



ESTABLISHED 1967

# DIRECT SELLING ASSOCIATION OF AUSTRALIA INC

ABN 68 413 038 101



The Secretary  
Senate Environment, Communications, Information  
Technology and the Arts Legislation Committee  
PO Box 6100  
Parliament House  
CANBERRA ACT 2600

Dear Secretary,

The Direct Selling Association of Australia Inc ("DSAA") represents organisations engaged in the promotion and sale of consumer products away from fixed retail locations, usually within homes or workplaces. Approximately 650,000 Australians are engaged in this activity through independent contractual arrangements with the DSAA's sixty-seven members.

The annual turnover from this activity is \$1.3 billion, and the DSAA estimates the sales people have at least two million home contacts each month. The sales people include persons who are essentially consumers of products, but for a large part comprises people who with varying motivation and scale conduct their own business. Common to all, and characteristic to a relationship based industry, is the use of the telephone in conducting this business. This may range from sophisticated telemarketing by members for promotion, sale or recruitment purposes, to similar activity by the sales people through informal telephone calls to family, friends, social acquaintances or prior customers.

As the DSAA understands the structure of the Bill, and with limited exceptions:

- **A person** [being a natural or artificial person or partnership – Clause 4]
- **cannot make or cause a telemarketing call to be made** [this includes a voice call to a telephone number offering a supply of goods or services; or offering, advertising or promoting a business opportunity – Clause 5]
- **to a number registered on the Do Not Call Register** [electronic register to be administered by the Australian Communications and Media Authority or a contracted party – Clause 13]
- **unless the account holder or a nominee** [being one or more persons nominated either orally or in writing the account holder, or anyone deemed by regulation as a nominee – clause 39]
- **expressly consented** [express consent may be indefinite or for a specified period, or if neither, three months – Schedule 2, Clauses 2 and 3]
- **or impliedly consented** [where consent may be reasonably inferred from the conduct and business or other relationship with the account holder or nominee – Schedule 2, Clause 2]
- **to the call being made.**

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This presents obvious difficulties, not just for DSAA members and their sales people, but the direct selling industry generally. None of the mischief identified in the Discussion Paper preceding this legislation is evident within the DSAA's membership and sales organisations, neither in the complaint databases of its members, the DSAA or to the DSAA's knowledge any public database. Sales people do not engage in the telemarketing practices sought to be controlled in the Bill.

It is relatively common for people who buy products as consumers to also purchase product for sale to their friends and relatives. In these circumstances the practical effect of the Bill could be to deny some the opportunity to purchase products or to be made aware of new products, where a telephone number is registered and the account holder or a nominee has not expressly or implied consented to a call. Although being a member of the same household and willing to accept a call, this person may be neither an account holder nor a nominee and therefore unable to authorise the call. If this person was orally nominated to authorise a call, how would this be known or proven (bearing in mind possible punitive consequences) by the person making the call?

The DSAA believes the Bill's requirements within this relational context will be exceptionally prone to innocent non-compliance. Wide compliance could only be expected to be achieved through extensive and continuing educational effort, and the cost associated with accessing a register that could possibly be used by 30% of Australia's adult population for unrelated purposes. Education would need to be built on a sales person being aware of the need to search the register, limits for reliance on register content, and if a number is entered on the register, the requirements and burden for establishing implied consent to make a call.

In summary, the DSAA submits:

- the Bill will have far reaching and seemingly unintended consequences for small business activity based on family and social relationships in direct selling;
- the "telemarketing" activity of the sales people engaged in the direct selling industry is not within the mischief outlined throughout the development of the Bill;
- the concepts of "nominee" and "consent" used in the Bill to exclude certain telemarketing, the lack of assistance in interpreting taking "reasonable precautions" and exercising "due diligence" in avoiding contraventions, and the accompanying burden of proof, do not give direct selling sales people the certainty needed to engage in telemarketing activity;
- achieving desired levels of compliance with the Bill will require a significant and ongoing investment in education, and subject the industry to the cost of register searches to reach possibly 70% of a willing consumer market.

As noted in its earlier submission, DSAA believes that recognising this small business reality will not compromise the underlying objectives of the Bill. The DSAA again submits that telemarketing to registered numbers within social relationships be exempted. Moreover, businesses having less than five employees should also be exempted from the application of the Bill, subject to a requirement that telemarketing not be made to a person who has expressed a wish not to receive a call.

It should be noted that the DSAA's concern is not with its own members' compliance with the proposed law. To the extent that its members engage in telemarketing activity they will obviously comply with the Register requirements. The concern lies solely in the application of the proposed law to a large and diversely scaled small business sales force, a large number of whom are untrained in sophisticated business practices.

