Baseline Sentences

To: Sentencing Advisory Council

CC:

Attorney General Robert Clark
Shadow Attorney General Martin Pakula
Sue Pennicuik MLC

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Queries regarding this submission should be directed to:

Contact person *Brigid Foster*
Ph *(03) 9607 9374*
Email *bfoster@liv.asn.au*

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Introduction

The Law Institute of Victoria (LIV) welcomes the opportunity to provide the Sentencing Advisory Council (the Council) with a submission on the government's proposal to introduce baseline sentences for serious and significant offences.

The government is committed to introducing baseline sentences and to that end, has provided the Council with a set of tightly defined Terms of Reference. The LIV is extremely disappointed that those Terms of Reference do not ask for an assessment of the merits of the proposal.

Similar schemes already exist in New South Wales, the Northern Territory and South Australia. The NSW scheme, in particular, has been the subject of significant criticism; that standard non-parole periods (SNPPs, of which baseline sentences are a form) unduly limit judicial discretion, over-complicate the sentencing process, and fail to fulfil their stated purposes.

The LIV is therefore dismayed that the Victorian Government has requested the Council's advice on the best way to implement such a scheme, rather than an assessment of the appropriateness of the introduction of such a scheme in Victoria.

After careful consideration of the Terms of Reference and the questions in the Council's Issues Paper, the LIV does not feel it can assist by answering the questions contained therein. In our view, neither the Objective Offence Seriousness Model nor the Combined Model serves the interests of justice.

Instead, this submission will outline the reasons for our opposition to baseline sentences, then present the basic principles upon which any just baseline sentence scheme must, in our submission, be based.

This submission uses the terms "baseline sentence" and "standard non-parole period" or SNPP, interchangeably.

The purpose of baseline sentences

On 23 November 2010, the Victorian Liberal Nationals Coalition announced that they would set "standard minimum sentences for serious crimes" in the event that they were elected:

> "The Coalition will legislate to set a new "baseline" minimum sentence for each offence, which will be the minimum non-parole period that Parliament expects the courts to *apply to the typical, or median*, case involving that offence.
>
> The courts will be required to make the baseline sentence the *starting point* for every minimum non-parole period they set."[1]

The proposal presupposes that current sentences are out of step with community expectations, that current sentencing laws fail to protect the community and deter would-be offenders, and that sentencing practices have led to a general lack of confidence by Victorians in the criminal justice system.[2]

While it is true that in abstract terms, 66.3% of Victorians surveyed indicated that they felt sentences were too lenient[3], a well-informed public in fact believes that sentences imposed in the particular case are appropriate[4]. Furthermore, there is striking evidence to show that making sentencing harsher is unlikely to change public opinion about sentencing[5].

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[1] Victorian Liberal Nationals Coalition Media Release *Coalition to set minimum sentence standards for serious crimes* 23 November 2010 http://bit.ly/pqxhtR

[2] Victorian Liberal Nationals Coalition Media Release *Coalition to set minimum sentence standards for serious crimes* 23 November 2010 http://bit.ly/pqxhtR

[3] *Perceptions of Justice Survey 2010 Results for 2009,* Department of Justice, p 9: http://bit.ly/ngdKEN

[4] K Warner, J Davis, M Walter, R Bradfield & R Vermey *Public Judgement on Sentencing: Final results of the Tasmanian Jury Study* Trends & Issues in Crime and Criminal Justice, Australian Institute of Criminology, Feb 2011, p3

[5] Roberts, J *Public opinion and sentencing policy* in Rex & Tonry *Reform and Punishment: The future of sentencing* (2002), p 26

Fundamentally, it is vital to note that studies have called into question the deterrent value of imprisonment; while the threat of imprisonment may generate a small general deterrent effect, increases in the severity of sentence or length of prison sentences do not produce a corresponding increase in the general deterrent effect.[6]

In fact, imprisonment has been shown to have a criminogenic effect on reoffending – increasing rates of recidivism.[7]

