

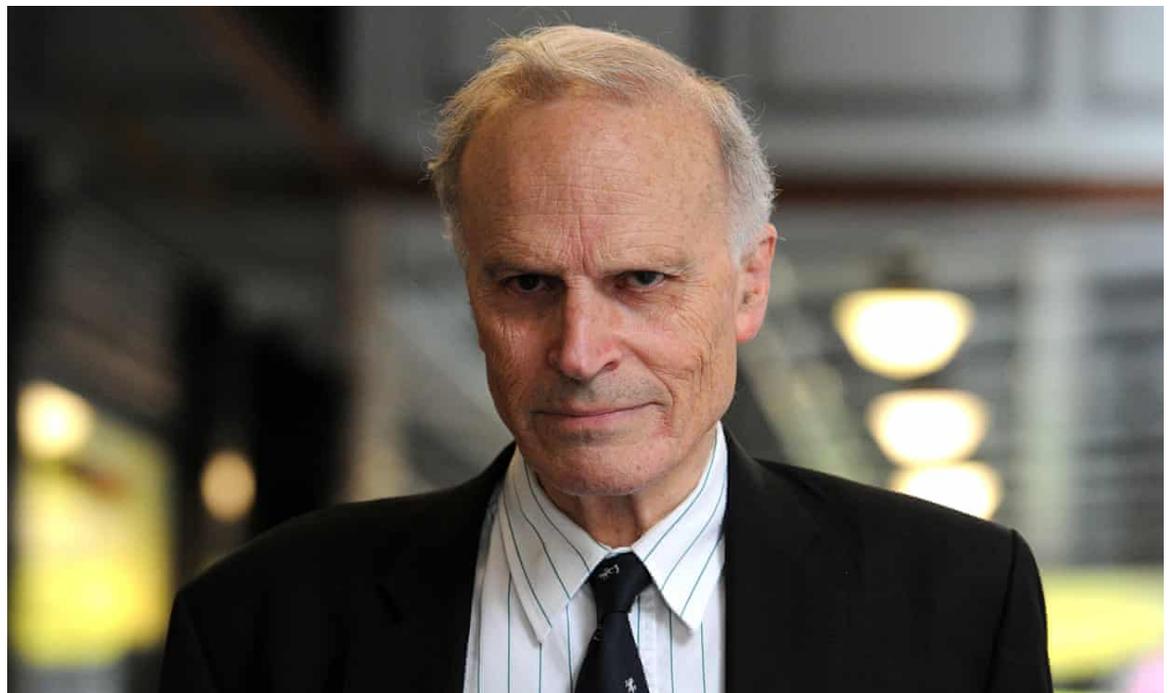
# The Guardian

## 'We're all gentlemen here': Australia's legal profession can pretend no more

The law is slowly confronting its toxic culture of sexual harassment. The Dyson Heydon allegations will only speed things up

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Former high court judge Dyson Heydon denies allegations of sexual harassment. Photograph: Joel Carrett/AAP

**T**he law is slow to change. For almost 30 years, the majority of law graduates in Australia have been women. And yet, when these brilliant young women enter the workplace, out-competing all their fellow graduates for a bottom-rung position at a top law firm or a prestigious posting as a judge's associate, their bosses are still, invariably men.

"We still do have mostly men in positions of power," says Kate Jenkins, the Australian sex discrimination commissioner. "Men who do identify with often the accused more than the victim, who haven't had the experience of being harassed but do look at these things and question - not only 'I can't believe he did it' but also 'I'd hate to think people thought I did it'."

The legal profession in Australia has long known it has a sexual harassment problem. A 2019 report by the International Bar Association found that 47% of women and 13% of men working in the law in Australia had experienced workplace sexual harassment, higher than a global average of 37% of women and 7% of men.

But the news that a former judge of the high court of Australia, Dyson Heydon, had been accused of sexual harassment by a number of women, and that an independent investigation commissioned by the high court had found Heydon had sexually harassed six former high court staff members, has turned the law's seedy underbelly into a problem the profession cannot ignore.

Heydon has denied the allegations.

Jenkins would not comment on the allegations against Heydon but says: "It is notable to me that the high court is for the first time gender balanced, that it has got a chief justice who is a woman."

The high court's chief justice, Susan Kiefel, began her legal career as a secretary at the age of 17 and completed her law degree at night while working as a legal clerk in Queensland in the 1970s. The toxic culture of the law would not be, for Kiefel, an abstract concept.

In April this year, a survey by the legal regulator in Victoria found that 61% of female lawyers had experienced sexual harassment in the workplace in the past five years - twice the incidence recorded in a national survey of all Australian workplaces.