The DSAA would welcome the opportunity to discuss and explore possible options to allay these concerns. In this regard the writer may be contacted on 02 9567 8566.

Yours faithfully,

A handwritten signature in black ink, appearing to read 'Les Dell', with a horizontal line underneath.

LES DELL  
Executive Director  
1 June 2006

Encls:

List of DSAA Members

DSAA Response to Do Not Call Register Discussion Paper – 1 December 2005.

DIRECT SELLING ASSOCIATION of AUSTRALIA  
MEMBERSHIP SHORT LIST – MAY 2006  
FULL MEMBERS

A Better Chance	GNLD International Pty Ltd
AdultShop.com Party Plan	Health Solutions Australasia
Amway of Australia	Herbalife Australasia Pty Ltd
Avon Products Pty Ltd	Homecare Direct Shopping Pty Ltd
Bessemer Sales	Hsin Ten Enterprise (Aust) Pty Ltd
Beta Alistine Pty Ltd	Intimo Lingerie Pty Ltd
Charlott' Lingerie	Jeunique Pacific Pty Ltd
Crafty Kids	Jigsaw Toy Factory Pty Ltd
Creative Memories Australia Pty Ltd	Le Reve Pty Ltd
Dine Rite Pty Ltd	Life Force Australasia Pty Ltd
Discreet Titillations	Lorraine Lea Linen Pty Ltd
Dominant Homecare Products Pty Ltd	Mannatech Australia Pty Ltd
EcoQuest International Pty Ltd, Australasia	Market Australia
Emma Page Pty Ltd	Mary Kay Cosmetics Pty Ltd
Enjo Pty Ltd	Nature's Sunshine Products of Australia
Essential Additions	New Image International
Furlong Wine Tastings	Niagara Therapy Manufacturing P/ L

DIRECT SELLING ASSOCIATION of AUSTRALIA  
MEMBERSHIP SHORT LIST – MAY 2006  
FULL MEMBERS

NSA (Australia) Pty Ltd	The Commonwealth Key & Property Register
Nu-Skin Enterprises Australia, Inc.	Thermomix in Australia
Nutrimetics	Tiens Australia Pty Ltd
Omegatrend Australia Pty Ltd	Tupperware Australasia
PartyLite Pty Ltd	UnderCoverWear Australia Pty Ltd
Pash Australia Pty Ltd	USANA Australia Pty Ltd
Postie Fashions	Watch 24 Pty Ltd
Pro-Ma Systems (Aust) Pty Ltd	
Rawleigh Pty Ltd	
Reliv Australia Pty Ltd	
SeneGence Australia Pty Ltd	
Sunrider International Australia	
Swipe & NaturCare Pty Ltd	
Tahitian Noni International	
the ARTTable	
The Body Shop At Home	
The Chef's Toolbox	

DIRECT SELLING ASSOCIATION of AUSTRALIA  
MEMBERSHIP SHORT LIST – MAY 2006  
PROVISIONAL MEMBERS

Australian Longevity

Biopro Technology Australasia Pty Ltd

Eco-Flow PLC

Envy Jewellery Pty Ltd

FreeLife International Australia Pty Ltd

Ideal Jewellery

Nikken Wellness Australia

Penny Miller Pty

Phoenix Trading (Aust) Co Pty Ltd

Saucy Fish

Sugar'N'Spice Homewares & Soft  
Furnishings Pty Ltd

Synergy Worldwide Australia Pty Ltd

Toys @ Home

tutorium

Viva Aroma Pty Ltd

Viviannes Collection Australia Pty Ltd



# DIRECT SELLING ASSOCIATION OF AUSTRALIA INC

ABN 68 413 038 101

COPY

Do Not Call Register Discussion Paper Submissions  
Department of Communications, Information Technology  
and the Arts  
GPO Box 2154  
CANBERRA ACT 2601

The Direct Selling Association of Australia ("DSAA") makes this submission in response to the discussion paper *Introduction of a Do Not Call Register – Possible Australian Model*, released October 2005.

DSAA represents direct selling companies operating in Australia. Attached is a list of its membership, and other material that gives some understanding of the industry.

## Relevant Industry Practices

Direct selling may be described as the sale of consumer products, person-to-person, away from a fixed retail location. For the most part this personalised distribution is achieved through multi-level marketing, party plan and door-to-door selling arrangements. Electronic communication is integral to each of these methods of distribution, including the use of telephony for processes that may lead to sales, and possibly the recruitment of persons to distribution systems. The industry is therefore engaged in the telemarketing practices defined in the paper.

