

How to take the politics out of the NBN

This is a slightly expanded version of a presentation I gave to the CommsDay Melbourne Congress on Wednesday, 8 October 2014.

Introduction

You may well be wondering what I am going here talking about how to take the politics out of the NBN. After all I made a living for two years helping Labor Ministers sell Labor's NBN.

I am certainly a Labor man through and through. It is an honour to have served the party that seeks to represent those who make their living by what they do, not what they own.

But before that I am passionate about telecommunications – communications at a distance – be it up the street or across the ocean.

Telecommunications fuels our economy and tends our society.

I am reminded of the award winning ads from OTC '[Memories](#)' and '[Why Didn't You Call](#)' which did so much to demonstrate the human and business dimensions of something as simple as a direct dialled international phone call.¹

But telecommunications policy has become intensely political.

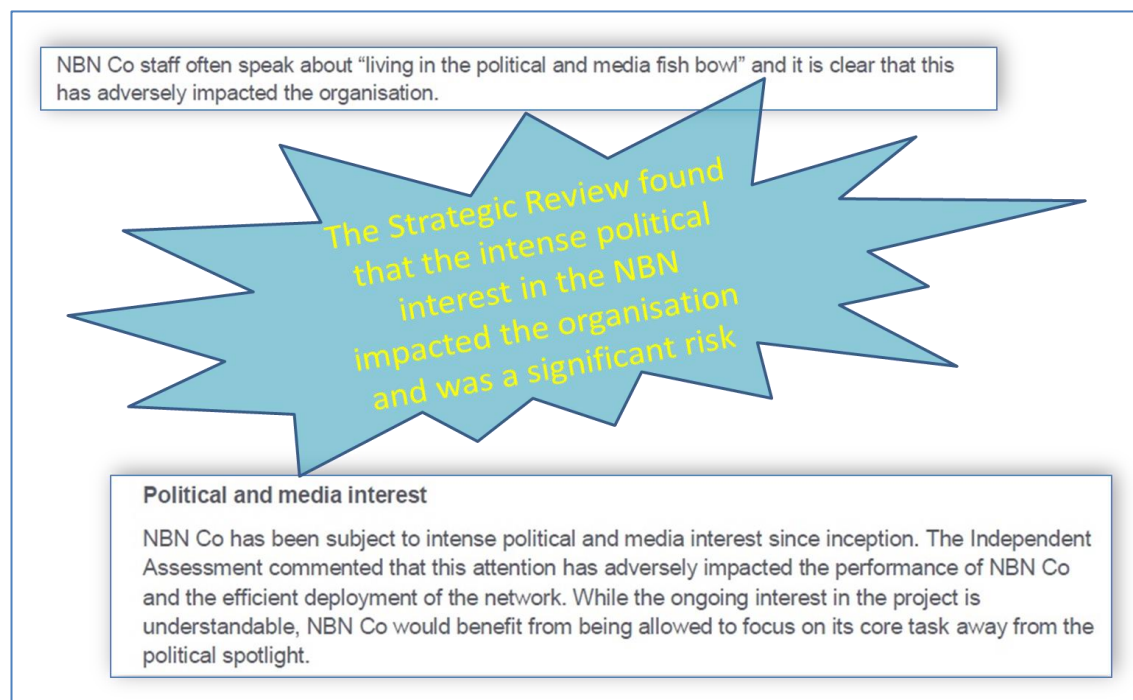


Figure 1: Extracts from the NBN Co Strategic Review

The NBN Strategic Review found that the intense political interest in the NBN impacted the organisation and was a significant risk (see Figure 1).

Staff reported they were living in a “political and media fishbowl.” The Review concluded that NBN Co would benefit from being allowed to focus on its core task away from the political spotlight.

What was the most immediate outcome of the Strategic Review though?

It was used as political weapon in its own right.

In his Ministerial Statement on releasing the Strategic Review Minister Turnbull said:

I will start by outlining the Strategic Review's findings regarding the previous Government's NBN policy. Because the situation at NBN Co is far worse than Parliament and the public were led to believe, worse even than the most trenchant critics of the NBN imagined.

And in doing so he misrepresented the Review report itself, saying the analysis showed to achieve its forecast return there would need to be a:

\$43 per month increase in the broadband bill paid by a typical Australian household.²

No "up to" as the report actually said.

No acknowledgement this was for a 50 Mbps plan – something the Minister would not otherwise call typical.

Far worse it was talking about price rises over the prices assumed for the Strategic Review evaluation... prices which were actually less than those included in the NBN Co Corporate Plan.

