

The Senate

Environment and Communications
References Committee

The feasibility of a prohibition on charging
fees for an unlisted number service

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Recommendations

Recommendation 1

2.50 The committee recommends that the *Telecommunications Act 1997* not be amended to prohibit the charging of a fee for an unlisted (silent) number on a public number directory.

Recommendation 2

2.54 The committee recommends that the Australian Communications and Media Authority produce relevant material for telecommunications users that explains where their personal information is published and how it may be made private.

Abbreviations and acronyms

| | |
|-------|---|
| ACCAN | Australian Communications Consumer Action Network |
| ACMA | Australian Communications and Media Authority |
| ALRC | Australian Law Reform Commission |
| CLC | Carrier Licence Condition |
| CLI | Calling Line Identification |
| CSP | Carriage Service Provider |
| IPND | Integrated Public Number Database |
| OAIC | Australian Information Commissioner |

Chapter 1

Introduction

Conduct of the inquiry

1.1 On 28 February 2013 the Senate referred the feasibility of a prohibition on charging fees for an unlisted number service to the Senate Environment and Communications References Committee for inquiry and report by 15 May 2013.

1.2 The terms of reference for the inquiry were:

The feasibility of a prohibition on the charging of fees for an unlisted (silent) number service, with particular reference to:

- a) recommendation no. 72–17 contained in report no. 108 of the Australian Law Reform Commission on Australian privacy law and practice;
- b) whether the payment of a fee unduly inhibits the privacy of telephone subscribers;
- c) the likely economic, social and public interest impact for consumers and businesses, carriage service providers and the White Pages directory producer, if the charging of fees for unlisted (silent) number services was prohibited;
- d) the implications of such prohibition for the efficacy of the national public number directory; and
- e) any other relevant matters.¹

1.3 In accordance with usual practice, the committee advertised the inquiry on its website and wrote to relevant organisations inviting submissions by 28 March 2013.

1.4 The committee received 19 submissions (for a list of submissions see Appendix 1).

1.5 Based on the high quality evidence in the written submissions, the committee resolved to prepare its report without holding a public hearing.

1.6 The committee would like to thank all individuals and organisations that contributed to this inquiry.

Unlisted or silent numbers

1.7 The *Telecommunications Act 1997* (Cth) provides that an unlisted number cannot be disclosed except in specified contexts. The Act however is silent on whether a fee can be charged for an unlisted number. The *Carrier Licence Conditions (Telstra Corporation Limited) Declaration* defines an unlisted number as a public number that is one of the following kinds:

1 *Journals of the Senate*, No. 136—28 February 2013, p. 3692.

- a mobile number, unless the customer and the carriage service provider that provides the mobile service to the customer agree that the number will be listed;
- a geographic number that the customer and the carriage service provider that provides services for originating or terminating carriage services to the customer agree will not be included in the directory;
- the number of a public payphone; or
- a number that, when dialled, gives access to a private telephone exchange extension that the customer has requested not be included in the directory.²

1.8 Mobile phone numbers are unlisted by default, without any fee imposed on customers.³

Integrated Public Number Database

1.9 Telstra's carrier licence requires it to provide and maintain an Integrated Public Number Database (IPND). The IPND was established in 1998 and is a database of all listed and unlisted telephone numbers and associated customer data: the name and address of the customer, the customer's service location, the name of the carriage service provider, and whether the telephone is to be used for government, business, charitable or private purposes.⁴

1.10 All telecommunications customers must provide required information to their telecommunications provider in order to receive service. In turn, telecommunications providers must provide required information to Telstra to maintain the IPND.

1.11 The data in the IPND may only be accessed for approved purposes as specified in Telstra's Carrier Licence Conditions, or as allowed by Part 13 of the *Telecommunications Act 1997*.⁵ These are:

- the operation of the emergency call service or assisting emergency services;
- assisting enforcement agencies or safeguarding national security;
- providing directory assistance services;
- providing operator services or operator assistance services;
- the publication and maintenance of public number directories;
- providing location dependent carriage services;

2 *Carrier Licence Conditions (Telstra Corporation Limited) Declaration*, clause 3.

3 Correspondence to the committee from Australian Mobile Telecommunications Association, 22 March 2013.

4 Australian Law Reform Commission, *For Your Information: Australian Privacy Law and Practice*, 2008, Vol. 3, p. 2453.

5 Australian Communications and Media Authority website, 'The Integrated Public Number Database (IPND)', http://www.acma.gov.au/WEB/STANDARD/pc=PC_1754 (accessed 2 May 2013).

-
- the provision of telephony-based emergency warning systems;
 - undertaking approved research; and
 - assisting the Australian Communications and Media Authority (ACMA) to verify the accuracy and completeness of information held in the IPND.⁶

1.12 When consumers provide their information to their telecommunications provider they can indicate their IPND display preference. The options are:

- Listed Entry—details will be published in public number directories both hard copy and online;
- Unlisted Entry—details will not be published in hard copy or on-line directories. Operator assisted services will have visibility of a flag, indicating that the information is unlisted;
- Suppressed Address Entry—details of the name and relevant phone number will appear but the relevant address will not.

1.13 ACMA has a compliance monitoring and enforcement role in relation to the IPND.⁷

Review of the IPND

1.14 On 14 November 2011 the Minister for Broadband, Communications and the Digital Economy announced a review of the IPND.⁸ The review is to examine and report on the effectiveness and utility of the IPND, the ability of the IPND to innovate and keep pace with technological and market changes and the privacy implications of the IPND. The inquiry has received 25 submissions and released a discussion paper.⁹

1.15 A final report has not yet been made publicly available.

6 Australian Communications and Media Authority website, 'The Integrated Public Number Database (IPND)', http://www.acma.gov.au/WEB/STANDARD/pc=PC_1754 (accessed 2 May 2013).

