

Dyson Heydon stays - and everyone loses

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The decision of Dyson Heydon to remain as trade unions royal commissioner highlights a fundamental disconnect between the world inside the legal system and the real world outside it.

Perceptions of bias will linger throughout the community about Mr Heydon's impartiality in spite of his ruling. Public confidence in the legal system has been eroded.

With key issues about our democracy at stake, Mr Heydon's ruling has also left Australian politics in limbo. The much-needed cleanout of union corruption and Labor Party structures has suffered a setback, while hopes for a policy-focused election due next year has taken a blow.

Mr Heydon's unquestioned expertise as a black-letter lawyer ensures his reasons for staying on are based on an impeccable reading of legal precedent. In deciding to apply the law as he saw it strictly, he took a principled approach true to his reputation. It was in many ways a courageous approach. As such we accept and respect his ruling.

The law as he has determined it must be upheld. While trade unions do have a right to ask the federal or high court to set aside Mr Heydon's ruling, we reject the cheap politics of Labor's plan to have the senate ask the governor general to remove him.

But the Herald maintains that Mr Heydon should have stood aside to salvage the commission's good work and rapidly diminishing reputation.

We had argued that Mr Heydon's behaviour did relate to a Liberal Party event – something the commissioner rejects in his ruling. We believe his decision to speak at the Sir Garfield Barwick address organised by the Liberal Party in the context of the union-Labor nexus and the political heat surrounding the commission created a perception of bias for the fair minded person. By contrast, Mr Heydon downplayed the link between Labor and the unions, while suggesting "the mere fact that a person agrees to deliver a speech at a particular forum does not rationally establish that the person is sympathetic to, or endorses the views of, the organiser of that forum".

In effect Mr Heydon's ruling expects the public to accept that he, as a learned former judge, is capable of fresh consideration of politically charged issues before him, even though he thinks speaking at a Liberal function is perfectly acceptable during a time in which he has the power to supply significant political ammunition to the Liberal Party.

His decision to stay is not clearly a loss for the Labor side, though. Unions may well feel vindicated in having made Mr Heydon pass judgement on himself in a very public manner. Labor has repeated its argument that every recommendation of the commission before this ruling and in future is stained. That will, sadly, give Labor an excuse to further delay essential reforms to unlink the party from the unions.

The government will try to claim the law has spoken and that is the end of the matter. Mr Abbott may even be tempted to test Labor's resolve on its union links by calling an early election, in effect asking voters to decide on Mr Heydon's conduct and the alleged corruption of some union officials.

But no matter who makes the most political mileage out of the ruling and the commission's report due in December, the issue risks playing a major and destabilising role in the next election due in about a year. That does not augur well for a constructive, policy-based election campaign.

Even greater than the damage to the political process, though, has been the way this saga has lowered public trust in the royal commission process. By extension, it has also raised scepticism about the law on which impartiality decisions are determined, and the judges who interpret it.

Rather than offer the public a verbal, televised summary of his reasons, Mr Heydon let his 67-page ruling speak for itself: "I have considered all the submissions. In my opinion, the applications must be dismissed. I publish my reasons."

Surely that approach would be seen by some as arrogant and dismissive of public demands for transparency. Not every citizen can navigate the high-level legal and logical reasoning that fills Mr Heydon's ruling. Amid global trends for lawyers to write in language everyone understands and to explain decisions in televised proceedings, the public discourse around his reasoning has been left to those with vested interests on either side of the political fence.

The Herald regrets that all the important work of Mr Heydon and his commission will no longer be seen on its merits. We fear voters will see it instead through a prism of distrust and scepticism.