

Victoria University of Wellington



**MASTER OF PUBLIC ADMINISTRATION
(Exec)**

PADM 505

Governing by the Rules

2005 Course Outline
(Second Trimester course – 24 points)

This course is co-ordinated and delivered by the Australian New Zealand School of Government (ANZSOG) of which Victoria University is a participating partner.

GOVERNING BY THE RULES

Subject Outline

Overview of the Subject

Governing by the Rules is essentially about *rules*, broadly defined, and their application to and by public managers. These rules may be formal – for example, black letter law, regulations, formal directives, permissions, conventions and expert judgements. But rules may also be informal and include influence, persuasion, advocacy, negotiation and ‘arm twisting’. Both formal and informal rules come to the public manager from ‘above’. The public manager may or may not have contributed to the form and content of these rules which it is then his or her responsibility to apply ‘below’. Whether rules are formal or informal, public managers must apply them in a way that not only accords with the rule of law but also meets policy objectives, accountability requirements and their own ethical standards (as well as those of others). In doing so, public managers exercise substantial and often unclearly defined discretionary powers. This discretionary aspect of interpreting and applying formal and informal rules is a highly significant, highly responsible and high risk aspect of the role of the public manager.

Once, rules were analysed generally in terms of what was prescribed by government authorities. In this *legal/formal* approach, legislation would be drafted upon the assumption that once approved, rules would operate and be enforceable in practice. However, today analysis of *rules* is more complex than assumed in the *legal/formal* approach. Although, public managers must know the law and not break it, the environment in which they work is clearly more complicated than that assumed by the *legal/formal approach*. This course thus focuses upon three analytical perspectives for enhancing our understanding of rules and their interpretation and application by public managers. These are discussed below:

1) *The Legal/Formal Approach*

This formal approach to rules focuses on the law as a prescriptive tool. It has confidence in the law, the letter of the law, compliance and enforcement of the law, legal process, legal argument and legal adjudication. If something is wrong it is probably because the law is not clearly articulated, is misapplied, subverted or poorly drafted. The law is sound although its practice may be imperfect. Legal instruments such as constitutions, acts of parliament, courts and the legal system itself are the substance of this approach.

2) *The Interpretive Approach*

This approach incorporates many diverse academic perspectives on the institutions of government and the panoply of largely unwritten rules attaching to them. It is the *interpretation* of these unwritten rules – often described as traditions and conventions - through beliefs, narratives and dilemmas that now dominate the work of the interpretive approach. What the proponents of the interpretive approach have in common is a desire to explain current practices in terms of their deeper meaning. Their academic frameworks from which they proceed include: political science, economics, sociology and linguistics.

3) *The Regulatory Approach*

This approach will focus, first, on the application of public choice theory to regulation. Second, it will focus on differing approaches to regulation, law enforcement, and compliance, including self regulation and coregulation.

As Australia's Office of Regulatory Review (ORR) observes:

“Regulation, like spending and taxing, is a fundamental policy tool used by governments. Regulations shape incentives and influence how people behave and interact, helping societies with difficult economic, social and environmental problems. Although some degree of regulation is essential for a properly functioning society and economy, regulations also impose costs.

High quality regulation is both *effective* in addressing an identified problem and *efficient* in terms of minimising necessary compliance and other costs imposed on the community. The best regulations achieve their objectives and at the same time deliver the greatest net benefit for the community. By contrast, poor quality regulation may not achieve its objectives and can impose unnecessary costs, impede innovation or create

unnecessary barriers to trade, investment and economic efficiency.”

Educational format

This subject will be taught intensively from Monday to Friday. It will utilise a variety of educational formats, including case studies, syndicate discussions, exercises and speaker panels. The program involves continuous participation by students, which in turn means that it is important for students to read and prepare set cases and exercises.