7 Australian Communications and Media Authority website, 'The Integrated Public Number Database (IPND)', http://www.acma.gov.au/WEB/STANDARD/pc=PC_1754 (accessed 2 May 2013).

8 Department of Broadband, Communications and the Digital Economy (DBCDE) website, 'The Integrated Public Number Database', [http://www.dbcde.gov.au/telephone_services/telephone_numbering/integrated_public_number_database_\(ipnd\)](http://www.dbcde.gov.au/telephone_services/telephone_numbering/integrated_public_number_database_(ipnd)) (accessed 8 May 2013).

9 DBCDE, *The Integrated Public Number Database: A Discussion Paper*, November 2011, http://www.dbcde.gov.au/_data/assets/pdf_file/0014/143051/IPND-discussion-paper.pdf (accessed 8 May 2013).

Public number directories

1.16 The data contained in the IPND may be used for the publication and maintenance of public number directories.¹⁰ The ACMA has responsibility for making and administering rules governing who can access the IPND for the purposes of producing public number directories.¹¹ The Australian Communications Industry Forum has also developed an industry code of practice to govern the use of data contained within the IPND.¹²

1.17 Any entries listed in the IPND as an Unlisted Entry or a Suppressed Address Entry will not have their details published in hard copy or online directories, nor made available through directory related services.

White Pages

1.18 As part of its Carrier Licence Conditions, Telstra is required to produce an alphabetical public number directory annually—the *White Pages*.¹³ The *White Pages* is to be made available free of charge to Telstra's own customers and the customers of other carriage service providers.¹⁴

1.19 Unlike other directory producers, who use output from the IPND to compile their products, Telstra's directory arm Sensis compiles the *White Pages* from substantially identical data supplied under commercial arrangements Telstra makes with individual telecommunication providers.

1.20 As part of its publication of the *White Pages* Telstra provides a commercial unlisting service called Silent Line which consists of directory unlisting and Calling Line Identification (CLI) Line Block (preventing a caller's number from being displayed to the other party before, during or after a call).¹⁵

1.21 Telstra's current fee for Silent Line is \$2.93 per month (including GST).¹⁶ The fee has remained unchanged since 1996, with the exception of the introduction of GST.¹⁷

10 Australian Communications and Media Authority website, 'The Integrated Public Number Database (IPND)', http://www.acma.gov.au/WEB/STANDARD/pc=PC_1754 (accessed 2 May 2013).

11 ACMA, *Submission 19*, p. 1.

12 Australian Communications Industry Forum, *Integrated Public Number Database (IPND) Industry Code: C555:2008*, 2008, available at: http://www.acma.gov.au/webwr/telcomm/industry_codes/codes/ipnd_code_c555_2008.pdf (accessed 6 May 2013).

13 *Carrier Licence Conditions (Telstra Corporation Limited) Declaration 1997*, clause 9.

14 *Carrier Licence Conditions (Telstra Corporation Limited) Declaration 1997*, clause 9.

15 Telstra, *Submission 17*, p. 4.

16 Telstra, *Submission 17*, p. 4.

17 Telstra, *Submission 17*, p. 4.

1.22 For customers who are not with Telstra, their reseller telecommunication service provider is billed for the Silent Line service. The telecommunication service provider may then choose to pass the cost on to their customers at prices they determine.¹⁸ According to data supplied by the Australian Communications Consumer Action Network (ACCAN), the current fees charged by telecommunications operators for the Silent Line service are:

*Table 1: Fees for Telstra's Silent Line service*¹⁹

| Telecommunications Provider | Fee |
|------------------------------------|------------------|
| Telstra | \$2.93 per month |
| Optus | \$0.00 per month |
| Internode | \$4.00 per month |
| iPrimus | \$3.50 per month |
| iiNet | \$2.93 per month |
| Spintel | \$2.95 per month |
| ACN | \$2.93 per month |

1.23 On 26 February 2013 Telstra announced that from May 2013 it would introduce a formal program to waive the fee for a silent line for customers whose personal safety is at risk.²⁰

Australian Law Reform Commission Report

1.24 In August 2008, the Australian Law Reform Commission (ALRC) tabled its report: *For Your Information: Australian Privacy Law and Practice*.²¹ During this comprehensive inquiry over 28 months, the ALRC considered the extent to which the Commonwealth *Privacy Act 1988* and related laws provided an effective framework for the protection of privacy in Australia.

1.25 This inquiry delivered a three volume report containing 295 recommendations for reform. The central theme of the report was that '...as a recognised human right,

18 Telstra, *Submission 17*, p. 4.

19 Australian Communications Consumer Action Network, *Submission 9*, pp 7–8.

20 Telstra Exchange, 'Telstra to review silent line fees', 26 February 2013, <http://exchange.telstra.com.au/2013/02/26/telstra-to-review-silent-line-fees/> (accessed 2 April 2013).

21 Australian Law Reform Commission (ALRC), *For Your Information: Australian Privacy Law and Practice*, 10 January 2013, available: <http://www.alrc.gov.au/publications/report-108> (accessed 2 May 2013).

privacy protection generally should take precedence over a range of other countervailing interests, such as cost and convenience.¹²²

1.26 The inquiry considered the issue of whether charging a consumer a fee for maintaining an unlisted telephone number provided an appropriate level of privacy protection.