The LIV is therefore wholly opposed to a scheme that blatantly fails to fulfil its aims, even before its introduction. Further, the LIV questions the necessity of introducing such a punitive and confusing sentencing scheme, when the 2010/11 official crime statistics show a 3.9% decrease in the crime rate per 100,000 population compared with 2009/10 – the lowest number of offences and the lowest rate of offences recorded since 1993.[8]

The former Director of Public Prosecutions, Jeremy Rapke QC, made a similar observation in his Annual Report:

> "I am not persuaded that crime in this State has reached such proportions as to require significant increases in available penalties or the introduction of mandatory sentencing or other like draconian measures."[9]

The Queensland Sentencing Advisory Council came to a similar conclusion, while providing advice to the Queensland government on the introduction of a similar scheme to Queensland:

> "The absence of strong evidence that minimum standard non-parole period schemes are effective, and achieve better sentencing outcomes than existing approaches, has led the Council to question the merits of introducing a minimum standard non-parole period scheme in this State".[10]

Baseline sentences have other stated objectives as well.

Standard non-parole periods were introduced to NSW with the aim of "promoting consistency and transparency of sentencing and also promoting public understanding of the sentencing process"[11], along with ensuring that "proper regard is given to the community expectation that punishment is imposed that is commensurate with the gravity of the crime"[12]. However, an evaluation of the SNPP scheme in NSW conducted by the Judicial Commission of NSW indicated that while the scheme had resulted in greater uniformity and consistency in sentencing outcomes,

> "it is not possible to conclude that the statutory scheme has only resulted in a benign form of consistency or uniformity whereby like cases are being treated alike and dissimilar cases differently. To put it another way, it is not possible to tell whether dissimilar cases are now being treated uniformly in order to comply with the statutory scheme"[13]

In other words, there is no way of ascertaining whether the SNPP scheme in NSW has resulted in the imposition of unjust sentences.

Further, there is no evidence that the SNPP scheme has promoted transparency in sentencing. On the contrary, the scheme has come under considerable criticism for being overly complex and raising the expectations of victims of crime without delivering additional transparency.[14]

The Terms of Reference envisage a scheme not dissimilar to the NSW scheme, except that Victoria's baseline is intended to apply as a starting point to *all* baseline offences rather that to just those offences deemed to be in the "mid-range". Thus, after the introduction of baseline sentences, judicial officers in Victoria will be required to undertake strenuous mental gymnastics in analysing where the "objective offence seriousness" or ""subjective and objective offence

[6] Richie, D *Does Imprisonment Deter? A Review of the Evidence,* Sentencing Advisory Council (Victoria), April 2011, p 18
[7] Ibid, p 19
[8] Victoria Police *Crime Statistics 2010/2011* 30 August 2011, p 4
[9] The 2010/11 Annual Report of the Director of Public Prosecutions pursuant to section 12 of the Public Prosecutions Act 1994, p 4
[10] Sentencing Advisory Council (QLD) *Minimum standard non-parole periods – final report* September 2011, p x
[11] NSW, Legislative Assembly, *Debates*, 23 October 2001, p 5813
[12] Ibid, p 5815
[13] Judicial Commission of NSW *The impact of the standard non-parole period sentencing scheme on sentencing patterns in New South Wales* May 2010, p 60, 61
[14] Sentencing Advisory Council (Queensland) *Minimum standard non-parole periods* Final Report, September 2011, p 9

seriousness" of the current offence lies in relation to the hypothetical "mid", "low" or "high range" offence.

Not surprisingly, the NSW experience has shown this process to be an extremely complicated and artificial exercise.

