

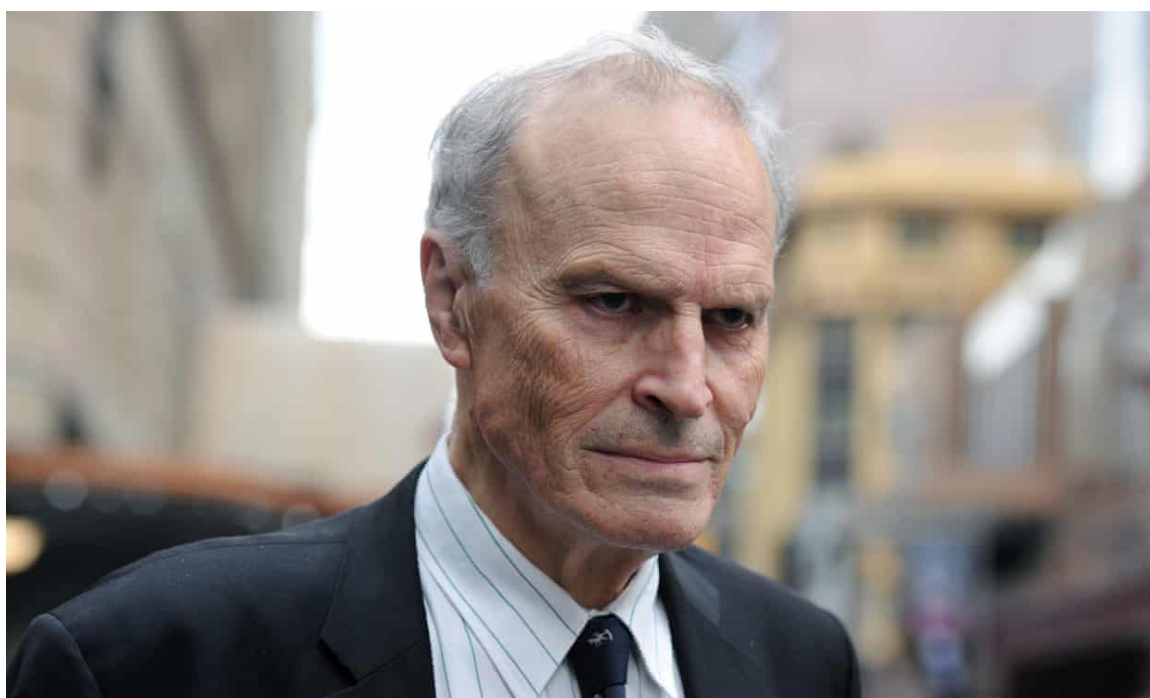
# The Guardian

## To all men who are in on the 'open secret': you have failed us

For all the work feminism has done, here we are in 2020 where sexual harassment is still a basic barrier to entry to the profession

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Dyson Heydon has 'emphatically' denied any allegation of predatory behaviour or breaches of the law. Photograph: Joel Carrett/AAP

**W**hen the Dyson Heydon story broke last Monday afternoon, the allegations started to fill the online chat in our workplace. For a number of women lawyers in the firm, there was a single theme running through our minds that made us all feel squeamish. Then upset. Then outright mad.

Heydon has “emphatically” denied any allegation of predatory behaviour or breaches of the law. For many of us, Heydon’s alleged sexual misconduct is not only a story about sexual harassment in the legal profession, nor about the absence of effective complaints mechanisms, nor about updating the high court’s HR policies.

It is also a story about systemic male power and privilege that still pervades all parts of women’s lives. It is about the boys’ club that still takes care of its members by keeping the destruction of their female peers’ careers “an open secret”, while otherwise appearing to

lead the institution charged with upholding the highest laws of the land.