Subject Outcomes

The subject seeks to provide participants with a guide to formal and legal rules, informal practices and the associated risks and ethical considerations, which arise in governing in an age of uncertainty. To do this, the course will ensure that participants:

- Understand the idea of the rule of law as socially constructed and the limits of formal rules
- Understand the regulatory frameworks and practices operating in diverse practical contexts
- Can analyse ‘rules’ – formal and informal - to assess their application and can manage risks associated with the uncertainty of some rules
- Will have a broader understanding of ethical considerations in rule-making situations

Assessment Requirements

Task	Length	Marks	Due date Wellington	Due date Brisbane
(1) First individual assignment	1500 words	30%	Monday 4 July	Monday 1 August
(2) Syndicate assignment	2 X 750 words = 1500 words	30%	Monday 18 July	Monday 15 August
(3) Second individual assignment	4000 words	40%	Monday 8 August	Monday 5 September

Assessment Tasks

General Guidelines

In all assessable work, full acknowledgement of sources used is required - both for general referencing and for quotation. Plagiarism is unacceptable.

All assessable work is compulsory. If, because of illness, a participant is unable to complete work, or sit a quiz or exam at the scheduled time, a medical certificate must be produced. Other exceptional circumstances affecting capacity to complete assessment should be discussed with the relevant lecturer. Supporting attestation, for example a work supervisor's written explanation, may be required. Applications for exception should be made to your subject leader with a copy to c.barker@anzsog.edu.au about any agreement reached. Penalties will apply where no adequate exception is established.

Assessment work for submission will be penalised by 5% per day late, unless waiver for good reason is arranged with the subject leader.

Essay text in excess of the stipulated word length will be ignored by the marker. Word count does not include footnotes, references or appendices. Harvard citation is preferred e.g. Smithson (2002).

Essays, reports and assignments should be typed or neatly presented and submitted direct to ANZSOG by c.o.b. on the date due. Submit your assignments to Amy Gibbs at assignment@anzsog.edu.au.

(1) First Individual Assignment

Task: On the basis of the information available in the case of APRA, HIH and NAB (Part A and the Epilogue), do you agree that APRA now has adequate powers (both formal and informal) for the role it is required to perform?

Give reasons for your answer.

Length: 1500 words

Marks: 30%

(2) Syndicate Assessment

Task: During the residential, you will be given two factual situations to analyse. One will focus on what is prima facie an ethical problem and the other on a legal problem. This will be accompanied by instructions. Each analysis will be 750 words long, making a total of 1500 words for the assessment.

Length: 2 x 750 words = 1500 words in total

Marks: 30%

(3) Second Individual Assignment

Task: Illustrate the interplay of rules from various levels in a situation of which you have knowledge or which you can research - your essay should achieve the following objectives:

- a) illustrate understanding of the law at various levels
- b) illustrate conventions or other rules of departmental or other behaviour that were relevant
- c) illustrate understanding of the materials and issues put to you in the course of study

Length: 4000 words

Marks: 40%

About the Faculty

Dr Randal Stewart - Subject Leader

Dr Stewart is a policy scientist with an extensive background in public policy, public affairs and strategic plan.

His key areas of expertise are in policy formulation, institutional design, policy and issues management and selected policy areas such as industrial policy, economic policy and regional development. He is an expert in regulatory issues.

He completed a PhD at the Australian National University in 1987 after graduating with First Class Honours in Arts from the University of Queensland. Stewart is the author/editor of eight books and thirty scholarly articles on policy issues. A recent book is a book called "Public Policy – Strategy and Accountability" (1999) and an edited collection called Government and Business Relations In Australia (1994). In 1996 a second edition of his co-authored textbook Politics One was published.

In 1991 he was awarded a senior Fulbright award to study in the United States of America and has held senior positions in the Economics Faculty at the University of Sydney.

Dr Stewart has extensive experience in overseas policy environments having undertaken work in Korea and the United States on comparative industrial policy in recent years. He has been Visiting Fellow at the University of California, Berkeley and at George Washington University in Washington D.C.

He is an experienced executive trainer with an excellent record of exemplary evaluations and he is frequently asked to develop specific programs for government agencies all over Australia. He is much sought after as a consultant and strategic planner.

Prof Allan Fels, AO

On July 1, 2003 Professor Fels became Dean of the Australia and New Zealand School of Government.

Previously, he was Chairman of the Australian Competition and Consumer Commission from 1995 until 2003. Professor Fels was also Chairman of the former Trade Practices Commission from 1991 until 1995 and Chairman of the Prices Surveillance Authority from 1989 until 1992. He was Prices Commissioner, Victoria from 1982 -1991 and has served on numerous other government bodies.

