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# THE CONVERSATION

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## Deep cultural shifts required: open letter from 500 legal women calls for reform of way judges are appointed and disciplined

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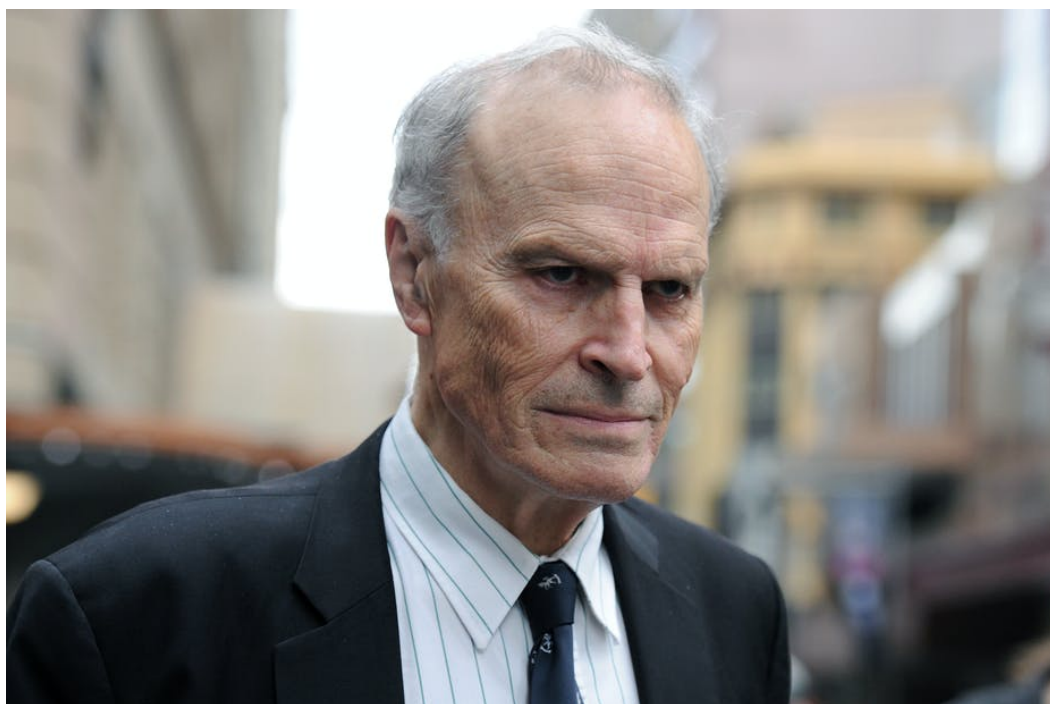
### Author

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**Gabrielle Appleby**

Professor, UNSW Law School, UNSW



AAP Image/Joel Carrett

In an open letter to Attorney-General Christian Porter, about 500 women working in the law from across Australia have sought changes to the way judges are disciplined and appointed.

The letter comes after former High Court judge Dyson Heydon was found by an independent investigation to have sexually harassed young female associates of the court, as reported by The Sydney Morning Herald.

The letter was also sent to Susan Kiefel, Chief Justice of the High Court of Australia, along with another letter to thank her

*for her strong, decisive and compassionate responses to the complaints in the Heydon matter, and ask her to work with the government to see these reforms implemented in a way sensitive to the protection of judicial integrity and independence.*

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The full text of the two letters are below, along with the names of signatories.

Dear Attorney-General

We are writing following the publication of the High Court's response to the complaints about the conduct of Mr Dyson Heydon AC QC during his time as a judge on the Court. As women working across the legal profession, we have welcomed the Chief Justice's strong response to the independent inquiry's recommendations about providing better protections to associates during their time employed at the Court, recognising their particularly vulnerable professional position.

We believe the abuse the allegations raise provides an important opportunity to implement wider reforms to address the high incidence of sexual harassment, assault and misconduct in the legal profession. Deep cultural shifts in how men treat women in the law are required, as well as reforms to prevent the manifestations of what many fear may be institutionalised sexism that has allowed this culture to continue. We must reach a position where all people, regardless of their sex, sexual orientation, gender identity, intersex status, age, race, ethnicity, or disability are treated with equal professional dignity. Of course, no single reform can achieve these shifts, and we understand many different forms of change must be pursued.

We are writing to urge you to implement two types of judicial institution reform – the establishment of an independent complaints body and the introduction of a transparent appointments process. We

believe these will prove to be important systemic contributions towards deeper cultural shifts.

To ensure these reforms are introduced and designed with appropriate levels of respect for the independence of the judiciary, we ask you to develop them with the cooperation and input of the judges. We encourage you to work with the Chief Justice of the High Court, to whom we have provided a copy of this letter, and the Council of Chief Justices of Australia and New Zealand to see them implemented. The Council of Chief Justices also offers an opportunity for these reforms to be considered at a national level to operate not just for the federal judiciary, but potentially across the federation.

First, we encourage the creation of an independent complaints body, with a standing jurisdiction to receive complaints against federal judges, investigate any complaints and provide appropriate responses to them. This institutional reform would ensure there is an established body to which future complainants may turn, whether they be court employees, members of the profession, the judiciary or members of the public. It would provide an independent avenue for individuals to seek redress with some guarantees of privacy and protection against recrimination, such as defamation actions.

An oversight institution such as this must be carefully designed so as to meet expectations of accountability for judicial misconduct, while protecting judges from unfounded allegations and not placing the judiciary in a subordinate position to any other branch of government. We underscore the necessity of any institution to respect judicial independence, and the requirements of Chapter III of the Constitution. If well designed with these considerations in mind, we believe such an institution could enhance public confidence in the integrity and independence of the judiciary.

In respect of its design, any institution should be informed by best practice and the standards that apply to complaint handling, such as ISO 10002:2004: Quality Management – Customer Satisfaction – Guidelines for Complaint Handling in Organizations. It should also be informed, although not limited, by the design of institutions that are already operating in many jurisdictions, including the Judicial Commission of New South Wales, the Judicial Conduct Commissioner of South Australia, the Judicial Commission Victoria, the ACT Judicial Council and most recently, the Judicial Commission of the Northern Territory.

Informed by such standards and the experience of these jurisdictions, we propose the following principles for the design of a national judicial complaints institution:

1. there must be clear, publicly available standards against which appropriate judicial behaviour is assessed. These standards must be developed by the judiciary to ensure independence from the political branches. The Guide to Judicial Conduct, adopted by the Council of Chief Justices, provides an important starting point as to the types of conduct that are unacceptable in judicial office. However, these standards need to go beyond aspirational statements and set down enforceable standards of appropriate conduct, including examples of behaviour and the consequences that might follow from such behaviour. Further, these standards should specify that

workplace harassment and bullying, including sexual harassment, constitute judicial misconduct; conduct which is currently not mentioned in the Guide

2. the body should be a standing body, separate and independent from the political branches of government. It should be appointed by the judiciary, to maintain judicial independence, but it must be separate from the ordinary judicial hierarchy and process
3. the body may include former judicial officers, and there should be diversity in its membership
4. the body must adopt a robust, fair and transparent process. It must have appropriate investigative powers and ensure procedural fairness is accorded to complainants and the respondent. It must also protect the privacy of complainants and provide them with guarantees against recrimination, including defamation proceedings
5. should the body determine that a complaint has been made out, it must have an appropriate suite of avenues for redress available to it. These might include: referral to Parliament for possible removal; referral to prosecutors in relation to possible criminal conduct; as well as intermediate forms of redress, such as public reprimand, orders for compensation, and recommendations for pastoral care and advice (eg mentoring). While there are concerns that such responses might undermine public confidence in the judiciary, we believe the revelation of misconduct without a mechanism for appropriate redress also poses a high risk of such damage.
6. the body must have jurisdiction that extends to the investigation of retired judges and chief justices. Its jurisdiction must include conduct on the bench, notwithstanding that a judge has subsequently resigned.

Second, we urge systemic reforms to the process of judicial appointments to increase transparency and promote the independence, quality and diversity of the judiciary. These reforms must be targeted to select candidates that will bring not just excellent legal skills to the office, but also the highest personal integrity, and contribute to greater diversity in the senior ranks of the profession.

In respect of its design, we proposed the following principles:

1. the government should appoint an independent body, composed of a diverse range of members, appointed by the judiciary and the government through a transparent process, to advise the government in its role in judicial appointments
2. the body's function should be to advertise widely for judicial vacancies, and to shortlist candidates who are suitable for appointment, from whom among the government may select.
3. shortlisting must occur against criteria that are set out in a public statement, and must include legal knowledge, skill and expertise in addition to essential personal qualities (eg integrity and good

character). The value of diversity in judicial appointments should also be respected. The Australasian Institute of Judicial Administration's Suggested Criteria for Judicial Appointments provides an example of such a statement

4. the body must consult widely, with relevant professional bodies and officeholders, including those representing women and other minority stakeholders, before shortlisting candidates
5. The body's processes must be transparent.

We hope government will seize the opportunity these shocking revelations have provided to implement these, and other, reforms that will contribute to making the law a safer profession for women into the future.

