21 February 2019

Office for Women
Department of the Prime Minister and Cabinet
PO Box 6500
CANBERRA ACT 2600

By email: womensbranchinternational@pmc.gov.au

Dear Sir/Madam

Australia’s national review of the Beijing Declaration and Platform for Action

The Law Council welcomes the opportunity to submit to Australia’s national review of the Beijing Declaration and Platform for Action (Beijing Declaration).

The Law Council is grateful for the assistance of its Family Law Section, the Law Society of New South Wales and the Law Society of South Australia in the preparation of this submission.

The Law Council takes this opportunity to outline some key priorities for government action, to assist in identifying areas of improvement, and to enable the full implementation of the Beijing Declaration. Where relevant, the Law Council draws upon its Justice Project Final Report findings. The Justice Project was a comprehensive national review into the state of access to justice in Australia focusing on groups experiencing significant disadvantage, released in August 2018. Relevant chapters include those on People experiencing Family Violence, Aboriginal and Torres Strait Islander Peoples and People experiencing Economic Disadvantage.

Please see attached a three page outline of the Law Council’s key concerns regarding Australia’s implementation of the Beijing Declaration.

Please contact Ms Leonie Campbell, Deputy Director of Policy, on (02) 6246 3711 or at leonie.campbell@lawcouncil.asn.au or Ms Sarah Sacher, Policy Lawyer, on (02) 6246 3724 or at sarah.sacher@lawcouncil.asn.au in the first instance, if you require further information or clarification. I note that the Law Council would also be happy to provide the Office for Women a separate briefing about the Justice Project and its findings, should this be of assistance.

Yours sincerely

Arthur Moses SC
President

Office of the President
Poverty Eradication, Social Protection and Social Services

Access to Legal Assistance

The Beijing Declaration requires State action to ‘ensure access to free or low-cost legal services, including legal literacy, especially designed to reach women living in poverty’.

Unfortunately, legal assistance funding in Australia is inadequate, and as such, Australia does not meet this benchmark.

In 2014 the Productivity Commission recommended that an additional $200 million per annum was needed to meet pressing gaps in civil legal assistance, to meet the needs of disadvantaged Australians. It recognised that the existing shortfalls in civil assistance meant that just eight per cent of Australians qualified for a grant of legal aid under restrictive means tests, while up to 14 per cent of Australians were living beneath the poverty line.

Community Legal Centres (CLCs) are also under severe strain. CLCs reported turning away 169,513 people in 2015-16. An ACOSS Survey of CLCs found that 72 per cent of CLCs reported being unable to meet demand.

The gap in civil legal assistance funding is felt acutely by women, who are more likely to experience economic disadvantage, with lone parents (who are primarily women) facing the highest poverty rates and certain groups, such as older, rural, Indigenous, migrant or women with disability more at risk. Women have a range of legal needs including those related to debt, fines, housing, child protection and family violence. Notably, the limited legal aid grants funding, which enables ongoing legal representation, is necessarily weighted towards criminal matters. This has resulted in more legal aid grants approvals provided to men than women overall in 2016-17 (47,745 legal aid grant applications were approved for women, versus 95,492 approved for men). This reinforces the necessity of increasing legal aid grant funding for civil and family law matters. At the same time, legal aid funding for criminal matters should also be increased, as this remains an urgent area of unmet need. The pressures in this area include alarming recent increases in the proportion of women who are imprisoned in Australia. Similarly, Aboriginal and Torres Strait Islander Legal Services (ATSILS) have stated that the amount of funding provided to ATSILS has declined since 2013 despite the cost of providing services having increased, and noting that the population of Aboriginal and Torres Strait Islander people has grown significantly.

In the family violence context, the recent policy focus aimed at eliminating family violence and better protecting children, while commendable, has not extended to sufficient investment in courts and legal assistance services to manage the downstream impact, placing critical pressure on justice services. For example, in Victoria, this has involved an increase of 490 per cent in family violence cases amongst CLCs over the decade to 2016. There have also been high rates of self-representation, which is often highly distressing and can lead to questionable outcomes for vulnerable litigants, many of whom are women.

Indigenous women are among the most legally disadvantaged groups in the country. The Justice Project highlighted the crucial role of specialised Aboriginal legal services, such as Family Violence Prevention Legal Services (FVPLS), which provide holistic, culturally safe services for Aboriginal women. However, some FVPLS’s are so under-resourced that they must turn away 30-40 per cent of of women seeking assistance. Noting that the FVPLS funding model is currently under review, the Law Council urges an approach which recognises the importance of Aboriginal-led services through significantly increased funding over the long-term.