While telecommunications legislation provides for unlisted or silent telephone numbers, it does not prohibit the charging of a fee to an individual who requests that his or her number not be listed in a public directory. The charging of a fee limits the ability of individuals—particularly those on low incomes—to control the use and disclosure of their personal information. The ALRC recommends that the charging of a fee for an unlisted (silent) number on a public number directory be prohibited by law.²³

1.27 A number of submitters to the ALRC inquiry noted that making it easy and without a cost imposition would benefit victims of family and domestic violence that would benefit from using an unlisted number to reduce the risk of being contacted by a perpetrator.²⁴

1.28 In Recommendation 72–17, the ALRC recommended that:

The *Telecommunications Act 1997* should be amended to prohibit the charging of a fee for an unlisted (silent) number on a public number directory.²⁵

Committee comment

1.29 The committee acknowledges the comprehensive work undertaken by the Australian Law Reform Commission in examining Australian privacy laws and whether current laws continue to provide an effective framework for the protection of privacy. The ALRC report examined many issues associated with an individual's privacy, including telecommunications legislation and the regulation of public number directories.

1.30 The ALRC report, *For Your Information: Australian Privacy Law and Practice*, was tabled in August 2008 and made 295 recommendations. Although approximately half of the recommendations made by the ALRC were passed into legislation on 29 November 2012, the issue of charging a fee for an unlisted number

22 Australian Law Reform Commission website: <http://www.alrc.gov.au/publications/report-108> (accessed 2 April 2013).

23 Australian Law Reform Commission, *For Your Information: Australian Privacy Law and Practice*, 2008, Vol. 1, p. 122.

24 Australian Law Reform Commission, *For Your Information: Australian Privacy Law and Practice*, 2008, Vol. 3, p. 2472.

25 Australian Law Reform Commission, *For Your Information: Australian Privacy Law and Practice*, 2008, Vol. 1, p. 86

on a public directory was not addressed.²⁶ The committee expresses its concern that the Commonwealth government has taken several years to duly consider and respond to many of the recommendations made by the ALRC.

26 See Australian Law Reform Commission, Annual Report 2011–12, Report No. 119, pp 148–149, available at: http://www.alrc.gov.au/sites/default/files/pdfs/publications/annaul_report_2011-12.pdf (accessed 7 May 2013).

Chapter 2

Discussion of key issues

2.1 The committee heard from a number of witnesses who were concerned about the impact that charging a fee for an unlisted number may have on a person's right to privacy. A number of submitters referred to privacy as an international human right, something that is noted in the preamble to the *Privacy Act 1988*, and expressed the view that to the extent that charging a fee for an unlisted number interferes with a person's right to privacy, then it should be prohibited.¹

2.2 In addition to privacy being an international human right, submitters informed the committee that a person may have a heightened need to safeguard their privacy, including people who feel threatened or are the victim of domestic violence and people whose occupation places them in a vulnerable position (for example: police officers, prison guards and domestic violence workers).²

2.3 Telstra informed the committee that as it has a regulatory obligation to maintain and publish an annual public directory—the *White Pages*—it should be entitled to charge a fee to cover the administrative cost of processing changes to a person's data.³ Furthermore, Telstra submitted that the minimal fee it charges for an unlisted number does not unduly inhibit the privacy of telephone subscribers.⁴

A right to privacy

2.4 The Australian Privacy Foundation submitted to the committee that it believes that the inquiry should not be focused on the 'feasibility' of a prohibition on charging fees for an unlisted number; rather it is the 'desirability', and the balance of public interest that needs to be assessed.⁵ The organisation stated that:

...there is no public interest in continuing to allow carriage service providers (CSPs) to charge for silent lines (unlisted numbers)—only the private commercial interest of some of the CSPs... Against this should be set a range of public interests in prohibiting the charging of a fee—primarily the privacy interests of all CSP consumers, which is not merely a collection of private interests, but also a wider public interest in maintaining both the letter and the spirit of the Privacy Act.⁶

2.5 The Office of the Australian Information Commissioner (OAIC) advised that privacy is a basic human right that should be made available equally to everybody.

1 Law Institute of Victoria, *Submission 1*, p. 2.

2 For example see: Consumer Credit Legal Centre NSW, *Submission 10*, p. 2 ; and Hunter Community Legal Centre, *Submission 11*, p. 3.

3 Telstra, *Submission 17*, p. 2.

4 Telstra, *Submission 17*, p. 2.

5 Australian Privacy Foundation, *Submission 14*, p. 2.

6 Australian Privacy Foundation, *Submission 14*, p. 2.

...the OAIC is of the view that privacy is a fundamental human right which should apply to all people regardless of financial means. The charging of a fee for a silent number may limit an individual's ability to freely exercise their choice of being unlisted in the public telephone directory and thereby hamper their ability to control their own personal information.⁷

2.6 The Women's Legal Services NSW similarly argued that a right to privacy is an indelible human right that is encroached upon with the charging of a fee.⁸ The organisation stated:

Charging a fee for silent numbers represents a financial obstacle to accessing a service which will help you protect your personal privacy. Charging a fee for a private number impinges on the ability of individuals to control the use and dissemination of their personal information.⁹

2.7 The Consumer Credit Legal Centre NSW submitted that 'privacy is a basic right and consumers should be able to control the use or disclosure of their personal information with as little effort or inconvenience as possible'.¹⁰