Diana Bryant, former chief justice of the family court of Australia, said she was "shocked by these revelations, but not surprised".

"This kind of behaviour isn't new, it's been rife within the legal profession and it goes back to times when I was a young lawyer, I had experiences myself," Bryant told the ABC.

Bryant says she was groped by a high court judge at a legal dinner, in just the manner described in the allegations against Heydon, and as chief justice heard allegations of poor conduct by other judges.

"That happened to me in exactly the same way forty years ago at a dinner in which I was sitting next to a high court judge who I might say is no longer alive, who did exactly that to me, groped me under the table," she says.

The allegations, which Heydon has denied, describe a type of sleazy conduct that is so prevalent as to be part of the culture of the legal profession.

The reports, and the unqualified support offered to Heydon's accusers by Kiefel has emboldened other women to share their stories of harassment at the hands of other senior legal practitioners.

"It's not new and it's not necessarily news but it is gratifying to see it being given prominence," says Tania Wolff, the president-elect of the Law Society of Victoria. "In the law

now, this is our 'me too' moment.”

Jane Needham SC has been fielding calls from women all week. The former president of the New South Wales Bar Association has previously spoken about her experiences of sexual harassment and says that, despite the insistence of male lawyers that women leave the bar to have children, most leave because of the toxic workplace culture.

“There’s an unwillingness or an unfamiliarity with workplace sexual harassment being a significant issue and a significant barrier to women practising,” Needham says.

“Women, I think, have always gone ‘I just need to make it stop’. And unfortunately that usually means changing chambers, changing firms, giving back a brief, not working with that silk again.

“We’re the ones making accommodations and the feeling I have at the moment is everyone is completely jack of it.”

Needham says when she encouraged barristers chambers in NSW to introduce a complaints procedure for sexual harassment, because as sole practitioners barristers have no other recourse, she was phoned by one indignant head of chambers who said: “We don’t need that, we’re all gentlemen here.”



Barristers outside Brisbane's supreme court. Photograph: Glenn Hunt/AAP

“I thought: that’s exactly the problem,” Needham says.

Only 25% of the senior positions in law in Australia are held by women.

The Victorian Legal Services Board survey, in which 61% of women reported experiencing sexual harassment in the past five years, found that 90% of harassers were men, and 72% of them were in a more senior role. Two-thirds of harassers were aged over 40, and in 48% of cases the harasser was known to have been involved in similar incidents.

Jenkins says the gender disparity at the top, the hierarchical structure, and the insecurity that comes from fixed-term contracts and highly competitive job placements are systemic factors contributing to high rates of sexual harassment within the law.

Junior employees, whatever their gender, are less likely to feel comfortable raising a complaint of sexual harassment with a male manager than they are a female manager.

The cultural problem in the legal profession is made worse by the “overly legalistic” way it deals with complaints of sexual harassment, which does not recognise anonymous complaints and often results in a settlement and a non-disclosure agreement, Jenkins says.

That is partly the fault of the laws policing sexual harassment, which are triggered by a complaint being made and do not impose a direct positive duty on employers.

She says if law firms treated sexual harassment as any other workplace safety issue, they would learn from past incidents and put in place a framework to proactively change the culture.

“I do have a view that there’s a place for [non-disclosure agreements] for people to be able to move on, but organisations never talk again about what happened,” Jenkins says. “And if you never talk again about what happened, then at the next Christmas party the exact same thing happens.”

Serial sexual harassers protected by non-disclosure agreements are “rolling bad apples” moving from firm to firm, Jenkins says. “I’ve often said I think there’s more incentives to stop complaints than there is to stop sexual harassment.”

A report by Jenkins’s office, released this year, made 55 recommendations to address rates of sexual harassment at work, including a new regulatory model which dealt with sexual harassment as a workplace safety issue and proposed the establishment of a Workplace Sexual Harassment Council.

It also recommended reforms to the Sex Discrimination Act to introduce a “positive duty” on employers to take “reasonable and proportionate measures to eliminate sex discrimination, sexual harassment and victimisation”.

If a perpetrator is considered an asset to a law firm, Wolff says, “there is almost a scaffolding around them”. People at the firm who know of their past misconduct might ensure they are not left alone at work drinks, or call the office manager back to shut down any unauthorised parties.

The victims of rolling bad apples, particularly if they are recent graduates, do not enjoy the same immunity. A sexual harassment complaint that would inconvenience the partner of a law firm could halt their fledgling career.

