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Sentencing Advisory Council  
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24 October 2011

By email: [contact@sentencingcouncil.vic.gov.au](mailto:contact@sentencingcouncil.vic.gov.au)

Dear Professor Freiberg

**Re: Baseline Sentences – Issues Paper**

Youthlaw welcomes the opportunity to respond to the Baseline Sentences Issues Paper. We are particularly interested in the potential impact of baseline sentencing on our client group, that is, young people up to the age of 25 years. Youthlaw, Victoria's state-wide community legal centre for young people, works to achieve systemic responses to the legal issues facing young people through casework, policy development, advocacy and preventative education programs, within a human rights and social justice framework.

Youthlaw is relieved baseline sentences will not apply to matters in the Children's Court where there is no requirement to set a non parole period nor in the Magistrates' Court. However we are still concerned about the implications of baseline sentencing for young adults between the ages of 18 and under 25 years of age.

We refer to the attendance by Youthlaw Principal Lawyer Anna Radonic, on Thursday 13<sup>th</sup> October 2011, to the SAC consultation regarding the Issues Paper. We note that stakeholders present voiced reservations and issues about, and were mostly opposed to, the introduction of baseline sentencing. Accordingly we are not commenting on the various proposals regarding the introduction of baseline sentencing.

We are concerned that with this proposal, Government is responding to community perception, driven by tabloid media, that courts do not impose "tough enough" sentences. We believe that the way to address this perception is through targeted community education campaigns about the role of courts and the sentencing system, rather than through law reform that restricts the discretion of the courts or removes sentencing options that provide important alternatives to imprisonment.

We are very concerned that baseline sentencing will be prescriptive and amounts to another attack on the separation of powers and judicial discretion in sentencing.

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Judicial officers are best placed to impose an appropriate sentence given their impartiality and the fact that they are publicly accountable for their decision.

Judicial discretion is an integral part of the criminal justice system and allows for judicial officers to consider the circumstances of that individual and the various interests of relevant stakeholders in a particular matter and sentence accordingly. A key principle in the sentencing of offenders is that sentences should be proportionate to the gravity of the offence. In sentencing judicial officers consider relevant factors and circumstances such as: the nature and gravity of the offence, the level of the offender's involvement, the impact of the offence on victims, the character, economic and social background of the offender, the offender's age, the likelihood of re-offending and any other relevant circumstances, to allow for the most appropriate penalty to be imposed. The weight to be applied to these various interests will vary from case to case and cannot be calculated as a fixed formula.

Government needs to reconsider its proposal to introduce baseline sentences in light of the recent High Court decision *Muldrock v The Queen*<sup>1</sup>. According to this decision, handed down at the beginning of October 2011, the appellant's mild intellectual disability was significant in the sentencing process, and general deterrence should be given little weight. The High Court said that a baseline sentence or in NSW's case, a "standard non parole period" creates a second legislative guidepost, along with the maximum penalty, that ought to be taken into account along with the full range of factors in determining the appropriate sentence. However in sentencing for an offence to which standard non-parole periods applied a court is not required or permitted to engage in a two-stage approach and that the standard non-parole period should not be determinative in sentencing.

Thank you again for the opportunity to respond to the Issues Paper. We welcome further opportunities for involvement in this process.

If you have any queries, please do not hesitate to contact Anna Radonic, Principal Solicitor on 9611 2424 or Tiffany Overall, Co-director on 9611 2422.

Yours faithfully

Tiffany Overall  
Co- Director

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<sup>1</sup> (2011) HCA 39 <http://www.hcourt.gov.au/assets/publications/judgment-summaries/2011/hca39-2011-10-05.pdf>