Yours faithfully,

*Nina Abbey, Senior Associate, Maurice Blackburn Dr Rebecca Ananian-Welsh, TC Beirne School of Law, The University of Queensland Kate Andean, Partner, Banki Haddock Fiora Larissa Andelman, NSW Bar and President of the Women Lawyers Association of NSW Ingrid Antolinez, Paralegal, Maurice Blackburn Professor Gabrielle Appleby, UNSW Law and Director, the Judiciary Project, Gilbert + Tobin Centre of Public Law Associate Professor Elisa Arcioni, Sydney Law School Amelia Arndt, Lawyer, Gilbert + Tobin, Perth Office Claire Arthur, Lawyer, Gilbert + Tobin, Sydney Office Amanda Atkins, Lawyer, Gilbert + Tobin, Melbourne Office The Hon Roslyn Atkinson AO Sarah Avery, Paralegal, Maurice Blackburn Elizabeth Avery, Partner, Gilbert + Tobin, Sydney Office Sara Ayoub, Lawyer, Gilbert + Tobin, Sydney Office Irene Baghoomians, Sydney Law School Caitlin Baker, Associate, Slater and Gordon Vanessa Balnaves, Senior Solicitor, Johnston Withers Lawyers Robin Banks, PhD Candidate, Faculty of Law, University of Tasmania Diane Banks, Partner, Gilbert + Tobin, Sydney Office Professor Elise Bant, FAAL, UWA Law School and Melbourne Law School Michelle Barnes, South Australian Bar Professor Katy Barnett, Melbourne Law School, University of Melbourne Jillian Barrett, Principal Lawyer, Maurice Blackburn Jennifer Barron, Partner, Gilbert + Tobin, Sydney Office Professor Lorana Bartels, FAAL, Criminology Program Leader, ANU and Adjunct Professor of Law, University of Canberra and University of Tasmania Associate Professor Francesca Bartlett, TC Beirne School of Law, The University of Queensland Michaela Bartonkova, Senior Associate, Maurice Blackburn Rachel Bassil, Partner, Gilbert + Tobin, Sydney Office Professor Vivienne Bath, Sydney Law School Jennifer Batrouney AM QC, Victorian Bar and Convenor of the Women Barristers Association Fiona Batten, Victorian Bar Katherine Bedford, Associate, Maurice Blackburn Narelle Bedford, Faculty of Law, Bond University Distinguished Professor Larissa Behrendt, University of Technology Sydney Selma Bekric, Lawyer, Gilbert + Tobin, Sydney Office Anna Belgiorna-Nettis, Lawyer, Gilbert + Tobin, Sydney Office Cassie Bell, Lawyer, Gilbert + Tobin, Sydney Office Andrea Bennett, Lawyer, Gilbert + Tobin, Sydney Office Professor Lyria Bennett Moses, UNSW Law Dr Laurie Berg, Senior Lecturer, Faculty of Law, University of Technology Sydney Rachel*

*Bhatt, Lawyer, Maurice Blackburn Professor Katherine Biber, Faculty of Law, University of Technology Sydney Associate Professor Alysia Blackham, Melbourne Law School, University of Melbourne Madison Blacklock, Paralegal, Maurice Blackburn Olivia Blakiston, Lawyer, Gilbert + Tobin, Sydney Office Laura Blandthorn, Lawyer, Slater and Gordon Manisha Blencowe, Practice Group Leader, Slater and Gordon Alex Blennerhassett, Lawyer, Slater and Gordon Natalie Blok, Victorian Bar Cynthia Bluett, Partner, PE Family Law Samantha Boardman, Lawyer, Maurice Blackburn Sophie Bogard, Lawyer, Gilbert + Tobin, Sydney Office Associate Professor Tracey Booth, Faculty of Law, University of Technology Sydney Associate Professor Catherine Bond, UNSW Law Hilary Bonney, Victorian Bar and writer Grace Borsellino, Lecturer in Law, Western Sydney University Kate Bouffler, Lawyer, Gilbert + Tobin, Sydney Office Kate Bowshell, Victorian Bar Clancy Bradshaw, Lawyer, Gilbert + Tobin, Sydney Office Margaret Brain, Special Counsel, Maurice Blackburn The Hon. Catherine Branson AC QC, former judge of the Federal Court of Australia (1994-2008) and President of the Australian Human Rights Commission (2008-2012)*

*Julia Bravis, Associate, Slater and Gordon Dr Elizabeth Brophy, Victorian Bar Louise Buckingham, Knowledge and Innovation Lawyer, Gilbert + Tobin, Sydney Office Lauren Burke, Victorian Bar Alison Burt, Victorian Bar Julie Buxton, Victorian Bar Patricia Cahill SC, WA Bar Milly Cain, Lawyer, Maurice Blackburn Sophie Callan, NSW Bar Professor Robyn Carroll, University of Western Australia Law School Dr Anne Carter, Deakin University Megan Casey, Victorian Bar Professor Judy Cashmore, The University of Sydney Law School Gina Cass-Gottlieb, Partner, Gilbert + Tobin, Sydney Office Associate Professor Melissa Castan, Faculty of Law, Monash University Gina Cerasiotis, Law Clerk, Maurice Blackburn Professor Louise Chappell, Director, Australian Human Rights Institute, UNSW Law Tess Chappell, Lawyer, Maurice Blackburn Sue Chakravarthy, Law Clerk, Maurice Blackburn Professor Hilary Charlesworth, Laureate Professor, Melbourne Law School; Distinguished Professor and Director of the Centre for International Governance and Justice, Australian National University Roslynn Chenoweth, Northern Territory Women Lawyers Association; Secretary, Australian Women Lawyers; Director, Crimes Victims Services Unit, Department of the Attorney-General and Justice (NT) Li-Jean Chew, Partner, Addisons Karmilla Chenia, Lawyer, Maurice Blackburn Grace Chia, Lawyer, Gilbert + Tobin, Melbourne Office Dr Madelaine Chiam, La Trobe Law School Karen Chibert, Victorian Bar Justine Clark, Principal, Tisher Liner FC Law Kerry Clark, South Australian Bar Alison Clues, Chief Commissioner / Chairperson, Workers Rehabilitation & Compensation Tribunal, Asbestos Compensation Tribunal, Health Practitioners Tribunal, Motor Accidents Compensation Tribunal, Anti-Discrimination Tribunal (Tas) Dr Helen Cockburn, Lecturer, Faculty of Law, University of Tasmania Professor Anna Cody, Dean, School of Law, Western Sydney University Michelle Cohen, Principal Solicitor, Public Interest Advocacy Centre Paloma Cole, Lawyer, Maurice Blackburn Christine Collin, General Manager, Maurice Blackburn Catherine Collins, Lawyer, Gilbert + Tobin, Sydney Office Rebecca Collins, Western Australian Bar Julie Comninos, Lawyer, Gilbert + Tobin, Sydney Office Dr Caroline Compton, Research Associate, UNSW Law Celia Conlan, Victorian Bar Madeline Connolly, Lawyer, Gilbert + Tobin, Sydney Office Roslynn Cook, Managing Solicitor, Homeless Persons' Legal Service, Public Interest Advocacy Centre Dr Monique Cormier, University of New England School of*

*Law Rebecca Coulter, Lawyer, Maurice Blackburn Eloise Cox, Paralegal, Maurice Blackburn Anne Cregan, Partner, Gilbert + Tobin, Sydney Office Dr Karen Crawley, Senior Lecturer, Griffith Law School Associate Professor Penny Crofts, University of Technology Sydney Associate Professor Melissa Crouch, UNSW Law Kristen Cummings, Paralegal, Maurice Blackburn Tristan Cutliffe, Lawyer, Gilbert + Tobin, Sydney Office Eleanor D'Amrosio Scott, Graduate, Slater and Gordon Linda Dalton, Solicitor, NSW Sarah Damon, Victorian Bar Azadeh Dastyari, Associate Professor, Faculty of Law, Western Sydney University Ann-Maree David, Director, Australian Women Lawyers and Australian Gender Equality Council Professor Margaret Davies, Flinders University Professor Megan Davis, Pro Vice Chancellor (Indigenous) UNSW, Balnaves Chair in Constitutional Law, UNSW Law Anna Dawson, Senior Solicitor, Public Interest Advocacy Centre Jessica Dawson-Field, Associate, Maurice Blackburn Tess Deegan, Solicitor, Kingsford Legal Centre UNSW Dr Sara Dehm, Lecturer, Faculty of Law, University of Technology Sydney Sherrilea Discombe, Paralegal, Maurice Blackburn Professor Rosalind Dixon, Director of the Gilbert + Tobin Centre of Public Law, UNSW Law Amanda Do, Lawyer, Maurice Blackburn Patricia Dobson, Victorian Bar Moya Dodd, Partner, Gilbert + Tobin, Sydney Office Lauren Lale Doganay, Law Clerk, Maurice Blackburn Grace Dong, Lawyer, Maurice Blackburn Professor Heather Douglas, TC Beirne School of Law, University of Queensland Dimitra Dubrow, Principal Lawyer, Maurice Blackburn Clair Duffy, lawyer, admitted in Queensland and Victoria Professor Andrea Durbach, UNSW Law Josephine Helen Dwan, PhD candidate, UNSW Canberra at ADFA Catherine Eagle, Solicitor, Welfare Rights & Advocacy Service Kate Eastman SC, NSW Bar Dr Lisa Eckstein, Senior Lecturer in Law and Medicine, University of Tasmania Alice Edwards PhD, international lawyer Alina El Jawhari, Lawyer, Maurice Blackburn Kylie Evans, Victorian Bar Julie Falck, University of Western Australia Law School Emily Fanning, Lawyer, Gilbert + Tobin, Sydney Office Associate Professor Bassina Farbenblum, UNSW Law Vanessa Farego-Diener, Lawyer, Gilbert + Tobin, Sydney Office Rebecca Faugno, University of Western Australia Law School Patricia Femia, Assistant State Counsel, State Solicitor's Office of Western Australia Kaitlin Ferris, Principal, Slater and Gordon Sarah Findlay, Lawyer, Gilbert + Tobin, Sydney Office Diane Fingleton, Chief Magistrate of Queensland (2000-2003) Megan Fitzgerald, Victorian Bar Tyneil Flaherty, South Australian Bar Mary Flanagan, Senior Legal Officer, Transitional Justice Program, Public Interest Advocacy Centre Natalie Fleming, Senior Associate, Maurice Blackburn Janine Foo, Lawyer, Maurice Blackburn Emily Forbes, Paralegal, Maurice Blackburn Carolyn Ford, Special Counsel, Maurice Blackburn Catherine Fraser, Lawyer, Gilbert + Tobin, Perth Office Giorgia Fraser, Lawyer, Gilbert + Tobin, Perth Office Juliana Frizziero, Lawyer, Maurice Blackburn Sarah Gaffney-Smith, Senior Associate, Gilbert + Tobin, Perth Office Associate Professor Kate Galloway, Griffith Law School Catherine Gamble, Lawyer, Gilbert + Tobin, Sydney Office Tami Ganemy-Kunoo, Paralegal, Maurice Blackburn Antonia Garling, Lawyer, Gilbert + Tobin, Sydney Office Jane Garnett, Lawyer, Maurice Blackburn Lauren Gavranich, South Australian Bar Daniela Gavshon, Program Director, Transitional Justice Program, Public Interest Advocacy Centre Professor Beth Gaze, Centre for Employment and Labour Relations Law, Melbourne University Law School Professor Katharine Gelber, University of Queensland Professor Alison Gerard, Head of Canberra Law School, University of Canberra Assistant*

