



SUMMARY OF REASONS 31.08.15*

1. The Commissioner has rejected the applications by the ACTU, CFMEU and AWU (the **applicants**) to disqualify himself for 'apprehended bias'. There has never been an application based on 'actual bias'.
2. The Commissioner has prepared written reasons which have been published.
3. In summary, the test set out in the reasons is whether, by reason of his agreement to speak at the sixth annual Sir Garfield Barwick Address, a fair-minded lay observer might reasonably apprehend that the Commissioner might not bring an impartial mind to the resolution of the issues for decision in the Commission.
4. Two key arguments were made by the applicants.

First argument

5. The applicants' first main argument was that a fair-minded lay observer might apprehend bias merely because he or she might apprehend that the Commissioner had agreed to deliver a legal speech to a function organised by two lawyer branches of the New South Wales Liberal Party. Issues of fundraising were irrelevant to this argument.
6. The Commissioner rejected this argument for three reasons:
 - 1) First, the nature of the event was a legal address in memory of Australia's longest-serving High Court Chief Justice. It could not rationally be concluded that a person who merely agrees to give a legal address at such an event, albeit organised by the lawyer branches of the Liberal Party, believes in, supports or has any relevant association with the Liberal Party.
 - 2) Secondly, the applicants did not explain how there was any logical connection between their argument and the actual issues for determination in the Commission, in particular having regard to the way material is collected and the Commission's hearings are conducted, in which detailed evidence is given publically and tested by cross-examination.
 - 3) Thirdly, even assuming the first and second reasons were wrong, the applicants did not show that a fair-minded lay observer might conclude the Commissioner, a highly experienced lawyer and former judge, would not be able to put out of his mind any extraneous or irrelevant matters and deal with the issues impartially.
7. The concession by the applicants that nothing could be said about the political leanings of the speaker at the 2014 Sir Garfield Barwick Address significantly undermined the applicants' argument.



Second argument

8. The applicants' second main argument was that a fair-minded lay observer might apprehend bias because the observer might apprehend that the Commissioner intended, in agreeing to deliver the sixth annual Sir Garfield Barwick Address, to raise funds or assist in raising funds or generate support for the Liberal Party.
9. The Commissioner rejected the second argument, also for three reasons.
 - 1) The first reason was that, when the documents are considered properly, there was no factual basis to support the argument that a fair-minded lay observer might apprehend any intention on the Commissioner's part to raise funds or assist in raising funds or generate support for the Liberal Party.
 - 2) The second and third reasons for rejecting the second argument were similar to those for rejecting the first argument. The concession by the applicants that nothing could be said about the political leanings of the speaker at the 2014 Sir Garfield Barwick Address also significantly undermined the second argument.

**This statement is not intended to be a substitute for the Commissioner's reasons or to be used in any later consideration of the Commissioner's reasons.*