



Inquiry into feasibility of a prohibition on the charging of fees for an unlisted (silent) number service

Submission by the Australian Communications Consumer Action
Network to the Senate Standing Committee on Environment and
Communications

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About ACCAN

The Australian Communications Consumer Action Network (ACCAN) is the peak body that represents all consumers on communications issues including telecommunications, broadband and emerging new services. ACCAN provides a strong unified voice to industry and government as consumers work towards availability, accessibility and affordability of communications services for all Australians.

Consumers need ACCAN to promote better consumer protection outcomes ensuring speedy responses to complaints and issues. ACCAN aims to empower consumers so that they are well informed and can make good choices about products and services. As a peak body, ACCAN will activate its broad and diverse membership base to campaign to get a better deal for all communications consumers.

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Contents

1. Executive summary	4
1.1. Key issues.....	5
1.1. Terminology.....	5
2. Responses to the terms of reference.....	7
2.1. ALRC recommendation 72.17	7
2.1.1. Customers of Telstra’s resellers.....	7
2.1.2. Low income consumers	8
2.1.3. Domestic violence and community legal workers	8
2.1.4. Consumers who consider themselves under threat.....	9
2.2. The Silent Line fee and privacy	9
2.2.1. Privacy impacts of the Silent Line fee	9
2.2.2. The Silent Line fee and consumer choice	10
2.3. Economic impact of fee prohibition	10
2.3.1. Public benefit of a Silent Line fee prohibition.....	10
2.3.2. Costs to Telstra of a Silent Line fee prohibition	11
2.3.3. Impact of a fee prohibition on the White Pages.....	12
2.4. The IPND and fee prohibition	12
2.5. Other matters	12
2.5.1. Unlisted numbers and Silent Lines.....	12
2.5.2. How the prohibition should be enacted	13

1. Executive summary

ACCAN welcomes the opportunity to make a submission to the Committee's inquiry into the Silent Number fee.

Along with many consumer and community organisations, ACCAN welcomes Telstra's recently announced revision of its policy on the Silent Line fee.¹ ACCAN was engaged in discussions with Telstra in the months leading up to the announcement, and it appears (subject to the specific details of the policy being announced by Telstra) that a number of our concerns about the application of the fee to particularly vulnerable consumers will be addressed by Telstra's proposed policy revision. Specifically, the proposal appears to address the needs of victims of crime, victims of domestic violence, and other customers facing security threats.

However, while Telstra's proposal appears to address some of ACCAN's concerns for consumers facing personal safety and security threats, our view is that the proposal is only a partial solution to the problems presented by the Silent Line fee. Under the proposal, a number of specific consumer groups may not receive any benefit:

- Customers of Telstra resellers will not be covered. Telstra's Silent Line fee is currently passed on to its wholesale customers, who in turn charge the fee to their own retail customers. In some cases, the fee charged by the reseller is higher than the fee charged by Telstra.
- Low income consumers for whom the fee is a particular burden will not be covered, except where they face a security threat. This excludes, for example, pensioners who may be unable to afford the fee but who would find significant peace of mind in having a Silent Line.
- There is a lack of clarity around the exemption as it applies to employees and workers of domestic violence and victims' support groups, community legal centres, and other community organisations who may have a particularly strong need for a Silent Line.

Moreover, the proposal will not address more general concerns about forcing consumers to 'pay for privacy'. While we accept that it may be appropriate for consumers to pay for certain privacy-enhancing services and that the White Pages provides a public service, we believe that a Silent Line fee prohibition would, on balance, be in the public interest.

Public sentiment is against the Silent Line fee. Although Telstra argued in its submission to the ALRC's inquiry that there are various costs incurred through its operation of the Silent Line service, the source of these costs remains unclear to the wider community, which appears to be exacerbating the feeling that the Silent Line fee is a charge for an option that should be free.

ACCAN therefore strongly recommends that a prohibition on charging a fee for an unlisted number be introduced.

¹ O'Leary T, *Telstra to review Silent Line fees*, Telstra Exchange, 26 February 2013, <<http://exchange.telstra.com.au/2013/02/26/telstra-to-review-silent-line-fees/>>.