*Professor Anthea Gerrard, Faculty of Law, Bond University Professor Felicity Gerry QC, Crockett Chambers and Deakin University, Melbourne Associate Professor and ARC Future Fellow, Rebecca Giblin, Melbourne Law School, University of Melbourne. Sue Gilchrist, Partner and Head of Intellectual Property Australia, Herbert Smith Freehills Rebecca Gilsenan, Principal Lawyer, Maurice Blackburn Lawyers Madeline Gleeson, UNSW Law Dr Beth Goldblatt, Professor, Faculty of Law, University of Technology Sydney Emma Golledge, Director Kingsford Legal Centre UNSW Zoe Gow, Paralegal, Maurice Blackburn Laura Gowdie, Lawyer, Maurice Blackburn Emeritus Professor Reg Graycar, Sydney Law School and Barrister, NSW Bar Alex Grayson, Principal Lawyer, Maurice Blackburn Brooke Greenwood, Senior Solicitor, Indigenous Child Protection Project, Public Interest Advocacy Centre Naty Guerrero-Diaz, Practice Group Leader, Slater and Gordon Alexandra Guild, Victorian Bar Associate Professor Nicole Graham, Sydney Law School, The University of Sydney Associate Professor Genevieve Grant, Director, Australian Centre for Justice Innovation, Faculty of Law, Monash University Mihal Greener, Victorian Bar Brooke Greenwood, Senior Solicitor, Public Interest Advocacy Centre Janine Gregory, Principal Lawyer, Maurice Blackburn Associate Professor Laura Grenfell, Adelaide Law School, The University of Adelaide Astrid Haban-Beer, Treasurer, Australian Women Lawyers, Victorian Bar Kate Haddock, Partner, Banki Haddock Fiora Simone Hall, Lawyer, Gilbert + Tobin, Sydney Office Marita Ham, Victorian Bar Michelle Hamlyn, South Australian Bar Professor Elizabeth Handsley, School of Law, Western Sydney University Michelle Hannon, Partner, Gilbert + Tobin, Sydney Office Dr Kristine Hanscombe QC, Victorian Bar Christine Harb, Lawyer, Gilbert + Tobin, Sydney Office Dr Tess Hardy, Melbourne Law School Syvannah Harper, Lawyer, Maurice Blackburn Deborah Harris, Victorian Bar Associate Professor Susan Harris Rimmer, Griffith Law School Georgia Harrison, Lawyer, Gilbert + Tobin, Sydney Office Kate Harrison, Partner, Gilbert + Tobin, Sydney Office Emily Hart, Principal Lawyer, Maurice Blackburn Laura Hartley, Partner, Addisons Simone Hartley-Keane, Head of People & Culture, Maurice Blackburn Karen Hayne, Partner, Addisons Jane Healey, Victorian Bar Kim Heap, Senior Associate, Dobson Mitchell Allport Sally Heidenreich, South Australian Bar Amanda Hempel, Partner, Gilbert + Tobin, Sydney Office Professor Samantha Hepburn, Deakin University Associate Professor Anne Hewitt, The University of Adelaide Kara Hill, Associate, Maurice Blackburn Professor Lesley Hitchens, Faculty of Law, University of Technology Philippa Hofbrucker, Partner, Gilbert + Tobin, Sydney Office Pamela Hogan, Victorian Bar Sahrah Hogan, Victorian Bar Dr Robyn Holder, Lecturer, School of Criminology and Criminal Justice, Griffith University Ms Sarah Holloway, lawyer Sarah Hook, School of Law, Western Sydney University Associate Professor Jacqui Horan, Member of the Victorian Bar (Academic), Faculty of Law, Monash University Kathleen Housego, Associate, Maurice Blackburn Azmeena Hussain, Principal Lawyer, Maurice Blackburn Dr Danielle Ireland-Piper, Associate Professor, Faculty of Law, Bond University Sofia Isabella-Hopper, Lawyer, Gilbert + Tobin, Melbourne Office Briana Jackman, Paralegal, Maurice Blackburn Nicola Jackson, Lawyer, Gilbert + Tobin, Melbourne Office Nicole Jagger, Lawyer, Maurice Blackburn Michelle James, Senior Associate, Maurice Blackburn Erin Jardine, Lawyer, Gilbert + Tobin, Sydney Office Professor Fleur Johns, UNSW Law Brigida Johnston, UTS Law Graduate Amy Johnstone, Associate, Maurice Blackburn*



*Rachel Jones, Special Counsel, Gilbert + Tobin, Sydney Office Professor Sarah Joseph, Griffith Law School Dr Tanya Josev, Senior Lecturer, Melbourne Law School, University of Melbourne Jennifer Kanis, Principal Lawyer, Maurice Blackburn Erin Kanygin, Legal Transformation Lawyer, Gilbert + Tobin, Melbourne Office Hannah Kay, Associate, Maurice Blackburn Miranda Kaye, Faculty of Law, University of Technology Sydney Carita Kazakoff, Principal Lawyer, Slater and Gordon Professor Fiona Kelly, Dean, La Trobe University Law School Heather Kerley, Maurice Blackburn Jessica Kerr, PhD candidate, UWA Law School, formerly Magistrate, Judiciary of Seychelles Nitra Kidson QC, Higgins Chambers, Brisbane Deborah Kilger, Associate, Hicks Oakley Chessell Williams, President of Victorian Women Lawyers Annabel Kirkby, Lawyer, Gilbert + Tobin, Sydney Office Lesley Kirkwood, Solicitor Louise Klamka, Special Counsel, Gilbert + Tobin, Sydney Office Jessie Klaric, Legal Counsel, BNK Annabelle Klimt, Lawyer, Gilbert + Tobin, Sydney Office Fiona Knowles, Victorian Bar Kristyn Knox, Lawyer, Maurice Blackburn Dr Jane Kotzmann, Lecturer, School of Law, Deakin University Dr Rebecca La Forgia, Adelaide Law School Professor Wendy Lacey FAAL, Executive Dean, Faculty of Business, Government & Law, University of Canberra Corinna Lagerberg, Law Graduate, Maurice Blackburn Belle Lane, Victorian Bar Professor Suzanne Le Mire, University of Adelaide Fiona Leddy, Senior Associate, Maurice Blackburn Michelle Lee, Lawyer, Gilbert + Tobin, Sydney Office Sunny Lee, Consultant, Gilbert + Tobin, Sydney Office Jane Leibowitz, Senior Solicitor, Asylum Seeker Health Rights Project, Public Interest Advocacy Centre Gemma Leigh-Dodds, Senior Associate, Slater and Gordon Lisa Lennon, Partner, Gilbert + Tobin, Sydney Office Haidee Leung, Lawyer, Gilbert + Tobin, Sydney Office Eugenia Levine, Victorian Bar Judith Levine, Independent Arbitrator Claudia Lewis, Lawyer, Gilbert + Tobin, Sydney Office Jessica Liang, Lawyer, Gilbert + Tobin, Sydney Office Associate Prof Terri Libesman, UTS Law Shari Liby, Principal, Slater and Gordon Monica Liesch, Associate, Maurice Blackburn Ffyona Livingstone Clark, Victorian Bar Nicole Lojszczyk, Lawyer, Gilbert + Tobin, Sydney Office Maryanne Loughnan QC, Victorian Bar Dr Trish Luker, Senior Lecturer, UTS Faculty of Law Roisin Lyng, Associate, Maurice Blackburn Therese MacDermott, Professor, Macquarie Law School, Macquarie University Edwina MacDonald, ACOSS Helen MacFarlane, Partner, Addisons Professor Jane McAdam, Scientia Professor of Law, UNSW Law Jessica McAvoy, Associate, Maurice Blackburn Katherine McCallum, Associate, Maurice Blackburn Dr Phillipa McCormack, School of Law, University of Tasmania Holly McCoy, Solicitor, InDIGO Program, Women's Legal Service (SA) Christiana McCudden, Partner, Gilbert + Tobin, Melbourne Office Jane McCullough, Senior Associate, Slater and Gordon Associate Professor Jani McCutcheon, University of Western Australia Law School Dr Fiona McDonald, Associate Professor, Faculty of Law, Queensland University of Technology Professor Jan McDonald, School of Law, University of Tasmania Dr Fiona McGaughey, UWA Law School Emily McGee, Paralegal, Maurice Blackburn Dr Carolyn McKay, Senior Lecture, The University of Sydney Law School Amelia McKellar, Lawyer, Gilbert + Tobin, Sydney Office Kathryn McKenzie, Executive Officer, Women Lawyers Association of NSW Sophie McKenzie, Lawyer, Maurice Blackburn Fiona McLeod AO SC, Victorian Bar Dr Keasey McLoughlin, Newcastle Law School The Hon. Margaret McMurdo AC, former President of the Queensland Court of Appeal; Commissioner, Victorian Royal Commission into Management of Police*