Professor Fels was appointed as Professor of Administration at Monash University in 1984 and was the Director of the Graduate School of Management, Monash University from 1985 until 1990. He is now an Honorary Professor in the Faculty of Business and Economics at Monash University and became a Professorial Fellow in the Department of Political Science at the University of Melbourne in 2003.

Professor Fels has degrees in economics and law from the University of Western Australia, and a Ph.D in Economics from Duke University. After leaving Duke he was appointed as a Research Fellow in the Department of Applied Economics, University of Cambridge, where his Duke Ph.D thesis was published as *The British Prices and Incomes Board* by Cambridge University Press.

Professor Fels was the Co-Chairman of the Joint Group on Trade and Competition at the OECD from 1996 until 2003. He was awarded the Order of Australia in June 2001.

Prof Brian Galligan

Professor Galligan is a professor and Head of the School of political science at the University of Melbourne with research and teaching interests mainly in Australian constitutional politics and political economy.

His recent books are *Australians and Globalisation* (2001, with Winsome Roberts and Gabriella Trifiletti), *Citizens Without Rights: Aborigines and Australian Citizenship* (1997, with John Chesterman) and *A Federal Republic* (1995), all published with Cambridge University Press. He was awarded an ARC Discovery grant for 2002-4 to do the Oxford Companion to Australian Politics.

Dr Andrew Ladley

Dr Ladley has Bachelor of Commerce and Bachelor of Laws degrees from the University of Cape Town and Master of Laws and Doctor of Philosophy degrees from the University of London.

Dr Ladley is Director of the Institute of Policy Studies which is part of Victoria University's School of Government. He has been on leave of absence from Victoria's School of Law since 1999, where he had taught from 1987. He firstly served as Legal Adviser in the United Nations Mission in East Timor, and then in New Zealand, as Chief of staff and Coalition Manager in the Office of the Deputy Prime Minister.

For his work in East Timor, Dr Ladley was made an Officer of the New Zealand Order of Merit and received the inaugural Peacebuilders Award of the New Zealand National Commission for UNESCO in the year 2000.

Professor Pat Weller

Professor Weller is Professor in the School of Politics and Public Policy at Griffith University. He is the Director of the Centre for Australian Public Sector Management, and Deputy Director of the Key Centre for Law, Ethics, Justice and Governance.

Widely known as a researcher and commentator on public policy and administration, his publications include *Public Sector Management in Australia* (with C. O'Faircheallaigh and J. Wanna), *The Hollow Crown: Countervailing Trends in Core Executives* (with H. Bakvis and R. Rhodes), *Don't Tell the Prime Minister*, a study of the 'children overboard' affair and *Australia's Mandarins: the frank and the fearless?*

Electronic Resources

The following are provided as general resources and are not required reading for the subject.

General Resources:

1. Australian Public Policy Online
www.apo.org.au
2. Australian Public Service Commission
www.apsc.gov.au
3. Association for Public Policy Analysis and Management (US association of public policy researches, analysts and educators)
<http://www.appam.org/index.shtml>
4. The Brookings Institution (major US think tank):
<http://www.ips.org.sg/>
5. Institute of Policy Studies, Singapore:
<http://www.ips.org.sg/>
6. OECD Public Management and Governance
<http://www.oecd.org>
7. Office of Management and Budget / USA
www.whitehouse.gov
8. Policy Library (a social, economic and foreign policy resource with international links)
<http://www.policylibrary.com/index.html>
9. Public Policy Forum / Canada
www.ppforum.com
10. Public-Policy.org (US clearing house for policy issues, including international)
<http://www.public-policy.org/web.public-policy.org/index.php>
11. SSC (NZ State Services Commission)
www.ssc.govt.nz/
12. United Kingdom Cabinet Office/Policy Hub
www.policyhub.gov.uk