1.1. Key issues

This submission raises the following key points:

- Telstra’s proposed Silent Line fee exemption policy will not cover several categories of vulnerable consumers.
- All consumers, not only vulnerable consumers, have a right to privacy, and this right is infringed upon by the Silent Line fee.
- A prohibition on the Silent Line fee is needed.
- The economic impacts of the Silent Line fee prohibition are likely to be minimal, and what costs there may be are justified.
- A regulatory mechanism is required to ensure no providers, including Telstra’s resellers, are able to charge a Silent Line fee.
- There is a broader need for the IPND and White Pages regulations and processes to be simplified.

1.1. Terminology

One of the difficulties in previous discussions of this issue has been terminological. There exist several services and statuses, each of which is referred to differently by different groups. For clarity, ACCAN has adopted the definition of a Silent Line matching that used by Telstra in its customer terms of service:²

Silent Line: a service offered by Telstra and its resellers for a monthly fee. If a customer has a Silent Line service, Telstra will not list the customer’s name, address or telephone number in the print or digital versions of the White Pages, and will not provide the customer’s name, address or telephone number through directory assistance. The customer’s information remains on the IPND.³ The Silent Line service includes CND blocking (see below).

The Silent Line service, thus defined, is distinct from:

CND blocking: a number that does not appear under Calling Number Display (CND). A number can be blocked by the customer on a call-by-call basis by dialing a prefixing the number to be called with a particular code. ACCAN’s understanding is that Telstra and other providers offer permanent number blocking without charge. CND blocking is also provided under Telstra’s Silent Line service.

Unlisted number: a number recorded in the Integrated Public Number Database (IPND) with an ‘Unlisted Entry’ status. This status is indicated by a ‘UL’ flag being set in the relevant IPND record. Since the information in the White Pages is not sourced from the IPND, a number being unlisted on the IPND does not mean the account holder has a Silent Line. Information about

² <<http://www.telstra.com.au/customer-terms/download/document/hf-fixed-homeline.pdf>>

³ This is confirmed by information on Telstra’s website; see <<http://www.telstra.com.au/privacy/privacy-information/>>.

an unlisted number may be provided to emergency services and law enforcement agencies, but not to other organisations (such as research groups and producers of public number directories).⁴

Suppressed address: a service offered by Telstra to ensure that a customer's address will not appear in the White Pages or be released through directory assistance. The service attracts a fee of \$5.48 for the first month and \$2.49/month for subsequent months.⁵ A suppressed address listing option is also available in the IPND.

Do Not Call Register: consumers are able to freely add their number to the Do Not Call (DNC) Register. Unsolicited telemarketing calls to a number on the DNC Register are prohibited, with exemptions for government bodies, political parties, charities, and educational institutes, as well as any organisation with which the consumer has an existing business relationship. The DNC Register is entirely separate from the White Pages and directory assistance, and registration on the DNC Register does not remove a consumer's phone number from these systems.

A great deal of public debate appears to have been made more complicated by the confusion of these privacy-enhancing services and statuses. Indeed, both 'silent line' and 'unlisted number' have been used at various times to refer to both numbers with a Silent Line service and UL-flagged IPND entries. The ALRC's report 108,⁶ for instance, uses the terms 'silent line' and 'unlisted number' interchangeably, and the terms of reference for this inquiry refer to 'an unlisted (silent) number service'. However, it is important to distinguish between the Silent Line service and an unlisted number.

The relevant service, for this inquiry, is the Silent Line service and equivalent services offered by other Carriage Service Providers (CSPs). While the Silent Line is a Telstra service, it also appears to be the dominant service of its kind, with Telstra's resellers generally referring to the service by this name. This submission will therefore refer to the Silent Line fee as the fee which should, in ACCAN's view, be prohibited.

⁴ ACIF C555:2008, <http://www.acma.gov.au/webwr/telcomm/industry_codes/codes/ipnd_code_c555_2008.pdf>.

⁵ This is confirmed by information on Telstra's website; see <<http://www.telstra.com.au/privacy/privacy-information/>>.

⁶ Australian Law Reform Commission, *For your information: Australian privacy law and practice*, ALRC report 108, <<http://www.alrc.gov.au/publications/report-108>>.

2. Responses to the terms of reference

2.1. ALRC recommendation 72.17

ACCAN supports the ALRC's recommendation:

Recommendation 72-17 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.