*Informants Dr Rebekah McWhirter, Faculty of Law, University of Tasmania Neeharika Maddula, Lawyer, Gilbert + Tobin, Sydney Office Sashi Maharaj QC, Victorian Bar Dr Felicity Maher, Senior Lecturer, University of Western Australia Law School; Barrister, Quayside Chambers, Perth Rebecca Mahoney, Knowledge Lawyer, Gilbert + Tobin, Sydney Office Shauna Mainprize, Lawyer, Gilbert + Tobin, Sydney Office Claire Mainsbridge, Lawyer, Maurice Blackburn Leah Marrone, Vice-President, Australian Women Lawyers Shanta Martin, Victorian Bar Professor Gail Mason, Sydney Law School, The University of Sydney Vavaa Mawuli, Principal Lawyer, Maurice Blackburn Caitlin Meade, Lawyer, Gilbert + Tobin, Sydney Office Lauren Meath, Graduate, Slater and Gordon Professor Denise Meyerson FAAL, Professor of Law, Macquarie Law School Heather Millar, Western Australian Bar Audrey Mills, Director, Dobson Mitchell Allport Lawyers and former President Australian Women Lawyers Lucy Minter, Associate, Maurice Blackburn Idil Mohamud, Lawyer, Slater and Gordon Jasmine Monastiriotis, Law Clerk, Maurice Blackburn Bethany Moore, Lawyer, Maurice Blackburn Victoria Moore, Paralegal, Maurice Blackburn Professor Jenny Morgan, Melbourne Law School, University of Law School Adrienne Morton, President, Australian Women Lawyers Idil Mohamud, Lawyer, Slater and Gordon Justine Munsie, Partner, Addisons Nikita Moyle, Associate, Maurice Blackburn Jennifer Mulheron, Lawyer, Gilbert + Tobin, Sydney Office Bridie Murphy, Associate, Maurice Blackburn Penny Murray, Partner, Addisons Professor Sarah Murray, University of Western Australia Professor Ngaire Naffine, Adelaide Law School Miranda Nagy, Principal Lawyer, Maurice Blackburn Ayesha Nathan, Law Clerk, Maurice Blackburn Marcia Neave Jane Needham SC, NSW Bar Dr Wendy Ng, Senior Lecturer, Melbourne Law School Dr Yee-Fui Ng, Senior Lecturer, Faculty of Law, Monash University Eileen Nguyen, Principal Lawyer, Slater and Gordon Distinguished Professor Dianne Nicol, Director of the Centre for Law and Genetics, Faculty of Law, University of Tasmania Associate Professor Jane Nielsen, Faculty of Law, University of Tasmania Associate Professor Jennifer Nielsen, School of Law and Justice, Southern Cross University Laura Nigro, Lawyer, Slater and Gordon Annabelle Nilsson, Lawyer, Gilbert + Tobin, Sydney Office Gisela Nip, Deakin University, Judge's Associate Kimi Nishimura, Principal Lawyer, Maurice Blackburn Professor Justine Nolan, UNSW Law Sarah Notarianni, Senior Associate, Maurice Blackburn Madeleine O'Brien, Paralegal, Maurice Blackburn Anna O'Callaghan, Victorian Bar Professor Ann O'Connell, Melbourne Law School, University of Melbourne Associate Professor Karen O'Connell, Faculty of Law, University of Technology Sydney Claire O'Connor SC, South Australian Bar Elizabeth O'Shea, Senior Associate, Maurice Blackburn Dr Maria O'Sullivan, Faculty of Law, Monash University Dr Anna Olijnyk, Senior Lecturer, Adelaide Law School, The University of Adelaide Associate Professor Bronwyn Olliffe, Faculty of Law, University of Technology Sydney Hannah Opperman-Williams, Lawyer, Gilbert + Tobin, Sydney Office Emily Ormerod, Lawyer, Maurice Blackburn Professor Margaret Otlowski, Faculty of Law, University of Tasmania and Pro Vice Chancellor (Culture, Wellbeing and Sustainability); Patron, Tasmanian Women's Lawyers. Associate Professor Juliette Overland, Business Law, The University of Sydney Business School Isabel Owen, Lawyer, Gilbert + Tobin, Sydney Office Emerita Professor Rosemary Owens AO, The University of Adelaide Dr Tamsin Paige, Deakin Law School Ivana Pajic, Associate, Maurice Blackburn Kerry*

*Palmer, Senior Associate, Maurice Blackburn Sophia Papadopoulos, Lawyer, Slater and Gordon Professor Christine Parker, Melbourne Law School, The University of Melbourne Professor Jeannie Marie Paterson, Co-Director for the Centre for AI and Digital Ethics, The University of Melbourne Suganya Pathanjanimanoharar, Victorian Bar Emma Pelka-Caven, Practice Group Leader, Slater and Gordon Jana Pennington, Associate, Maurice Blackburn Dr Tania Penovic, Senior Lecturer, Deputy Associate Dean (International), Monash University Elly Phelan, Lawyer, Gilbert + Tobin, Sydney Office Sarah Pickles, Solicitor, Family Violence Legal Service Aboriginal Corporation (SA) Clementine Pickwick, Lawyer, Gilbert + Tobin, Sydney Office Dr Sangeetha Pillai, UNSW Law Claire Pirie, Associate, Slater and Gordon Colleen Platford, Partner, Gilbert + Tobin, Sydney Office Rebecca Preston, Victorian Bar Diana Price, Victorian Bar Phoebe Prossor, Associate, Maurice Blackburn Paula Pulitano, Associate, Slater and Gordon Associate Professor Julia Quilter, School of Law, University of Wollongong Genevieve Rahman, Special Counsel, Gilbert + Tobin, Sydney Office Dr Sally Antionette Raine, Fremantle Law Pty Ltd Zoe Rathus AM, Senior Lecturer, Griffith Law School Jacqueline Reid, Lawyer, Gilbert + Tobin, Sydney Office Rhiannon Reid, Senior Associate, Maurice Blackburn Professor Catherine Renshaw, School of Law, Western Sydney University Professor Sharyn Roach Anleu FAAS, Flinders University Julie Robb, Partner, Banki Haddock Fiora Dr Hannah Robert, Senior Lecturer, La Trobe Law School Associate Professor Heather Roberts, ANU College of Law, ANU Natasha Roberts, Lawyer, Maurice Blackburn Carly Robertson, Victorian Bar Becci Robinson, Lawyer, Gilbert + Tobin, Melbourne Office Jane Robinson, Paralegal, Maurice Blackburn Sharni Robinson, Paralegal, Maurice Blackburn Dr Justine Rogers, UNSW Law Carrie Rome-Sievers, Victorian Bar Fiona Roughley, NSW Bar Professor Kim Rubenstein, FAAL, FASSA, Co-Director, 50/50 by 2030 Foundation, Faculty of Business Governance and Law, University of Canberra Professor Kristen Rundle, Melbourne Law School Dr Olivia Rundle, University of Tasmania Law School Erin Rutherford, Victorian Bar Dr Philippa Ryan, NSW Bar and ANU College of Law Gemma Saccasan, Law Graduate, Maurice Blackburn Professor Maree Sainsbury, University of Canberra Liberty Sanger, Principal Lawyer, Maurice Blackburn Dr Amanda Scardamaglia, Associate Professor and Department Chair, Faculty of Business and Law, Swinburne University of Technology Carolyn Scobie, General Counsel, QBE Insurance Group Associate Professor Kate Seear, Faculty of Law, Monash University, Practising Solicitor Jo Seto, Lawyer, Gilbert + Tobin, Sydney Office Rheya Shah, Lawyer, Gilbert + Tobin, Sydney Office Celeste Shambrook, Senior Associate, Maurice Blackburn Lauren Shave, Senior Associate, Gilbert + Tobin, Perth Office Kim Shaw, Principal Lawyer, Maurice Blackburn Anne Sheehan, Victorian Bar Dr Kym Sheehan, Sydney Law School, The University of Sydney Emily Shen, Lawyer, Gilbert + Tobin, Sydney Office Donna Short, Partner, Addisons Anne Shortall, Special Counsel, Slater and Gordon Dr Ronli Sifris, Senior Lecturer, Faculty of Law, Deputy Director, Castan Centre for Human Rights Law, Monash University Dr Natalie Silver, Faculty of Law, The University of Sydney Associate Professor Amelia Simpson, ANU Law School Zahra Sitou, Paralegal, Maurice Blackburn Professor Natalie Skead, Dean of Law, The University of Western Australia Nina Smart, Lawyer, Maurice Blackburn Verity Smith, Solicitor, Strategic Litigation, Public Interest Advocacy Centre Dr Laura Smith-Khan, Faculty of Law, University of Technology Sydney Anna Smyth, Lawyer,*