In his piece published in the New York Times, Dear White America, George Yancy candidly admitted that he is a sexist, in order to illustrate how men, being the problem, need to be the solution. He explains:

*As a sexist, I have failed women. I have failed to speak out when I should have ... I have failed to challenge those poisonous assumptions that women are 'inferior' to men ... I have been complicit with, and have allowed myself to be seduced by, a country that makes billions of dollars from sexually objectifying women, from pornography, commercials, video games, to Hollywood movies. I am not innocent.*

When men don't speak out against sexual harassment in the legal profession, their silence suggests a cognitive dissonance. Despite having such historically and socially protected agency, the majority of men have rarely used their agency and power to improve equality. Men's commitment to equality often remains hypothetical only, for when it comes to taking any meaningful steps to advocate for their colleagues, they would rather just be "in" on the secret.

In this respect, there are two contributing factors to every buried sexual harassment story. One factor is the conscious decision of one individual to harm to another, which ends up in the realm of one-to-one complaints mechanisms. The other equally insidious factor is the broader failure to recognise the shared responsibility to uphold a bare minimum standard of conduct - which includes the responsibility and willpower of speaking up when someone breaches that standard of conduct.

None of the proposed responses to the Heydon controversy address this. In its first statement announcing the findings of the inquiry, the high court identified six recommendations that it intended to implement. Two of these were starkly oriented towards "victim responsibility"; the first being that the induction materials provided to associates should "make sure to cover material directly relevant to their specialised role"; and secondly, that "the court should make clear to associates that their duties do not extend to an obligation to attend social functions".

What about making it clear to judges not to inappropriately touch and harass their associates at social functions? To police the conduct of their colleagues at social functions?

The high court then announced that it had invited 100 former associates that worked at the high court during Heydon's tenure to share any relevant experiences.

What about inviting the judges and other senior members of the court during that time to explain what they knew, if anything, about the alleged "open secret" and what they did or did not do about it? Surely that is the next step in order to identify what systemic problems exist.

There have been calls for amendments to the Sex Discrimination Act 1984 (Cth) to better address victims of sexual harassment in the legal profession. Many have suggested that a

federal judicial commission should be established to deal with complaints against judicial officers.

That is all fine, but let's be clear: no amount of tinkering with complaints mechanisms and conducting reviews will really shift sexism and the exploitation of women until men, every single one of them, are asked to take responsibility for ending inequality.

Heaven knows it is not just a woman's job to speak out - we have enough to do.

Most women in the legal profession at other firms are still figuring out how to stake our claim to senior roles and close a salary gap that pays women 25.1% less than their male counterparts.

For those of us in relationships with men, we are still trying to figure out how to juggle children and work, given that the institution of marriage and broader social expectations pressure us to assume the majority of domestic and emotional labour, as well as our day jobs. For those of us experiencing intersecting forms of discrimination, the impacts are multidimensional and inseparable. For those of us who do not conform to binary gender norms, the data is not representative and the conversation has barely begun.

For all the work feminism has done, and despite the fact that many of us can enjoy successful careers in the law, here we are in 2020 reckoning with the fact that sexual harassment is still operating as a basic barrier to entry to the profession while being an "open secret".

To those men who are reading this and starting to stiffen their backs in self-defence, we accept that you may not be personally guilty of misconduct. But, if you thought that the "open secret" is par for the course, then you are part of the problem.

To all those men that are in on the "open secret", you have failed us. You failed to speak out when you should have. You failed to help salvage the career of the women who left their workplace. You failed to advocate for your colleagues, for your friends, and for a future free from sex discrimination. Your silence was complicity.