Along with many consumer and community organisations, ACCAN welcomes Telstra's recently announced revision of its policy on the Silent Line fee.⁷ ACCAN was engaged in discussions with Telstra in the months leading up to the announcement, and it appears (subject to the specific details of the policy and its implementation being announced by Telstra) that a number of our concerns about the application of the fee to particularly vulnerable consumers will be addressed by Telstra's proposed policy revision. Specifically, the proposal appears to address the needs of victims of crime, victims of domestic violence, and other consumers who satisfy a proposed 'security threat' requirement. As stated in Telstra's announcement, this requirement will be met by a consumer who:

- Has a valid protection order recognising a security threat; or
- Is a client of a community organisation providing services to people facing a security threat.

However, while Telstra's proposal appears to address ACCAN's concerns for consumers facing security threats, a number of specific consumer groups may not receive any benefit. The prohibition recommended by the ALRC is necessary to address these limitations of Telstra's proposed fee exemption policy, as well as to ensure the Silent Line is available free to all.

2.1.1. Customers of Telstra's resellers

One of the key shortcomings of Telstra's proposal is that Telstra's resellers will be under no obligation to waive their own Silent Line fees. Under current arrangements, a number of Telstra's wholesale customers charge a fee for a Silent Line (see table below). ACCAN understands that this fee is charged by Telstra to its wholesale customers, who in turn pass the fee on to their consumers.

Telco	Fee	Notes
Telstra	\$2.93/month	Sponsored Access Program applies a 'zero-rate' to crisis accommodation.
Optus	\$0/month ⁸	Applies to home and mobile. Number is removed from White Pages and directory assistance.
Internode	\$4/month ⁹	Fee appears to apply whether a Silent Line or only suppressed address is

⁷ O'Leary T, *Telstra to review Silent Line fees*, Telstra Exchange, 26 February 2013, <<http://exchange.telstra.com.au/2013/02/26/telstra-to-review-silent-line-fees/>>.

⁸ <http://optus.custhelp.com/app/answers/detail/a_id/54/kw/accounts%20and%20billing/related/1>

⁹ <http://www.internode.on.net/residential/phone_and_voip/nodeline_home_phone/features/>

Telco	Fee	Notes
iPrimus	\$3.50/month ¹⁰	requested.
iiNet	\$2.93/month ¹²	Previously charged at \$2.93/month; new charge applies from Oct 2012. ¹¹
Spintel	\$2.95/month ¹³	
ACN	\$2.93/month ¹⁴	Price is listed as \$2.66 + \$0.27/month GST

A customer of any of these resellers who faces 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 fact of their security-threatened status, to Telstra, which would raise further privacy concerns.

ACCAN submits that this limitation of Telstra’s proposal is a significant reason for following the ALRC’s recommendation. In order to ensure that all vulnerable consumers are able to hold an unlisted number without a fee, regardless of whether their service provider is Telstra or one of its resellers, the fee should be prohibited.

2.1.2. Low income consumers

Under Telstra’s proposal, the Silent Line fee would remain a problem—indeed, a proportionally larger problem—for low income consumers who do not satisfy the security threat requirement. This may include older Australians and people with disabilities, who may live alone and away from family, and who would benefit from the privacy and peace of mind of a Silent Line, even if they do not face a security threat that would satisfy the criteria for Telstra’s proposed exemption.

2.1.3. Domestic violence and community legal workers

ACCAN has been in contact with a range of community legal centres concerning the Silent Line fee, including women’s legal centres and victim’s groups. These groups have identified a heightened need for their employees and case workers to have a Silent Line for their privacy and, in some cases, for their personal security. A comment from Telstra on its blog announcement indicates that workers in community organisations may be eligible for the Silent Line fee exemption where the community organization confirms that the worker faces a security threat. ACCAN’s view, however, is that this condition is too strong. Many of these workers may be on low incomes and may benefit from the privacy and peace of mind a Silent Line would offer, even if they do not face a security threat that would attract the proposed exemption. However, it is not clear that these workers would be covered by the proposed exemption.