Only a small number of asylum seekers in Australia have access to government-funded legal assistance, noting the 2014 withdrawal of most Commonwealth funding for this purpose, and most rely on pro-bono services. Legal assistance is particularly important for female asylum seekers, as they often experience heightened vulnerability, and uncertainty around visa status increases the risk of family violence.

The consequences of a lack of legal assistance funding are severe and manifold. For example: a lack of legal representation may result in the continuation or escalation of family violence; failure to provide legal assistance in housing matters is a major contributing factor to the removal of Indigenous children; a lack of services in remote areas means women may be excluded from court processes that directly affect them; and a lack of assistance for fines and debt can escalate to imprisonment.
The Law Council has estimated that an additional $390 million per annum in legal assistance funding is needed to meet civil and criminal needs, which would include returning the Commonwealth’s share of relevant funding to 50 per cent for legal aid commissions with the states and territories.

**The Human Rights of Women**

**Imprisonment rates of Aboriginal and Torres Strait Islander women**

In 2017 the Australian Human Rights Commission found that “[Indigenous] women are the most significantly over-represented population in Australian prisons and their rate of incarceration is increasing more rapidly than any other group.” The incarceration rate for Indigenous women is up 148 per cent since 1991, and Indigenous women are incarcerated at more than 20 times the rate of non-Indigenous women.

This reality is a national crisis that indicates a failure to address the Beijing Declaration’s requirement to ‘review and amend criminal laws and procedures, as necessary, to eliminate any discrimination against women.’

Imprisonment of Aboriginal women perpetuates cycles of disadvantage and intergenerational trauma. Many Aboriginal women in the prison system live with disability and mental health conditions. For example, a Victorian study showed that 92 per cent of Koori women in prison had a mental health condition and nearly half were suffering from post-traumatic stress disorder. Further, up to 80 per cent of Aboriginal women in prison are mothers. The imprisonment of a parent can be detrimental to the development of a child and also increases the likelihood that they will themselves have contact with the criminal justice system. The Justice Project found that underlying drivers of imprisonment such as family violence, disability, homelessness and poverty are currently poorly addressed due to limited investment by government in social support services and early intervention strategies, or in the Aboriginal controlled organisations that are best placed to deliver them.

The Justice Project also identified specific laws, policies and practices that contribute to over-incarceration of Indigenous women, including:

- bail laws have become more restrictive in most states and territories, leading to a nationwide increase in the amount of people held on remand. Aboriginal women are ‘a fast-growing group’ within the remand population. Many spend significant periods on remand for relatively minor offences;
- Aboriginal women may be subject to problematic police practices in response to family violence, including police acting on outstanding warrants when responding to incidents of violence, or inappropriately issuing cross orders against both parties. The Justice Project noted the need to review police protocols and guidelines to prioritise the appropriate recognition and provision of support to Aboriginal women and children; and
- imprisonment for fine default disproportionately impacts Aboriginal women in Western Australia.

Criminal justice policies and procedures must recognise the distinct criminogenic profile of women offenders. Priorities in this area include the adoption of diversionary responses; fine, bail and sentencing reform; investment in critical support services including interpreter services and mental health services; place-based prevention and early intervention strategies such as justice reinvestment; developing and resourcing specialist courts; and culturally safe, trauma informed programs for women in prison and exiting prison. Further, the Law Council strongly recommends the adoption of federal justice targets as part of the Closing the Gap framework.

**Gender based discrimination and sexual harassment**

Through the Beijing Declaration, governments committed to ‘adopt and implement laws against discrimination based on sex in the labour market’ and ‘enact and enforce laws… regarding discriminatory working conditions and sexual harassment.’ Australia addresses sex discrimination and sexual harassment through the *Sex Discrimination Act 1984* (Cth). Each state and territory also has its own legislation. However, significant gaps in coverage remain, along with a set of exclusions that hamper their efficacy. The Law Council is currently finalising its submission to the Sex Discrimination Commissioner regarding her important national inquiry into sexual harassment in Australian workplace. It will be essential for all levels of government to carefully consider, and respond to, the Commissioner’s findings and recommendations when released.
Gender pay gap
The Law Council supports laws and policies aimed at addressing the gender pay-gap. It notes that while the gender pay gap in Australia has dropped from 24.7 per cent in 2013-2014, progress remains slow: at the present rate of change, Australia will not reach gender pay equity until the year 2060.

Freedom from violence, stigma and stereotypes
Family violence is endemic and a major health and welfare issue in Australian society. On average, one woman is killed by her current or former partner each week in Australia. Women experiencing intersectional disadvantage are particularly at risk. In 2014-15, Aboriginal and Torres Strait Islander women were 32 times more likely to be hospitalised due to family violence than non-Indigenous women.