*Gilbert + Tobin, Sydney Office Sarah Sorrell, Associate, Maurice Blackburn Professor Tania Sourdin, Dean and Head of School, Newcastle Law School Sarah Snowden, State Practice Group Leader, Slater and Gordon Dr Lisa Spagnolo, Senior Lecturer, Monash Law School Victoria Sparks, Associate, Slater and Gordon Dr Linda Steele, Senior Lecturer, Faculty of Law, University of Technology Sydney Molly Stephens, Lawyer, Maurice Blackburn Professor Natalie Stoianoff, Faculty of Law, University of Technology Sydney Nadia Stojanova, Victorian Bar Toni Stokes, Victorian Bar Dr Cait Storr, Chancellor's Postdoctoral Research Fellow, Faculty of Law, University of Technology Sydney Tanya Straguszi, Principal Lawyer, Maurice Blackburn Emma Strugnell, Victorian Bar Professor Anita Stuhmcke, Faculty of Law, University of Technology Sydney Gabrielle Sumich, Lawyer, Gilbert + Tobin, Perth Office Lexi Sun, Lawyer, Gilbert + Tobin, Melbourne Office Dr Carolyn Tan, In-House Legal Counsel at Yamatji Marlpa Aboriginal Corporation Jessie E Taylor, Associate Director, Victoria Legal Aid Chambers. Dr Madeline Taylor, Sydney Law School Amy Teiwes, Paralegal, Maurice Blackburn Karin Temperley, Victoria Legal Aid Amy Tesoriero, UTS Law Graduate Associate Professor Shih-Ning Then, Law Faculty, Queensland University of Technology Rhea Thomas, Solicitor, Welfare Rights & Advocacy Service Amanda Thompson, President, Tasmanian Women Lawyers, Associate, Wallace Wilkinson & Webster Clare Thompson, Western Australian Bar, President of Women Lawyers of WA Emerita Professor Margaret Thornton, ANU College of Law, Australian National University Associate Professor Amelia Thorpe, UNSW Law Ellen Tilbury, Senior Solicitor, Public Interest Advocacy Centre Ltd Eleanor Toohey, Graduate, Slater and Gordon Jenny Tran, Senior Associate, Maurice Blackburn Charmaine Tsang, Director, Australian Women Lawyers; Immediate Past President Women Lawyers of Western Australia Dr Tamara Tulich, UWA Law School Andrea Turner, Associate, Maurice Blackburn Sarah Turner, Partner, Gilbert + Tobin, Perth Office Alison Umbers, Barrister and Mediator, Assistant Convenor of the Women Barristers Association Sarah Vallance, Senior Associate, Maurice Blackburn Kirsten Van Der Wal, Associate, Maurice Blackburn Ella van der Schans, Solicitor, Herbert Smith Freehills, Victorian Director of Australian Women Lawyers Dr Kate van Doore, Griffith Law School Sarah Varney, Victorian Bar Holly Veale, South Australian Bar Sarah Vo, Lawyer, Gilbert + Tobin, Sydney Office Dr Anthea Vogl, Faculty of Law, University of Technology Sydney Alexandra Volk, Lawyer, Maurice Blackburn Mackenzie Wakefield, Law Graduate, Maurice Blackburn Gayann Walker, Assistant Convenor of the Women's Barrister Association of the Victorian Bar Gillian Walker, South Australian Bar Samantha Walker, Associate, Maurice Blackburn Brighdin Walsh, Lawyer, Slater and Gordon Lorraine Walsh, Lawyer, Maurice Blackburn Dr Jane Wangmann, Faculty of Law UTS Stacey Ward, Lawyer, Gilbert + Tobin, Melbourne Office Juliana Warner, Managing Partner, Sydney Office, Herbert Smith Freehills, Dr Helen Watchirs OAM, ACT President and Human Rights Commissioner Nicole Watson, Senior Lecturer, Sydney Law School Tanya Watson, Senior Associate, Julian Johnson Lawyers Dr Kylie Weston-Scheuber, Victorian Bar Professor Sally Wheeler OBE, MRLA, FaCSS, Pro-Vice Chancellor for International Strategy and Dean, Robert Garran Professor of Law, ANU College of Law, Australian National University Jenni Whelan, Clinical Director, School of Law, Western Sydney University Janet Whiting, Partner, Gilbert + Tobin, Melbourne Office Nikki Whiting, Special Counsel, Maurice*

*Blackburn Deborah Wiener, Victorian Bar Marie Wilkening-Le Brun, Victorian Bar Anita Will, Solicitor Kingsford Legal Centre UNSW Kerrie Wood, Lawyer, Maurice Blackburn Donna Woodleigh, Lawyer Aimee Woods, UTS Law Graduate Alice Woolven, Legal Support Officer, City of Casey Isabelle Wong, Lawyer, Gilbert + Tobin, Sydney Office Madeline Wu, Lawyer, Gilbert + Tobin, Sydney Office Angelika Yates, Partner, Addisons April Zahra, Lawyer, Slater and Gordon Jessica Zarkovic, Senior Associate, Slater and Gordon*

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Dear Chief Justice,

We are writing following the publication of the High Court's response to the complaints about the conduct of Mr Dyson Heydon AC QC during his time as a judge on the Court. We thank you and the Court's Principal Registrar, Ms Philippa Lynch, in particular for the decisive action taken to ensure the complaints were thoroughly investigated by an independent process. We are grateful that you took this matter so seriously and treated the complainants with dignity, compassion and respect. We welcome your response to the inquiry's recommendations as to how to provide better protections to associates during their time employed at the Court, recognising their particularly vulnerable professional position.

Today, we have sent a letter to the Commonwealth Attorney-General urging him to seize this moment as an opportunity to implement reforms to address the high incidence of sexual harassment, assault and misconduct in the law. We have asked that he take action to implement two types of institutional reforms – an independent complaints body and a transparent judicial appointments process. While no single reform will achieve the necessary cultural shifts in how women are treated in the law, we believe, if properly designed, these will prove to be important systemic contributions towards deeper change.

We are very conscious that these reforms must be developed through close cooperation between the government, through the Attorney-General's portfolio, and the judiciary. In particular, the creation of an independent complaint-handling body with a standing jurisdiction to receive complaints against federal judges, investigate any complaints and provide appropriate responses to them, must be designed with care. It must meet expectations of accountability for judicial misconduct while protecting judges from unfounded allegations and not compromising judicial independence by placing the judiciary in a subordinate position to any other branch of government.

With these considerations in mind, we have asked the Attorney-General to work with you and the Council of Chief Justices of Australia and New Zealand as an important forum for input from the Australian judiciary into the design of these reforms. We applaud your initial response to this issue. The changes you and Ms Lynch have made will form a significant legacy and will make the law a safer profession for women.

Yours faithfully,

*Nina Abbey, Senior Associate, Maurice Blackburn Dr Rebecca Ananian-Welsh, TC Beirne School of Law, The University of Queensland Kate Andean, Partner, Banki Haddock Fiora Larissa Andelman, NSW Bar and President of the Women Lawyers Association of NSW Ingrid Antolinez, Paralegal, Maurice Blackburn Professor Gabrielle Appleby, UNSW Law and Director, the Judiciary Project, Gilbert + Tobin Centre of Public Law Associate Professor Elisa Arcioni, Sydney Law School Amelia Arndt, Lawyer, Gilbert + Tobin, Perth Office Claire Arthur, Lawyer, Gilbert + Tobin, Sydney Office Amanda Atkins, Lawyer, Gilbert + Tobin, Melbourne Office The Hon Roslyn Atkinson AO Sarah Avery, Paralegal, Maurice Blackburn Elizabeth Avery, Partner, Gilbert + Tobin, Sydney Office Sara Ayoub, Lawyer, Gilbert + Tobin, Sydney Office Irene Baghoomians, Sydney Law School Caitlin Baker, Associate, Slater and Gordon Vanessa Balnaves, Senior Solicitor, Johnston Withers Lawyers Robin Banks, PhD Candidate, Faculty of Law, University of Tasmania Diane Banks, Partner, Gilbert + Tobin, Sydney Office Professor Elise Bant, FAAL, UWA Law School and Melbourne Law School Michelle Barnes, South Australian Bar Professor Katy Barnett, Melbourne Law School, University of Melbourne Jillian Barrett, Principal Lawyer, Maurice Blackburn Jennifer Barron, Partner, Gilbert + Tobin, Sydney Office Professor Lorana Bartels, FAAL, Criminology Program Leader, ANU and Adjunct Professor of Law, University of Canberra and University of Tasmania Associate Professor Francesca Bartlett, TC Beirne School of Law, The University of Queensland Michaela Bartonkova, Senior Associate, Maurice Blackburn Rachel Bassil, Partner, Gilbert + Tobin, Sydney Office Professor Vivienne Bath, Sydney Law School Jennifer Batrouney AM QC, Victorian Bar and Convenor of the Women Barristers Association Fiona Batten, Victorian Bar Katherine Bedford, Associate, Maurice Blackburn Narelle Bedford, Faculty of Law, Bond University Distinguished Professor Larissa Behrendt, University of Technology Sydney Selma Bekric, Lawyer, Gilbert + Tobin, Sydney Office Anna Belgiorna-Nettis, Lawyer, Gilbert + Tobin, Sydney Office Cassie Bell, Lawyer, Gilbert + Tobin, Sydney Office Andrea Bennett, Lawyer, Gilbert + Tobin, Sydney Office Professor Lyria Bennett Moses, UNSW Law Dr Laurie Berg, Senior Lecturer, Faculty of Law, University of Technology Sydney Rachel Bhatt, Lawyer, Maurice Blackburn Professor Katherine Biber, Faculty of Law, University of Technology Sydney Associate Professor Alysia Blackham, Melbourne Law School, University of Melbourne Madison Blacklock, Paralegal, Maurice Blackburn Olivia Blakiston, Lawyer, Gilbert + Tobin, Sydney Office Laura Blandthorn, Lawyer, Slater and Gordon Manisha Blencowe, Practice Group Leader, Slater and Gordon Alex Blennerhassett, Lawyer, Slater and Gordon Natalie Blok, Victorian Bar Cynthia Bluett, Partner, PE Family Law Samantha Boardman, Lawyer, Maurice Blackburn Sophie Bogard, Lawyer, Gilbert + Tobin, Sydney Office Associate Professor Tracey Booth, Faculty of Law, University of Technology Sydney Associate Professor Catherine Bond, UNSW Law Hilary Bonney, Victorian Bar and writer Grace Borsellino, Lecturer in Law, Western Sydney University Kate Bouffler, Lawyer, Gilbert + Tobin, Sydney Office Kate Bowshell, Victorian Bar Clancy Bradshaw, Lawyer, Gilbert + Tobin, Sydney Office Margaret Brain, Special Counsel, Maurice Blackburn The Hon. Catherine Branson AC QC, former judge of the Federal Court of Australia (1994-2008) and President of the Australian Human Rights Commission (2008-2012) Julia Bravis, Associate, Slater and Gordon Dr Elizabeth Brophy, Victorian Bar Louise Buckingham,*