2.8 As part of its inquiry into the protection of people's privacy, the Australian Law Reform Commission (ALRC) investigated the effect of charging a fee for an unlisted number on a person's ability to maintain their privacy.¹¹ The ALRC noted that while charging for an unlisted number is not a breach of the National Privacy Policy:

...it is a financial impediment to accessing a service that will help to protect privacy. A charge reduces an individual's ability to control the use or disclosure of their personal information. This is particularly an issue for individuals on fixed or low incomes.¹²

2.9 The ALRC therefore recommended that 'the *Telecommunications Act 1997* should be amended to prohibit the charging of a fee for an unlisted (silent) number on a public number directory'.¹³ This recommendation was supported by a number of submitters.¹⁴

7 Office of the Australian Information Commissioner, *Submission 3*, p. 2.

8 Women's Legal Services NSW, *Submission 12*, p. 3.

9 Women's Legal Services NSW, *Submission 12*, p. 3.

10 Consumer Credit Legal Centre NSW, *Submission 10*, p. 2.

11 Australian Law Reform Commission (ALRC), *For Your Information: Australian Privacy Law and Practice*, 10 January 2013, available: <http://www.alrc.gov.au/publications/report-108> (accessed 2 May 2013).

12 ALRC, *For Your Information: Australian Privacy Law and Practice*, 2008, pp 2474–2475.

13 Australian Law Reform Commission, *For Your Information: Australian Privacy Law and Practice*, 2008, Vol. 3, p. 2475.

14 For example see: Consumer Credit Legal Centre NSW, *Submission 10*, p. 2; Mr Steven Roddis, *Submission 13*, p. 1; Australian Privacy Foundation, *Submission 14*, p. 3; and Electronic Frontiers Australia, *Submission 18*, p. 1.

2.10 Telstra however argued that the charging of fees for unlisted number service does not unduly inhibit the privacy of telephone subscribers, and 'is consistent with the policy driver behind Telstra's *White Pages* carrier licence condition which serves the public benefit of a comprehensive national public number directory'.¹⁵

2.11 Telstra stated that it:

...does not believe the payment of a fee unduly inhibits the privacy of telephone subscribers. The fact that a customer is listed in a directory is a product of Telstra's *White Pages* [carrier licence condition] and is not a breach of privacy under Australian law. Directory unlisting is an enhancement of personal information protection that is available for a modest fee in the same manner as similar services including post office boxes.¹⁶

2.12 Furthermore, Telstra argued that:

It may be narrowly accurate to say that charging for a service is an impediment to accessing a service, but it does not follow that a charge should therefore be prohibited, even where the service has the effect of enhancing the customer's privacy. A modest charge that is reasonable on other grounds does not constitute an insurmountable or even an unreasonable barrier to access. For most people directory unlisting is not critically important and not prohibitively expensive.

Telstra agrees that customers who have experienced family violence and need to ensure the perpetrator is unable to contact them should not need to pay for directory unlisting...¹⁷

Privacy for personal safety

2.13 Organisations with expertise in supporting victims of domestic or family violence were concerned about the impact that the charging of a fee might have on people experiencing this violence, and submitted that the fee may be a factor which reduces their ability to conceal their location, or be free from contact by the perpetrator of this violence.

2.14 The Law Institute of Victoria told the committee that:

It is the experience of our members that clients who are suffering from or have suffered family violence often request an unlisted number from their telecommunications providers due to grave concerns they have regarding the care, safety and wellbeing of their children and families.¹⁸

2.15 Community Legal Centres NSW advised that 'silent numbers are most essential for the physical and psychological safety of people who have previously

15 Telstra, *Submission 17*, p. 2.

16 Telstra, *Submission 17*, p. 3.

17 Telstra, *Submission 17*, p. 6.

18 Law Institute of Victoria, *Submission 1*, p. 2.

been victims of violence or who have been threatened or stalked'.¹⁹ They also noted that employees of these services may also be threatened or put at risk by assisting the victims of violence.²⁰

2.16 The Women's Legal Services NSW explained that they regularly advise victims of domestic violence to change their phone numbers or to obtain silent numbers.²¹

2.17 The St Vincent de Paul Society told the committee that in their experience, many of the people that they provide support to have problems with ex-partners harassing them.

In our opinion, the constant harassment faced by some of the people we help adds significantly to their stress, and further damages their chances of escaping poverty.

The economic, social, and public interest impact for consumers may therefore be bigger than expected. By making privacy the default option, not charging for unlisted numbers will start to offer a real option to those living near the poverty line as to whether they wish their number to be disclosed or not. Removing fees, and making privacy the default option, will really empower those we help to control who has access to them, and how – something most Australians are able to take for granted.²²

2.18 Submitters also argued that people whose occupation exposes them to unpredictable and dangerous individuals often wish to protect their privacy by having an unlisted number.²³ The Women's Legal Services NSW informed the committee that many domestic violence workers are advised when they start work in the field to remove themselves from phone directories and the electoral roll as a safety precaution.²⁴

Fee charging

2.19 It was raised by a number of submitters that often people who request an unlisted number in the interests of protecting their personal safety are the least able to afford the charges.²⁵

2.20 The Women's Legal Centre (ACT and Region) advised the committee that over half of their clients experience domestic violence, and the majority of all clients rely on Centrelink payments to survive. Many are also supporting children and,