¹⁰ <<http://www.iprimus.com.au/PrimusWeb/HomeSolutions/HomePhone/>>

¹¹ <<http://www.iprimus.com.au/PrimusWeb/HomeSolutions/HomePhone/ValueAddedServices.htm>>

¹² <<http://www.iinet.net.au/phone/home/features/>>

¹³ <<http://www.spin.net.au/products/phone>>

¹⁴ <http://www.acnpacific.com.au/_files/f/1875/Fixed-Wire-Service&Features-Pricing.pdf>

2.1.4. Consumers who consider themselves under threat

While the security threat requirement will clearly be met by some consumers—those with a protection order and those who are clients of a community organisation providing services to people facing a security threat—other consumers may consider themselves to be under threat, either generally or from a specific source.

The Telstra proposal, in effect, makes Telstra the arbiter of whether or not such consumers face a legitimate threat. While Telstra’s intention may be to exercise this power in a consumer-friendly manner, and while an unlisted number would remain available to such individuals for a fee regardless of Telstra’s decision, there is a lack of clarity around how this proposal would be implemented. For example:

- Would the decision to grant a fee exemption be made by Telstra’s front-of-house staff?
- Would these staff be located at onshore or offshore call centres?
- Would the decision-maker be following a set procedure to determine whether or not to exempt the customer from the fee, or would the decision be largely arbitrary?

Consumers who face a personal safety or security threat are at a particularly vulnerable position. The Silent Line fee presents an initial hurdle for these consumers, and may be a disincentive for them against contacting Telstra to apply for the exemption. These consumers may be uncomfortable obtaining a protection order or seeking the services of a community organisation for any number of reasons. They may also be uncomfortable approaching Telstra’s front-of-house staff to argue their case. ACCAN believes that it is inappropriate to require a customer who may be in a great deal of distress to be forced to argue for their need for a Silent Line fee exemption with front of house staff.¹⁵

2.2. The Silent Line fee and privacy

2.2.1. Privacy impacts of the Silent Line fee

ACCAN acknowledges the public benefit in having a free public number directory, and that the White Pages is useful in providing this service. However, consumers should have a choice as to whether or not their information is published in the White Pages and provided by directory assistance, and the Silent Line fee impacts on this consumer choice.

As noted, Telstra’s proposal would see the Silent Line fee waived for consumers who Telstra considers to be under a security threat. While consumers under a security threat are particularly vulnerable and would benefit from an unlisted number, ACCAN does not believe that the right to privacy should be defined only in terms of removing threats or the risks of harm. Consumers have a right to privacy even where they do not face a general or specific security threat.

It is important to note just how privacy-invasive 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

¹⁵ We note, on this point, that the Telecommunication Industry Ombudsman reported that customer service complaints accounted for nearly one quarter of new complaints in 2012; see Telecommunications Industry Ombudsman, *Annual report*, 2012, <http://annualreport.tio.com.au/_data/assets/pdf_file/0005/107735/TIO-2012-Annual-Report.pdf>.

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. Of course, the two databases serve different purposes, and an individual's expectations of privacy may be higher when considering electoral information. Nevertheless, the comparison shows how easily a consumer's information can be accessed via the White Pages, and why the imposition of a fee to have one's details kept out of the White Pages inhibits consumers' privacy.

2.2.2. The Silent Line fee and consumer choice

In its submission to the ALRC's inquiry, Telstra argued that:

the Australian telecommunications market is fiercely competitive, and that consumers can choose a telecommunications service provider that does not charge for the service.¹⁶

We suggest that neither of these claims is entirely correct. While the telecommunications market may be 'fiercely competitive' in general, the competition with respect to the Silent Line fee is minimal, given that Telstra's resellers also apply fees for their own Silent Line services. Competition and consumer choice may also be reduced in regional and rural areas where Telstra is the predominant CSP.

It should also be acknowledged that there may be reasons why a consumer wishes to remain with Telstra despite the Silent Line fee. Considerations of mobile coverage, bundling, brand familiarity and social factors may all contribute to a consumer choosing Telstra as their fixed line provider.¹⁷ Unless pushed by a stronger force than the Silent Line fee, many customers are unlikely to change providers. It does not follow from this, however, that the Silent Line fee can be justified as a cost consumers are should pay.