I could go on and detail the number of times the Minister has used this and other falsehood sin answer to dixer in question time.

I only mention this to note that despite the comments in the Strategic Review about the damage being caused by the "political spotlight" on the project, the spotlight has continued.

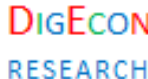
My thesis is not that this is something we should blame the politicians for.

This, whether we like it or not, is their job.

My thesis is that the cause has been the erosion of the policy capabilities in the public service, and that this erosion has been facilitated by the approach of industry and other stakeholders.

The Policy Process and Politics

What do we want from "politics"



Let us not seek the Republican answer or the Democratic answer, but the right answer. Let us not seek to fix the blame for the past. Let us accept our own responsibility for the future.

John F. Kennedy

One of the penalties for refusing to participate in politics is that you end up being governed by your inferiors.

(Common paraphrase of Plato)

Figure 2" What do we want from politics?

I think all of you at a CommsDay Congress, leaders in the telco sector, would agree with the sentiment from John Kennedy. You aren't looking for the Labor or Liberal answer; you are looking for the right answer.³

But I think we also have to acknowledge the sentiment in the common paraphrase of Plato from *The Republic*. There is no point in simply despairing about the quality of political outcomes; you need to do something about it.⁴

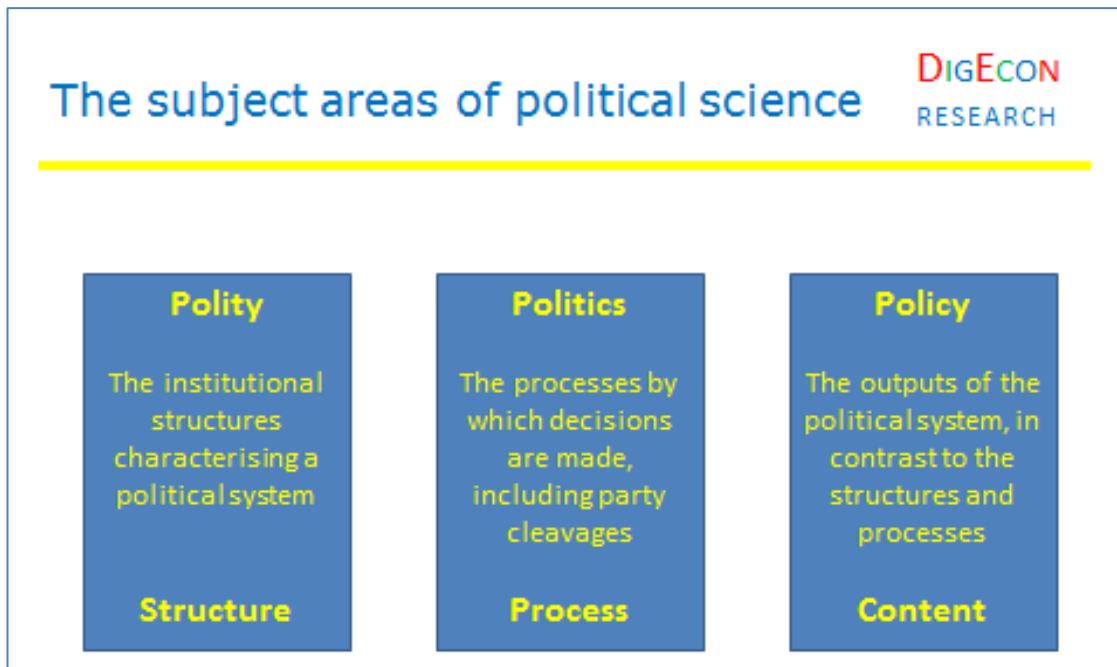


Figure 3: The subject areas of political science

In political science there are three main subject areas; polity, politics and policy (Figure 3). These refer in general to the structure, process and content of public policy decisions. There are clearly linkages between these.

Polity includes in our case the Federal constitutional responsibility for "post, telegraph and other like services."

Ignoring this institutional feature is a common failing in comparative studies.

The creation, role and responsibility of regulatory bodies is another aspect of polity.

Once again we are unusual, having as we do two regulators.

All of these have an impact on the development of broadband policy in Australia.

Politics is the process by which decisions are made, and this includes the distinction along party lines.

However, many political decisions have bipartisan support – far more than is generally realised because they are not the ones that get reported.

An issue becomes "political" when there is a great divergence of views between political groupings.

This will happen if there is a distinction on philosophical or ideological grounds. The approach to workplace law is a good example.

However it is not the only, or even most common, cause.

