Do any of the following apply to your store(s)?**

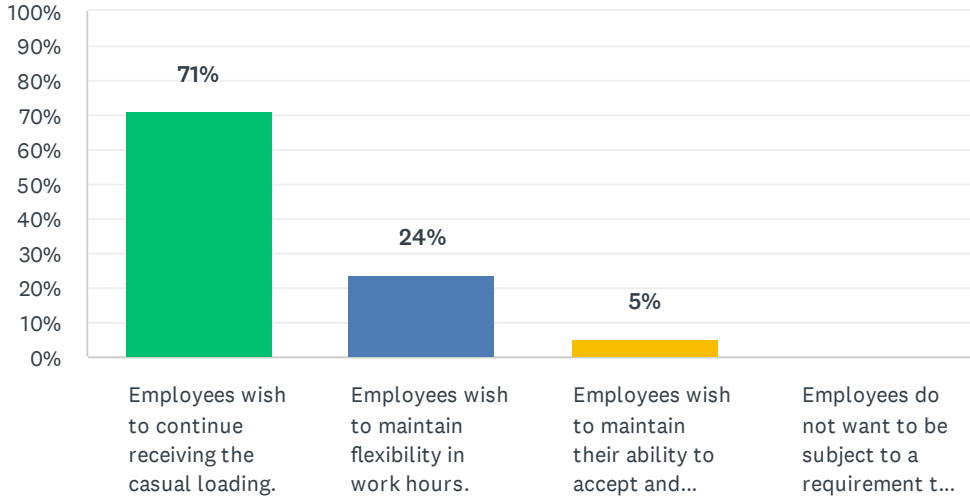
Answered: 38 Skipped: 1



ANSWER CHOICES	RESPONSES	
I have difficulty ascertaining whether my casual employees have worked a 'regular pattern of hours on an ongoing basis which, without significant adjustment, be converted to full or part-time basis'.	37%	14
It is administratively burdensome for me to verify whether the employee has already refused an offer of casual conversion, whether the employee was given a notice that an offer of casual conversion would not be made or whether a previous request for conversion was already refused, within the 6 month period to the employee's request.	37%	14
It is administratively burdensome to ensure that I engage in discussions with employees that make a request for casual conversion, whether the conversion is to full or part time, what hours of work are after conversion, and the date the conversion takes effect.	39%	15
It is administratively burdensome to ensure that I give a further written notice to employees within 21 days after their request, that specifies whether the conversion is to full or part time, what hours of work are after conversion, and the date the conversion takes effect.	47%	18
I have difficulty ascertaining whether any grounds that I have to not grant a request for casual conversion are 'reasonable grounds'.	32%	12
On the whole, it is not common for me to receive requests for casual conversion.	74%	28
None of the above apply to me.	8%	3
Total Respondents: 38		

## Q7 If employees do not accept offers of casual conversion made to them, what reason do they provide, if any?

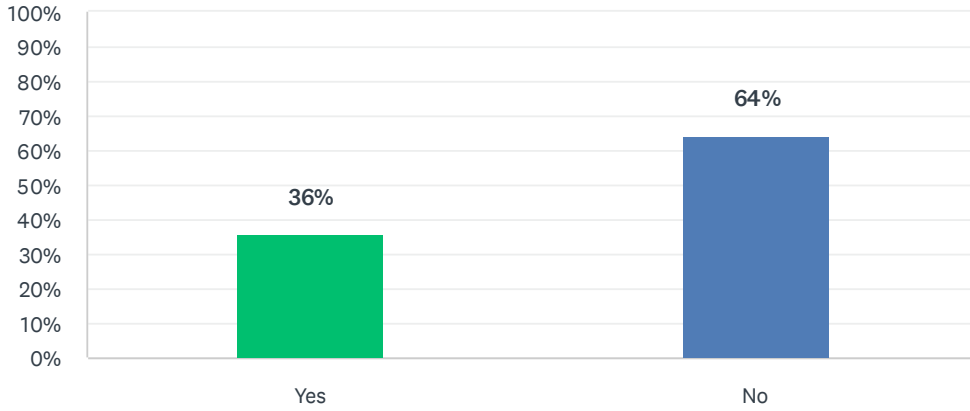
Answered: 38 Skipped: 1



ANSWER CHOICES	RESPONSES	
Employees wish to continue receiving the casual loading.	71%	27
Employees wish to maintain flexibility in work hours.	24%	9
Employees wish to maintain their ability to accept and reject shifts.	5%	2
Employees do not want to be subject to a requirement to provide minimum notice of termination in the event that they wish to resign.	0%	0
<b>TOTAL</b>		<b>38</b>

### Q8 Did you need to seek assistance from a business advisor/lawyer to help you either understand your casual conversion obligations, or to obtain resources to assist with compliance with casual conversion laws?