## Support for a Do-Not-Call Register

DSAA supports the principle of a Do-Not-Call Register. This support acknowledges the strength of its drivers, namely the privacy related issues associated with the increasing pervasiveness of telemarketing (particularly offshore originated telemarketing), and the response to managing these issues in other jurisdictions. That said, and against a myriad of circumstances in which telemarketing practices are engaged, the paper rightly observes the need for privacy rights to be balanced with the right, and DSAA submits wide expectation, for business to access the community for commercial purposes.

So far as the scope of a possible register is concerned, DSAA acknowledges that national regulation already exists to deal with many aspects of direct selling, thus removing any consideration of the need for a register beyond telemarketing to land lines and mobile phones.

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## Opt In/Opt Out

DSAA submits the practical approach for establishing a register is an "opt out" approach. In so doing, it notes the paper's commentary on the distinguishing features for the contra arrangement in addressing spam. Suggestions in the paper of the incidence of dissatisfaction with telemarketing practices are not empirically supported, so that the true level of dissatisfaction is not known, nor is its apportionment across industry sectors and particular telemarketing practices. DSAA is unaware of any specific community concern with the industry's use of telephony for business purposes. The reasons supporting decisions in the United Kingdom and United States to adopt the "opt out" approach are appropriate for Australian conditions. Moreover, the "opt in" approach assumes the bulk of Australians are averse to telemarketing approaches for any purpose – which DSAA believes cannot be sustained. An "opt in" approach also raises obvious and unacceptable administrative and cost issues.

## Registration

DSAA offers a single comment on registration issues. The paper anticipates an act of registration precluding any form of telemarketing. Elsewhere in the paper, rightly or wrongly, it is claimed in support of certain exemptions that the community would expect, perhaps welcome, approaches from charities, political parties, research bodies etc. While this may be so for many in our community, there would presumably be some who could be averse to all or certain forms of telemarketing. This begs the question whether registration should preclude all telemarketing approaches, or only telemarketing of a specified kind, and for the community itself to determine the level of exemption.

## Exemptions

In the context of direct selling practices, DSAA obviously supports the exemption of telemarketing to registered persons with whom an existing business arrangement exists. DSAA submits that direct selling practices that are probably as evident in the broader small business community warrant further exemptions. Approximately 650,000 Australians are associated with the distribution of member products. Some of these persons have entered into contractual arrangements with members to simply facilitate their personal consumption of products, but most are engaged in selling to end consumers. These people operate their own, for the most part relatively small businesses, and predominantly without employees. As mentioned earlier, telephony is integral to their promotion and sale of products and also used in building distribution networks. While their activities can include an element of cold canvassing, it arises in the vast majority of cases from social relationships. DSAA does not believe this activity is within the mischief described in the discussion paper. It submits that telemarketing to registered persons within social relationships must be exempted. A further issue is the extent to which compliance with register requirements in the light of continuing education needs and compliance costs could be expected to be achieved within the small business sector. DSAA believes the overall objectives of the register proposal could be achieved in recognising this small business reality. Policymakers may wish to consider whether businesses having no employees, or perhaps less than five employees, should be exempted.



### Administration/Enforcement/Fees and Funding

The experience of other jurisdictions is also instructive for administering a register. The diverse nature of telemarketing activities makes unviable self-regulatory and co-regulatory models for managing other community issues. DSAA believes the administration of any register should vest ultimately in a government body, with or without contracted arrangements.

The law enforcement measures utilised by other, established, agencies should be retained for blatant or systemic instances of non-compliance. DSAA is concerned that the paper's discussion of law enforcement anticipates the conduct of "companies" and "organisations". As mentioned earlier, the direct selling industry comprises a large number of individual persons who are engaged in the industry to supplement incomes or derive funds to meet specific needs. While business entities in their own right, they do not have the characteristics of businesses typically engaged in telemarketing. Nonetheless, their use of telephony for the purposes of creating a broader distribution network or increasing the sale of products could in some circumstances be regarded as telemarketing. DSAA makes no comment on where the administration and enforcement of register requirements is best placed. It emphasises, however, the extensive and continuing education and training requirements associated with achieving the objectives of a register.

While the Government would obviously mount a case for industry funding of its administration, DSAA believes that those utilising the register are beneficiaries or users in the same sense as those who access other public registers. In the absence of Commonwealth government funding, there is a case for sharing the cost between the register's stakeholders. This again raises the equity of many independent contractors in the direct selling industry being potentially subjected to the same cost as large telemarketing companies.

### Other Regulation

Recently, Ministers for Fair Trading in Victoria and New South Wales released a paper that commendably sought submissions on harmonising the regulation of telemarketing in both jurisdictions. The paper highlights the extent of inconsistency between those States in how the practices are controlled and acknowledges the potential disruption and cost to organisations engaged in national markets. DSAA would obviously welcome any opportunity to bring a national focus to the management of these issues.

Yours faithfully,



LES DELL  
Executive Director  
1 December 2005