



St Vincent de Paul Society
NATIONAL COUNCIL *good works*

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Submission to the Inquiry into Feasibility of a Prohibition on the Charging of Fees for an Unlisted (Silent) Number Service

The St Vincent de Paul Society (the Society) is a respected lay Catholic charitable organisation operating in 148 countries around the world. In Australia, we operate in every state and territory, with more than 50,000 members, volunteers, and employees. Our people are deeply committed to our work of social assistance and social justice, and we run a wide variety of programs around Australia. Our work seeks to provide help for those who are marginalised by structures of exclusion and injustice, and our programs target (among other groups) people experiencing poverty, people who are homeless and insecurely housed, migrants and refugees, and people living with mental illness.

On 28 February 2013, the Senate Standing Committee on Environment and Communications invited the Society to provide a submission to its *Inquiry into Feasibility of a Prohibition on the Charging of Fees for an Unlisted (Silent) Number Service*. The Society's member states and National Council have consulted, and the Society welcomes the opportunity to contribute a submission.

Introduction

The debate around charges for unlisted numbers began around privacy rights for survivors of the crime of domestic violence. Telstra has now announced that it will drop unlisted numbers fees for this group,¹ although most other telecommunications providers charge up to \$48 per year for the service.²

The Society is pleased that the Committee is taking a broader approach to who should receive a fee exemption. We believe that all telecommunications companies should be prohibited from charging fees for any unlisted number.

a) Recommendation no. 72-17 of report no. 108 of the ALRC

The Society is in broad agreement with the views put forward by the Australian Law Reform Commission (ALRC) at item 72 of its report into Australian privacy law, including the recommendation 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."³

We agree with the Office of the Privacy Commissioner (as was) that "charging a fee for a silent number may affect individuals' ability to make such choices freely, and thereby hamper their ability to control their own personal information. This may be particularly the case in regard to individuals on low or fixed incomes".⁴

¹ See exchange.telstra.com.au/2013/02/26/telstra-to-review-silent-line-fees/.

² See for example primus.com.au/PrimusWeb/HomeSolutions/HomePhone/, iinet.net.au/phone/home/features/, internode.on.net/residential/phone_and_voip/nodeline_home_phone/features/.

³ Australian Law Reform Commission, *For Your Information: Australian Privacy Law and Practice* (Report number 108) Part 72 (at alrc.gov.au/publications/72.%20Exceptions%20to%20the%20Use%20and%20Disclosure%20Offences/charging-fee-unlisted-number on 20 March 2013).

⁴ Office of the Privacy Commissioner, *Submission PR 499*, 20 December 2007, quoted in Australian Law Reform Commission, above n 3.

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

One's home telephone number is private information, and the fact that this number is linked to a particular person's name is information belonging to the individual, not to the telecommunications company.

There is no question that privacy is a core human right.⁵ Privacy law in Australia is governed by the *Privacy Act 1988* (Cth). In that Act, National Privacy Principle 2.1 states that "An organisation must not use or disclose personal information about an individual for a purpose (the secondary purpose) other than the primary purpose of collection unless ... the individual has consented to the use or disclosure."⁶ The primary purpose of collection of a piece of personal information by most companies is to create a contract to provide services. In principle, therefore, companies cannot use the personal information for any secondary purpose, unless they have the consent of the individual who owns the information. This is the principle that enables customers to choose whether or not to receive advertising communications from companies they have purchased from, and whether or not to allow companies to pass on our data to third parties. It is also the principle that enables customers of telecommunications companies to decide whether or not they want an unlisted number.

(In addition to consent, organisations may pass on a piece of personal information if there is a legal requirement for them to do so.⁷ However, there is no legal requirement for a telecommunications company to release any particular name and phone number they possess, but rather just to create a directory.)

The principle is that personal information is private unless consent is given to release it. Therefore, the fact that telecommunications companies operate from a default assumption that they can release personal information, or can charge fees for not publishing private information, reverses the principles underlying Australian privacy law.

The ALRC noted that the cost associated with unlisted numbers is a factor people take into account. That consumers currently have to pay in order to maintain their right to privacy, and that privacy is seen as an optional "bonus" rather than the default, also raise very real issues about the value of the "consent" that individuals are giving to have their information disclosed. We would argue that it is not seriously meaningful to speak of a person giving "consent" to publish a phone number in a directory, when retracting that consent would involve becoming 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 "consent" 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.

⁵ See, for example, *International Covenant on Civil and Political Rights*, 16 December 1966, [1980] ATS 23, (entered into force generally on 23 March 1976).

⁶ Schedule 3, Item 2.1 (b).

⁷ Schedule 3, Item 2.1 (g)

c) the likely economic, social and public interest impact for consumers ... if the charging of fees for unlisted (silent) number services was prohibited;

The Society agrees with the comments of the Office of the Privacy Commissioner (as was quoted above; clearly, charging individuals to maintain their privacy will impact most severely on people on low or fixed incomes.

In the experience of the Society, through the tens of thousands of disadvantaged people we visit and provide support to, many have difficulties 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.

Dr John Falzon
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