Other criticisms aimed at the NSW scheme are relevant to the Victorian proposal:

- That the scheme in NSW has resulted in overcharging practices by police, to encourage successful plea negotiations later in the process;
- That the scheme has resulted in greater difficulty in securing bail for those defendants charged with SNPP offences;
- That since the introduction of the scheme, there has been a corresponding increase in offenders pleading guilty (which is a grounds for departure from the application of the scheme in NSW), with concerns that offenders, particularly vulnerable offenders, are being pressured to plead guilty;
- That the scheme has created additional work for the Office of the Director of Public Prosecutions in prosecuting matters and preparing sentencing submissions;
- That the scheme has led to an increase in matters being dealt with in the superior courts, with corresponding higher costs;
- That the scheme has resulted in greater complexity and additional time required for the hearing of sentences, longer defence and prosecution submissions, and longer time required for judges to draft their sentencing remarks, thus contributing to court backlogs;
- That the complexity of the scheme has led to an increase in appeals due to errors in applying the scheme;
- That the scheme has led to longer sentences (which the LIV submits is the primary purpose of the scheme) and this has resulted in greater prison and corrections costs.[15]

The LIV is particularly concerned that the scheme in NSW has led to an increase in offenders pleading guilty, especially as this may be viewed by some as a positive effect.

A person charged with a criminal offence has a fundamental right to plead not guilty and defend him or herself. While a plea of guilty saves the community the expense of a contested trial, and spares any victim the stress of giving evidence, the utilitarian value of a plea should never outweigh those fundamental rights.

The LIV is also extremely concerned that baseline sentences will place more power in the hands of police, in relation to their charging practices. The experience in NSW has shown that police have used the threat of a charge to a baseline offence as tool for negotiating a plea to a lesser offence, despite the strength of evidence, or the possibility of a defence. These practices are especially concerning in relation to vulnerable defendants – those with a mental impairment, intellectual disability, or those who are young.

The LIV submits that the introduction of baseline sentences in Victoria will require a huge influx of resources on behalf of the government, across all aspects of the criminal justice system. Baseline sentences will contribute to court delay, as defendants choose to "roll the dice" and take matters to trial, rather than plead guilty to baseline offences.

This will put significant strain on the courts, the OPP and the legal aid dollar, and will postpone the resolution of matters for victims of crime.

Further, the experience in NSW has shown that the SNPP scheme there has led to increases in the rates of imprisonment for some offences, and longer terms of sentence,[16] putting a strain on the prisons.

The LIV is wholly opposed to the introduction of such a scheme in Victoria, especially where the scheme in New South Wales has been so fraught with issues and criticisms.

[15] Sentencing Advisory Council (Queensland) *Minimum standard non-parole periods* Final Report, September 2011, p 9
[16] Judicial Commission of NSW *The impact of the standard non-parole period sentencing scheme on sentencing patterns in New South Wales* May 2010, p 60

Furthermore, the Victorian proposal represents a significant departure from current sentencing practices, which, in our opinion, can only lead to confusion, greater complexity in the sentencing process, and a corresponding lack of transparency in sentencing reasons.

Instinctive synthesis

First, the introduction of baseline sentences in the form proposed by the government represents a departure from the instinctive synthesis approach to sentencing, by introducing a two-stage, or two-tier approach.

The LIV is wholly supportive of the instinctive synthesis approach, which has at its heart the theory and reality that each criminal case is unique[17]. Further, the LIV is absolutely opposed to a two-stage approach, which ultimately attempts to apportion numerical values onto infinite sociological variables, and then force those values into an inflexible mathematical equation.

The High Court is particularly critical of the two-stage approach to sentencing, for the reasons stated in *Wong v The Queen*[18]:

> "That kind of approach, usually referred to as a "two-stage approach" to sentencing, not only is apt to *give rise to error*, it is an approach that *departs from principle*. It should not be adopted.
>
> It departs from principle because it does not take account of the fact *that there are many conflicting and contradictory elements which bear upon sentencing an offender.* Attributing a particular weight to some factors, while leaving the significance of all other factors substantially unaltered, may be quite wrong. We say "may be" quite wrong because the task of the sentencer is to take account of *all* of the relevant factors and to arrive at a single result which takes due account of them all. That is what is meant by saying that the task is to arrive at an "instinctive synthesis"[19]. This expression is used, not as might be supposed, to cloak the task of the sentencer in some mystery, but to make plain that the sentencer is called on to reach a single sentence which, in the case of an offence like the one now under discussion, balances many different and conflicting features.[20]