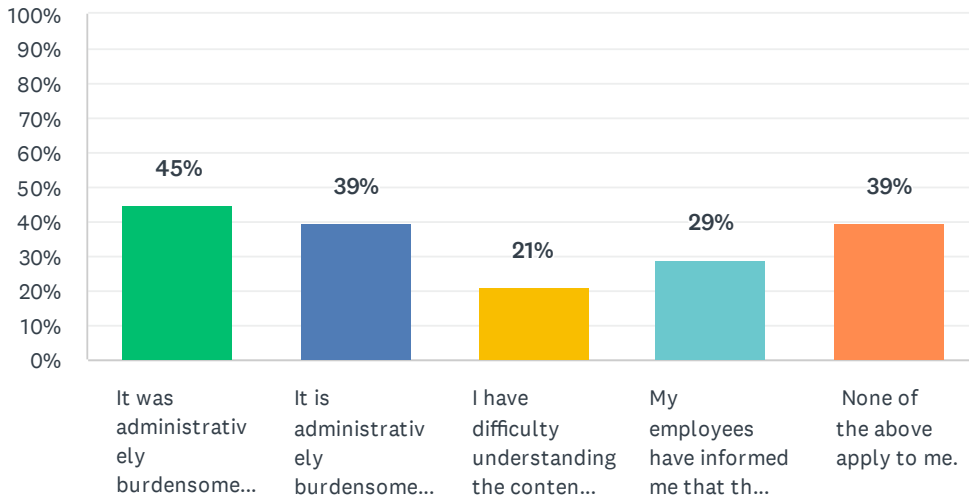
Answered: 39 Skipped: 0



ANSWER CHOICES	RESPONSES	
Yes	36%	14
No	64%	25
TOTAL		39

## Q9 A new National Employment Standard requires provision of the Casual Employment Information Statement (CEIS) to existing and new casual employees. Do any of the following apply to your store(s)?

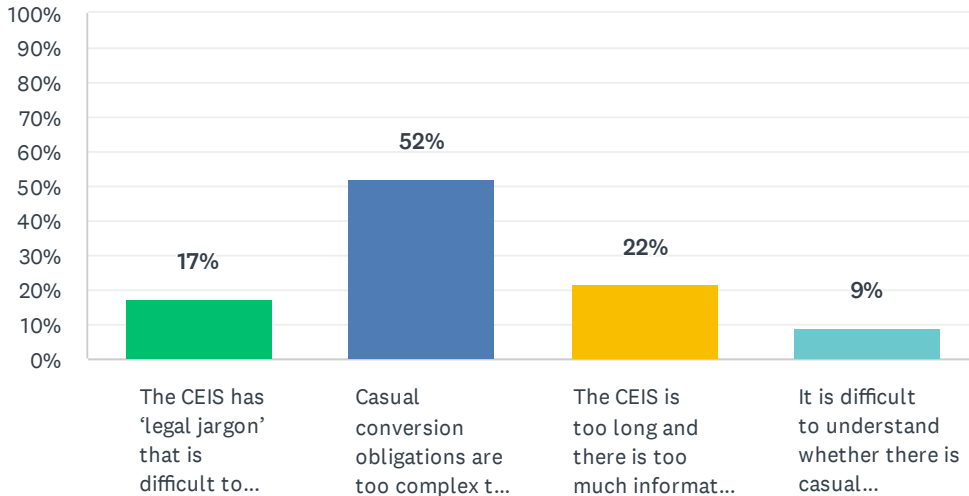
Answered: 38 Skipped: 1



ANSWER CHOICES	RESPONSES	
It was administratively burdensome to ensure that I gave the CEIS to all existing casual employees	45%	17
It is administratively burdensome to ensure that I give the CEIS to all new casual employees, in addition to the Fair Work Information Statement.	39%	15
I have difficulty understanding the contents of the CEIS.	21%	8
My employees have informed me that they have difficulty understanding the contents of the CEIS.	29%	11
None of the above apply to me.	39%	15
Total Respondents: 38		

## Q10 If you or any employee had difficulty understanding the contents of the CEIS, kindly explain what this difficulty was.

