

DIRECT SELLING ASSOCIATION  
OF AUSTRALIA INC

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17 December 2003

The Assistant Commissioner  
Productivity Commission PO  
Box 80  
Belconnen ACT 2616

Dear Sir

**Re: National Workers Compensation and Occupational Health  
and Safety Frameworks**

The Association provided the Commission with a Submission on 20 June 2003.

As the Executive Director of the Association, I provided the Commission with several "matters for discussion" at the Commission's public hearing in Sydney on Thursday 4 December.

A copy of those "matters for discussion" is attached.

I attended the Commission's hearing in Sydney on 4 December and discussed the matters listed with the Commissioners and I now provide additional comments.

1. A Profile of the Industry was attached to our Submission of 20 June, 2003
2. There is no defined "workplace" for independent salespersons engaged in the direct selling industry. Sales and appointments are made wherever people meet. The industry is comprised mainly of women and activity occurs in a great variety of places, for example, private houses, supermarkets, schools, pre-schools, workplaces of customer or independent salesperson or in a neighbourhood environment.
3. There are at present, approximately 620,000 independent salespersons selling our Members' goods and services and of these, nearly 98% earn annual gross commissions of less than \$6,000, the income tax threshold.

The Australian Taxation Office has granted to our Members a special exemption arrangement for ABN withholding tax where earnings of independent salespersons are less than \$6,000 in any period of twelve consecutive months.

4. Approximately 94.7% of independent salespersons earn annual gross commissions of less than \$2,000, and a very substantial proportion

of these salespersons are not considered to be "in business" for tax purposes.

5. We believe that up to 60% of all purchases from our Members are for the personal and family use of the independent salesperson, and this reflects the absence of any "business" pursuit, mentioned in 4 above.
6. Independent salespersons in the direct selling industry, do not fall within the criteria generally accepted at common law to establish an employer/employee relationship. This has been supported by two landmark legal cases in recent years, viz:
  - a) Commissioner of Pay-Roll Tax (Victoria)  
V Mary Kay Cosmetics Pty Ltd (June 1982)
  - b) World Book (Australia) Pty Ltd V Federal Commissioner of Taxation (July 1992)
7. The Agreements in use in the industry are not contracts for labour or work and this was confirmed in both the cases mentioned in 6 above. Recent opinion from Senior Counsel in Sydney has also supported this contention. The agreements typically do not require the independent salesperson to do anything or provide any service. They may terminate the Agreement at will and simply walk away.
8. Independent salespersons do not regard themselves as "workers". They operate independently and do not look for benefits extended to employees. As we mentioned in our additional matters, we are not aware of any claim for workers compensation in any State or Territory from an independent salesperson in the Industry.
9. Genuine contractors are excluded from workplace insurance arrangements in all jurisdictions and direct selling salespersons are specifically exempted in Victoria.

Furthermore the earnings of independent salespersons are specifically exempted from pay-roll tax in NSW and Victoria, and pay-roll tax is not sought in any other jurisdiction.
10. While the position remains as it is at present, (reliance on definitions in States and Territories Acts), we will continue to seek specific exemptions wherever possible.

I attach herewith the separate pages which accompanied the notes provided to the Commission on 2 December 2003.

If any further information or assistance is required please contact Les Dell on (02) 9567 8566

Sincerely

A handwritten signature in black ink, appearing to read 'Les Dell', written in a cursive, flowing style.

Les Dell

## Elements of the Calculation

Should some form of withholding tax system be imposed, two elements are vital to the calculation of the withholding tax liabilities and superannuation obligations of the direct selling industry. These elements are the turnover at retail for the direct selling companies and the frequency distribution of income for the independent sales persons (ISPs).

Based on the survey results from Questionnaire "B" of the DSAA Econometric Study 2001, the turnover at retail for the 37 direct selling companies that responded to the questionnaire is \$822,675,047. In order to provide an accurate picture, it is necessary to extrapolate this figure across the entire direct selling industry. The DSAA has provided information that turnover at retail is approximately \$215 million for the 26 DSAA member companies that are unaccounted for. This brings the total turnover at retail for DSAA member companies to \$1,037,675,047. The DSAA is representative for approximately 80% of the entire direct selling industry. Therefore, the total turnover at retail for the whole direct selling industry is equal to \$1,297,093,809. For the purposes of this calculation this figure is rounded to \$1.3 billion.

