

Fetal Alcohol Spectrum Disorders (FASD)

Executive Summary

Fetal Alcohol Spectrum Disorders ('FASD') are the largest cause of non-genetic, at-birth brain damage in Australia.¹

FASD is associated with a range of birth defects and the average life expectancy for a child with FASD is only 34 years of age.²

The causes of excessive drinking extend beyond the circumstances of the individual and are a product of a complex mix of interrelated socio-economic and cultural factors, including dispossession, trans-generational grief, isolation, poverty and trauma.³

Neurodevelopmental impairments due to FASD can predispose young people to interactions with the law.⁴

Brain damage from prenatal exposure to alcohol can increase involvement in criminal activity due to the following characteristics of FASD:

- lack of impulse control;
- trouble identifying future consequences of current behaviour;
- difficulty planning and connecting cause and effect;
- difficulty empathising with others and taking responsibility for actions;
- difficulty delaying gratification or making good judgments;
- a tendency towards explosive episodes; and
- vulnerability to social influences such as peer pressure.⁵

The potential relevance of evidence of FASD in sentencing proceedings includes an assessment of *moral culpability*; moderating the weight to be given to *general deterrence*; and determining the weight to be given to *specific deterrence* and *protection of the community*. There may also be issues relating to the likelihood of hardship in custody, a finding of special circumstances and the shaping of conditions to enhance prospects of rehabilitation.

¹ House of Representatives Standing Committee on Social Policy and Legal Affairs, Parliament of Australia, [FASD: The Hidden Harm – Inquiry into the Prevention, Diagnosis and Management of Fetal Alcohol Spectrum Disorders](#) (2012) 1 [1.2].

² Australian Medical Association, [Fetal Alcohol Spectrum Disorder \(FASD\) – 2016](#) (Position Paper, 24 August 2016).

³ Stephen Ralph, 'Fetal Alcohol Spectrum Disorder in Indigenous Adults and the Role of Psychology' (2017) 39(2) *InPsych: The Bulletin of the Australian Psychological Society Ltd* 14, 14–15.

⁴ Judicial Commission of New South Wales, [Equality Before the Law Bench Book – People With Disabilities](#) (18 July 2016) [5.2.2.8].

⁵ Senate Standing Committee on Legal and Constitutional Affairs, Parliament of Australia, [Inquiry into the Value of a Justice Reinvestment Approach to Criminal Justice in Australia](#) (Final Report, 2013) 36 [4.42].