

Fetal Alcohol Spectrum Disorders (FASD)

The purpose of this document is to collate published research, the findings of government reports and inquiries and academic commentary in relation to FASD, and the effects this may have on a person's behaviour; development; physical, mental and social well-being; and links to contact with the criminal justice system.

Alcohol abuse is a serious issue because it can have a profound impact upon the life chances of people before they are born. The Committee received compelling evidence on the issue of Foetal Alcohol Spectrum Disorder (FASD) and their links with offending behaviour.¹

Description

- 1 Fetal Alcohol Spectrum Disorders ('FASD') is an 'umbrella' term for a range of effects or disabilities that may be experienced by individuals who were prenatally exposed to alcohol.²
- 2 The 2013 House of Representatives [*Inquiry into the Value of a Justice Reinvestment Approach to Criminal Justice in Australia*](#) acknowledged that:

drug and alcohol abuse can have intergenerational effects, especially for individuals that have been exposed to alcohol in the womb. Fetal Alcohol Spectrum Disorders are conditions that are unique to an individual who has been exposed to alcohol during pregnancy and is characterised by:

...a spectrum of conditions which are unique to an individual and which may be physical and/or neurobehavioural ... fetal alcohol exposure is often noticed as behaviours which result in a disparity between individual abilities and environmental expectations which increase over time. Frequently undetected, FASD is referred to as the "invisible disability". This may be attributed to the current lack of a comprehensive understanding of FASD among many health professionals and service providers.³

¹ House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs, Parliament of Australia, [*Doing Time – Time for Doing: Indigenous Youth in the Criminal Justice System*](#) (June 2011) 96 [4.31] ('*Doing Time – Time for Doing*').

² Judicial Commission of New South Wales, [*Equality Before the Law Bench Book – People With Disabilities*](#) (18 July 2016) [5.2.2.8].

³ 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 [4.41] citing National Organisation for Fetal Alcohol Spectrum and Related Disorders, [*Submission 106*](#) to Senate Standing Committee on Legal and Constitutional Affairs, [*Inquiry into the Value of a Justice Reinvestment Approach to Criminal Justice in Australia*](#) (22 March 2016) 7.

3 The same inquiry also acknowledged the Royal Australian and New Zealand College of Psychiatrists' submission that 'the resulting brain damage from prenatal exposure to alcohol can increase involvement in criminal activity due to the following characteristics of FASD:

- a 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 toward explosive episodes; and
- vulnerability to social influences such as peer pressure.⁴

4 A [2014 publication](#) by the Australian Institute of Family Studies reported the following primary symptoms which can be present and relate to cognitive and language difficulties:

- difficulty with executive functioning – the coordinated planning and execution of cognitive functions;
- memory difficulties;
- language difficulties, including disorders of pragmatic language (i.e., being able to follow rules of conversation and adjust language according to the needs of listeners);
- delays in gross (larger movements, e.g., crawling, jumping, running) and fine (smaller movements, e.g., picking things up, tasting and feeling things) motor functioning;
- disordered attention and activity levels; and
- delayed attainment of specific academic skills.⁵

5 The 2012 House of Representatives [*Inquiry into The Prevention, Diagnosis and Management of Fetal Alcohol Spectrum Disorders*](#) reported that:

FASD is the largest cause of non-genetic, at-birth brain damage in Australia. People with FASD have an 'observable abnormality in the structure and size of the brain; that is, a physical condition which causes a change in function'... FASD is the overarching term for the range of conditions that can occur in an individual with prenatal exposure to alcohol. It can result in learning difficulties, a reduced capacity to remember tasks from day to day, anger management and behavioural issues, impaired speech and muscle coordination, and physical abnormalities in the heart, lung and other organs. The effects can range from mild impairment to serious disability ...

FASD is caused by prenatal exposure to alcohol. If a woman has zero alcohol consumption during pregnancy, then the fetus has zero risk of developmental abnormalities from

⁴ 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*](#) (2013) 36 [4.42] citing Royal Australian and New Zealand College of Psychiatrists, [Submission 19](#) to Senate Standing Committee on Legal and Constitutional Affairs, *Inquiry into the Value of a Justice Reinvestment Approach to Criminal Justice in Australia* (March 2013) 8–9.

