

## Dishonour on the Bench: Dyson Heydon and the Australian High Court

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Asia-Pacific Research, June 24, 2020

Region: [Oceania](#)

Theme: [Justice](#)

*It is one of the oldest professions, stacked with rules, conventions and protocols. It is also tribal and hierarchical. The law, presided over its executors, the judges, do not do transparency well. It stands to reason: according to Charles Dickens, the business of the law is to make business for itself, creating its own impenetrable labyrinths and traps while insisting on its own policing. Now, the high priests in Australia are asking searching questions about the case of former High Court justice Dyson Heydon.*

On Monday, the *Sydney Morning Herald* and *The Age* revealed the existence, and the findings of an independent inquiry, into claims that Heydon had sexually harassed six associates during his time on the High Court bench. To that number were also a former judge and former head of the ACT Law Society, who allege indecent assault.

The Chief Justice of the Australian High Court, **Susan Kiefel**, revealed in her [statement](#) that the investigation, conducted by Vivienne Thom, had produced findings of “extreme concern to me, my fellow Justices, our Chief Executive and the staff of the Court. We’re ashamed that this could have happened in the High Court of Australia.”

The six recommendations seem odd, drafted, as it were, by someone who had just woken from an induced coma. They include the development of “a supplementary HR policy relevant to the particular employment circumstances of the personal staff of Justices including associates”: more information in “induction” sessions; and an understanding that associates were under no obligation “to attend social functions”. That this latter recommendation was even made suggests the ceremonial terror such powerful institutions wield: Whatever the judge says, goes.

Ceremonial terror is precisely the sort of thing that Heydon’s brother and sister justices could not have been ignorant of. While parlour gossip can be just that, the tightness of the bench, and members of the legal profession, suggest a desire to look the other way even as an open secret screams before you.

Three of those who received Heydon’s unwanted attention are now seeking legal action for compensation against both the justice and the Commonwealth.

“They were the best and brightest out of law school,” [claimed](#) their legal representative **Josh Bornstein**. “This was their first job in the legal profession, working for one of the most powerful men. They were in the early 20s, he was in his late 60s. In all three cases, they’ve abandoned the law.”

Such behaviour is also said to have taken place in Britain, where the justice proceeded to teach after mandatory retirement at the age of 70 in 2013. His appointment as Visiting Professor to the Law Faculty at the University of Oxford was greeted with some fanfare – at least initially. Law Faculty Dean **Timothy Endicott** [was ecstatic](#).

“We would wish to be very careful to keep an appropriately high standard of distinction for Visiting Professors; in our view, Justice Heydon is most clearly a lawyer of the highest academic distinction.”

Endicott swooned over Heydon’s command of the “law of trusts”, and the fact that he was “a leading figure in the law of evidence”.

In undertaking his tasks of delivering lectures between 2014 to 2016, word got around; the Australians were talking about the judge’s reputation, and it certainly was not about either the law of evidence or trusts. According [to a former student](#),

“My first introduction to him was that the Australian law students at Oxford called him ‘Dirty Dyson’, that seemed to be a moniker he had widely.”

A postgraduate student also complained to the university after being supposedly harassed in the Bodleian Library. Dirty Dyson’s stint also extended to invitations to awkward lunches.

Heydon, for his part, rejects “any allegation of predatory behaviour or breaches of the law” and that any conduct that “caused offence” was “inadvertent and unintended”. His [statement](#) conveyed through his lawyers sought to take any legal sting out of the findings of the investigation, “an internal administrative inquiry” that “was conducted by a public servant and not by a lawyer, judge or a tribunal member. It was conducted without having statutory powers of investigation and of administering affirmations or oaths.”

The Australian Labor Party smell blood, and few could blame them. Former opposition leader **Bill Shorten** is [demanding](#) the return of the fee he received while chairing the royal commission into trade unions, and stripping his Order of Australia. “This is a time to strip him of all his recognition and get him sorted.” Memories of being closely examined by Heydon in 2014, with the justice calling Shorten an evasive witness, remain vivid.

The fact that Heydon also accepted an invitation to deliver the annual Sir Garfield Barwick address at a Liberal Party event even as he performed his duties for the royal commission, did not help. Exposing the invitation led to Heydon’s withdrawal of acceptance; subsequent calls that he step down from his role led to a less than searching investigation conducted by, of all people, Heydon himself. In [his words](#), he had “overlooked the connection between the person and persons organising the address and the Liberal party which had been set out in [an] April 2014 email.”

Those in the legal profession have been rushing to the platforms in the wake of the revelations. As a judge’s associate, Brooke Greenwood [remembers](#) “being warned of [Heydon’s] behaviour when retired justices returned for events – warnings passed on by successive cohorts of female associates trying to protect themselves and each other.” She [also](#) “experienced sexual harassment” prior to starting at the court. “I complained. It was one of the hardest things I’ve ever done. I was terrified I would lose the job I loved and had

always wanted to do.”

In 2018, the International Bar Association, [in a joint-survey](#) conducted with Acritas of 7,000 individuals in legal workplaces spanning 135 countries found endemic instances of bullying and sexual harassment. “One in three female respondents had been sexually harassed in a workplace context, as had one in 14 male respondents.”

Tentative [suggestions](#) are now being made that an equivalent Me Too movement in the legal profession is in the offing. The lechers of power will be outed; the molesters will be run out of the profession. But that would require a massive, top-to-bottom, back and forth reappraisal of a guild much petrified by convention and obsessed with self-policing. In the meantime, Heydon’s fall may also take others with him. “By the time this thing has washed through the system,” [concludes](#) Phillip Coorey in the *Australian Financial Review*, “there is every potential for more scalps. Big names too.”

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