Timetable

Monday

Time	Session
9.30 – 10.00am	Registration
10.00 – 10.30am	Introduction to the Subject <i>STEWART</i>
10.30am–12.30pm	Frameworks for analysis of Governing by the Rules Case: APRA, HIH and the NAB <i>STEWART</i>
12.30 – 1.30pm	<i>LUNCH</i>
1.30 – 2.15pm	Perspectives on Governing by the Rules: an introductory discussion <i>STEWART</i>
2.15– 2.30pm	<i>STRETCH BREAK</i>
2.30- 4.00pm	Legal/Formal Approach Cases: Genetically Engineered Corn Special Education <i>LADLEY</i>
4.00 – 4.30pm	<i>AFTERNOON TEA</i>
4.30 – 6.00pm	Legal/Formal Approach (cont) Cases: Regional Assistance Mission in Solomon Islands Therapeutics Products <i>LADLEY</i>
6.45 – 7.45pm	<i>DINNER</i>
7.45 – 8.45pm	Individual reading: preparation of cases

Tuesday

Time	Session
9.00 – 10.30am	Legal/Formal Approach (cont) Cases: Tasmanian Dams Public Sector <div style="text-align: right;"><i>LADLEY</i></div>
10.30 – 11.00am	<i>MORNING TEA</i>
11.00am–12.30pm	Legal/Formal Approach (cont) Cases: Mabo Foreshore and Seabed <div style="text-align: right;"><i>LADLEY</i></div>
1.00 – 2.00pm	<i>LUNCH</i>
2.00 – 3.30pm	Stakeholder rights and entitlements <div style="text-align: right;"><i>STEWART</i></div>
3.30 – 4.30pm	Health practice and performance
4.30 – 5.00pm	<i>AFTERNOON TEA</i>
5.00 – 6.30pm	Accountabilities in administrative practice <div style="text-align: right;"><i>STEWART</i></div>
6.45 – 7.45pm	<i>DINNER</i>
7.45 – 8.45pm	Syndicate work Preparation of Video Ezy case

Wednesday

Time	Session
9.00 – 10.30am	Executive government: cabinet government: an elusive ideal? <div style="text-align: right;"><i>WELLER</i></div>
10.30 – 11.00am	<i>MORNING TEA</i>
11.00am–1.00pm	Ministers, ministerial advisers and the public sector: does our system work? <div style="text-align: right;"><i>WELLER</i></div>
1.00 – 1.45pm	<i>LUNCH</i>
1.45 – 3.15pm	The world is flat and interconnected: managing intergovernmental relations <div style="text-align: right;"><i>GALLIGAN</i></div>
3.15 – 3.45pm	<i>AFTERNOON TEA</i>
3.45 – 5.15pm	Australia and NZ connections: managing intergovernmental relations <div style="text-align: right;"><i>GALLIGAN</i></div>
5.15 – 5.45pm	Debrief <div style="text-align: right;"><i>STEWART</i></div>
	<i>FREE NIGHT</i>

Thursday

Time	Session
9.00 – 10.00am	Syndicates: Case preparation NZ Dairy Accord
10.00 – 11.00am	Public choice and regulation <i>FELS</i>
11.00 – 11.30am	<i>MORNING TEA</i>
11.30am–12.30pm	Regulatory strategies and regulatory choice Case: NZ Dairy Accord <i>FELS</i>
12.30 – 1.30pm	<i>LUNCH</i>
1.30 – 2.45pm	Regulatory strategies Case: Video Ezy <i>STEWART</i>
2.45 – 3.45pm	Managing risk
3.45 – 4.15pm	<i>AFTERNOON TEA</i>
4.15 – 4.45pm	Debrief <i>STEWART</i>
5.00 – 6.30pm	Syndicates: preparation for group assignment
6.45 – 7.45pm	<i>DINNER</i>

Friday

Time	Session
9.00 – 10.00am	Syndicate work Preparation of case for Panel on Ethics
10.00 - 11.00am	Ethics in executive government
11.00 – 11.30am	<i>MORNING TEA</i>
11.30am–12.30pm	Panel on ethics: Case discussion <i>LADLEY, WELLER. STEWART (CHAIR)</i>
12.30 – 1.15pm	Subject conclusion/overview <i>STEWART</i>
1.30-1.45pm	Participant evaluations
1.45pm	<i>FINISH</i> <i>BUS TO HOTEL AND OPTIONAL BUS TO AIRPORT</i>

N.B. A boxed lunch will be provided at the finish so that students can leave for the airport.