Issues also become 'political' when there are consequences of the policy, no matter how meritorious the policy is, that can be utilised as a campaign tool.

In the West Wing episode "Slow News Day" Communications Director Toby Zeigler hits on a way to solve the problem of Social Security. ... (In the US it is underfunded – Republicans want to cut benefits, Democrats want to increase contributions).

Deputy Chief of Staff Josh Lyman points out that if Social Security is fixed the Democrats will have nothing to campaign on.

- The campaign opportunity
 - TOBY So we exploit the hard stuff 'til it can't be solved? That's what we want to be remembered for?
 - JOSH We do what's possible, we exploit what's not. That's how we win elections.
- The West Wing 'Slow News Day'*

Figure 4: Excerpt from *The West Wing: Slow News Day*

Broadband policy has demonstrated aspects of both over the last decade.

[Slide 6– same as Slide 4 – subject areas of Pol Sci]

Policy is the content of the political system. It is the content that results from the various institutions making relevant decisions.

That can manifest itself as legislation, policy statements, budget decisions, or the decisions and instruments of the regulators.

Type of policy	Definition	Application to broadband policy
Distributive policies	Policies distributing new state resources	Government ownership Service characteristics
Redistributive policies	Policies modifying distribution of resources	Uniform wholesale pricing Telstra and Optus agreements Pol location decision
Regulatory policies	Policies specifying conditions and constraints for individual and collective behaviour	Structural separation Level playing field rules Greenfields policy
Constituent policies	Policies creating or modifying the state's institutions	ACCC powers with respect to NBN Co Creation (the abolition of) TUSMA

Figure 5: The NBN and Lowi's policy typology

Policy Challenges and Development in Broadband

Turning our attention now to the NBN we can note that there is not just one policy decision here, but a host of decisions that fall into different parts of a common policy typology (Figure 5).⁵

That is, broadband isn't a simple policy issue.

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Broadband also shows that policy doesn't follow a simple linear process of problem definition, policy formulation and adoption, implementation and evaluation. (Figure 6)

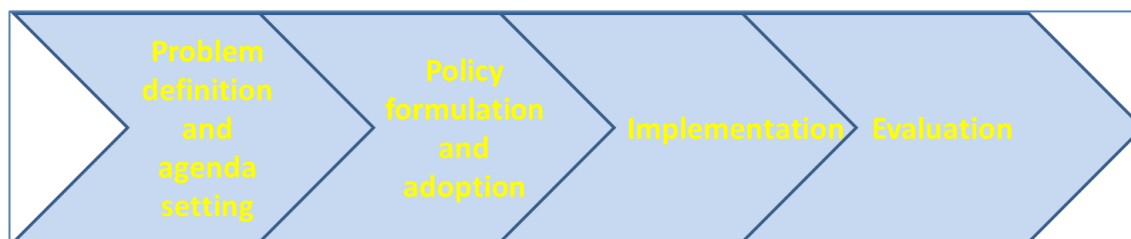


Figure 6: A linear theory of policy development

The stages do however provide a framework for analysis.⁶

Let's start at the issue of problem identification. In the early part of the century many people were commenting on the state of Australian Broadband.

A sample of comments about Australian broadband

Australia's broadband position is "embarrassing" and there was a huge consumer demand for online video that is being held back by Australia's antiquated broadband infrastructure. "Australia needs ubiquitous, high-speed broadband infrastructure to be internationally competitive. This is a top-order priority for the nation" (James Packer – March 2007)

"The encouragement of broadband is a critical element in Australia's overall media policy...internet speeds are slower and internet pricing is more expensive, than many other developed countries" (Fairfax – March 2007 submission)

Australian broadband is a "disgrace" and "We are being left behind and we will pay for it." (Rupert Murdoch – November 2006)

"Significant and meaningful changes in attitude and leadership from the Government and policy makers"(Internet Industry Association – July 2006)

Box 1: Comments included in the ALP 2007 policy

That there seemed to be a problem can be gleaned from the comments by James Packer, Rupert Murdoch, the Fairfax organisation and the late (but unlamented) IIA. (Box 1)

But was the problem ever really analysed?

Instructive here is that at the time answers to questions in writing to the Minister (or the Minister representing the Minister in the other chamber) about the state of broadband in certain areas all began with "Telstra has advised that."

Policy formulation was never led by the public service.

Telstra proposed a policy in 2005 that took Government by surprise.

The head of Optus Regulatory Affairs organised a counter policy – though that person subsequently wrote a book to claim the "crisis" was manufactured.

