

Committee Secretary
Senate Select Committee on the National Broadband Network
Department of the Senate
Parliament House
CANBERRA ACT 2600

By email: broadband.sen@aph.gov.au

Re TELSTRA CORPORATION LIMITED

Please include this submission with the submissions to be received and considered by your committee in relation to the Rudd Labor Government's proposed legislation to emasculate Telstra Corporation Limited.

In making this submission I declare my family's interest in 47000 Telstra shares which, since Minister Conroy's announcement in relation to the proposed Telstra legislation, have declined in value by \$18000.00

One of the defining features of a democracy, we are told, is the Rule of Law. Respect for private property is said to be a cornerstone of that principle. Thus, where dictatorships of the right or the left prevail, such as in Nazi Germany, Fascist Italy, Communist China, the former U.S.S.R, Zimbabwe, and a host of other African and South American, (dare I say it), "Banana Republics", there is no respect for the right to private property or personal rights. We democracies, rightly, look down on such regimes as inferior models, and bewail the treatment of their citizens by their oppressors.

The Australian Constitution implicitly recognizes the principles of the Rule of Law and provides, for example, in Section 51(xxxi) that

"The Parliament shall, subject to this Constitution, have power to make laws for the *peace, order, and good government* of the Commonwealth with respect to the acquisition of property *on just terms* from any State or person in respect of which the Parliament has power to make laws"

The proposal to expropriate Assets of Telstra by means of the proposed Legislation neatly sidesteps this constitutional provision which requires the acquisition of property on just terms by making the intended acquisition a "voluntary" act on the part of Telstra - essentially by blackmailing Telstra into meekly handing over its property, backed by the threat of causing irreparable damage to Telstra, and to its millions of direct and indirect shareholders should Telstra not comply.

A reformist High Court might well hold that the Commonwealth cannot do indirectly that which it cannot do directly, that is, acquire property without paying for it "on just terms". Such a Court might equally decide that such a Law that is proposed is not for "the peace order and good government of the

Commonwealth", subverting, as it intends to do, the Rule of Law, upon which our democracy is founded.

The Law under discussion is a Law aimed at the expropriation of the property of one company alone, and as such, it violates another principle of the Rule of Law - ad hominem laws are to be abhorred in a democracy. But it is also the indirect expropriation of the property in the Telstra holding of the millions upon millions of Telstra's direct and indirect shareholders, with the inevitable erosion of their equity value.

Once government is allowed to ride roughshod over the Rule of Law and the respect for the right of private property in a democracy, there are no bounds to the way in which a totalitarian State might confiscate any private property rights.

Consider the following example:

A Law is passed that contains the following principles:

- (a) In the event that the Commonwealth of Australia gives notice to any person that property is required for resumption, the person has no obligation to sell to the Commonwealth for less than a price calculated on just terms; (on the face of it, the Law complies with Section 51(xxxi) of the Constitution)
- (b) Should the Commonwealth make an offer to purchase property from any person which is rejected that person shall be liable to a special Commonwealth Land Tax;
- (c) The new Commonwealth Land Tax is to be calculated at an annual flat rate of, say, 50% of the price that the Commonwealth offered to purchase that person's property.

Consider these facts: I own a property which has a sworn valuation of \$1,000,000. The Commonwealth gives me notice of intended resumption at an offer price of \$600,000. I politely refuse to sell. Each and every year thereafter I receive a Land Tax Bill for \$300,000. Within 2 years I regret my decision not to sell to the Commonwealth!

Variations of such oppressive legislation could be manifested in many more sinister ways to force any Corporation to undertake joint ventures with the Commonwealth, or force it to sell to the Commonwealth in a Telstra-like way by, for example, withholding entitlements to grants, access to ports, export or import licences etc etc.

I am not so paranoid as to suggest that the Rudd Labor government is aiming to undertake a general acquisition of private property along the lines of my examples. However, once the wall of the constitutional dam has been breached by stealth, the way is open for a future government, of the extreme

right or left, to build on the example of the present jackbooted approach to wrest Telstra's assets from it, and diminish the wealth of its shareholders, without paying just terms.

