

**INQUIRY INTO APPLICATION OF THE CONTRACTOR  
AND EMPLOYMENT AGENT PROVISIONS IN THE  
PAYROLL TAX ACT 2007**

**Organisation:** Direct Selling Australia  
**Date Received:** 7 February 2025

---

**Written Submission re 2025 NSW Payroll Tax Review**

Submitted to: NSW Parliament, Legislative Council

Submitted by: Direct Selling Australia

Key contact: Nina Rossi  
Legal and Policy Manager

**Executive Summary**

- Direct Selling Australia (DSA) represents over 350,000 independent sales consultants (ISC's), who are micro business owners.
- Most (up to 78% on 2024 figures) are women, who put occasional hours into their business, to develop supplementary income for their family. Proportionately, many are in rural communities.
- This large cohort of Australians are true independent micro business owners, contracting and providing their skills to the relevant member companies, not characterised in any way by the employee-like structures that have become common in our economy. To this extent treating their income earned as equivalent to employee wages, causing our member companies to incur payroll tax liabilities as a result has severely impacted revenue and member growth/productivity, which may otherwise be used to assist these contractors to further develop their skills and businesses.

**About Direct Selling and Direct Selling Australia**

1. Direct Selling is a sector of retailing where products and services are marketed directly to consumers via an Independent Sales consultant (ISC) who run their own micro-business, set their own hours and are paid on commission.
2. There are around 45 companies in Australia who market their products in the "Direct Sales" channel, many of which are household names, such as Thermomix, Isagenix, Nutrimetics, Amway, USANA, and Saladmaster.
3. In 2024 there were more than 300,000 Independent Sales Consultants (ISC's) engaged with direct selling organisations in Australia, with total sales in excess of AUD\$883.7 million.
4. Direct Selling Australia, formed in 1967, is the self-regulatory peak body representing the industry in Australia.
5. Direct Selling Australia is a member of the World Federation of Direct Selling Associations (wfdsa.org) with member associations in over 60 countries, representing millions of ISPs and sales.
6. Most Direct Selling Australia members classify as SME businesses and are attracted to the industry and model due to the lower cost of entry and operational costs, in comparison to other business models.
7. Despite a number of members having affiliations and parent companies overseas, largely USA, many of our members operate as stand-alone Australian businesses, and do not receive financial support from these external bodies.

**Profile of an Independent Sales Consultant (ISC)**

8. More than 78% of ISPs are women, often seeking an alternative to employed work, with a flexible opportunity to supplement household income. Many ISC's experience circumstances that don't allow for an employed position, but they are able to develop significant fulfillment, including financially, through their direct selling micro business. This particularly applies to rural

communities, where employment opportunities are limited, and distances and family commitments are incompatible.

9. Independent research<sup>1</sup> shows that direct selling provides an income and social/lifestyle opportunity and a sense of community to hundreds of thousands of people, as well as serving consumers with a convenient source of quality products. Consumers benefit from the convenience and service direct selling provides, including personal demonstration and explanation of products, home delivery, and generous satisfaction guarantees.
10. In operating an independent micro business, an ISC makes every decision relating to:
  - where to obtain sales;
  - the geography of where to operate;
  - the hours, days, and times to work her business;
  - the volume of sales generated;
  - the freedom to work for other companies, or in employed positions;
  - the prices to sell products to customers;
  - all business expenses.
11. Direct Selling Australia (DSA) provides an independent self-regulatory code of practice for its members and a dispute resolution mechanism available free of charge to all ISC's, for the rare instances where a dispute may arise. The DSA Code and practices are based upon global experience and development over more than a century.
12. Direct Selling Australia strongly supports protecting and preserving the existing genuine independent status of Direct Selling ISC's due to their ability to own and operate a micro business on their own terms, with all the existing personal, social, financial and community benefits enjoyed and shared.

#### **DSA Views on current NSW Payroll Tax legislation.**

13. DSA and its members consider that the manner by which its ISC's are remunerated should not subject to payroll tax under the contractor provisions.
  14. This contention is made in reference to the application of Payroll Tax on monies paid to contractors, as contained presently within Division 7 of the *Payroll Tax Act 2007 (NSW)*. DSA submits that the contracts in place between its members and ISC's should not be considered as relevant contracts for the following reasons:
    - a. ISC's do not provide services to member organisations and only hold a relationship with the member organisation in so far as the member supplies products on to or on behalf of the ISP; and
    - b. ISC's do not re-sell products of our members but sell products directly to consumers, only purchasing products from members who have developed and manufactured products for sale, in the same manner as would a distributor or other retailer; and
    - c. Member companies have no control over if or how ISC's work, for how many hours or from where.
  15. Though it is understood that the premise of earlier amendments was on the basis of anti-tax avoidance measures, DSA says that current options available, such as the replacement method, are difficult to measure in the circumstances and therefore not readily available to members to use. Our members do not require ISPs to log time sheets to record hours worked and in any case payment is made on the basis of sales made and commissions associated.
-

16. Moreso, the imposition of Payroll tax, especially on newer members attempting to grow their business, despite current challenging market conditions, only increases operational, staffing costs and bookkeeping costs, increases the burden on regulatory oversight and compliance, and adds to the complexity of maintaining compliance, all of which adds to time and expense on managing the business, leaving less time and money available to grow and build the business.
17. It is simply not economically feasible or viable to continue to increase the cost of goods offered by members to offset the expenses that are incurred, especially under current market conditions. In fact, the Payroll Tax system in NSW as presently exists, creates a roadblock to member's business growth, so to avoid the regulatory difficulties and costs associated.
18. As mentioned above at clause 7, most member companies are SME businesses and do not receive financial support from external parent companies etc, meaning that costs such as Payroll Tax, are to be borne and paid by the Australian SME organization.
19. In light of this status and positioning, where members also operate across Australia, there are inconsistencies in the application of Payroll tax, due to varying tax rates, payroll thresholds, and legislative frameworks, such as differences in contractor exemptions, for example in the ACT, overall causing even greater administrative and compliance burden/cost on each member organization.
20. Adding to the pressures already mentioned, with the NSW Payroll Tax system being different from and out of alignment with all other states in Australia, it creates additional cost and time expenses for business, with separate considerations and calculations being required due to the fact that, for example, all other states retain an exemption to payroll tax for door to door sales or a modernised equivalent.
21. It may also be mentioned that Western Australia, in comparison, does not impose any payroll tax obligations on businesses in regard to independent contractors and arguably overall a more productive state than most others in Australia.
22. In summary, like many other small businesses, the regulatory burden, cost and confusion altogether is causing many members to question if it is worth continuing to operate at all.
23. In saying the above, as an example, if our members were required to convert existing ISC's/contractors to employees, which is essentially how the NSW Payroll Tax system is treating such persons, there would likely be a number of outcomes to follow. Firstly, a mass of exits of member companies from Australia, in particular those with US head offices and secondly an overall reduction in the number of ISC's in the market due to layoffs as a result of the additional costs associated with employment and the need to have minimum outputs/productivity produced by each person in order to justify their ongoing engagement.
24. These laws can therefore be directly shown to have led to significant additional cost and burden, which will only increase if Payroll Tax continues in the manner in its current form and, like many small businesses, will only lead to decline, not further growth or productivity.
25. To these ends, DSA submits that payroll tax in NSW should either be removed, as per initial intentions following the introduction of GST in Australia or limited to genuine employee/employer relationships. Alternatively, NSW should reinstate exemptions, as available in other jurisdictions, including any amendments, for example in regard to the definition of door to door sales, to account for modern practices i.e. direct online sales.