



**Australian
Privacy
Foundation**

email: mail@privacy.org.au

website: www.privacy.org.au

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

Submission to the Senate Standing Committee on Environment and Communications

28 March 2013

Conclusion (repeated here to summarise our submission)

We submit that the case for a prohibition of charging for unlisted telephone numbers (silent lines) has been well established for many years, as convincingly argued by the ALRC in its 2008 Report. We call on the Committee to add its voice to the clear community demand for a prohibition.

The Australian Privacy Foundation

The Australian Privacy Foundation is the main non-governmental organisation dedicated to protecting the privacy rights of Australians. The Foundation aims to focus public attention on emerging issues which pose a threat to the freedom and privacy of Australians. Since 1987, the Foundation has led the defence of the right of individuals to control their personal information and to be free of excessive intrusions. The Foundation uses the Australian Privacy Charter as a benchmark against which laws, regulations and privacy invasive initiatives can be assessed. For further information about the Foundation and the Charter, see www.privacy.org.au

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Publication of submissions

We note that we have no objection to the publication of this submission in full. To further the public interest in transparency of public policy processes, APF strongly supports the position that all submissions to public Inquiries and reviews should be publicly available, except to the extent that a submitter has reasonable grounds for confidentiality for all, or preferably part of, a submission.

Terms of Reference

We note the Terms of Reference for this Inquiry, as follows:

The feasibility of a prohibition on the charging of fees for an unlisted (silent) number service¹, with

¹ We note that the legislation refers to unlisted numbers – ‘silent line’ is the Telstra product but has become synonymous in common public usage (and in these terms of reference). The distinction is symptomatic of a more general approach by Telstra to avoiding the spirit of the legislation – another example being the arrangements for publishing the White Pages outside the framework of the regulated Integrated Public Number Database (IPND).

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 matter

We submit that the question should not be the ‘feasibility’ of a prohibition – that is quite clearly possible. It is the desirability, and balance of public interests, that needs to be assessed.

We submit 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 – primarily Telstra. 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.

These issues have already been canvassed extensively in previous fora – including the ALRC Privacy Inquiry – recommendation 72-17 of which is cited in the Terms of Reference.

More recently, we took the opportunity of the Departmental Review of the Integrated Public Number Database (IPND)² to raise the silent line issue again. In our submission, we said:

“There are two major reasons why telephone numbers are unlisted. The first, for a high proportion of all mobile numbers, is because the subscriber has not ‘opted in’ to a directory entry. The second, for most of the unlisted geographic or fixed line numbers, is because individuals have made a conscious decision to ‘opt-out’. This in turn may be due to one of two broad categories of reasons. Firstly because the subscriber does not wish to receive unsolicited calls – in this respect the Do Not Call Register (DNCR) has provided an alternative, but the relationship is complex – some people may choose to be unlisted but not on the DNCR, and vice versa. Secondly there are subscribers who have a genuine safety or security concern – these include significant sub-categories of individuals who would risk significant harm if their telephone number, with or without other details, was made known to certain other parties. Some of those in this latter category choose a ‘suppressed address’ option where this is offered.

The unlisted number issue is further complicated by the fact that some CSPs, including the dominant fixed line provider Telstra, charge a fee for an unlisted number. This acts as a deterrent for subscribers and has in our view, expressed in numerous submissions, always been unjustifiable and objectionable. We note that the ALRC in its Report 108 accepted this and recommended that the Telecommunications Act be amended to prohibit the charging of a fee for an unlisted (silent) number on a public directory (Recommendation 72-17). **We submit that the government should take the opportunity of the IPND Review to accept and implement this recommendation.**”

It is unfortunate that specific telecommunications privacy issues, such as the IPND and silent lines (and data retention), are coming up for debate before the government has responded in full to all the ALRC Recommendations in the two chapters of its 2008 Report 108 that deal expressly with Telecommunications. We understand that a response is still being finalized. Had it been available earlier it would provide important context for the specific issues – in its absence, we have to argue each time from first principles.