Much has been made by the financial press and by the government concerning the belligerent attitude of the former management of Telstra. The mood of the Government has been, in some way, to punish Telstra for its conduct. However extreme the conduct of former executives may have been, it is the long suffering shareholders of Telstra who are to have their noses bloodied – not the fortunate Amigos who have departed with rivers of gold! As David Thodey, the new Managing Director of Telstra has made clear, he intends to engage in active and polite dialogue with the government, and was disappointed that Minister Conroy apparently chose to preempt any conciliatory discussions by holding the sword of Damocles over his head.

In the light of Senator Fielding's stated intention to pursue the matter in Parliament, I wish to comment on the role of the Future Fund in relation to recent events. Minister Conroy, in response to questions asked of him by the Press, negated the suggestion that the Future Fund had prior knowledge of the Government's intentions and plans from him. The Funds Managers, and the several millions of Australians they represent in Superannuation and other investments, as well as Telstra's one and a half million shareholders, must surely be suspicious of a transaction whereby the Future Fund sells at the highest price reached by Telstra for months, just a few days before Minister Conroy's announcement saw Telstra shares tumble from \$3.67 to \$3.08 in a few minutes, thereby, as they might think, duping the Funds out of hundreds of millions of dollars!

I, personally, do not, for one minute, doubt Minister Conroy's statement as to what his personal position was, but the circumstances just do not look good. Surely the old principle, "Justice must not only be done, but it must be seen to be done" applies here? I would like to think that the Senate Committee would consider it appropriate to call for the diaries of Future Fund executives and Directors, and the diaries of Ministerial Staff, and have those persons called before the Senate to ensure that there is transparency in the way in which the Future Fund dealings were carried out. I recall one argument put forward to explain the "coincidence" of the Future Fund sale was that the Future Fund was selling out to balance its Portfolio after the November 2008 embargo on it selling Telstra shares was lifted. Why then did it not sell in early December 2008, when the share price was in excess of \$4.15. It seems strange that such an opportunity was missed in December 2008, yet it happened to sell at the highest price reached in 2009, just before Telstra's equity value was to be irrevocably destroyed, should the Legation proceed.

Minister Conroy has said that he believes that the government's plan will result in a "win-win situation for shareholders" He has not elaborated on how this will come to pass. Surely, in proposing such a piece of legislation, he ought to be able to demonstrate how this end will be achieved? Surely such an explanation is required of him by your Committee to ensure that the

rights of Telstra and its shareholders are, indeed, not prejudiced? Certainly, from what I have read, the evidence is that every structural separation of a Telco around the world has resulted in tremendous loss of value for the affected shareholders. There is simply no demonstrated justification for the assertion that we shareholders are in a "win-win"!

I am not in the habit of protesting to Government, as I believe, on the whole, that Australian Governments of either persuasion act in the general interest of all. Sure, I disagree with various policy decisions from time to time, but have never before felt so passionate about anything that has led to a formal submission. However, in this instance, the threat to our democratic way of life, to the principles of the Rule of Law, to the institution of Private Property ensconced in the unwritten and written Constitution of the United Kingdom, whence our ideals of justness sprung, have moved me to make this submission.

It is time for the Committee, in my submission, to consider the threat to the rights, not only of Telstra and its shareholders, but also to the rights of all Australians, and our Australian Corporations implicit in the proposed legislation.

I am put in mind of the Lutheran Pastor in Nazi Germany, about to be led to his death at Belsen. He said, "when the Nazis came for the Communists I did nothing and did not speak up for them, when they came for the Trade Unionists I was silent, when they came for the Jews, the Slave, The Gypsies and all of the others, I looked the other way, and when they came for me, there was none to defend me"

It is, in my submission, for the Senate, now, to speak for us all."

Yours faithfully
Adrian Cardell LL.B.