*Knowledge and Innovation Lawyer, Gilbert + Tobin, Sydney Office Lauren Burke, Victorian Bar Alison Burt, Victorian Bar Julie Buxton, Victorian Bar Patricia Cahill SC, WA Bar Milly Cain, Lawyer, Maurice Blackburn Sophie Callan, NSW Bar Professor Robyn Carroll, University of Western Australia Law School Dr Anne Carter, Deakin University Megan Casey, Victorian Bar Professor Judy Cashmore, The University of Sydney Law School Gina Cass-Gottlieb, Partner, Gilbert + Tobin, Sydney Office Associate Professor Melissa Castan, Faculty of Law, Monash University Gina Cerasiotis, Law Clerk, Maurice Blackburn Professor Louise Chappell, Director, Australian Human Rights Institute, UNSW Law Tess Chappell, Lawyer, Maurice Blackburn Sue Chakravarthy, Law Clerk, Maurice Blackburn Professor Hilary Charlesworth, Laureate Professor, Melbourne Law School; Distinguished Professor and Director of the Centre for International Governance and Justice, Australian National University Rosilyn Chenoweth, Northern Territory Women Lawyers Association; Secretary, Australian Women Lawyers; Director, Crimes Victims Services Unit, Department of the Attorney-General and Justice (NT) Li-Jean Chew, Partner, Addisons Karmilla Chenia, Lawyer, Maurice Blackburn Grace Chia, Lawyer, Gilbert + Tobin, Melbourne Office Dr Madelaine Chiam, La Trobe Law School Karen Chibert, Victorian Bar Justine Clark, Principal, Tisher Liner FC Law Kerry Clark, South Australian Bar Alison Clues, Chief Commissioner / Chairperson, Workers Rehabilitation & Compensation Tribunal, Asbestos Compensation Tribunal, Health Practitioners Tribunal, Motor Accidents Compensation Tribunal, Anti-Discrimination Tribunal (Tas) Dr Helen Cockburn, Lecturer, Faculty of Law, University of Tasmania Professor Anna Cody, Dean, School of Law, Western Sydney University Michelle Cohen, Principal Solicitor, Public Interest Advocacy Centre Paloma Cole, Lawyer, Maurice Blackburn Christine Collin, General Manager, Maurice Blackburn Catherine Collins, Lawyer, Gilbert + Tobin, Sydney Office Rebecca Collins, Western Australian Bar Julie Comninos, Lawyer, Gilbert + Tobin, Sydney Office Dr Caroline Compton, Research Associate, UNSW Law Celia Conlan, Victorian Bar Madeline Connolly, Lawyer, Gilbert + Tobin, Sydney Office Roslyn Cook, Managing Solicitor, Homeless Persons' Legal Service, Public Interest Advocacy Centre Dr Monique Cormier, University of New England School of Law Rebecca Coulter, Lawyer, Maurice Blackburn Eloise Cox, Paralegal, Maurice Blackburn Anne Cregan, Partner, Gilbert + Tobin, Sydney Office Dr Karen Crawley, Senior Lecturer, Griffith Law School Associate Professor Penny Crofts, University of Technology Sydney Associate Professor Melissa Crouch, UNSW Law Kristen Cummings, Paralegal, Maurice Blackburn Tristan Cutliffe, Lawyer, Gilbert + Tobin, Sydney Office Eleanor D'Amrosio Scott, Graduate, Slater and Gordon Linda Dalton, Solicitor, NSW Sarah Damon, Victorian Bar Azadeh Dastyari, Associate Professor, Faculty of Law, Western Sydney University Ann-Maree David, Director, Australian Women Lawyers and Australian Gender Equality Council Professor Margaret Davies, Flinders University Professor Megan Davis, Pro Vice Chancellor (Indigenous) UNSW, Balnaves Chair in Constitutional Law, UNSW Law Anna Dawson, Senior Solicitor, Public Interest Advocacy Centre Jessica Dawson-Field, Associate, Maurice Blackburn Tess Deegan, Solicitor, Kingsford Legal Centre UNSW Dr Sara Dehm, Lecturer, Faculty of Law, University of Technology Sydney Sherrilea Discombe, Paralegal, Maurice Blackburn Professor Rosalind Dixon, Director of the Gilbert + Tobin Centre of Public Law, UNSW Law Amanda Do, Lawyer, Maurice Blackburn Patricia Dobson, Victorian Bar Moya Dodd, Partner, Gilbert + Tobin,*

*Sydney Office Lauren Lale Doganay, Law Clerk, Maurice Blackburn Grace Dong, Lawyer, Maurice Blackburn Professor Heather Douglas, TC Beirne School of Law, University of Queensland Dimitra Dubrow, Principal Lawyer, Maurice Blackburn Clair Duffy, lawyer, admitted in Queensland and Victoria Professor Andrea Durbach, UNSW Law Josephine Helen Dwan, PhD candidate, UNSW Canberra at ADFA Catherine Eagle, Solicitor, Welfare Rights & Advocacy Service Kate Eastman SC, NSW Bar Dr Lisa Eckstein, Senior Lecturer in Law and Medicine, University of Tasmania Alice Edwards PhD, international lawyer Alina El Jawhari, Lawyer, Maurice Blackburn Kylie Evans, Victorian Bar Julie Falck, University of Western Australia Law School Emily Fanning, Lawyer, Gilbert + Tobin, Sydney Office Associate Professor Bassina Farbenblum, UNSW Law Vanessa Farego-Diener, Lawyer, Gilbert + Tobin, Sydney Office Rebecca Faugno, University of Western Australia Law School Patricia Femia, Assistant State Counsel, State Solicitor's Office of Western Australia Kaitlin Ferris, Principal, Slater and Gordon Sarah Findlay, Lawyer, Gilbert + Tobin, Sydney Office Diane Fingleton, Chief Magistrate of Queensland (2000-2003) Megan Fitzgerald, Victorian Bar Tyneil Flaherty, South Australian Bar Mary Flanagan, Senior Legal Officer, Transitional Justice Program, Public Interest Advocacy Centre Natalie Fleming, Senior Associate, Maurice Blackburn Janine Foo, Lawyer, Maurice Blackburn Emily Forbes, Paralegal, Maurice Blackburn Carolyn Ford, Special Counsel, Maurice Blackburn Catherine Fraser, Lawyer, Gilbert + Tobin, Perth Office Giorgia Fraser, Lawyer, Gilbert + Tobin, Perth Office Juliana Frizziero, Lawyer, Maurice Blackburn Sarah Gaffney-Smith, Senior Associate, Gilbert + Tobin, Perth Office Associate Professor Kate Galloway, Griffith Law School Catherine Gamble, Lawyer, Gilbert + Tobin, Sydney Office Tami Ganemy-Kunoo, Paralegal, Maurice Blackburn Antonia Garling, Lawyer, Gilbert + Tobin, Sydney Office Jane Garnett, Lawyer, Maurice Blackburn Lauren Gavranich, South Australian Bar Daniela Gavshon, Program Director, Transitional Justice Program, Public Interest Advocacy Centre Professor Beth Gaze, Centre for Employment and Labour Relations Law, Melbourne University Law School Professor Katharine Gelber, University of Queensland Professor Alison Gerard, Head of Canberra Law School, University of Canberra Assistant Professor Anthea Gerrard, Faculty of Law, Bond University Professor Felicity Gerry QC, Crockett Chambers and Deakin University, Melbourne Associate Professor and ARC Future Fellow, Rebecca Giblin, Melbourne Law School, University of Melbourne. Sue Gilchrist, Partner and Head of Intellectual Property Australia, Herbert Smith Freehills Rebecca Gilsenan, Principal Lawyer, Maurice Blackburn Lawyers Madeline Gleeson, UNSW Law Dr Beth Goldblatt, Professor, Faculty of Law, University of Technology Sydney Emma Golledge, Director Kingsford Legal Centre UNSW Zoe Gow, Paralegal, Maurice Blackburn Laura Gowdie, Lawyer, Maurice Blackburn Emeritus Professor Reg Graycar, Sydney Law School and Barrister, NSW Bar Alex Grayson, Principal Lawyer, Maurice Blackburn Brooke Greenwood, Senior Solicitor, Indigenous Child Protection Project, Public Interest Advocacy Centre Naty Guerrero-Diaz, Practice Group Leader, Slater and Gordon Alexandra Guild, Victorian Bar Associate Professor Nicole Graham, Sydney Law School, The University of Sydney Associate Professor Genevieve Grant, Director, Australian Centre for Justice Innovation, Faculty of Law, Monash University Mihal Greener, Victorian Bar Brooke Greenwood, Senior Solicitor, Public Interest Advocacy Centre Janine Gregory, Principal Lawyer, Maurice Blackburn Associate Professor*