Based on the survey results from Questionnaire "A" of the DSAA Econometric Study 2001, the frequency distribution of income for the independent sales persons (ISPs) from the 37 DSAA member companies that responded to the questionnaire is as follows:

**Table 6: Income Group Share of Questionnaire Income**

Group	Income	Number of ISPs	% of Total	Cumulative
1	\$0 - \$1,000	193,565	90.46	90.46
2	\$1,001 - \$2,000	7,720	3.61	94.07
3	\$2,001 - \$3,000	3,483	1.63	95.70
4	\$3,001 - \$4,000	2,088	0.98	96.68
5	\$4,001 - \$5,000	1,532	0.71	97.39
6	\$5,001 - \$6,000	1,081	0.51	97.90
7	\$6,001 - \$10,000	1,683	0.78	98.68
8	\$10,001 - \$15,000	967	0.45	99.13
9	\$15,001 - \$20,000	592	0.28	99.41
10	\$20,001 - \$30,000	512	0.24	99.65
11	\$30,001 - \$40,000	254	0.12	99.77
12	\$40,001 - \$50,000	174	0.08	99.85
13	\$50,001 and over	314	0.15	100
	<b>Total</b>	<b>213,965</b>	<b>100</b>	<b>100</b>

This distribution of ISPs across the various income groups relates to the DSAA questionnaire respondents. If the same percentages are applied to the 585,656 ISPs estimated to be operating across the whole direct selling industry, the number of ISPs within each income group for the entire industry can be calculated as follows:

**Table 7: Total Industry - ISPs per Income Group**

Group	Income	Calculation	Number of ISPs
1	\$0 - \$1,000	90.46% x 585,656	529,784
2	\$1,001 - \$2,000	3.61% x 585,656	21,142
3	\$2,001 - \$3,000	1.63% x 585,656	9,546
4	\$3,001 - \$4,000	0.98% x 585,656	5,739
5	\$4,001 - \$5,000	0.71% x 585,656	4,158
6	\$5,001 - \$6,000	0.51% x 585,656	2,987
7	\$6,001 - \$10,000	0.78% x 585,656	4,568
8	\$10,001 - \$15,000	0.45% x 585,656	2,635
9	\$15,001 - \$20,000	0.28% x 585,656	1,640
10	\$20,001 - \$30,000	0.24% x 585,656	1,405
11	\$30,001 - \$40,000	0.12% x 585,656	703
12	\$40,001 - \$50,000	0.08% x 585,656	469
13	\$50,001 and over	0.15% x 585,656	878
		<b>Total</b>	<b>585,656</b>

To allocate income across the groups it has been assumed that each member of the above income groups earns the median amount of income except for Group 1, where the median amount is estimated to be \$200, and Group 13, where the median amount is estimated to be \$85,000.

Accordingly, gross income allocation for the DSAA questionnaire respondents is as follows:

**Table 8: Questionnaire Respondents - Income per Income Group**

Group	Calculation	Income
1	\$200 x 193,565	\$38,713,000
2	\$1,500 x 7 720	\$11,580,000
3	\$2,500 x 3,483	\$8,707,500
4	\$3,500 x 2,088	\$7,308,000
5	\$4,500 x 1,532	\$6,894,000
6	\$5,500 x 1,081	\$5,945,500
7	\$8,000 x 1,683	\$13,464,000
8	\$12,500 x 967	\$12,087,500
9	\$17,500 x 592	\$10,360,000
10	\$25,000 x 512	\$12,800,000
11	\$35,000 x 254	\$8,890,000
12	\$45,000 x 174	\$7,830,000
13	\$85,000 x 314	\$26,690,000
	<b>Total</b>	<b>\$171,269,500</b>

This income total relates directly to the \$822,675,047 turnover at retail for the DSAA member companies that responded to the questionnaire. However, the total turnover at retail for the entire direct selling industry was extrapolated to \$1.3 billion. This represents a 58% increase on the turnover at retail for the questionnaire respondents. Applying the same proportional factor to the above ISP income of \$171,269,500, the total income for ISPs in the whole direct selling industry is equal to \$270,605,810. This can be allocated across the income groups as follows:

**Table 9: Total Industry - Income per Income Group**

Group	Calculation	Income
1	\$38,713,000 x 158%	\$61,166,540
2	\$11,580,000 x 158%	\$18,296,400
3	\$8,707,500 x 158%	\$13,757,850
4	\$7,308,000 x 158%	\$11,546,640
5	\$6,894,000 x 158%	\$10,892,520