

27 March 2013

Committee Secretary
Senate Standing Committees on Environment and Communications
By email: ec.sen@aph.gov.au

Dear Committee Secretary,

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

Community Legal Centres NSW makes the following contribution to the inquiry into the feasibility of a prohibition on charging fees for an unlisted number service.

In particular, our comments relate to the following aspects of the Terms of Reference:

- recommendation no. 72.17 contained in report no. 108 of the Australian Law Reform Commission on Australian privacy law and practice;
- whether the payment of a fee unduly inhibits the privacy of telephone subscribers; and
- the likely economic, social and public interest impact for consumers if the charging of fees for unlisted (silent) number services was prohibited

We support the position that there should be a blanket prohibition on fees for unlisted numbers.

ABOUT COMMUNITY LEGAL CENTRES NSW

Community Legal Centres NSW Inc (**CLCNSW**) is an incorporated association consisting of, and representing, the network of 40 community legal centres (**CLCs**) throughout NSW. These CLCs provide legal advice, representation, information and education to people from a wide range of communities, focusing on the disadvantaged and those with special needs.

Many CLCs provide advice and representation to victims of family violence, for example, in relation to protection orders, family law, victims compensation, immigration, debt, and housing.

Our members include:

- Wirringa Baiya Aboriginal Women's Legal Centre, a NSW state-wide service for Aboriginal women, children and youth, with a focus on assisting victims of crime;
- Thiyama-li Family Violence Service, based in Moree, which provides Aboriginal clients with legal support in relation to family violence, as well as counselling in the areas of domestic violence, sexual assault, and grief and loss;
- Women's Legal Services NSW, a state-wide service with a focus on domestic violence, sexual assault, family law and discrimination; and

Many CLC clients have concerns for their personal safety. Due to the nature of their work, many CLC employees and volunteers can also have safety and privacy concerns, for example in relation to people the centre has been unable to assist, clients, and / or the opposing party in a legal matter.

COMMENTS ON THE TERMS OF REFERENCE

Support for prohibition on fees

CLCNSW supports a prohibition on fees for unlisted / silent numbers. We support recommendation no. 72.17 of ALRC Report 108.

The safety and privacy of a wide range of Australians could be enhanced by the provision of unlisted telephone numbers without additional charge.

Of most immediate concern are people with reasons to fear that violent ex-partners, family members or others, will attempt to track them down and perpetrate further violence. Silent numbers are most essential for the physical and psychological safety of people who have previously been victims of violence or who have been threatened or stalked.

The provision of unlisted telephone numbers without additional charge would also assist people who, because of their employment or volunteer role, are at risk of violence or unwelcome contact during their personal time. This latter category could include a wide range of community workers, health professionals, lawyers and other advocates, and certain public servants (e.g. child protection workers, prison guards, teachers). These people may feel safer and more comfortable to maintain the privacy of their home telephone numbers before any specific threat arises. As the Telstra website says "...if a nuisance caller already has your number Silent Line won't stop them from using it."¹

The privacy associated with access to unlisted numbers is also important to some telephone subscribers to avoid unwanted calls from telemarketers and scammers: despite the 'Do Not Call Register', unwanted calls are still received, including from overseas telemarketers and scammers.

¹ https://help.telstra.com/app/answers/detail/a_id/17300/c/1986

Why fees inhibit real choice about privacy

We believe that a telephone subscriber's right to privacy is inhibited by the requirement of payment to avoid their personal details (including phone number) being disclosed and listed in telephone directories.

Although a monthly fee of \$2.93 is minimal, it is still a deterrent for someone on a low income or otherwise suffering from financial hardship. CLCs regularly see clients who face severe financial hardship, including insufficient income to cover basic living requirements such as food, shelter, and utility bills. For over half a million Australians receiving income support, such as Newstart, there may be no ability to pay \$2.93 per month: see, for example, the numerous submissions on the adequacy of Newstart Allowance to the 2012 Senate inquiry into "The adequacy of the allowance payment system for jobseekers and others, the appropriateness of the allowance payment system as a support into work and the impact of the changing nature of the labour market".²

Even telephone subscribers who receive a regular income may be deterred by the current monthly fee. Income levels for workers in the community sector are notoriously low³, yet some of these workers deal with vulnerable, needy, and possibly unstable clients who may attempt to contact their community workers at their private residence. Some community workers face possible harassment from 3rd parties in relation to their work.

Although there is at least one telephone provider who does not currently charge a fee for a silent number, this could change at any time unless fees are prohibited. The telephone providers that a subscriber can choose between varies in different geographic locations. It is therefore important that all telephone providers are required to provide fee-free unlisted numbers.

Right to privacy and responsibility of government

It is unreasonable for telephone providers to only agree to protect privacy if the customer pays a fee. The right to privacy is a recognised human right, and Government should facilitate the enjoyment of that right by placing reasonable limits on commercial entities. If there are license or regulatory requirements⁴ that create a true impediment to providing fee-free unlisted number, the Government could consider modifying those requirements.

If fees for silent numbers are prohibited, there could be an increase in the number of telephone subscribers who chose not to list their home phone numbers. We do not see this as a major problem for Australian society. In any case, the ability to obtain an unlisted

² See, Chapter 3 of the Senate Committee's report, available at http://www.aph.gov.au/Parliamentary_Business/Committees/Senate_Committees?url=eet_ctte/completed_inquiries/2010-13/newstart_allowance/report/index.htm.

³ See, for example, the Social, Community, Home Care and Disability Services Industry Award 2010

⁴ as referred to in clause 72.252 of the ALRC Report.

number is not promoted on the websites of the major telephone providers, so the take up rate is unlikely to be large.

Concerns about limiting fee exemptions only to victims of family violence

We understand that Telstra has proposed that a waiver be available to a consumer who can show a valid protection order recognising a security threat or who can prove that they are a client of a community organisation providing services to people who are facing a security threat.

While we agree that victims of family violence who request silent numbers should not have to pay, we have concerns about the operation of a limited fee-exemption.

A limited exemption to the fee for consumers facing a security threat would be inadequate, and itself raises 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 face a security threat (for example, from an ex-partner or from relatives) to provide documentation about this to a telephone company. This is extremely personal and sensitive information, which the telephone subscriber may be uncomfortable or unwilling to share with a commercial company.

Unless Telstra has very tight security for accessing such information, it could be a security risk (for the victim) for Telstra to hold information about the community organisations / services that the victim is accessing.

Furthermore, many victims of violence or potential violence will not have any documentary evidence, let alone a current protection order. There are a variety of reasons why violence, or threats of violence, is not reported to police, or why police action is not taken. Some people facing serious security threats will not have contact with community organisations.

Therefore the Telstra proposal is of limited reach, and should not be preferred over a blanket prohibition on fees for unlisted numbers.

Thank you for the opportunity to provide comments.

Yours sincerely,

Roxana Zulfacar
Advocacy and Human Rights Officer