Answered: 23 Skipped: 16



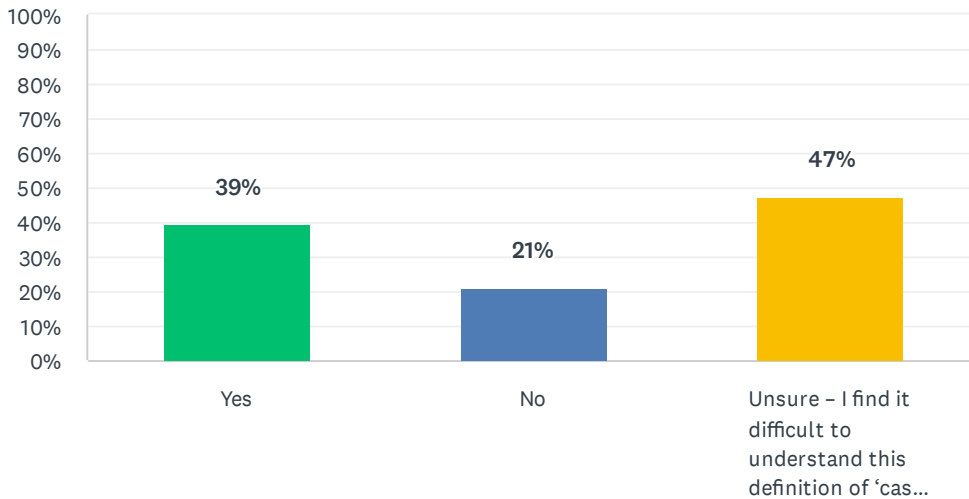
ANSWER CHOICES	RESPONSES	
The CEIS has 'legal jargon' that is difficult to understand.	17%	4
Casual conversion obligations are too complex to understand easily, so it is difficult to understand a summary of these obligations.	52%	12
The CEIS is too long and there is too much information to understand.	22%	5
It is difficult to understand whether there is casual employment as described in the CEIS.	9%	2
<b>TOTAL</b>		<b>23</b>

#	OTHER (PLEASE SPECIFY)	DATE
1	n/a	7/14/2022 12:35 PM
2	N/A	7/14/2022 9:55 AM
3	n/a	7/1/2022 6:53 PM
4	No one really requests the any more information	7/1/2022 8:03 AM
5	The CEIS is not applicable to all casual team members so they tend to not care about it when trying to explain it to them so it is a waste of our time.	6/30/2022 7:01 AM
6	My staff aren't interested. They like the higher hourly pay rate. They like the flexibility of been able to swap shifts to suit there needs. And have a flexible roster that suits other commitments like studies & children committements.	6/29/2022 5:08 PM
7	employees dont read it or are not interested	6/29/2022 1:37 PM
8	na	6/29/2022 1:16 PM
9	we are to small to worry about this is our team are generally school kids	6/29/2022 12:18 PM
10	easy to under stand	6/29/2022 12:15 PM



Q11 The definition of 'casual employee' inserted into the Fair Work Act 2009 requires that the employee accepts an offer for work knowing that there is no firm advance commitment to ongoing work with an agreed pattern. The definition also specifies only a narrow number of relevant factors at the time of the offer and acceptance of work, ignoring any subsequent conduct. Does this definition provide you with more certainty that you have engaged a person as a casual employee?