*Laura Grenfell, Adelaide Law School, The University of Adelaide Astrid Haban-Beer, Treasurer, Australian Women Lawyers, Victorian Bar Kate Haddock, Partner, Banki Haddock Fiora Simone Hall, Lawyer, Gilbert + Tobin, Sydney Office Marita Ham, Victorian Bar Michelle Hamlyn, South Australian Bar Professor Elizabeth Handsley, School of Law, Western Sydney University Michelle Hannon, Partner, Gilbert + Tobin, Sydney Office Dr Kristine Hanscombe QC, Victorian Bar Christine Harb, Lawyer, Gilbert + Tobin, Sydney Office Dr Tess Hardy, Melbourne Law School Syvannah Harper, Lawyer, Maurice Blackburn Deborah Harris, Victorian Bar Associate Professor Susan Harris Rimmer, Griffith Law School Georgia Harrison, Lawyer, Gilbert + Tobin, Sydney Office Kate Harrison, Partner, Gilbert + Tobin, Sydney Office Emily Hart, Principal Lawyer, Maurice Blackburn Laura Hartley, Partner, Addisons Simone Hartley-Keane, Head of People & Culture, Maurice Blackburn Karen Hayne, Partner, Addisons Jane Healey, Victorian Bar Kim Heap, Senior Associate, Dobson Mitchell Allport Sally Heidenreich, South Australian Bar Amanda Hempel, Partner, Gilbert + Tobin, Sydney Office Professor Samantha Hepburn, Deakin University Associate Professor Anne Hewitt, The University of Adelaide Kara Hill, Associate, Maurice Blackburn Professor Lesley Hitchens, Faculty of Law, University of Technology Philippa Hofbrucker, Partner, Gilbert + Tobin, Sydney Office Pamela Hogan, Victorian Bar Sahrah Hogan, Victorian Bar Dr Robyn Holder, Lecturer, School of Criminology and Criminal Justice, Griffith University Ms Sarah Holloway, lawyer Sarah Hook, School of Law, Western Sydney University Associate Professor Jacqui Horan, Member of the Victorian Bar (Academic), Faculty of Law, Monash University Kathleen Housego, Associate, Maurice Blackburn Azmeena Hussain, Principal Lawyer, Maurice Blackburn Dr Danielle Ireland-Piper, Associate Professor, Faculty of Law, Bond University Sofia Isabella-Hopper, Lawyer, Gilbert + Tobin, Melbourne Office Briana Jackman, Paralegal, Maurice Blackburn Nicola Jackson, Lawyer, Gilbert + Tobin, Melbourne Office Nicole Jagger, Lawyer, Maurice Blackburn Michelle James, Senior Associate, Maurice Blackburn Erin Jardine, Lawyer, Gilbert + Tobin, Sydney Office Professor Fleur Johns, UNSW Law Brigida Johnston, UTS Law Graduate Amy Johnstone, Associate, Maurice Blackburn Rachel Jones, Special Counsel, Gilbert + Tobin, Sydney Office Professor Sarah Joseph, Griffith Law School Dr Tanya Josev, Senior Lecturer, Melbourne Law School, University of Melbourne Jennifer Kanis, Principal Lawyer, Maurice Blackburn Erin Kanygin, Legal Transformation Lawyer, Gilbert + Tobin, Melbourne Office Hannah Kay, Associate, Maurice Blackburn Miranda Kaye, Faculty of Law, University of Technology Sydney Carita Kazakoff, Principal Lawyer, Slater and Gordon Professor Fiona Kelly, Dean, La Trobe University Law School Heather Kerley, Maurice Blackburn Jessica Kerr, PhD candidate, UWA Law School, formerly Magistrate, Judiciary of Seychelles Nitra Kidson QC, Higgins Chambers, Brisbane Deborah Kilger, Associate, Hicks Oakley Chessell Williams, President of Victorian Women Lawyers Annabel Kirkby, Lawyer, Gilbert + Tobin, Sydney Office Lesley Kirkwood, Solicitor Louise Klamka, Special Counsel, Gilbert + Tobin, Sydney Office Jessie Klaric, Legal Counsel, BNK Annabelle Klimt, Lawyer, Gilbert + Tobin, Sydney Office Fiona Knowles, Victorian Bar Kristyn Knox, Lawyer, Maurice Blackburn Dr Jane Kotzmann, Lecturer, School of Law, Deakin University Dr Rebecca La Forgia, Adelaide Law School Professor Wendy Lacey FAAL, Executive Dean, Faculty of Business, Government & Law, University of Canberra Corinna Lagerberg, Law Graduate, Maurice*

*Blackburn Belle Lane, Victorian Bar Professor Suzanne Le Mire, University of Adelaide Fiona Leddy, Senior Associate, Maurice Blackburn Michelle Lee, Lawyer, Gilbert + Tobin, Sydney Office Sunny Lee, Consultant, Gilbert + Tobin, Sydney Office Jane Leibowitz, Senior Solicitor, Asylum Seeker Health Rights Project, Public Interest Advocacy Centre Gemma Leigh-Dodds, Senior Associate, Slater and Gordon Lisa Lennon, Partner, Gilbert + Tobin, Sydney Office Haidee Leung, Lawyer, Gilbert + Tobin, Sydney Office Eugenia Levine, Victorian Bar Judith Levine, Independent Arbitrator Claudia Lewis, Lawyer, Gilbert + Tobin, Sydney Office Jessica Liang, Lawyer, Gilbert + Tobin, Sydney Office Associate Prof Terri Libesman, UTS Law Shari Liby, Principal, Slater and Gordon Monica Liesch, Associate, Maurice Blackburn Ffyona Livingstone Clark, Victorian Bar Nicole Lojszczyk, Lawyer, Gilbert + Tobin, Sydney Office Maryanne Loughnan QC, Victorian Bar Dr Trish Luker, Senior Lecturer, UTS Faculty of Law Roisin Lyng, Associate, Maurice Blackburn Therese MacDermott, Professor, Macquarie Law School, Macquarie University Edwina MacDonald, ACOSS Helen MacFarlane, Partner, Addisons Professor Jane McAdam, Scientia Professor of Law, UNSW Law Jessica McAvoy, Associate, Maurice Blackburn Katherine McCallum, Associate, Maurice Blackburn Dr Phillipa McCormack, School of Law, University of Tasmania Holly McCoy, Solicitor, InDIGO Program, Women's Legal Service (SA) Christiana McCudden, Partner, Gilbert + Tobin, Melbourne Office Jane McCullough, Senior Associate, Slater and Gordon Associate Professor Jani McCutcheon, University of Western Australia Law School Dr Fiona McDonald, Associate Professor, Faculty of Law, Queensland University of Technology Professor Jan McDonald, School of Law, University of Tasmania Dr Fiona McGaughey, UWA Law School Emily McGee, Paralegal, Maurice Blackburn Dr Carolyn McKay, Senior Lecture, The University of Sydney Law School Amelia McKellar, Lawyer, Gilbert + Tobin, Sydney Office Kathryn McKenzie, Executive Officer, Women Lawyers Association of NSW Sophie McKenzie, Lawyer, Maurice Blackburn Fiona McLeod AO SC, Victorian Bar Dr Kcasey McLoughlin, Newcastle Law School The Hon. Margaret McMurdo AC, former President of the Queensland Court of Appeal; Commissioner, Victorian Royal Commission into Management of Police Informants Dr Rebekah McWhirter, Faculty of Law, University of Tasmania Neeharika Maddula, Lawyer, Gilbert + Tobin, Sydney Office Sashi Maharaj QC, Victorian Bar Dr Felicity Maher, Senior Lecturer, University of Western Australia Law School; Barrister, Quayside Chambers, Perth Rebecca Mahoney, Knowledge Lawyer, Gilbert + Tobin, Sydney Office Shauna Mainprize, Lawyer, Gilbert + Tobin, Sydney Office Claire Mainsbridge, Lawyer, Maurice Blackburn Leah Marrone, Vice-President, Australian Women Lawyers Shanta Martin, Victorian Bar Professor Gail Mason, Sydney Law School, The University of Sydney Vavaa Mawuli, Principal Lawyer, Maurice Blackburn Caitlin Meade, Lawyer, Gilbert + Tobin, Sydney Office Lauren Meath, Graduate, Slater and Gordon Professor Denise Meyerson FAAL, Professor of Law, Macquarie Law School Heather Millar, Western Australian Bar Audrey Mills, Director, Dobson Mitchell Allport Lawyers and former President Australian Women Lawyers Lucy Minter, Associate, Maurice Blackburn Idil Mohamud, Lawyer, Slater and Gordon Jasmine Monastiriotis, Law Clerk, Maurice Blackburn Bethany Moore, Lawyer, Maurice Blackburn Victoria Moore, Paralegal, Maurice Blackburn Professor Jenny Morgan, Melbourne Law School, University of Law School Adrienne Morton, President, Australian Women Lawyers Idil Mohamud,*

*Lawyer, Slater and Gordon Justine Munsie, Partner, Addisons Nikita Moyle, Associate, Maurice Blackburn Jennifer Mulheron, Lawyer, Gilbert + Tobin, Sydney Office Bridie Murphy, Associate, Maurice Blackburn Penny Murray, Partner, Addisons Professor Sarah Murray, University of Western Australia Professor Ngaire Naffine, Adelaide Law School Miranda Nagy, Principal Lawyer, Maurice Blackburn Ayesha Nathan, Law Clerk, Maurice Blackburn Marcia Neave Jane Needham SC, NSW Bar Dr Wendy Ng, Senior Lecturer, Melbourne Law School Dr Yee-Fui Ng, Senior Lecturer, Faculty of Law, Monash University Eileen Nguyen, Principal Lawyer, Slater and Gordon Distinguished Professor Dianne Nicol, Director of the Centre for Law and Genetics, Faculty of Law, University of Tasmania Associate Professor Jane Nielsen, Faculty of Law, University of Tasmania Associate Professor Jennifer Nielsen, School of Law and Justice, Southern Cross University*