2.3. Economic impact of fee prohibition

2.3.1. Public benefit of a Silent Line fee prohibition

We suggest that there will several economic, social and public interest benefits for consumers stemming from the cost savings and privacy benefits of a prohibition on Silent Line fees. There is a heightened awareness of privacy in the community, and the Silent Line fee is in conflict with consumer expectations of privacy.

¹⁶ ALRC report 108, para. 72.247.

¹⁷ These and other factors affecting consumer decision-making are surveyed in ACCAN, *Seeking straight answers: consumer decision-making in telecommunications*, September 2011, <http://accan.org.au/index.php?option=com_content&view=article&id=365:seeking-straight-answers-consumer-decision-making-&catid=103:general-communications&Itemid=170>.

A prohibition on the Silent Line fee would make the Silent Line consistent with other privacy-enhancing telecommunications options, notably the Do Not Call Register and the IPND unlisting option. The prohibition would also bring fixed and mobile services into closer alignment, since mobile services by default are not listed in the White Pages.

While the fees currently charged by Telstra and its resellers are relatively small for consumers on an adequate income, the fact that a particular consumer has a high income should not affect the consumer's right to privacy, any more than other rights are granted or denied based on income.

2.3.2. Costs to Telstra of a Silent Line fee prohibition

There is very little public information about the extent of the costs incurred by Telstra in operating the Silent Line service. A common public perception appears to be that activating a Silent Line service for a particular customer is a relatively simple matter of 'flicking a switch', i.e. updating the customer's record to reflect that their information should not be published in the White Pages or disclosed by directory assistance, much as having an unlisted number is a relatively straightforward matter of setting a 'UL' flag in the IPND.¹⁸

Telstra submitted to the ALRC inquiry that

its unlisted number service is a commercial service offered by a privately-owned company, and that its investors expect a competitive return on their investment. It observed that it carries a consequent commercial, reputational and financial risk and incurs costs to provide and maintain the service. These costs include those of: employing personnel to enter and process data, maintaining information technology systems, and responding to customer requests; updating the database to avoid unauthorised disclosure; information technology and systems; and undertaking sophisticated verification procedures to reduce the mistaken release of silent line information.¹⁹

While we accept that Telstra and/or Sensis may incur costs of the kinds referred to by the ALRC, we submit that this is not a sufficient reason to allow the continued charging of the Silent Line fee. All organisations with regulatory compliance requirements incur costs for employing personnel to ensure these requirements are met, maintaining information systems in a manner that satisfies the requirements, etc., and all such organisations face commercial, reputational and financial risks if they fail to meet those requirements.

However, while any such organisation will factor these costs into the prices of its services, 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

¹⁸ See, for example, comments on the Whirlpool forum thread 'Silent Line fury', <<http://forums.whirlpool.net.au/forum-replies.cfm?t=1993145>>.

¹⁹ ALRC report 108, para. 72.249.

unsolicited commercial emails on the grounds that the *Spam Act 2003* introduces additional regulatory costs and commercial, reputational and financial risks.

We recognise that Telstra will, of course, lose the revenue from the Silent Line fee. There appears to be no public information about how much revenue the Silent Line fee generates for Telstra, although one estimate put the amount at \$30 million annually.²⁰ By contrast, Telstra's sales revenue in FY 2011–2012 was almost 1,000 times this amount, at over \$25 billion.²¹ We submit that the economic impact of fee prohibition to Telstra would therefore be insufficient to offset the public benefit of fee prohibition.

2.3.3. Impact of a fee prohibition on the White Pages

The impact of the fee prohibition on the White Pages is likely to be proportional to the number of fixed line account holders who view the fee as a disincentive to obtain a Silent Line. Any significant impact on the White Pages will simply reflect the burden the Silent Line fee places on customers who want their number removed from the White Pages and directory assistance. If the fee were not particularly burdensome, then there would be no reason to think the removal of the fee will lead to a sudden jump in the number of Silent Line subscribers.

ACCAN believes that the economic impact on a commercial product should not be a primary factor in the decision whether or not to protect consumer privacy through a fee prohibition.

2.4. The IPND and fee prohibition

As ACCAN understands it, the 'unlisted number' provided by the Silent Line service is independent of the IPND (see section 1, above). The Silent Line service provides a number that is not listed in the White Pages and not provided by directory assistance. The 'unlisted number' provided by the Silent Line service should not be confused with a number that has been flagged as 'UL' in the IPND.