One young lawyer says she refused to give her name as a witness to sexual harassment by a partner in a law firm she worked at because of the potential impact on her own career. She and other young lawyers did anonymously verify the claims to the Victorian Legal Services Board, and says she was disappointed that, because none of them felt safe to put their name to the allegations, the repercussions against the perpetrator were minimal.

“Your name does get out there, and it’s a small industry,” she says. “If I am known for this, I

will never get employed again.”

She notes that none of the other partners, who were also aware of the conduct, came forward.

Needham says she knows of women who have had to leave the industry after reporting sexual harassment, while their harasser enjoyed continued success. Wendy Harris QC, the president of the Victorian bar, says women have historically feared they would be “squashed” if they spoke out.

The law is slowly realising the impact of its toxic workplace culture, Wolff says. The Heydon allegations - and the shocked realisation from some that this could be what the senior jurist is remembered for - could speed things up.

“At the end of the day, as lawyers we have a trusted and respected role in the community,” Wolff says. “It’s not just how astute we are, how sharp our legal mind is, it’s what is our character, what is our integrity, what is our contribution to the community in a wider sense. We are not doctors who take an oath, but we ought to do no harm.”

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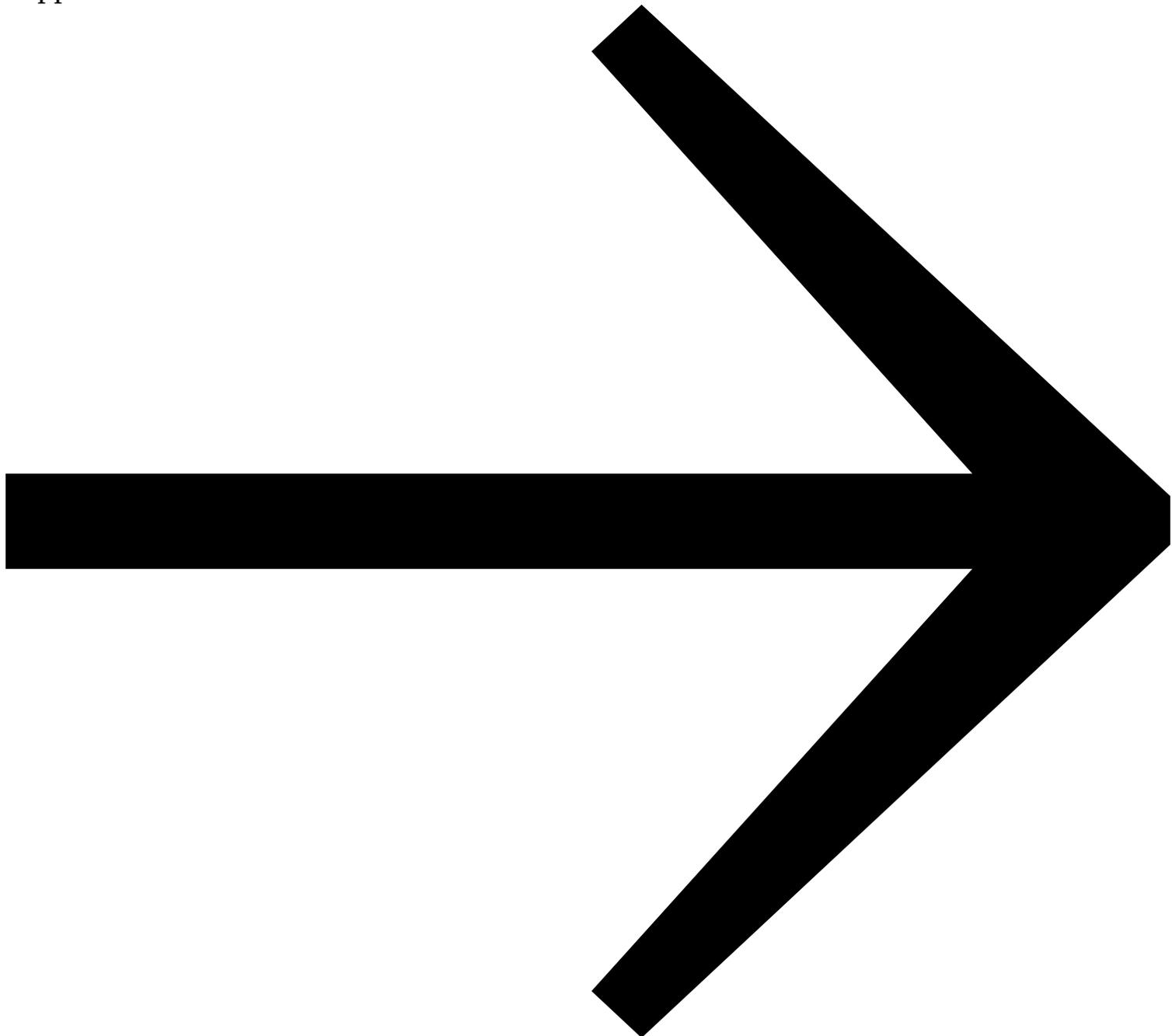
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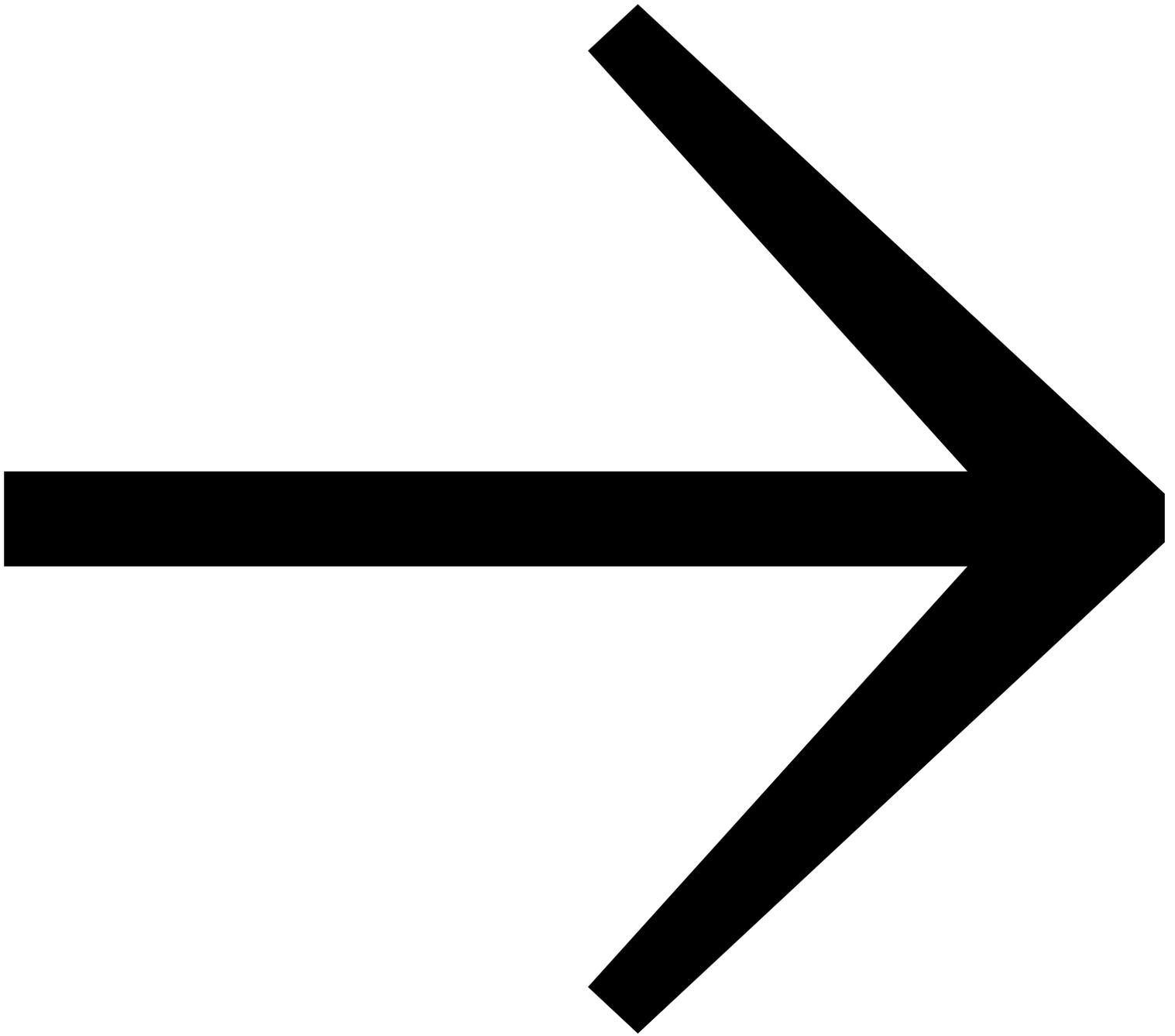
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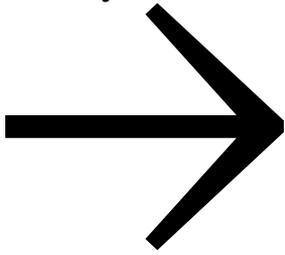


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