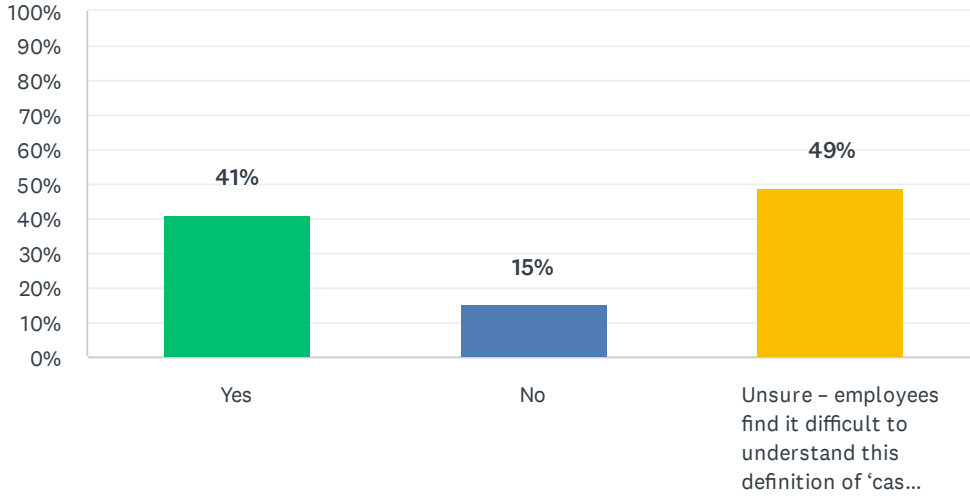
Answered: 38 Skipped: 1



ANSWER CHOICES	RESPONSES	
Yes	39%	15
No	21%	8
Unsure – I find it difficult to understand this definition of 'casual employee' outlined in section 15A of the Fair Work Act 2009.	47%	18
Total Respondents: 38		

## Q12 Does the definition of 'casual employee' referred to in Q10 provide your employees with clarity about their status as a casual employee?

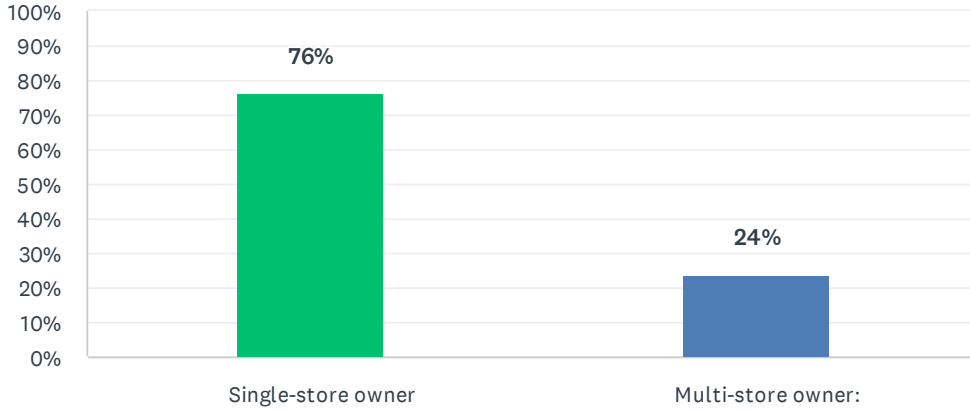
Answered: 39 Skipped: 0



ANSWER CHOICES	RESPONSES	
Yes	41%	16
No	15%	6
Unsure – employees find it difficult to understand this definition of 'casual employee' outlined in section 15A of the Fair Work Act 2009.	49%	19
Total Respondents: 39		

### Q13 Are you a single or multi-store owner? If multi-store, how many stores do you operate?

Answered: 38 Skipped: 1

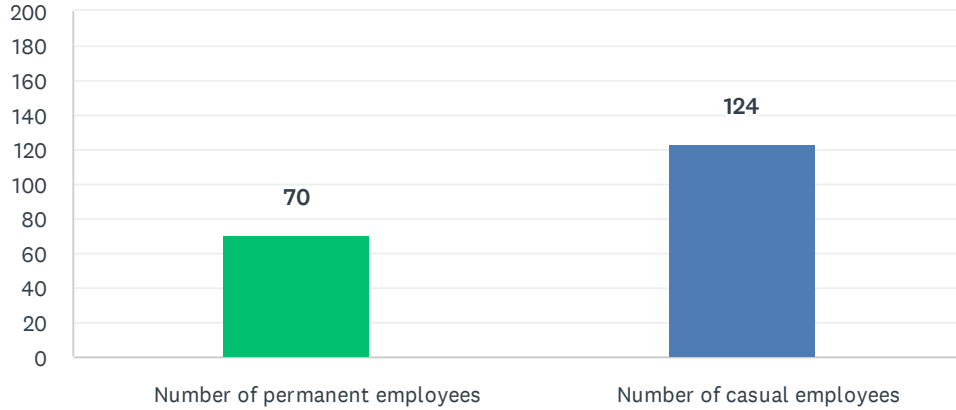


ANSWER CHOICES	RESPONSES
Single-store owner	76% 29
Multi-store owner:	24% 9
TOTAL	38