As a case study in rhetoric over reality, the broadband policy saga between 2005 and 2008 is a fascinating if slightly depressing story. Telstra deliberately sought to create a sense of crisis – to manufacture a case for regulatory changes to suit its private commercial interests.

Paul Fletcher *Wired Brown Land* (2008)

Box 2: Extract from *Wired Brown Land*

The Government set up an Expert Panel to tell it which of the industry solutions to adopt. This is best characterised as a tender for regulatory settings.

The Opposition drafted a policy without any of the benefits of public service resources – but of which a key feature was industry reform.

The Role for the Public Service

There have been two reports commissioned by the Abbott Government into the implementation of policies during the previous Labor Government (Hanger Royal Commission and Scales review of NBN).

Both were highly critical of the state and condition of the public service. Bill Scales was more succinct in his comments. (Box 3)

Recommendation 7: The leaders of the Australian Public Service should examine whether its inability to have its views seriously considered on the important matters related to the Rudd Labor Government's NBN Policy was circumstantial or whether it signals a more serious malaise within the Australian Public Service that needs addressing.

(Scales Independent Audit – NBN Public Policy Processes)

Box 3: Extract from the Independent Audit of the NBN Policy Processes

I have no particular insight into Scales thinking here. It is unclear at exactly what point he thinks the Public Service struggled to be heard.

In relation to the NBN Mark II Scales has reported as if the actual policy decision to proceed was made in the 11 weeks leading up to April 2009. As the instructions issued to NBN Co varied significantly from that announcement and included the analysis of the Implementation Study and the initial Corporate Pla, analysis was very robust prior to that instruction being issued.

His comments on NBN Mark I imply he was satisfied with the Department's process but that the Minister shut down the effort to cost the policy. It was not the costing of the policy that was at fault in this instance, it was shared clarity of the objectives.

What is clear was that the tender documents only considered the structural outcome to be one of the elements to be considered. As Lindsay Tanner advised in his comments to Scales the structural issue had been a core feature of the policy from its inception.

What is unstated here is whether the Department ever sought to clarify with the Minister the relative importance of the structural outcome.

I know from my own engagement with some of the officials that they were uncomfortable with the RTIRC chaired by Bill Glassen recommending that structural separation be a mandatory requirement.

There was a clear disconnection between the Minister and the Department and it is unclear if it was ever identified or dealt with. (This predates my time in the Minister's office)

To discuss policy evaluation I want to move from broadband but to talk about telecommunications policy in general.

As I wrote in the *Australian Financial Review* the Vertigan Regulatory and Market Report shows, policy makers start from an ideal of "market" and "competition" and attempt to make the facts fit the theory.⁷

Australia was a leader in the first round of telco reform, and yet it has been a point of criticism that the NBN Mark II isn't being done anywhere else in the world.⁸

We got it wrong in 1991 and we need to analyse in much more detail how and why.

It was clear in the early 2000s that broadband competition based on ULL and competing DSLAMs would not be a long term solution. The inability to agree on a process to migrate nodes closer to the premises revealed that. (It is why AAPT intentionally stayed infrastructure light before the PowerTel acquisition, but the policy process took too long to catch up).

Today our broadband problem is different to what it was in 2005.

Due to the inaction of the Howard Government, the errors in framing the NBN Mark I tender, the delays in securing the agreements for NBN Mark II and the errors in the construction contracting model our issue now is the need for greater speed.

None of the reviews have added anything of great substance. The Strategic Review did not conduct a genuine comparison between the technology choices, and both it and the CBA are framed in terms of demand assumptions that the industry making investments doesn't accept.

The Way Forward

There is no "if" about regulation, only "how". Government's role is not to get out of the way of the market nor is it to just to respond to "market failure."

It is the Government's role to design markets.

To take the politics out of the NBN – and the rest of telco policy – the process of policy needs to be reinvigorated.

Beginning in 1996 policy work has been contracted out to the private sector, both by direct contracting to analyst and legal firms and by relying on submissions by stakeholders. The conflicting versions of broadband policy were classic examples of how this process has played out.

But less bureaucrats does not lead to less regulation, it just leads to worse regulation.

The re-creation of the Research group in the Department is a good start.

I was heartened at the CommsDay Congress to hear Paul Patterson identify the four pillars the bureau will be pursuing- elevating recognition of the industry's contribution, identifying barriers to the operation of efficient communications markets and support of innovation, identify policy changes that will facilitate efficient market operation and enhancing knowledge important for policy formulation.

Dr Patterson said that in addressing the barriers to enabling communications markets and innovation, the Bureau will seek to identify industry structures that hinder innovation.