As noted above, the recent policy focus by governments on addressing family violence has not generally included a sufficient investment in courts and legal services to manage the downstream impact. In addition to legal assistance shortfalls, the funding of both the family courts and state/territory courts has failed to keep pace with the growth in the number of people who need access to it and the breadth and complexity of the issues, resulting in long and unsustainable court delays. For example, due to delays, many face a wait time of about 17 months in the family court system. These realities have serious consequences for victims, threatening their physical safety and emotional wellbeing, as well as the safety of their children. The Justice Project reinforced the need for increased funding of the Family Court of Australia, and the Federal Circuit Court, as well as relevant state and territory courts, to better respond to the demand.

A further pressing concern is the extent to which there remains an insufficient understanding of family violence among some personnel within the justice system. An informed view of the nature of family violence is fundamental to ensuring the safety of victims. The Justice Project therefore emphasised the importance of ongoing family violence education for relevant judicial officers and legal practitioners while acknowledging existing efforts in this area. It is similarly essential for those working with Aboriginal people within the justice, law enforcement and child protection systems to have sufficient cultural competence training, to eliminate instances of inappropriate and harmful responses to family violence.

Critical support services are a key element of an integrated response to family violence. In particular, Justice Project contributors overwhelmingly stressed the multiple ways in which lack of housing and crisis accommodation contributes to homelessness and prevents victims from escaping their situation. Family violence is a major cause of homelessness, and the biggest reason for people seeking homelessness assistance, as recognised by the Australian Government. For Aboriginal women, lack of access to housing in the family violence context is also a major factor contributing to child protection intervention and child removal. Notably, Aboriginal women access crisis accommodation at 15 times the rate of non-Indigenous women. As such, the Justice Project recommended that governments prioritise homelessness prevention, through investment in safe, secure housing, including inclusive crisis accommodation.

Tailored, evidence-based rehabilitative behaviour change programs for perpetrators have the potential to break the cycle of violence in families. Other evidence-based early intervention and prevention initiatives, such as holistic family support programs and educational campaigns are equally important. The Justice Project also reinforced the need to expand these initiatives, without diverting from frontline service funds.

For Aboriginal communities, a number of community-led approaches, including justice reinvestment models, were surveyed by the Justice Project as key to addressing family violence. The Justice Project also recommended national, specific Closing the Gap targets to reduce family violence and child removal.

Forced sterilisation of women and girls with a disability
The Law Society of New South Wales has noted that the Beijing Declaration affirms that forced sterilisation of women and girls is an act of violence which nullifies the enjoyment of human rights. Nonetheless, forced sterilisation of people with a disability, particularly women and girls, is an ongoing practice in Australia: in the 24 months to 30 June 2018, there were 13 adult sterilisation approvals across the country. In July 2018, the UN Committee on the Elimination of All Forms of Discrimination against Women, in its observations on Australia’s progress in eliminating discrimination against women, recommended that Australia ‘abolish… the sterilization of women with disabilities, and enforce strict guidelines on the sexual and reproductive health rights of women and girls with disabilities who cannot consent’.
Aboriginal and Torres Strait Islander Women’s Growing Overrepresentati


3 Ibid 1016.

4 Ibid 1022.


11 Law Council of Australia, Justice Project: Aboriginal and Torres Strait Islander People (2018) 37.


21 See eg Law Council of Australia, Justice Project: Aboriginal and Torres Strait Islander Peoples (2018) 42.

22 Ibid 56.


25 Human Rights Law Centre and Change the Record Coalition, *Over-represented and Overlooked, the crisis of Aboriginal and Torres Strait Islander women’s growing over-incarceration* (2017) 10.


29 Human Rights Law Centre and Change the Record Coalition, *Over-represented and Overlooked Report*, 18

30 The Australian Law Reform Commission, Pathways to Justice – An inquiry into the incarceration rate of Aboriginal and Torres Strait Islander Peoples: Final Report (2017), 11.100.


xxxiv See also, Australian Law Reform Commission, *Pathways to Justice*, recommendation 14-1.

xxxv Neil Morgan, ‘Fine defaulters in the Western Australian prison system’ (Office of the Inspector of Custodial Services, Government of Western Australia, 3 April 2016) v.


xiv Robyn Powell, ‘Family Court underfunded, letting people down, chief justice says’ *ABC News* (online) 1 May 2017


xvi See Law Council of Australia, Justice Project: *Aboriginal and Torres Strait Islander People* (2018), 23.

xvii Human Rights Law Centre and Change the Record Coalition, *Over-represented and Overlooked*, 18.