#	NUMBER OF STORES:	DATE
1	7	7/15/2022 5:16 PM
2	8	7/14/2022 12:35 PM
3	1	7/4/2022 4:21 PM
4	3	7/1/2022 1:13 PM
5	78	7/1/2022 12:33 PM
6	3	7/1/2022 8:03 AM
7	1	6/30/2022 12:53 PM
8	22	6/30/2022 9:50 AM
9	1	6/29/2022 6:11 PM
10	2	6/29/2022 3:05 PM
11	3	6/29/2022 2:45 PM
12	5	6/29/2022 1:37 PM
13	2	6/29/2022 12:16 PM

## Q14 How many permanent and casual employees do you have across all stores?

Answered: 39 Skipped: 0



ANSWER CHOICES	AVERAGE NUMBER	TOTAL NUMBER	RESPONSES
Number of permanent employees	70	2,597	37
Number of casual employees	124	4,818	39
Total Respondents: 39			

#	NUMBER OF PERMANENT EMPLOYEES	DATE
1	0	7/15/2022 5:16 PM
2	140	7/14/2022 12:35 PM
3	10	7/14/2022 9:55 AM
4	6	7/13/2022 4:55 PM
5	2	7/13/2022 3:09 PM
6	38	7/11/2022 10:38 AM
7	27	7/8/2022 8:11 AM
8	7	7/7/2022 10:42 AM
9	6	7/5/2022 5:55 PM
10	7	7/5/2022 8:16 AM
11	2	7/4/2022 4:21 PM
12	10	7/1/2022 6:53 PM
13	106	7/1/2022 1:13 PM
14	1500	7/1/2022 12:33 PM
15	20	7/1/2022 8:03 AM
16	25	6/30/2022 12:53 PM
17	15	6/30/2022 10:44 AM

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18	350	6/30/2022 9:50 AM
19	4	6/30/2022 7:01 AM
20	0	6/29/2022 6:11 PM
21	2	6/29/2022 5:08 PM
22	6	6/29/2022 3:05 PM
23	9	6/29/2022 2:45 PM
24	5	6/29/2022 1:57 PM
25	100	6/29/2022 1:37 PM
26	9	6/29/2022 1:16 PM
27	0	6/29/2022 1:08 PM
28	58	6/29/2022 12:44 PM
29	2	6/29/2022 12:18 PM
30	14	6/29/2022 12:16 PM
31	40	6/29/2022 12:15 PM
32	0	6/29/2022 12:02 PM
33	8	6/29/2022 12:01 PM
34	7	6/29/2022 11:58 AM
35	30	6/29/2022 11:58 AM
36	30	6/29/2022 11:55 AM
37	2	6/29/2022 11:53 AM
<b>#</b>	<b>NUMBER OF CASUAL EMPLOYEES</b>	<b>DATE</b>
1	0	7/15/2022 5:16 PM
2	290	7/14/2022 12:35 PM
3	29	7/14/2022 9:55 AM
4	50	7/13/2022 4:55 PM
5	17	7/13/2022 3:09 PM
6	10	7/11/2022 10:38 AM
7	35	7/8/2022 8:11 AM
8	27	7/7/2022 10:42 AM
9	15	7/5/2022 5:55 PM
10	13	7/5/2022 8:16 AM
11	6	7/4/2022 5:28 PM
12	9	7/4/2022 4:21 PM
13	9	7/4/2022 10:48 AM
14	50	7/1/2022 6:53 PM
15	9	7/1/2022 1:13 PM
16	3000	7/1/2022 12:33 PM
17	130	7/1/2022 8:03 AM

IMPORTANT - HAVE YOUR SAY: Casual conversion and casual definition laws

18	50	6/30/2022 12:53 PM
19	5	6/30/2022 10:44 AM
20	700	6/30/2022 9:50 AM
21	14	6/30/2022 7:01 AM
22	18	6/29/2022 6:11 PM
23	15	6/29/2022 5:08 PM
24	22	6/29/2022 3:05 PM
25	32	6/29/2022 2:45 PM
26	25	6/29/2022 1:57 PM
27	25	6/29/2022 1:37 PM
28	7	6/29/2022 1:16 PM
29	28	6/29/2022 1:08 PM
30	2	6/29/2022 12:44 PM
31	10	6/29/2022 12:18 PM
32	47	6/29/2022 12:16 PM
33	18	6/29/2022 12:15 PM
34	4	6/29/2022 12:02 PM
35	12	6/29/2022 12:01 PM
36	18	6/29/2022 11:58 AM
37	40	6/29/2022 11:58 AM
38	15	6/29/2022 11:55 AM
39	12	6/29/2022 11:53 AM