In this regard it is interesting to note that Jean Tirole was awarded this year's Nobel Prize in Economics. Along with long term collaborator Jean-Jacques Laffont (who died in 2004 from cancer) Tirole reframed our understanding of the way competition operates in various industries. Their book *Competition in Telecommunications* (2000) not only dealt with the regulation of monopoly but also addressed the issue of two-sided access markets. Both regarded *Incentives in Procurement and Regulation* (1993) as the fundamental work.

The Nobel citation makes the point that a conclusion of that work is that "Although general theories can be of great value, in the end all regulation must be industry-specific."⁹ This runs counter to the recommendations of both the Harper review of competition and the Vertigan market and regulation report.

The sentiments in the Department's current Corporate Plan are also encouraging.

But ultimately good policy needs better agenda setting by industry. That is something between the vague "we want less regulation" and the specific as was entailed in the Telstra FTTN plan of 2005.

Ultimately all firms benefit from a stable predictable external environment.

Identifying what the issues are and assisting in the policy research process will generate better outcomes – and less politics.

¹ These ads can be found online at <http://www.youtube.com/watch?v=LFV5Yqkba5U> & <http://www.youtube.com/watch?v=Ju4c6iAnQNs> respectively.

² Malcolm Turnbull, House of Representatives, Ministerial Statement 12 December 2013

³ (Kennedy Quote on slide) "Loyola College Alumni Banquet, Baltimore, Maryland, February 18, 1958," box 899, Senate Speech Files, John F. Kennedy Papers, Pre-Presidential Papers, John F. Kennedy Presidential Library <http://www.jfklibrary.org/Research/Research-Aids/Ready-Reference/JFK-Quotations.aspx>

⁴ The actual Plato quote comes from 347-C of Book 1 of *The Republic.. In my copy (trans Desmond Lee. Penguin Books 2nd Ed 1974) it says "the worst penalty for refusal is to be governed by someone worse than themselves." Referring to a refusal by good men to govern.*

⁵ Based on the representation of Lowi's typology in Christopher Knill and Jale Tosun *Public Policy: A New Introduction* P.17

⁶ Text on slide comes from Knill and Tosun P. 10

⁷ David Havyatt 'Economic theory trumps real world sense in NBN reviews' *Australian Financial Review* 7 October 2014

⁸ "Along with New Zealand, Chile and Guatemala, Australia is seen as one of the leaders in telecommunications reform." John Quiggin (1998) 'The Premature Burial of Natural Monopoly: Telecommunications Reform in Australia' *Agenda*

⁹ Available at http://www.nobelprize.org/nobel_prizes/economic-sciences/laureates/2014/advanced-economicsciences2014.pdf

About DigEcon Research

Purpose

DigEcon Research is a stand alone research body. Ultimately, its pursuit is policy research, the focus of which is the meaning and significance of the Digital Economy. This policy research encompasses both economic and social research.

Researching the significance of the Digital Economy

The concept generally referred to as the Digital Economy is frequently discussed but there is little shared meaning in the term. A key definitional issue is whether the Digital Economy is something yet to happen or in which we are now embedded.

DigEcon Research focuses on the analysis of social and economic change rather than an analysis of a notionally static "Digital Economy". Analysis of the change as it occurs should highlight those areas where there is genuine policy choice rather than merely a need to adapt policy to changes that have already occurred.

Before Thomas Kuhn popularised the idea of "paradigms" J.K.Galbraith railed against the "conventional wisdom". There is no denying that what Kuhn called "normal science" or the repeated application of existing theory to new problems results in most practical developments. It is equally true that the application of existing theory to problems they were not designed for results in, at best, vacuous solutions and, at worst, wildly dangerous outcomes.

The Digital Economy challenges the fundamental concepts of neo-classical economics. It also challenges most of the precepts of how societies are organised. In this context policy research needs to focus on what is different, not on what is the same. The Digital Economy is not just a matter of means of production but about the fundamental structures of social organisation.

Work program

This research is designed both to inform policy makers and to assist those who would seek to influence policy makers or to make business decisions. DigEcon Research however does not provide strategy recommendations nor undertake policy advocacy on behalf of any party.

A key element of the research will relate to the direct regulation of the converging industries of telecommunications, media, consumer electronics and information technology. However, the agenda encompasses the wider economic and social policy issues.

The scope of the research agenda will ultimately depend upon the researchers who wish to participate in what is more an idea than an entity.

In the crowded Australian research field there are a number of "bodies" that share some of the objectives of DigEcon Research. DigEcon Research aspires to contribute to the work of these and any other researchers in the field.