The two-stage approach emphasises some purposes of sentencing over others, namely, punishment and deterrence over rehabilitation and reform. By compelling a judicial officer to start at a notional non-parole period then adjust the sentence accordingly, primary weight is given to punishment, regardless of the mitigating factors of the particular case.

The High Court has recently had reason to examine the two-stage approach to sentencing in relation to the NSW legislative scheme in the case of *Muldrock v The Queen*[21]. In that case the Court found that:

> "It remained, and remains, essential to recognise, however, that the fixing of a non-parole period is *but one part of the larger task of passing an appropriate sentence upon the particular offender*. Fixing the appropriate non-parole period is *not to be treated as if it were the necessary starting point* or the only important end-point in framing a sentence to which Div 1A applies"[22]

Further:

> "Section 54B(2), read with ss54B(3) and 21A, requires an approach to sentencing for Div 1A offences that is consistent with the approach to sentencing described by McHugh J in *Markarian v the Queen:*
>
> > "The Judge identifies *all* the factors that are relevant to the sentence, discusses their significance and then makes a value judgment as to what is the appropriate sentence given all the factors of the case"[23]

[17] *R v Howell* (2007) 16 VR 349 at [24]
[18] [2001] HCA 64
[19] *R v Williscroft* [1975] VR 292 at 300 per Adam and Crockett JJ. See also *R v Thomson* (2000) 49 NSWLR 383.
[20] *Wong v The Queen* [2001] HCA 64 at [74] and [75], confirmed by the majority in *Markarian v The Queen* [2005] HCA 25 at [39]
[21] [2011] HCA 39
[22] *Muldrock v The Queen* [2011] HCA 39 at [17]
[23] Ibid at [26]

Naturally, the legislative provisions of any Victorian scheme could be drafted in such a way as to avoid the interpretative issues raised in *Muldrock.* But it is our submission that to do so would be to undermine decades of well-understood sentencing principles, for no benefit and indeed at the considerable risk of making sentencing in Victoria overly-complex and less transparent.

Ultimately, the LIV is of the strong view that a two-stage approach to sentencing for serious and significant offences should not be introduced in Victoria, on the basis that such an approach has the potential to lead to unjust, disproportionate sentences. Further, it will create two different approaches to sentencing within the one criminal justice system, both of which may apply in the singular case, where an offender has been convicted of a serious or significant offence (which would require a two-stage process) and another offence (which would require the instinctive synthesis approach).

This will make sentencing a far more complex process, especially where multiple charges are heard, and ultimately, we submit, the proposal is likely to lead to less transparency in sentencing, and more appeals.

Fixing the head sentence and minimum term

Secondly, the proposal represents a dramatic departure from well-understood current sentencing practices in terms of how a head sentence and minimum term is set. Currently, an appropriate head sentence is set first, taking into account all the circumstances of the case using an instinctive synthesis approach, and then a minimum non-parole term is set. The relevant principles and process are set out in the case of *R v Grmusa*:

> "There are two stages in the process of awarding a prison term for which a minimum term is to be fixed. The judge *must first* impose a sentence appropriate to the crime in question bearing in mind the circumstances relevant both to the crime and to the offender. Having done that the *second stage* is the selection of an appropriate minimum term. The purpose of fixing a minimum term is unrelated to the selection of an appropriate sentence (sometimes called "the head sentence"). The latter sentence "represents the sentencing judge's instinctive synthesis of all the various aspects involved in the punitive process". That is not to say that the fixing of a minimum term does not and is not intended to lessen the burden of punishment. But the selection of a minimum term is a process different from the selection of the appropriate sentence. The minimum term is fixed so as to determine when the convicted person shall be eligible for parole"[24]

The government's proposal, however, envisages an approach whereby the non-parole period is set first, then the head sentence adjusted accordingly. This approach turns sentencing in Victoria literally on its head, calls into question the legislative purpose of the head sentence, and greatly complicates the sentencing process, especially where a person is convicted of both baseline and non-baseline offences. It also calls into question the potency of the deterrent value of the head sentence.