● Rhea Dhillon, Olivia McMillan and Sally Shera-Jones are lawyers at Phi Finney McDonald, a specialist class action law firm

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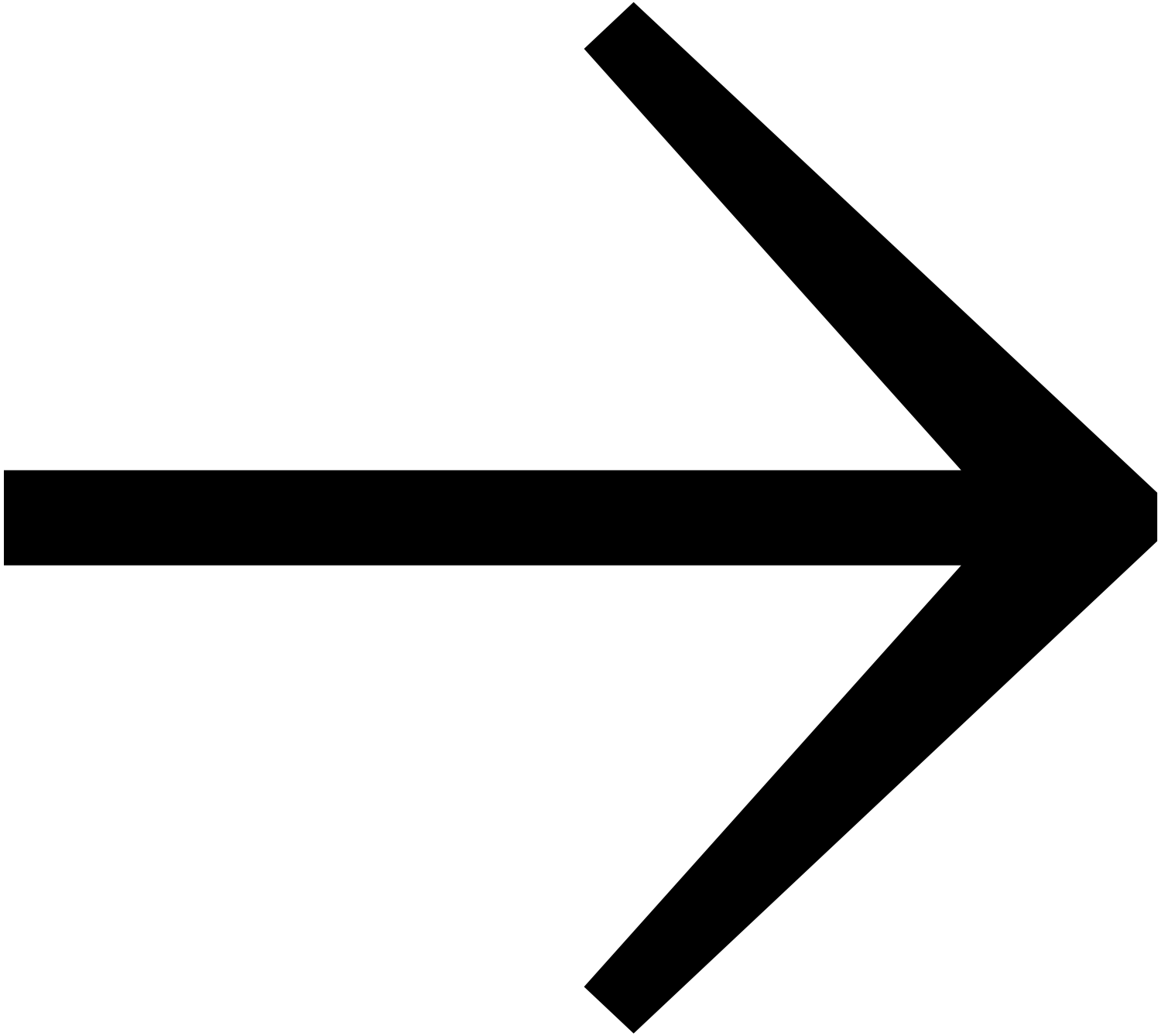