² See

[http://www.dbcde.gov.au/telephone_services/telephone_numbering/integrated_public_number_database\(ipnd\)/integrated_public_number_database_ipnd_review](http://www.dbcde.gov.au/telephone_services/telephone_numbering/integrated_public_number_database(ipnd)/integrated_public_number_database_ipnd_review)

It will already be clear that we fully support recommendation 72-17 by the ALRC, and the reasoning behind that recommendation set out in Report 108 (Terms of reference (a))

In relation to the other specific terms of reference, we make the following comments:

(b) whether the payment of a fee unduly inhibits the privacy of telephone subscribers;

We submit that it is beyond contention that the imposition of a fee acts as an active deterrent to individuals exercising their right to privacy by opting out of listing in the publicly available directories and directory services.

(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;

There is no way of knowing how many additional telecommunications customers would choose to have an unlisted number if the charge or fee was removed. Any increase could reduce the commercial value of directory services, but we doubt if there would be a direct relationship (i.e. a 30% increase in silent lines would not automatically translate into an equivalent loss of revenue to the directory service providers). It may even be that the value of directory services would increase, as the listings would exclude customers concerned about their privacy and perhaps less likely to respond to marketing calls.

We anticipate that CSPs, particularly Telstra as the provider of most potentially affected fixed line services, will seek to argue that there are costs involved in the administration of unlisted numbers that they need to recoup. We have yet to see any convincing evidence of a significant cost, and in any case, respecting customers' wishes about secondary uses of their personal information should be accepted as a normal cost of business (which if passed on, would reasonably be spread across all customers, although we doubt if the amount involved could not be absorbed by the providers). We submit that if CSPs put forward any specific estimates of costs, they should also be required to quantify the revenue they gain from the provision of directory services which monetise listed numbers— we would expect this revenue to be significantly higher than any costs – destroying any economic justification for opposing prohibition of silent line fees.

(d) the implications of such prohibition for the efficacy of the national public number directory;

We submit that there need be no effect whatsoever on the efficacy of the national public number directory, if by this is meant the Integrated Public Number Database (IPND). The IPND contains unlisted numbers, which are available to certain categories of authorized users, including emergency services and law enforcement agencies. Other categories of users are denied access to or use of unlisted number information, which is as it should be, to respect the choice made by individual telecommunications customers.

None of the public interests that justify the statutory regime providing for an IPND are in our view affected by the proposal to prohibit the charging of a fee for unlisted numbers (silent lines). We refer the committee to the current IPND review and to the submissions to that review available online (see footnote 1).

(e) any other relevant matter

We note that Telstra recently announced that it was willing to waive its 'silent line' fee for vulnerable customers, whose 'personal safety is at risk'. Whilst superficially attractive, this offer is fraught with difficulties. Telstra has only given a very general indication of the criteria it would apply and the decision making process for accepting applications. It is however obvious that any process would involve customers having to provide Telstra with even more personal information – probably including highly sensitive information about their 'vulnerability'. This would not only be highly privacy intrusive in itself but would also increase the potential risk to these customers' privacy from any unauthorized access or other security breach (an inevitability with any large database).

Telstra's offer is, on reflection, insulting to customers. Why should anyone have to justify to a commercial telecommunications service provider why they do not wish the provider to make their name and number (and in some cases address) available to third parties, when that provision has absolutely no

connection to the service for which they are paying?

Conclusion

We submit that the case for a prohibition of charging for unlisted telephone numbers (silent lines) has been well established for many years, as convincingly argued by the ALRC in its 2008 Report. We call on the Committee to add its voice to the clear community demand for a prohibition.

For further information please contact:

Nigel Waters 0407 230 342 and board5@privacy.org.au

Board Member
Australian Privacy Foundation

APF Web site: <http://www.privacy.org.au>

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