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27th October 2011

Sentencing Advisory Council
4/436 Lonsdale St
Melbourne VIC 3000

Dear Sentencing Advisory Council,

RE: Baseline Sentencing Reference

The Victorian Aboriginal Legal Service Co-operative Limited (VALS) writes to you concerning the proposed introduction of the baseline sentencing scheme. We wish to note that our ability to assess the baseline sentencing proposal is significantly hindered through the lack of detail provided. There are, however, some of issues of concern and queries that we would like to raise with the Council in response to the terms of reference at this time.

Firstly, VALS is concerned about how the baselines will be determined and what they are intended to represent. For instance, we question whether the scheme will reflect current jurisprudence and incorporate the expertise of the judiciary in setting baseline/median sentences. Secondly, VALS recommends against including additional categories or types of offences than that already committed to by the government. Furthermore, we recommend that a number of offences be removed. For instance, we draw your attention to the Queensland Sentencing Advisory Council Report which highlights that baseline sentencing for offences such as manslaughter and murder may be inadvisable because of the great variability in circumstances involving these crimes which makes it difficult to define an appropriate standard.[1]

VALS has numerous questions relating to the issues of mitigating and subjective factors. It would be useful for the Council to provide guidance on what subjective or mitigating factors should be used in the consideration of establishing the non-parole periods; whether these factors will be set within the sentencing guidelines or be left to judicial discretion; and in the case of the

[1] http://www.sentencingcouncil.qld.gov.au/__data/assets/pdf_file/0004/93829/Ch-6-CONSIDERING-SPECIFIC-OFFENCES-FOR-A.pdf, p 107.

former, how these factors be determined. We strongly argue that if a baseline sentence scheme is introduced, it is essential that different levels of baseline sentences are available to the judiciary for each type of offence.

Lastly, VALS is concerned about what effect this proposed scheme will have on the Koori Court system. We urge the Council to consider what this scheme would mean for the Koori Court system and how it would likely be applied.

Your consideration of our comments and queries is appreciated. We look forward to your response regarding these matters.