In light of this, we do not believe that a prohibition on the Silent Line fee would have any implications for the IPND or public directories that are generated from the IPND.

2.5. Other matters

2.5.1. Unlisted numbers and Silent Lines

Under current arrangements, the White Pages and the IPND are largely independent systems. This has led to a great deal of confusion for consumers, while Telstra appears to be getting the best of both worlds. On the one hand, Telstra's carrier licence conditions²² require Telstra to produce an 'alphabetical public number directory' and to 'arrange to publish and distribute the

²⁰ Birnbauer W, *Telstra rings up \$30m a year in silent number fees*, The Sydney Morning Herald, 21 January 2007, <<http://www.smh.com.au/news/national/telstra-rings-up-30m-a-year-in-silent-number-fees/2007/01/20/1169096030980.html>>.

²¹ Telstra, *It's how we connect*, 2012 annual report, <<http://www.telstra.com.au/abouttelstra/download/document/Telstra-Annual-Report-2012.pdf>>.

directory to its own customers and the customers of other carriage service providers (or the nominees of the customers).’ The White Pages fills this requirement. On the other hand, because information in the White Pages is not sourced from the IPND, Telstra is not bound by the regulations that apply to directories sourced from the IPND.²³ A single public number directory (the White Pages) appears both to satisfy Telstra’s carrier licence conditions and avoid the regulations that apply to other public number directories.

These arrangements have resulted in a lack of clarity about consumers’ rights and protections. Indeed, on one reading of Telstra’s carrier licence conditions, an unlisted number should not be published in the White Pages regardless of whether or not the number has a Silent Line service. The carrier licence conditions require Telstra to ‘ensure, to the greatest extent practicable, that the directory [i.e. the White Pages] does not include details of a customer whose number is an unlisted number.’ This does not appear to be conditional on whether Telstra obtained the number from the IPND, its own records or another CSP’s records. If a number has been set to unlisted in the IPND, it should not be published in the White Pages.

The current arrangement has several additional shortcomings:

- It leads to consumer confusion about the collection, use and disclosure of their personal information, and what steps consumers can take to control their information.
- It leads to different regulations applying to different publishers of public number directories. For a publisher other than Sensis, directory information must be obtained from the IPND, and the IPND regulations will apply. The IPND regulations do not apply to the White Pages, which is not sourced from the IPND.
- It requires customers’ personal information to be disclosed to Sensis by other CSPs.

We suggest that, ultimately, the best response to these complexities would be to simplify the regulations surrounding the IPND and public number directories by:

- Requiring that the White Pages data be obtained from the IPND, as is currently required of other public number directories.
- As a corollary, unlisted numbers should neither be disclosed to Sensis nor published in the White Pages.
- As a further corollary, unlisted numbers should neither be disclosed to Telstra nor made available by Telstra’s directory assistance.

2.5.2. How the prohibition should be enacted

ACCAN submits that there are two key requirements of a Silent Line fee prohibition:

- It must apply to all consumers, regardless of any vulnerable status they do or do not have; and
- It must apply to all consumers, regardless of the service provider they use.

²² Carrier Licence Conditions (Telstra Corporation Limited) Declaration 1997, <<http://www.comlaw.gov.au/Details/F2012C00836>>.

²³ Clause 7.12 of ACIF C555:2008, for example, requires an IPND data user not to ‘use or disclose Unlisted Entry data for purposes other than assisting Enforcement Agencies and Emergency Services’.

Given these requirements, a regulatory response to the Silent Line is appropriate. As noted above, the current exemption proposal by Telstra will not extend to all consumers, and may not extend to all vulnerable consumers. Furthermore, there will be no requirement on Telstra's resellers to remove the Silent Line fee. We note that the Telstra retail price controls may be another option for prohibiting the Silent Line fee charged by Telstra. However, it does not appear that these controls would have any effect on Telstra resellers, who may continue to charge a fee.²⁴

A regulatory prohibition would ensure that any consumer is able to have their number removed from the White Pages and directory assistance.

²⁴ <http://www.dbcde.gov.au/telephone_services/telstra_retail_price_controls>