Common law and legislative sentencing principles

Baseline sentences potentially interfere with the well-understood sentencing principles of parsimony and proportionality.

The principle of parsimony is set out in ss5(3)-(7) Sentencing Act 1991 and the common law, and requires that a court not impose a sentence that is more severe than that which is necessary to achieve the purpose or purposes for which the sentence is imposed.

The principle of proportionality, fundamental to the criminal law, is that a sentence of imprisonment imposed by a court should never exceed that which can be justified as appropriate or proportionate to the gravity of the crime considered in the light of its objective circumstances.[25]

[24] R *v Grmusa* [1991] 2 VR 153, at 157.
[25] *Veen [No 2]* (1987) 164 CLR 465 at 472.

Baseline sentences ultimately fetter a judicial officer's discretion and ability to sentence according to the justice of the case, by mandating a minimum or baseline non-parole period. Although the proposal envisages that the baseline non-parole period could be adjusted up or down according to aggravating or mitigating circumstances, the fact that a particular period is mandated in the first place is the point where the discretion is ultimately fettered. Imprisonment will become mandatory for serious and significant offences, despite the particular circumstances of the case. This can only lead to the risk of serious injustice in sentencing.

Basic principles of any baseline scheme

The LIV is absolutely opposed to baseline sentences and does not support their introduction in Victoria. However, in light of the government's commitment to introducing baseline sentences, we have attempted to formulate a set of principles upon which any just baseline sentence scheme must be based.

The LIV has carefully considered the two models set out in the Issues Paper and has come to the conclusion that we cannot, in good conscience, support either.

Both models proposed are overly complex, require artificial comparisons between the seriousness of a hypothetical offence and a real offence, unduly fetter judicial discretion (for no benefit beyond making sentencing more punitive) and raise the spectre of serious injustice in sentencing.

In our view, to fulfil the principles of justice, any introduced baseline scheme should preserve judicial discretion, ensure consistency with current statutory and common law sentencing principles and create a transparent and coherent sentencing framework that is unambiguous and simple to understand and apply.

It is our view that any baseline sentence proposal must fulfil these minimum requirements:

1. Baseline sentences would only apply to the most serious sort of offending

Any baseline sentence scheme should apply to only the most serious, repeat offending.

We would thus submit that any baseline sentence scheme should be tied to the *Serious Offenders* provisions of the *Sentencing Act 1991*. That is, baseline sentences would only apply where a court has made a declaration under s6F *Sentencing Act 1991* that an offender is a serious offender.

To doubly ensure that baseline sentences only apply to the most serious type of offending, the LIV submits that baseline sentences should only apply where the court has decided that a sentence of immediate, full time imprisonment is appropriate, *in excess of five years.*

Further, baseline sentences should only apply to offender's convicted on indictment in the higher courts, and not to matters dealt with summarily.

These provisions would lessen the injustice of such a scheme by ensuring that only the most serious, repeat offenders and the most serious type of offending are captured.

2. The scheme should be accompanied by a broadly drafted "departure clause"

The LIV is very firmly of the view that judicial officers are best placed to impose the most appropriate sentence, taking into account all the circumstances of the offence, the offender, aggravating and mitigating circumstances, and the attitude of the victim.

To preserve the fundamental principle of criminal law – that the "punishment fit the crime" - any scheme must be accompanied by a broadly drafted "departure clause"; that is, that the baseline sentence would apply "unless it was unjust to do so". This departure clause could take the form of s 125(1) *Coronors and Justice Act 2009* (UK), that a baseline sentence would need to apply "unless the court is satisfied that it would be contrary to the interests of justice to do so".

