

14 March 2013

Committee Secretary
Senate Standing Committee on Environment and Communications
PO BOX 6100
Parliament House
Canberra ACT 2600



**Law
Institute
Victoria**

By Email: ec.sen@aph.gov.au

Dear Sir/ Madam,

The Feasibility of a Prohibition on Charging Fees for an Unlisted Number Service Inquiry

The Law Institute of Victoria (LIV) is the peak body for the Victorian legal profession. Through its Family Law Section, the LIV currently represents 2,270 members. The Family Law Section is overseen by an Executive Committee, three Sub Committees consisting of the Courts Practice Committee, Children and Youth Issues Committee, Maintenance and Property Committee, two Working Groups consisting of the Junior Family Lawyers Working Group and Education Working Group and two portfolios consisting of the Child Support Portfolio and the Family Violence Portfolio.

The function of the Family Law Section's Family Violence Portfolio is to monitor developments in both the State and Federal jurisdiction, consider and recommend applicable law reform, regularly inform members of developments and conduct events and professional development relevant to family violence, recommend educational and research programs and to liaise with the Law Council of Australia as to the issues at a national level.

This submission has been prepared following consultation with the Family Law Section's Family Violence Portfolio. The LIV welcomes the opportunity to comment on the Senate's Inquiry into the feasibility of a prohibition on charging fees for an unlisted number service.

Terms of Reference

The Family Law Section's Family Violence Portfolio has reviewed the Inquiry's terms of reference, the relevant terms of which we have addressed below.

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

The handling of personal information by telecommunications providers is governed by both the *Telecommunications Act 1997* (Cth) ('the Act') and the *Privacy Act 1988* (Cth), as well as other industry-specific instruments, such as licences and codes. The Act is currently silent on whether a fee can be charged for an unlisted number. Article 12.2 of the European Union *Directive Concerning the Processing of Personal Data and the Protection of Privacy in the Electronic Communications Sector* provides that a fee should not be charged for an unlisted number. Many of our members provide legal advice to children, young people, families and separating couples regarding family violence matters. The Australian Government and Family Law Council, "Best Practice Guidelines for Lawyers Doing Family Law Work" provides the following recommendations to our members in respect of family violence:

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“The role of lawyers is to recognise that family violence is a serious problem ... have information about other sources of help and support available within the local area, preferably in the form of pamphlets that the client can take, and keep such information up to date ... Safety of a client needs to be a foremost consideration. As soon as family violence is revealed as an issue, lawyers should consider the safety of clients and any children and in appropriate cases consider early referral to an appropriate service ... In appropriate cases lawyers should consider ways in which a client’s location can be kept confidential and client’s safety enhanced such as constant vigilance about the content of documents ... In some cases, lawyers also need to take other steps to ensure the safety of their client such as making notes of which telephone numbers it is safe to ring, ensuring that clients’ names on files are not visible to casual observers, for example, in court, court premises or other offices and ensuring that all staff in the office are aware of these protocols. Consideration should be given to the tactical advantage of moving out immediately or remaining in the property, bearing in mind any potential property adjustment claim at a later stage. However, safety of clients and children is always the first priority”.

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. It is well recognised internationally that privacy is a human right. The Preamble to the *Privacy Act 1988* (Cth) refers to Australia’s obligations at international law to give effect to the right of persons not to be subjected to arbitrary or unlawful interference with their privacy, family, home or correspondence and to protect privacy and individual liberties.

The LIV supports the recommendation made by the Australian Law Reform Commission in ‘Australian Privacy Law and Practice (ALRC Report 108)’ (August 2008) (‘the report’) that *“the Telecommunications Act 1997 (Cth) should be amended to prohibit the charging of a fee for an unlisted (silent) number on a public number directory”* for customers who are victims of family violence. In particular, the LIV has been made aware of and welcomes the recent decision made by Telstra to waive their unlisted (silent) number fee for victims of family violence. The LIV submits that the current imposition of a fee by some telecommunications providers impacts on family violence victim’s decision to choose to have an unlisted number. The LIV endorses the sentiments expressed in the above report that charging a fee for an unlisted number is a financial impediment to customers accessing a service that will help to protect their privacy. The LIV believes that charging a fee for an unlisted number hampers victim’s ability to control the use and disclosure of their own personal information in such vulnerable situations.

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

The Family Law Courts, ‘Family Violence Best Practice Principles (3rd edition, 2012)’ states that:

“Cases involving findings of family violence or abuse pose real difficulties. The essential task for the Court is to determine the extent of risk which violent and abusive conduct poses for the child concerned and to fashion orders which are commensurate with the degree of risk involved ... In other cases, the Court may consider a range of strategies which would protect the child and family in the context of the possible benefits to the child in maintaining some form of relationship with the parent concerned. In particular, the court may consider the following in determining what the best outcome is for the child concerned ... whether telephone contact with the child is permitted and under what conditions, including the time of such contact, the duration of such contact and the number of times per week”.

A statutory prohibition on charging a fee for an unlisted number service will better assist the courts in developing strategies, responses and approaches to family violence and ensure that perpetrators of family violence are unable to contact their victims by telephone. The LIV appreciates the potential cost incurred by telecommunications providers in maintaining such a service for victims of family violence such as appropriate training in family violence, employing personnel to enter and process the relevant

data regarding the circumstances of the family violence, maintaining information technology systems such as storing a copy of the Family Violence Intervention Order or order of the Family Law Courts, responding to customer requests, updating their databases to avoid unauthorised disclosures and undertaking verification processes to reduce the mistaken release of silent line information.

The LIV concludes that an unlisted (silent) number service is not a privacy protection for which victims of family violence should be charged. The LIV is grateful for the opportunity to provide comment and we would appreciate the opportunity for further input as the consultation continues.

Yours sincerely,

Reynah Tang
President
Law Institute of Victoria