19 Community Legal Centres NSW, *Submission 8*, p. 2.

20 Community Legal Centres NSW, *Submission 8*, p. 2.

21 Women's Legal Services NSW, *Submission 12*, p. 2.

22 St Vincent de Paul Society, *Submission 4*, p. 4.

23 Hunter Community Legal Centre, *Submission 11*, p. 3.

24 Women's Legal Services NSW, *Submission 12*, p. 2.

25 For example see: Women's Legal Centre (ACT and Region), *Submission 6*, p. 2; and Hunter Community Legal Centre, *Submission 11*, p. 4.

according to the Centre, it is not hard to see that paying a monthly fee to 'ensure their silent number is not published is an added burden that they are unable to afford'.²⁶

2.21 The Hunter Community Legal Centre observed that 'although the fee itself may be considered to be minimal, it can still be unaffordable for those persons who are vulnerable and disadvantaged'.²⁷ According to the Centre:

Removal of the monthly fee will allow vulnerable and disadvantaged persons to protect their privacy and ensure that they can maintain some level of control over what information is available in the public domain.²⁸

2.22 Mr Timothy Pilgrim similarly advised the committee that the fee should be prohibited on the basis that it may:

...limit an individual's ability to freely exercise their choice of being unlisted in the public telephone directory, and thereby hamper their ability to control their own personal information. This is especially problematic for individuals on low or fixed incomes.²⁹

2.23 The St Vincent de Paul Society advised the committee that for many people, there may be a lot of complexity around being able to negotiate the process of asking for a number to be unlisted, as well as having the ability to pay for it, noting that people have to be:

...educated about how the number is being used, researching how to change this, engaging in a complex administrative procedure, and then paying monthly fees for as long as one wants the basic right to privacy protected. This...seems even more absurd in the case of those close to the poverty line, who may not have access to resources such as the internet, and may already be juggling multiple low-paying jobs as well as family commitments. Negotiating the complexities of obtaining a private number will also be particularly difficult for those not confident with technology, such as older Australians, or for those who struggle with English, including recent migrants and those with language difficulties.³⁰

Telstra to waive Silent Line fee for victims of domestic abuse

2.24 In its submission Telstra announced that it would 'introduce a formal program to waive the fee for customers facing a demonstrated security threat in recognition of the elevated importance of the service for those customers'.³¹ Telstra explained that:

This fee exemption removes the only potential barrier posed by the fee to the effective management of personal information in a situation where that management is critical to an individual's personal safety. Silent Line is a

26 Women's Legal Centre (ACT and Region), *Submission 6*, p. 2.

27 Hunter Community Legal Centre, *Submission 11*, p. 4.

28 Hunter Community Legal Centre, *Submission 11*, p. 4.

29 Office of the Australian Privacy Commissioner, *Submission 3*, p. 2.

30 St Vincent de Paul Society, *Submission 5*, p. 3.

31 Telstra, *Submission 17*, p. 5.

discretionary service for most fixed line customers, but Telstra recognises it is not discretionary for customers facing a security threat.³²

2.25 In the past Telstra has frequently waived the Silent Line fee for customers in distress and the new company policy will formalise and publicise that policy.³³ For customers who face a security threat but do not meet the eligibility criteria for Silent Line fee exemption, customer service agents will be authorised to respond to an applicant's individual circumstances and apply the fee exemption where appropriate.³⁴ Telstra will also provide its fee exemption to domestic violence workers facing threats as 'the community organisations they work for are highly resource constrained'.³⁵

2.26 While a number of submitters congratulated Telstra for waiving the fee for silent line customers whose personal safety is at risk, several submitters pointed out that this waiver is dependent on the individual having a valid protection order in place, or being a client of a community organisation providing services to people who are facing a security threat.³⁶ The committee was advised that for many women experiencing domestic violence, escaping the violence was their priority, and that seeking a protection order was not always an option. In addition, a protection order specified the location that the person subject to the order has to avoid, thereby alerting the perpetrator in many instances to the location of the victim. For this reason many victims do not use protection orders.³⁷

2.27 The Cairns Community Legal Centre raises additional issues with the criteria for the waiver:

...the waiver does not recognise people who may feel that they are at risk but do not have the courage or access to resources to obtain a protection order, nor does it recognise people who feel that they are facing a security threat and are in the process of obtaining a protection order.

Likewise, when a protection order expires, would the person then be charged a fee to have their silent number remain silent?³⁸

2.28 Community Legal Centres NSW is concerned that the criteria creates additional privacy concerns:

It is an invasion of privacy to require consumers to explain why they need or desire a silent number – in other words, why they chose to exercise their right to privacy. It is not reasonable, nor efficient, to expect consumers who

32 Telstra, *Submission 17*, p. 5.

33 Telstra, *Supplementary Submission*, p. 1.

34 Telstra, *Supplementary Submission*, p. 1.

35 Telstra, *Supplementary Submission*, p. 2.

36 Telstra Exchange, 'Telstra to review silent line fees', 26 February 2013, <http://exchange.telstra.com.au/2013/02/26/telstra-to-review-silent-line-fees/> (accessed 2 April 2013).