Such a departure clause would preserve judicial discretion, provide a broad safety net for vulnerable offenders, and ensure that baseline sentences only apply in just cases.

3. Baseline sentences should not apply to young offenders

Any just sentencing scheme must recognise that youth and inexperience can constitute powerful factors in mitigation.

It is the LIV's strong submission that any sentencing scheme, which presumes imprisonment based only upon the conviction for an offence, regardless of factors of youth or other mitigation, cannot be said to be just.

The principles of consideration in sentencing youthful offenders are clearly set out by Batt JA in the case of *R v Mills* [1998] 4 VR 235 (CA):

1. Youth of an offender, particularly a first offender, should be a primary consideration for a sentencing court where that matter properly arises.

2. In the case of a youthful offender rehabilitation is usually far more important than general deterrence. This is because punishment may in fact lead to further offending. Thus, for example, individualised treatment focussing on rehabilitation is to be preferred. (Rehabilitation benefits the community as well as the offender.)

3. A youthful offender is not to be sent to an adult prison if such a disposition can be avoided, especially if he is beginning to appreciate the effect of his past criminality. The benchmark for what is serious as justifying adult imprisonment may be quite high in the case of a youthful offender; and, where the offender has not previously been incarcerated, a shorter period of imprisonment may be justified. (This proposition is a particular application of the general principle expressed in s.5(4) of the Sentencing Act.)[26]

Further, the Court of Appeal recently stated in unequivocal terms that "general deterrence as a sentencing consideration is entirely foreign to a scheme of this character"[27] referring to the sentencing provisions of the *Children, Youth and Families Act 2005* (VIC).

In recognition of these well-understood principles, the LIV strongly submits that any baseline sentence scheme must not apply to young offenders or youthful offenders where a period of detention in a youth justice centre would apply.

[26] *R v Mills* [1998] 4 VR 235 (CA) at 241.
[27] *CNK v The Queen* [2011] VSCA 228 at [12]

4. Baseline sentences should be trialled and evaluated for a small number of serious offences

Examining evaluations and criticisms of the NSW SNPP scheme, it is the strong view of the LIV that the introduction of baseline sentences will lead to less transparency in sentencing, longer sentencing submissions on behalf of both defence and prosecution, longer sentencing remarks, and corresponding court delays.

The experience of SNPP's in NSW has also shown that sentences have become more punitive since the introduction of SNPP's, and prison rates have increased.[28]

The LIV therefore strongly recommends a limited trial of baseline sentences for a small number of serious offences, rather than a wholesale introduction of baseline sentences for all serious and significant offences. This would allow the government to assess the impact of the scheme, and provide necessary additional resources to those aspects of the criminal justice system which will be most affected – namely, the courts, Victoria Legal Aid, the OPP and corrections.

Non-legislative alternatives that fulfil the purposes of a baseline sentence scheme

It is clear from an examination of the Liberal Nationals Coalition policy announcement, that baseline sentences are intended to satisfy community expectations of sentencing, or in other words, address *perceptions* of inadequate sentencing.

However, there is no evidence to suggest that harsher penalties change public perceptions about lenient sentencing.

Throughout the 1980s and 1990s, sentencing in the United States became significantly more punitive. Mandatory sentencing legislation was introduced, including "three strikes' legislation and "truth in sentencing" laws which increased the proportion of sentences of imprisonment that offenders actually spent in prison.[29]

These policies led to a 70 per cent increase in the US prison population over the decade 1989-99.[30]

Despite this shift to more punitive sentencing practices, community perceptions of leniency have not changed, leading to the conclusion that the promotion of public confidence in the criminal justice system should not be used to justify changes to sentencing policy, as such changes have little impact on public perception[31].

The LIV is therefore strongly favours non-legislative methods of increasing public confidence in the criminal justice system.

