



MONASH University

Taxation Law & Policy Research Institute

Evaluating the Impact of Statutes

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A benchmark for statutes?

- **rise of statutes as the foundation for law**
- **common law shift from law to interpretation**
- **evaluating statutes**
 - political economy
 - economics
 - legal
 - are the courts getting it “right” or “wrong”?
 - did the legislature get it right or wrong?



Quantitative or Qualitative

- **measure the quantitative or qualitative impact of statutes?**
- **impossible to isolate from each other**



Why have a statute?

- **initial assumption is the market works and individuals are rational**
- **that is, we don't need statutes – it's best if the state does not intervene – we leave to individual to say what they want, to enter into arrangements as they want**



Why statutes? (cont.)

- **social cohesion, social values, social protection**
 - criminal law; holocaust denial law, speeding law, drink driving law
 - moral law (pornography, homosexuality, Sunday trading, prostitution)
 - smoking advertisements, seat belts



Why statutes? (cont.)

- **interfere with the market**
 - distribution
 - positive externalities (prime time TV)
 - negative externalities (petrol, cigarette, alcopops)
 - market failure (information failure, monopoly, oligopoly)



Judicial interpretation of statutes

- **Acts Interpretation Act – purpose of the statute**
- **AIA – 2nd reading speech, EM, extraneous materials**
 - e.g., Murphy on Commonwealth Aluminium transfer pricing
- **fallacy of the transplanted category**
 - “employee”



Four tier analysis

- 1. Is there a case for government intervention?**
- 2. How to intervene? Regulate? Tax? Create market rights?**
- 3. Once choice is made, is the statute designed properly?**
- 4. Are the courts interpreting the statute right?**



Choosing the tool (and the statute)

- **petrol consumption causes pollution - negative externality of excessive consumption**
- **choices**
 - regulate (fleet must achieve 6 litres per 100 km)
 - regulate (odd/even licence plates)
 - create market rights (class action right to sue for clean air)
 - tax (\$1 excise on petrol)



Can start at any level

- **can start at any tier – eg, accept first two questions as givens**
- **analyse an Act – look at the purpose of the Act**
- **analyse a provision – look at the purpose of the provision, not the purpose of the Act**

eg:

no insider trading; use put and call options

no trading while insolvent; use repos

no authorisation of bribes to win contracts



Using the right benchmark

- **GST: tax all consumption exactly the same so no impact on market**
- **no tax on food
(expenditure analysis – subsidy)**





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Three tier analysis

(can start at any tier, but acknowledge other tiers)

(example: no insider trading; no trading while insolvent; no authorisation of bribes to win contracts)

- 1. Is there a case for government intervention?**
 - 2. How to intervene? Regulate? Tax? Create market rights?**
 - 3. Once choice is made, is the statute designed properly?**
-
- 3. Are the courts interpreting the statute right?**



Applying the analysis

- **accept there's a market failure and government intervention is needed**
- **accept subsidy is the desired tool**
- **accept reduced Workers Comp is the desired legislative tool**
- **then analyse the subsidy**
- **BUT, analyse as a grant, not as a workers insurance policy**



Using the right benchmark

- **Income tax: impose tax on net income (gross income less deductions for expenses to derive income)**
- **indifferent to form of business, type of business, labour or machines, etc.**
- **no deduction for bribe**



Using the right benchmark

- **tax law: special deduction for investments in Australian films**
- **labour law: different rules for small business**
- **tax law: different rules for small business**



Example: judicial interpretation

- **Directors are liable if they knowingly allow an insolvent company to trade (debts exceed assets)**
- **company has little formal debt but has entered into a repo transaction**



Example: scope of statute

- **no insider trading**
 - does not extend to synthetic acquisition through put and call options