37 Women's Legal Centre (ACT and Region), *Submission 6*, p. 2.

38 Cairns Community Legal Centre, *Submission 7*, p. 2.

face a security threat (for example, from an ex-partner or from relatives) to provide documentation about this to a telephone company.³⁹

2.29 The Australian Communications Consumer Action Network (ACCAN) also pointed out that customers of telecommunication companies that resell Telstra's Silent Line product will not be covered by the fee waiver initiative.⁴⁰ According to ACCAN:

A customer of...resellers who face a security threat will not be able to avail themselves of Telstra's proposed policy. This is a limitation of the policy which would be difficult to resolve. For a customer of a reseller to be granted the exemption, the reseller would need to (i) implement a policy similar to Telstra's proposal, which would be entirely at the discretion of the reseller, and (ii) provide the consumer's information, and the consumer's information, and the fact of their security-threatened status, to Telstra, which would raise further privacy concerns.⁴¹

2.30 In its supplementary submission to the committee, Telstra reiterated that:

For customers who face a security threat but do not meet the eligibility criteria for Telstra's Silent Line fee exemption, our customer service agents will be empowered to respond to applicants' individual circumstances and apply the fee exemption where appropriate.⁴²

Implications for the national public number directory

2.31 It was agreed by submitters that there is a public benefit in having a free public number directory.⁴³ The Australian Communications and Media Authority (ACMA) provided the committee with the results of research it has undertaken into how consumers use directory assistance services and the *White Pages* and *Yellow Pages*.⁴⁴ According to their findings, the majority of Australians continue to keep a printed telephone directory at home and have used a telephone directory and/or directory assistance services in the last 12 months:

Nine in 10 (88 per cent) of all Australians have used either the hardcopy *White Pages* and/or the electronic *White Pages* and/or called Directory Assistance services to find a telephone number in the last 12 months.

The majority of Australians (86 per cent) keep at least one printed telephone directory at home, either the printed *White Pages*, *Yellow Pages* and/or a combined book with both.⁴⁵

39 Community Legal Centres NSW, *Submission 8*, p. 4.

40 Australian Communications Consumer Action Network (ACCAN), *Submission 9*, p. 4.

41 ACCAN, *Submission 9*, p. 8.

42 Telstra, *Supplementary Submission*, p. 1.

43 For example see: ACCAN, *Submission 9*, p. 9; Australian Communications and Media Authority (ACMA), *Submission 19*, pp 4–6.

44 ACMA, *Submission 19*, pp 4–6.

45 ACMA, *Submission 19*, p. 5.

2.32 The results showed the people aged 65 years or older are much more likely to use a hardcopy of the White Pages than the electronic version.⁴⁶

2.33 However their findings also indicated that people are using alternative sources to find telephone numbers and that advancements in technology have made it easier to store and retrieve information that was previously only available through a public directory.

The capacity of phones to store numbers and other contact details, and the ease of capturing a caller's details, have lessened the dependency on, and use of, written phone lists, telephone directories and directory services for many participants...

Many participants preferred to use online search facilities such as Google rather than the phone book or electronic directories as it was faster, provided more succinct information, and, if being used to find a local tradesperson, for example, provided a targeted list.⁴⁷

2.34 ACMA believed that the idea that consumers should be able to choose to have their details published and be able to do so at no additional cost is, in principle, consistent with good consumer outcomes.⁴⁸ ACMA did not have a particular view on what changes would assist in meeting this outcome.⁴⁹

2.35 Although ACCAN acknowledged the public benefit in having a free public number database, it argued that consumers should have a choice as to whether or not their information is published online.⁵⁰ Furthermore, ACCAN expressed concern at just how privacy intensive the *White Pages* can be:

It is possible to search for a surname, without specifying any initial, and the search can be made at the National, State, or suburban level. Alternative spellings of surnames are provided by the site. The live search results display street names and suburbs, and individual search results can be followed to find the user's phone number, street number, and location displayed on a map.

By comparison, the website of the Australian Electoral Commission allows visitors to check their enrolment status, but to do so the user must provide an exact match on surname, given name, street name, postcode and suburb, as well as a Captcha verification code, in order to display the results.⁵¹

2.36 ACCAN was also of the opinion that charging the Silent Line fee for administrative requirements is unjustified as many organisations factor these costs into the prices of its services.

46 ACMA, *Submission 19*, p. 6.

47 ACMA, *Submission 19*, p. 4.

48 ACMA, *Submission 19*, p. 3.

49 ACMA, *Submission 19*, p. 3.

50 ACCAN, *Submission 9*, p. 9.

51 ACCAN, *Submission 9*, p. 10.

...the Silent Line fee amounts to the charging of a special fee in order for Telstra to comply with what would, in other circumstances, be its customers' expectations of and rights to privacy. This is no more acceptable than would be a company charging its customers a fee to opt out of receiving unsolicited commercial emails on the grounds that the *Spam Act 2003* introduces additional regulatory costs and commercial, reputational and financial risks.⁵²

2.37 ACCAN suggested that data utilised in the *White Pages* be obtained from the IPND as is currently required of other public number directories.⁵³

2.38 Vodafone submitted to the inquiry that the purpose of the *White Pages* in the past was to encourage the use of the Telstra network and for people to find each other for that purpose.⁵⁴ Vodafone argues that the reason the Silent Line fee continues to exist 'is because it is in Telstra's commercial interests to retain this revenue stream and to discourage and penalise customers who choose not to be listed in the *White Pages* products'.⁵⁵ In turn this allows Telstra to make more money on its other commercial offerings that make use of *White Pages* data.⁵⁶ Vodafone believes that technological changes to systems mean that there would be no extra work required to maintain privacy of Silent Line records.⁵⁷

2.39 Optus similarly submitted that it believes that there should not be a fee for an unlisted number.⁵⁸ Indeed, Optus informed the committee that it does not charge its customers for silent numbers.⁵⁹ Optus also argued that:

Given mobile numbers are unlisted by default—with no charge to the customer, we believe the requirement for fixed line customers to pay for an unlisted number is out dated, and not reflective of the current telecommunications environment and the increasing use of mobile phones.⁶⁰