1. Broadcasting or publishing sentencing remarks

One way to increase public confidence in the sentencing process is to make the process more accessible and transparent to the public. This can be done by broadcasting sentencing hearings or publishing sentencing remarks - de-identified, where broadcasting or publication of an identity would be contrary to the interests of justice.

[28] Judicial Commission of NSW *The impact of the standard non-parole period sentencing scheme on sentencing patterns in New South Wales* May 2010, p 56

[29] Tony, M *Sentencing Matters* (1996) cited in Roberts, J *Public opinion and sentencing policy* in Rex & Tonry *Reform and Punishment: The future of sentencing* (2002), p 25

[30] Pastore, A and Maguire, K (2000) cited in Roberts, J *Public opinion and sentencing policy* in Rex & Tonry *Reform and Punishment: The future of sentencing* (2002), p 26

[31] Roberts, J *Public opinion and sentencing policy* in Rex & Tonry *Reform and Punishment: The future of sentencing* (2002), p 26

The Supreme Court of Victoria regularly broadcasts audio streams of sentence hearings and judgments on their website.[32] The public can listen to but not download broadcasts from the website.

Whether a sentence or other proceeding is broadcast is at the discretion of the presiding Judge after consultation with the Chief Justice, and audio broadcast of judgments or sentences should be transmitted in their entirety.[33]

The LIV submits that, where possible, all sentencing hearings in the Supreme Court should be broadcast (via audio or even televised in cases of particular public interest) and all other sentencing remarks in the Supreme and County Courts should be published.

We note that Chief Judge Michael Rozenes has stated that the County Court's 2011-12 Business Plan provides that the court will develop a strategy to publish sentences and judgments on its website.[34]

The LIV is strongly supportive of this initiative, and submits that the government should provide significant additional resources to the courts to undertake this important endeavour.

The LIV further submits that the media should be required to provide a link to the actual published or broadcast sentence, when reporting sentences.

This would avoid the issue of incorrect media reporting of the reasons for sentencing, and would foster confidence in the criminal justice system by making the complex sentencing process more transparent.

2. Replicate the Tasmanian Jury Sentencing Study in Victoria

The LIV has previously called for the seminal Tasmanian Jury Sentencing Study[35] to be replicated in Victoria[36].

While the results of such a study if replicated in Victoria are, of course, unknown, knowledge of juror's attitude to sentencing in Victoria would be extremely useful. Jurors are as fully informed as to the facts of the case as the judge, so their perceptions are vital in determining whether sentences are in fact commensurate with community expectations.

Conclusion

It is the strong view of the LIV that baseline sentences should not be introduced into Victoria.

There is no justification for such a measure, with official statistics showing that crime rates are falling. Further, such schemes are introduced to alleviate public *perceptions* of leniency, while studies show that an informed public believes that sentences are, in fact, appropriate.

Baseline sentences erode judicial discretion, lead to the imposition of unjust sentences, contribute to court delay, and over-complicate sentencing. The experience of a similar scheme in NSW has attracted a huge amount of criticism, for over-complicating sentencing, and leading to less transparency in sentencing, not more.

Public perceptions of leniency are best addressed through increasing transparency and accessibility to sentencing reasons, rather than making dramatic and draconian changes to sentencing policy.

[32] http://scv2.webcentral.com.au/sentences/
[33] Supreme Court of Victoria *Media Policies and Practices* current at 26 August 2010, p 5
[34] Chief Judge Michael Rozenes in a letter to the Herald Sun *Judges can take as well as give it* 26 August 2011
[35] K Warner, J Davis, M Walter, R Bradfield & R Vermey *Public Judgement on Sentencing: Final results of the Tasmanian Jury Study* Trends & Issues in Crime and Criminal Justice, Australian Institute of Criminology, Feb 2011
[36] LIV submission to Attorney General Robert Clark *Mandatory Minimum Sentences* 29 June 2011, p 19