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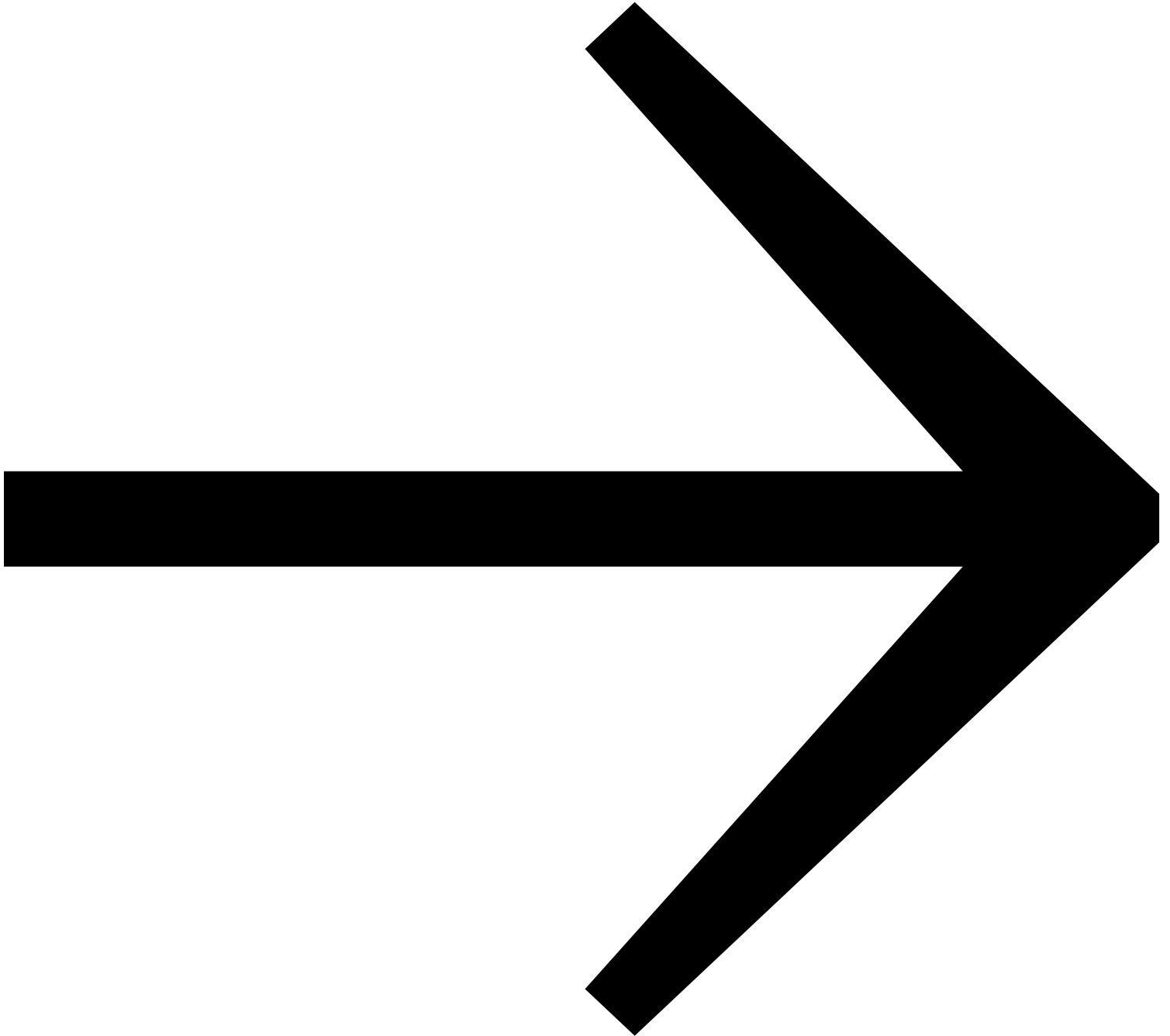
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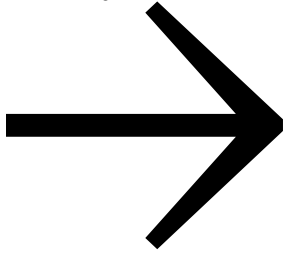


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