2.40 Mr Bruce Arnold suggested that if there is a cost associated with providing an unlisted number, then this is a one-off fee, and not one that should be ongoing.⁶¹ Mr Arnold also acknowledged that prohibiting a fee does not prevent people from

52 ACCAN, *Submission 9*, pp 11–12.

53 ACCAN, *Submission 9*, p. 13.

54 Vodafone, *Submission 16*, p. 1.

55 Vodafone, *Submission 16*, p. 2.

56 Vodafone, *Submission 16*, p. 2.

57 Vodafone, *Submission 16*, p. 1.

58 Optus, *Submission 15*, p. 1.

59 Optus, *Submission 15*, p. 1.

60 Optus, *Submission 15*, p. 1.

61 Mr Bruce Arnold, *Submission 2*, p. 3.

disclosing their number publicly in other ways—on a business card, website or by other means.⁶²

Telstra's response

2.41 Telstra informed the committee that its *White Pages* Carrier Licence Condition (CLC) embodies the government's view that a comprehensive national directory is a necessary public good.⁶³ According to Telstra:

The purpose of a national public number directory is to publish the basic contact information of all fixed line telephone subscribers in order to facilitate connections between them. Users consult the directory when they know there is a good chance of finding the fixed number listing they need. Encouraging customers to remove themselves from the directory without good reason via a prohibition of the current modest fee will detract from this purpose in proportion to the percentage of unlisted numbers.⁶⁴

2.42 Telstra argued that as the publication of a free national telephone directory remains part of Telstra's Carrier Licence Conditions, it is evidence enough that the government still believes there is a public benefit derived from the provision of the directory.⁶⁵ As such, Telstra asserted that it should not be required to subsidise the cost of two social policies that undermine each other:

Telstra is required by its CLC to subsidise the cost of delivering the *White Pages*. If the charges for directory unlisting are prohibited and Silent Line becomes a tool of social policy, Telstra would also be required to subsidise the costs of delivering the competing social policy obligation, being the provision of directory unlisting. Government has chosen the paramount social policy in the *White Pages* CLC. The other should be allowed to make a reasonable return.⁶⁶

2.43 Telstra also commented that if the Silent Line fee were prohibited, the number of people who would request an unlisted number could increase significantly enough to render the national telephone directory useless.⁶⁷ The current number of Silent Line residential customers has remained consistent at 16 per cent of the residential fixed line customer base for the last four years.⁶⁸ For Telstra this demonstrates that a stable balance exists between the availability of directories information and the interests of individuals who wish their contact information to remain private.⁶⁹

62 Mr Bruce Arnold, *Submission 2*, p. 7.

63 Telstra, *Submission 17*, p. 4.

64 Telstra, *Submission 17*, p. 4.

65 Telstra, *Submission 17*, p. 4.

66 Telstra, *Submission 17*, p. 5.

67 Telstra, *Submission 17*, p. 2.

68 Telstra, *Submission 17*, p. 2.

69 Telstra, *Submission 17*, p. 2.

At \$2.93 per month (inc. GST) the fee is just high enough to prevent most people from making an unthinking or reflective choice to unlist, but modest enough to be readily paid by the few who really want or need to be unlisted.⁷⁰

2.44 Telstra also argued that the impact of a dramatic rise in unlisted numbers would be felt most critically by consumers, who as individuals may see no disadvantage in being unlisted, but who in aggregate will suffer from a reduced ability to make social connections.

The relationship between an increase in unlisted numbers and a decline in the national directory's ability to facilitate connections is not likely to be linear. The national directory will become ineffective as soon as users think it will more likely than not that the listing they need will not be found there, because at that point they will cease to use the directory. Although we cannot know exactly where this tipping point lies, it must be reached before all numbers are unlisted.⁷¹

Committee comment

2.45 As the Australian Law Reform Commission stated in its report, *For Your Information: Australian Privacy Law and Practice*, privacy is a recognised human right and generally should take precedence over a range of other countervailing interests, such as cost and convenience.⁷² The ALRC also recognised however that privacy rights will clash with a range of other individual rights and collective interests.⁷³

2.46 The committee acknowledges the concerns raised by submitters that the charging of a fee for an unlisted number in the national public number directory may interfere with elements of their right to privacy. Furthermore, the committee appreciates that in addition to privacy being an individual right, people who have experienced domestic violence or who would be placed in a vulnerable position should their personal information become public are compelled to maintain their privacy. For these people even a modest charge to have an unlisted number could prove a barrier to their protection.

2.47 The committee also agrees with comments made by Telstra that for now there remains public interest in maintaining a nationally available public telephone directory to assist people maintaining communication. The *White Pages* has been published for a considerable period of time and is relied upon by many people for its information. Indeed the committee particularly notes the statistics provided by the Australian Communications and Media Authority that 88 per cent of all Australians have used

70 Telstra, *Submission 17*, p. 4.

71 Telstra, *Submission 17*, p. 8.

72 Australian Law Reform Commission, *For Your Information: Australian Privacy Law and Practice*, 2008, Vol. 1, p. 104.

73 Australian Law Reform Commission, *For Your Information: Australian Privacy Law and Practice*, 2008, Vol. 1, p. 104.

either the electronic or hardcopy *White Pages* or Directory Assistance services in the past 12 months. The inclusion of the production of a public telephone directory in Telstra's Carrier License Conditions is indicative of its importance to the Australian public.