⁵ Australian Institute of Family Studies, [*Fetal Alcohol Spectrum Disorders: Current Issues in Awareness, Prevention and Intervention*](#) (CFCA Paper No 29, December 2014) (citations omitted).

exposure to alcohol. While greater exposure to alcohol increases the risk, there are critical fetal developmental stages during which small levels of exposure may carry significant risk.⁶

- 6 Forensic Psychologist Professor Stephen Ralph in 2017 noted the following in relation to the influence of a person's environment:

Individuals along the FASD spectrum will each experience a specific set of symptoms and a specific set of secondary conditions according to the environment they grow up in. It is important to remember that not all people with FASD will have visible facial characteristics, low IQ, mental illness, violent behaviour or substance addiction. The unique pattern of individual differences in the expression of FASD symptoms makes the assessment of FASD particularly difficult. As a result, FASD appears to be under-recognised and under-treated, particularly in vulnerable populations, such as those living in psychiatric settings, the child welfare system, and juvenile detention and correctional facilities (Standing Committee on Social Policy and Legal Affairs, 2012).⁷

- 7 In its [2016 position paper on FASD](#), the Australian Medical Association stated that:

...failure to identify children at risk or to consider a diagnosis of FASD means that many individuals with the disorder are not identified and do not receive appropriate support and early intervention. 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... There is emerging evidence that alcohol use around the time of conception and during pregnancy can also have epigenetic effects that may be transmitted to future generations.⁸

- 8 The 2012 [Addressing Fetal Alcohol Spectrum Disorder in Australia](#) report by the National Indigenous Drug and Alcohol Committee states that:

FASD is entirely preventable and, if children are assessed and diagnosed early in life, it is also potentially treatable. If not prevented or diagnosed early, the condition can have a profound lifelong impact, initiating or perpetuating a cycle of intergenerational disadvantage and poor health.⁹

Prevalence

- 9 There is a range of research relating to the prevalence of FASD in the general community and in Aboriginal and Torres Strait Islander communities. The findings of the House of Representatives [Inquiry into the High Level of Involvement of Indigenous Juveniles and Young Adults in the Criminal Justice System](#) included:

- the Department of Health and Ageing acknowledged that 'the incidence of FASD is likely to be unreported because of these issues around data collection, difficulties in

⁶ 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]–[1.3], [1.7].

⁷ 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.

⁸ Australian Medical Association, [Fetal Alcohol Spectrum Disorder \(FASD\) – 2016](#) (Position Paper, 24 August 2016).

⁹ National Indigenous Drug and Alcohol Committee, [Addressing Fetal Alcohol Spectrum Disorder in Australia](#) (Report, 2012) 1.

early diagnosis, lack of referrals by non-specialists, lack of recognition of FASD indicators and insufficient information on medical records’;¹⁰ and

- the Spokesperson for the National Organisation for Fetal Alcohol Syndrome and Related Disorders ‘stressed that FASD is not an Indigenous problem; it is emerging as an issue across the Australia population’.¹¹

10 The Australian Medical Association’s [2016 position paper](#) emphasised that FASD

is not confined to a particular community or demographic; it is a disorder that crosses socio-economic, racial and education boundaries ... Whilst the high prevalence of FASD in some communities warrants targeted intervention, it is important to consider FASD in the context of a broader societal problem, and not one that only affects particular parts of the community.¹²

11 The 2012 House of Representatives [Inquiry into The Prevention, Diagnosis and Management of Fetal Alcohol Spectrum Disorders](#) heard that

FASD is under diagnosed and under reported in Australia. An estimate provided by DHHS suggests that at least two per cent of all Australian babies are born with FASD ...

The Foundation for Alcohol Research and Education (FARE) and the Departments of Health and Ageing and Families Housing, Community Services and Indigenous Affairs (FaHCSIA) report that recent research estimates the prevalence of FAS to be between 0.06 and 0.68 per 1,000 live births ... FARE reports that among Indigenous Australians, the incidence of FAS is estimated to be 2.76 and 4.7 per 1 000 births.¹³

Links to Contact with the Criminal Justice System

12 Australian and international research has identified that people with FASD are at increased risk of coming into contact with the criminal justice system, both as victims and offenders:¹⁴

The difficulties people with FASD may have learning from experience, linking actions with consequences, and restraining impulses, may render them more susceptible to engage in criminal behaviour. This is exacerbated by suggestibility, which, research indicates, often results in secondary participation in the commission of criminal offences by more sophisticated offenders.¹⁵

¹⁰ [Doing Time – Time for Doing](#) 96 [4.33].

¹¹ Ibid [4.34].

¹² Australian Medical Association, [Fetal Alcohol Spectrum Disorder \(FASD\) – 2016](#) (Position Paper, 24 August 2016).

¹³ 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) 32 [2.90]–[2.92].

¹⁴ See, eg, Harry Blagg, Tamara Tulich and Zoe Bush. ‘[Placing Country at the Centre: Decolonising Justice for Indigenous Young People with Foetal Alcohol Spectrum Disorders \(FASD\)](#)’ (2015) 19(2) *Australian Indigenous Law Review* 4, 4. The authors cite US research suggesting that ‘over half of persons with FASD will interact with the criminal justice system: around 60% will be arrested, charged or convicted of a criminal offence, and about half will have spent time in juvenile detention, prison, inpatient treatment or mental health detention. Canadian research also indicates that young people with FASD are 19 times more likely to be arrested than their peers’: 4.

