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.

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