2.48 The committee is pleased that Telstra has agreed to formally implement a policy to waive the Silent Line fee for telecommunication users who face a demonstrated security threat. The empowerment of customer service agents to respond to an applicant's individual circumstances and apply the fee exemption where appropriate is also welcomed. The committee considers that these measures will help to ensure the privacy of those people who would be placed at risk if their personal information were to become public. The victims of domestic violence have a right to ensure their personal safety and this should not come at a cost to them. The committee acknowledges that through Telstra's announcement, the ability of victims to maintain their privacy free of charge is now available.

2.49 The committee agrees with comments made by Telstra that if it is compelled by its Carrier License Conditions to produce a national telephone directory, that it would be inconsistent for it to then also be compelled to support a government policy that could encourage users to remove themselves from that directory. Eventually this position would undermine the purpose and usefulness of the directory. The committee therefore considers that a nominal charge which has the effect of ensuring that most people do not unlist their number is beneficial to the directory and ultimately to the community.

Recommendation 1

2.50 The committee recommends that the *Telecommunications Act 1997* not be amended to prohibit the charging of a fee for an unlisted (silent) number on a public number directory.

2.51 The committee notes that there may be confusion that telecommunications users have in establishing how their personal information that they are required to supply by law may ultimately be used. The creation and use of the IPND and the public directories that flow from this information, in conjunction with the *White Pages* directory produced separately by Telstra's subsidiary Sensis, can lead to confusion as to what personal information is produced where.

2.52 The committee believes that establishing a single repository of data may make it easier for users to track their information and avoid having to go through multiple sources to maintain their privacy. The committee urges the Department of Broadband, Communications and the Digital Economy, through its current review of the IPND, to address these concerns, potentially by giving consideration to creating a single repository of telecommunications data.

2.53 The committee also sees value in the Australian Communications and Media Authority producing information for consumers on what public telephone directories exist and how users can go about keeping their personal information private.

Recommendation 2

2.54 The committee recommends that the Australian Communications and Media Authority produce relevant material for telecommunications users that explains where their personal information is published and how it may be made private.

Senator Simon Birmingham

Chair

Dissenting Senators Report

1.1 Senator Cameron, Senator Bilyk and Senator Ludlam do not agree with Recommendation 1 in the Coalition's Senators' report.

1.2 Dissenting Senators find that the charging for a fee for an unlisted (silent) number should be prohibited.

1.3 The genesis for this References inquiry was recommendation no. 72-17 of report no. 108 of the Australian Law Reform Commission on Australian privacy law and practice which recommended that:

The *Telecommunications Act 1997* should be amended to prohibit the charging of a fee for an unlisted (silent) number.

1.4 The Coalition Senators' report found that the ALRC's recommendation has widespread support from consumer and privacy advocacy groups as well as sections of the telecommunications industry. The Coalition Senators have chosen to ignore the evidence received and seek to protect the corporate interest of Telstra.

1.5 Of the 19 submissions, the only submission that advocated the continuation of unlisted (silent) line fees was made by Telstra. Their submission was focused on ensuring the continued profitability of Telstra, through the charging of unlisted (silent) line fees, and of Sensis, the subsidiary that is responsible for the production of the White Pages directory.

1.6 This was opposed by groups like the St Vincent de Paul Society, the Australian Communications Consumer Action Network, the Privacy Commissioner and Legal Centres from around Australia - all built on the work of the Australian Law Reform Commission. Their submissions were focused on concerns about privacy and safety. They also focused on ensuring that all telecommunications users are able to enjoy those two rights, regardless of their ability to pay, or meet complex eligibility requirements.

1.7 The claim by Coalition Senators that the prohibition of charging a fee for an unlisted number would undermine the purpose and usefulness of the national telephone directory does not withstand even basic scrutiny.

1.8 As it stands, 16% of fixed line users are currently paying a monthly fee to have their details removed from telephone directories. This has not had a deleterious effect on the use of telecommunications directories, which is still used by 88% of Australians in the past year.

1.9 Dissenting Senators have taken the view that citizens' right to privacy and personal safety are more important than a theoretical decrease in the usefulness of Telstra's White Pages directory.

1.10 Dissenting Senators agree with the Australian Law Reform Commission view that a fee can act as an impediment to accessing a service that will help protect privacy, particularly for individuals on fixed or low incomes.

1.11 Dissenting Senators call on the government to undertake consultation in order to set out a clear timetable that would see the abolition of the charging of fees for unlisted (silent) lines.

Recommendation 1

That the *Telecommunications Act 1997* be amended to prohibit the charging of a fee for an unlisted (silent) number on a public number directory.

Senator Doug Cameron
Deputy Chair

Senator Catryna Bilyk
Senator for Tasmania

Senator Scott Ludlam
Senator for Western Australia

Appendix 1

Submissions

- 1 Law Institute Victoria
- 2 Mr Bruce Arnold
- 3 Office of the Australian Information Commissioner
- 4 Name Withheld
- 5 St Vincent de Paul Society
- 6 Women's Legal Centre (ACT and Region)
- 7 Cairns Community Legal Centre Inc
- 8 Community Legal Centres NSW
- 9 Australian Communications Consumer Action Network
- 10 Consumer Credit Legal Centre (NSW) Inc
- 11 Hunter Community Legal Centre Inc
- 12 Women's Legal Services NSW
- 13 Mr Steven Roddis
- 14 Australian Privacy Foundation
- 15 Optus
- 16 Vodafone Hutchison Australia
- 17 Telstra
- 18 Electronic Frontiers Australia
- 19 Australian Communications and Media Authority

