

LAWS70460 Regulatory Policy and Practice

Credit Points:	12.5
Level:	7 (Graduate/Postgraduate)
Dates & Locations:	2016, Parkville This subject commences in the following study period/s: March, Parkville - Taught on campus. This subject has a quota of 30 students. Please refer to the Melbourne Law Masters website for further information about the management of subject quotas and waitlists.
Time Commitment:	Contact Hours: 24-26 hours Total Time Commitment: 136-150 hours The pre-teaching period commences four weeks before the subject commencement date. From this time, students are expected to access and review the Reading Guide that will be available from the LMS subject page and the subject materials provided by the subject coordinator, which will be available from Melbourne Law School. Refer to the Reading Guide for confirmation of which resources need to be read and what other preparation is required before the teaching period commences.
Prerequisites:	None
Corequisites:	None
Recommended Background Knowledge:	Applicants without legal qualifications should note that subjects are offered in the discipline of law at an advanced graduate level. While every effort will be made to meet the needs of students trained in other fields, concessions will not be made in the general level of instruction or assessment. Most subjects assume the knowledge usually acquired in a degree in law (LLB, JD or equivalent). Applicants should note that admission to some subjects in the Melbourne Law Masters will be dependent upon the individual applicant's educational background and professional experience.
Non Allowed Subjects:	Students who have completed the below subject are not permitted to take LAWS70460 Regulatory Policy and Practice: LAWS70419 Fundamentals of Regulation
Core Participation Requirements:	The Melbourne Law Masters welcomes applications from students with disabilities. The inherent academic requirements for study in the Melbourne Law Masters are: The ability to attend a minimum of 75% of classes and actively engage in the analysis and critique of complex materials and debate; The ability to read, analyse and comprehend complex written legal materials and complex interdisciplinary materials; The ability to clearly and independently communicate in writing a knowledge and application of legal principles and interdisciplinary materials and to critically evaluate these; The ability to clearly and independently communicate orally a knowledge and application of legal principles and interdisciplinary materials and critically evaluate these; The ability to work independently and as a part of a group; The ability to present orally and in writing legal analysis to a professional standard. Students who feel their disability will inhibit them from meeting these inherent academic requirements are encouraged to contact Student Equity and Disability Support.
Coordinator:	Prof Karen Yeung
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Subject Overview:	Regulation has become a permanent feature of the way in which contemporary democratic economies, including Australia, are governed. There are few spheres of economic activity that are not subject to some form of regulatory oversight and control. Daily news programs rarely pass without some mention of a significant regulatory decision, proposed regulatory reform, or allegations of some regulatory failure or scandal. For lawyers, dealings with regulators

and regulatory regimes have become part of the staple diet of their work. Yet the practice of regulation is far from straightforward. Regulatory policy and practice has evolved considerably from its traditional origins in the form of 'command and control', accompanied by the growth of specific terminology and concepts that are likely to be unfamiliar to those other than regulatory technocrats. This subject provides an opportunity for students to develop an understanding of, and critically to evaluate, the basic tools, techniques and decision-making methodologies that are employed in regulatory design and practice. It will be of interest to both private and public sector lawyers who practise in regulated sectors of the economy, enhancing their understanding of how regulators go about the business of regulatory decision-making.

Principal topics include:

- # Introduction: What is 'regulation' and 'governance'?; the regulatory agency: institutional features, strengths and shortcomings; the rise of the 'regulatory state'; regulatory regimes and the role of non-state actors
- # Tools, Techniques and Instruments of Regulation: command—traditional legal prohibitions backed by sanctions; competition—market based approaches; communication—information disclosure and publicity-based approaches; consensus (including self-regulation); code architecture and the use of 'Nudge' techniques
- # 'New Governance' approaches to regulation: choice of Instrument; 'Hybrid' approaches to regulation; Responsive Regulation, 'Smart Regulation' and its variants (including meta-regulation); Cost-Benefit Analysis and Regulatory Impact Assessment and 'Better Regulation'; the Precautionary Principle
- # Enforcement and Compliance: problems with rules; principles-based regulation; the role of the criminal and civil law; punitive civil sanctions (The Macrory Review); regulatory enforcement styles; national styles of regulation; private enforcement, third party monitoring and certification systems
- # Appraising Regulation: regulatory accountability; regulatory legitimacy: between democracy and expertise.

Learning Outcomes:

A student who has successfully completed this subject will:

- # Acquire a set of general analytical tools and concepts that may be applied to the regulation of any domain of social activity, in any jurisdiction, in seeking to understand how regulatory authorities pursue the social objectives that they are expected to promote
- # Have a sophisticated appreciation of the challenges (of both a principled and practical kind) associated with attempts by regulatory authorities in seeking to promote particular social goals, including an appreciation of the kinds of conflicts and tensions which may arise within, or as a product of, the regulatory process
- # Have the capacity and skills to critically appraise regulatory design, policy and practice, including the role and limits of the law's contribution to regulation
- # Have an advanced and integrated understanding of general challenges associated with effective and legitimate regulatory governance, including an understanding of so-called principles of 'better regulation' and various desiderata considered essential to 'good' regulation
- # Be able to critically examine, analyse, interpret and assess the effectiveness and legitimacy of a regulatory program, proposal or decision
- # Be an engaged participant in debate regarding emerging and contemporary issues in the field, such as tools and instruments of regulation, approaches to regulatory enforcement, the use of regulatory decision-making methodologies such as cost-benefit analysis, regulatory impact analysis, risk-based approaches to regulation, the role of public and private enforcement, the characteristics of various sanctions for violations of regulatory standards, and how to evaluate and design regulatory regimes
- # Have the cognitive and technical skills to generate critical and creative ideas relating to the design and evaluation of regulatory regimes, and to critically evaluate proposed solutions to regulatory problems
- # Be able to demonstrate autonomy, thoughtful and informed judgment and responsibility as a learner in the field of regulatory policy and practice.

Assessment:

Take-home examination (5,000-6,000 words as specified in the subject reading guide) (100%) (13 - 16 May) A minimum of 75% attendance is a hurdle requirement.

Prescribed Texts:

Specialist printed materials will be made available free of charge from the Melbourne Law School prior to the pre-teaching period.

Breadth Options:

This subject is not available as a breadth subject.

Fees Information:	Subject EFTSL, Level, Discipline & Census Date, http://enrolment.unimelb.edu.au/fees
Links to further information:	www.law.unimelb.edu.au/subject/LAWS70460/2016
Related Course(s):	Graduate Diploma in Communications Law Graduate Diploma in Competition and Consumer Law Graduate Diploma in Corporations and Securities Law Graduate Diploma in Government Law Graduate Diploma in Health and Medical Law Graduate Diploma in Legal Studies Master of Commercial Law Master of Competition and Consumer Law Master of Employment and Labour Relations Law Master of Health and Medical Law Master of Laws Master of Public and International Law