*Laura Nigro, Lawyer, Slater and Gordon Annabelle Nilsson, Lawyer, Gilbert + Tobin, Sydney Office Gisela Nip, Deakin University, Judge's Associate Kimi Nishimura, Principal Lawyer, Maurice Blackburn Professor Justine Nolan, UNSW Law Sarah Notarianni, Senior Associate, Maurice Blackburn Madeleine O'Brien, Paralegal, Maurice Blackburn Anna O'Callaghan, Victorian Bar Professor Ann O'Connell, Melbourne Law School, University of Melbourne Associate Professor Karen O'Connell, Faculty of Law, University of Technology Sydney Claire O'Connor SC, South Australian Bar Elizabeth O'Shea, Senior Associate, Maurice Blackburn Dr Maria O'Sullivan, Faculty of Law, Monash University Dr Anna Olijnyk, Senior Lecturer, Adelaide Law School, The University of Adelaide Associate Professor Bronwyn Olliffe, Faculty of Law, University of Technology Sydney Hannah Opperman-Williams, Lawyer, Gilbert + Tobin, Sydney Office Emily Ormerod, Lawyer, Maurice Blackburn Professor Margaret Otlowski, Faculty of Law, University of Tasmania and Pro Vice Chancellor (Culture, Wellbeing and Sustainability); Patron, Tasmanian Women's Lawyers. Associate Professor Juliette Overland, Business Law, The University of Sydney Business School Isabel Owen, Lawyer, Gilbert + Tobin, Sydney Office Emerita Professor Rosemary Owens AO, The University of Adelaide Dr Tamsin Paige, Deakin Law School Ivana Pajic, Associate, Maurice Blackburn Kerry Palmer, Senior Associate, Maurice Blackburn Sophia Papadopoulos, Lawyer, Slater and Gordon Professor Christine Parker, Melbourne Law School, The University of Melbourne Professor Jeannie Marie Paterson, Co-Director for the Centre for AI and Digital Ethics, The University of Melbourne Suganya Pathanjalinanoharar, Victorian Bar Emma Pelka-Caven, Practice Group Leader, Slater and Gordon Jana Pennington, Associate, Maurice Blackburn Dr Tania Penovic, Senior Lecturer, Deputy Associate Dean (International), Monash University Elly Phelan, Lawyer, Gilbert + Tobin, Sydney Office Sarah Pickles, Solicitor, Family Violence Legal Service Aboriginal Corporation (SA) Clementine Pickwick, Lawyer, Gilbert + Tobin, Sydney Office Dr Sangeetha Pillai, UNSW Law Claire Pirie, Associate, Slater and Gordon Colleen Platford, Partner, Gilbert + Tobin, Sydney Office Rebecca Preston, Victorian Bar Diana Price, Victorian Bar Phoebe Prossor, Associate, Maurice Blackburn Paula Pulitano, Associate, Slater and Gordon Associate Professor Julia Quilter, School of Law, University of Wollongong Genevieve Rahman, Special Counsel, Gilbert + Tobin, Sydney Office Dr Sally Antionette Raine, Fremantle Law Pty Ltd Zoe Rathus AM, Senior Lecturer, Griffith Law School Jacqueline Reid, Lawyer, Gilbert + Tobin, Sydney Office Rhiannon Reid, Senior Associate, Maurice*

*Blackburn Professor Catherine Renshaw, School of Law, Western Sydney University Professor Sharyn Roach Anleu FAAS, Flinders University Julie Robb, Partner, Banki Haddock Fiora Dr Hannah Robert, Senior Lecturer, La Trobe Law School Associate Professor Heather Roberts, ANU College of Law, ANU Natasha Roberts, Lawyer, Maurice Blackburn Carly Robertson, Victorian Bar Becci Robinson, Lawyer, Gilbert + Tobin, Melbourne Office Jane Robinson, Paralegal, Maurice Blackburn Sharni Robinson, Paralegal, Maurice Blackburn Dr Justine Rogers, UNSW Law Carrie Rome-Sievers, Victorian Bar Fiona Roughley, NSW Bar Professor Kim Rubenstein, FAAL, FASSA, Co-Director, 50/50 by 2030 Foundation, Faculty of Business Governance and Law, University of Canberra Professor Kristen Rundle, Melbourne Law School Dr Olivia Rundle, University of Tasmania Law School Erin Rutherford, Victorian Bar Dr Philippa Ryan, NSW Bar and ANU College of Law Gemma Saccasan, Law Graduate, Maurice Blackburn Professor Maree Sainsbury, University of Canberra Liberty Sanger, Principal Lawyer, Maurice Blackburn Dr Amanda Scardamaglia, Associate Professor and Department Chair, Faculty of Business and Law, Swinburne University of Technology Carolyn Scobie, General Counsel, QBE Insurance Group Associate Professor Kate Seear, Faculty of Law, Monash University, Practising Solicitor Jo Seto, Lawyer, Gilbert + Tobin, Sydney Office Rheya Shah, Lawyer, Gilbert + Tobin, Sydney Office Celeste Shambrook, Senior Associate, Maurice Blackburn Lauren Shave, Senior Associate, Gilbert + Tobin, Perth Office Kim Shaw, Principal Lawyer, Maurice Blackburn Anne Sheehan, Victorian Bar Dr Kym Sheehan, Sydney Law School, The University of Sydney Emily Shen, Lawyer, Gilbert + Tobin, Sydney Office Donna Short, Partner, Addisons Anne Shortall, Special Counsel, Slater and Gordon Dr Ronli Sifris, Senior Lecturer, Faculty of Law, Deputy Director, Castan Centre for Human Rights Law, Monash University Dr Natalie Silver, Faculty of Law, The University of Sydney Associate Professor Amelia Simpson, ANU Law School Zahra Sitou, Paralegal, Maurice Blackburn Professor Natalie Skead, Dean of Law, The University of Western Australia Nina Smart, Lawyer, Maurice Blackburn Verity Smith, Solicitor, Strategic Litigation, Public Interest Advocacy Centre Dr Laura Smith-Khan, Faculty of Law, University of Technology Sydney Anna Smyth, Lawyer, Gilbert + Tobin, Sydney Office Sarah Sorrell, Associate, Maurice Blackburn Professor Tania Sourdin, Dean and Head of School, Newcastle Law School Sarah Snowden, State Practice Group Leader, Slater and Gordon Dr Lisa Spagnolo, Senior Lecturer, Monash Law School Victoria Sparks, Associate, Slater and Gordon Dr Linda Steele, Senior Lecturer, Faculty of Law, University of Technology Sydney Molly Stephens, Lawyer, Maurice Blackburn Professor Natalie Stoianoff, Faculty of Law, University of Technology Sydney Nadia Stojanova, Victorian Bar Toni Stokes, Victorian Bar Dr Cait Storr, Chancellor's Postdoctoral Research Fellow, Faculty of Law, University of Technology Sydney Tanya Straguszi, Principal Lawyer, Maurice Blackburn Emma Strugnell, Victorian Bar Professor Anita Stuhmcke, Faculty of Law, University of Technology Sydney Gabrielle Sumich, Lawyer, Gilbert + Tobin, Perth Office Lexi Sun, Lawyer, Gilbert + Tobin, Melbourne Office Dr Carolyn Tan, In-House Legal Counsel at Yamatji Marlpa Aboriginal Corporation Jessie E Taylor, Associate Director, Victoria Legal Aid Chambers. Dr Madeline Taylor, Sydney Law School Amy Teiwes, Paralegal, Maurice Blackburn Karin Temperley, Victoria Legal Aid Amy Tesoriero, UTS Law Graduate Associate Professor Shih-Ning Then, Law Faculty, Queensland University of Technology Rhea Thomas, Solicitor,*

*Welfare Rights & Advocacy Service Amanda Thompson, President, Tasmanian Women Lawyers, Associate, Wallace Wilkinson & Webster Clare Thompson, Western Australian Bar, President of Women Lawyers of WA Emerita Professor Margaret Thornton, ANU College of Law, Australian National University Associate Professor Amelia Thorpe, UNSW Law Ellen Tilbury, Senior Solicitor, Public Interest Advocacy Centre Ltd Eleanor Toohey, Graduate, Slater and Gordon Jenny Tran, Senior Associate, Maurice Blackburn Charmaine Tsang, Director, Australian Women Lawyers; Immediate Past President Women Lawyers of Western Australia Dr Tamara Tulich, UWA Law School Andrea Turner, Associate, Maurice Blackburn Sarah Turner, Partner, Gilbert + Tobin, Perth Office Alison Umbers, Barrister and Mediator, Assistant Convenor of the Women Barristers Association Sarah Vallance, Senior Associate, Maurice Blackburn Kirsten Van Der Wal, Associate, Maurice Blackburn Ella van der Schans, Solicitor, Herbert Smith Freehills, Victorian Director of Australian Women Lawyers Dr Kate van Doore, Griffith Law School Sarah Varney, Victorian Bar Holly Veale, South Australian Bar Sarah Vo, Lawyer, Gilbert + Tobin, Sydney Office Dr Anthea Vogl, Faculty of Law, University of Technology Sydney Alexandra Volk, Lawyer, Maurice Blackburn Mackenzie Wakefield, Law Graduate, Maurice Blackburn Gayann Walker, Assistant Convenor of the Women's Barrister Association of the Victorian Bar Gillian Walker, South Australian Bar Samantha Walker, Associate, Maurice Blackburn Brighdin Walsh, Lawyer, Slater and Gordon Lorraine Walsh, Lawyer, Maurice Blackburn Dr Jane Wangmann, Faculty of Law UTS Stacey Ward, Lawyer, Gilbert + Tobin, Melbourne Office Juliana Warner, Managing Partner, Sydney Office, Herbert Smith Freehills, Dr Helen Watchirs OAM, ACT President and Human Rights Commissioner Nicole Watson, Senior Lecturer, Sydney Law School Tanya Watson, Senior Associate, Julian Johnson Lawyers Dr Kylie Weston-Scheuber, Victorian Bar Professor Sally Wheeler OBE, MRLA, FaCSS, Pro-Vice Chancellor for International Strategy and Dean, Robert Garran Professor of Law, ANU College of Law, Australian National University Jenni Whelan, Clinical Director, School of Law, Western Sydney University Janet Whiting, Partner, Gilbert + Tobin, Melbourne Office Nikki Whiting, Special Counsel, Maurice Blackburn Deborah Wiener, Victorian Bar Marie Wilkening-Le Brun, Victorian Bar Anita Will, Solicitor Kingsford Legal Centre UNSW Kerrie Wood, Lawyer, Maurice Blackburn Donna Woodleigh, Lawyer Aimee Woods, UTS Law Graduate Alice Woolven, Legal Support Officer, City of Casey Isabelle Wong, Lawyer, Gilbert + Tobin, Sydney Office Madeline Wu, Lawyer, Gilbert + Tobin, Sydney Office Angelika Yates, Partner, Addisons April Zahra, Lawyer, Slater and Gordon Jessica Zarkovic, Senior Associate, Slater and Gordon*

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