Regulation and Control of Labour Organisations

**Dates:** Saturday 23, Saturday 30 August, Saturday 6 & Saturday 13 September 2014  
**Time:** 8.45am–4.00pm  
**Venue:** Law Building, Kensington Campus UNSW

About the Lecturer: Robert McClelland has been a legal practitioner for over 30 years working as a both Barrister and Solicitor. He was elected to the Federal Parliament as the member for Barton, served as Australia’s Attorney General, and possesses a deep understanding of industrial organisations. He is a Visiting Fellow at the UNSW and a Director of LEADR.

Additional Guest lecturers:  
Kylie Nomchong SC, Barrister, Denman Chambers  
Jeff Phillips SC, Barrister, Denman Chambers  
Selwyn Black, Partner, Carroll and O’Dea Solicitors  
Prof John Buchanan, Workplace Research Centre Sydney University  
Ian Latham, Barrister, Denman Chambers  
Peter Punch, Partner Carroll and O’Dea Solicitors  
Tony Slevin, Barrister, HB Higgins Chambers  
Erik Young, Barrister, 15 Wardell Chambers

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DAY 1 – Saturday 23 August 2014

9am
History and Overview
Presenter Robert McClelland
- Trade unions as a restraint of trade
- The early Trade Union Acts
- Statutory Regulation – consistency with ILO Convention 87 (right to determine structures and activities).

10am
Union Management – Are unions too flat footed?
Presenter Professor John Buchanan
- Adapting to change – are traditional structures and approaches are failing?
- Encouraging participation – re thinking the compact of membership and leadership.

10:30am Morning Tea

10:45am
Registration and Coverage
Presenter Ian Latham
- Requirements for registration
- Concept of Industry / eligibility
- Conveniently belong objections

12pm
Structures and Rules
Presenter Robert McClelland
- statutory requirements
- choice of structures
- challenging rules as “oppressive, unreasonable or unjust”

1pm Lunch

1.45pm
Enforcement of Rules
Presenter Robert McClelland
- seeking orders to “perform and observe”
- implied obligations
- disciplinary hearings – procedural fairness

3pm Afternoon Tea

3.15 pm
Eligibility for Membership and to Hold Office
Presenter Robert McClelland
- Employed in a relevant calling / industry
- The obligation to purge ineligible members
- Who is an officer
- Restrictions on eligibility to contest office

DAY 2 – Saturday 30 August 2014

9am
Statutory Duties of Officers
Presenter Robert McClelland
- statutory duties of care, diligence and good faith
- the applicability of corporate law principles
- examples in the Industrial organisation context
- use of resources for electioneering

10:30am Morning Tea

10:45am
Fiduciary duties and accountability, and common law duty of care
Presenter Selwyn Black
- Non-statutory fiduciary duties and accountability
- Ratification – by whom and with what disclosure?
- practical application – HSU v Williamson case
- duty of care of union officers and employees

12pm
“Slush funds”
Selwyn Black and Robert McClelland
- Use of Office to obtain donations
- Donation or Secret Commission?
- Obligations of disclosure
- Concept of “Ultra Vires” expenditure
- Consequences of unauthorised expenditure

1pm Lunch

1:45pm
Financial Accountability
Presenter Robert McClelland
- reporting obligations
- disclosure obligations of officials
- Administrative policies / training obligations
- problems arising from dual Federal/State Registration

3pm Afternoon Tea

3:15pm
Enforcement
Presenter Ian Latham
- the inquiry/investigatory function of the Fair Work Commission
- prosecutions and recovery of funds
- Rights of individual members
DAY 3 – Saturday 6 September 2014

9am
Dual Registration – rational division or historical impediment?
Presenter Kylie Nomchong SC
• Artificiality of two distinct entities
• Consequences for control, effective governance and accountability

10am
Focus on Employer Organisations
Presenter Peter Punch
• Right to membership – sole traders and corporations
• Industry Association or Registered Organisation
• Disputes between employer organisations
• Challenges in the context of enterprise bargaining

11am morning tea

11:15am
Inter-Union Conflicts
Presenter Erik Young
• demarcation disputes
• award/ agreement coverage
• bargaining agency beyond eligibility rule

12.15pm
Industrial Action
Presenter Tony Slevin
• Challenges of industrial action.
• Duty of care and exposure to civil penalty
• Acting “for and on behalf of the Union”
• Victimisation
• Individual exposure to penalty/damages

1.15pm Lunch

2pm
Correcting administrative Irregularities
Presenter Robert McClelland
• Acts done in good faith
• Scope of validating orders
• Rights of 3rd parties

3pm Afternoon Tea

3:15pm
Deregistration and Administration
Presenter Robert McClelland
• grounds for
• removal from office
• distribution/ management of assets

DAY 4 – Saturday 13 September 2014

9am
Amalgamations and Withdrawal from Amalgamations
Presenter Jeff Phillips SC
• Pre amalgamation Federations
• Use of resources
• Procedures
• Withdrawal from amalgamation

10:30am Morning Tea

10:45am
Democratic Control – Participatory Democracy
Presenter Robert McClelland
• proportional representation
• power to call special / general meetings
• plebiscites

12 noon – 1 PM
Protected Action Ballots
Presenter Robert McClelland
• Requirements
• Challenging outcome of ballot
• consequences of invalidity

1pm Lunch

1:45pm
Representative Democracy – elections
Presenter Robert McClelland
• the electoral process
• Irregularities
• Inquiries into elections

3pm Afternoon Tea

3:15pm
Issues for Reform – General discussion
Potential issues arising from the Royal Commission into Trade Union Governance and Corruption
• Adequacy of rights of members?
• A case for standardisation of rules?
• Adequacy of whistleblower protection?
• Adequacy of current disclosure obligations?
• Enhancing the contest for power.
• Federal/State consistency.
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