¹⁵ Ibid.

- 13 In the *Equality Before the Law Bench Book*, the Judicial Commission of New South Wales recognises that '[n]euro-developmental impairments due to FASD can predispose young people to interactions with the law'.¹⁶
- 14 The final report of the Inquiry into the High Level of Involvement of Indigenous Juveniles and Young Adults in the Criminal Justice System, *Doing Time – Time For Doing*, considered the links between FASD and contact with the criminal justice system from a number of sources,¹⁷ for example:

The *Equality Before the Law Bench Book* of Western Australia discusses the lack of FASD data in Australia and the link between FASD and the criminal justice system:

International research over the past decade has highlighted the link between Foetal Alcohol Spectrum Disorders (FASD) and involvement in the criminal justice system

...

- In Australia, FAS is almost certainly under-diagnosed and there is no data on FASD prevalence;
- The most at-risk populations for FASD are those which experience high degrees of social deprivation and poverty;
- Current birth prevalence data for FAS ranges from 0.06 to 0.68 per 1,000 live births;
- Current research indicates that a disproportionately large number of youth and adults with FASD are engaged with the legal system;
- The complex learning and behavioural difficulties observed in people with FASD increase their risk of undertaking or being guided into criminal behaviour. For example, all youth remanded to a Canadian forensic psychiatric inpatient assessment unit over a one-year period were evaluated for FASD. Of the 287 youth, 67 (23.3%) had an alcohol-related diagnosis — three (1.0%) had a diagnosis of FAS and 64 (22.3%) had a diagnosis within FASD.

The *Equality Before the Law Bench Book* also acknowledges that people with FASD may have difficulties in understanding the criminal justice system processes:

Individuals with a FASD who become involved with the criminal justice system may not understand the arrest and court process, will have diminished competency and capacity and will not fully grasp the severity of the situation. Individuals with a FASD may make false confessions without understanding the legal consequences of such an act. Individuals with a FASD can also be victimised in custody.¹⁸

¹⁶ Judicial Commission of New South Wales, *Equality Before the Law Bench Book – People With Disabilities* (18 July 2016) [5.2.2.8].

¹⁷ *Doing Time – Time for Doing* 97–9 [4.37]–[4.40].

¹⁸ *Ibid*, citing Supreme Court of Western Australia, *Equality Before the Law Bench Book* (November 2009) [4.1.5]–[4.1.6], [4.2.7]–[4.2.8].

- 15 A [2017 study](#) examining the links between FASD and contact with the criminal justice system in Western Australia revealed that:¹⁹

Contact with the justice system was significantly higher in children who had a mother with an alcohol use disorder diagnosis than comparison children (16% vs. 8%, respectively), males compared with females (14% vs. 6%, respectively), and Indigenous than non-Indigenous young people (21% vs. 4%, respectively) ...

After adjusting for potential confounding factors, children whose mothers had a diagnosis of a maternal alcohol use disorder had almost twice the odds of having had contact with the justice system compared with children whose mothers had no diagnosis ...

Existing research provides that children who are exposed to alcohol prenatally have cognitive and behavioural deficits compared to unexposed children (Mattson and Riley, 1998; Vall et al., 2015). This includes greater risk of developmental delay, learning and memory deficits, poor attention, inhibition, and self-regulation (Mattson and Riley, 1998; Streiss-guth and O'Malley, 2000). Further, it has been identified that heavy alcohol exposure during development results in increased risk of externalizing and aggressive behaviours, hyperactivity, and poor psychosocial functioning (Mattson and Riley, 1998; O'Connor and Paley, 2009; Roebuck et al., 1999) ...

The odds of contact with the justice system were five times higher for Indigenous young people than non-Indigenous young people. The overrepresentation of Indigenous Australians in the justice system is well known (Homel et al., 1999; Weatherburn et al., 2003). This has been attributed to a number of factors including inherited trauma, low socioeconomic status, and compounding disadvantage which disproportionately effect the Indigenous community in Australia. Further, the high rates of alcohol use and alcohol-related harm are well documented in this population, and these factors have contributed to an increased risk of justice contact (Conseur et al., 1997; Dowse et al., 2014; Higgins and Davis, 2014).²⁰

Treatment and Management*

- 16 In its [2016 position paper on FASD](#), the Australian Medical Association stated that:

International studies have identified a range of psychosocial and pharmacological treatment strategies to manage FASD, although few are evidence-based. Effective interventions included family, educational and parental support, increased social-skills education for FASD children, and prescription medications to help manage the attention deficit issues associated with FASD.²¹

- 17 The 2012 [Addressing Fetal Alcohol Spectrum Disorder in Australia](#) report by the National Indigenous Drug and Alcohol Committee makes the following findings in relation to treatment of FASD:

¹⁹ Katherine Hafekost et al, '[Maternal Alcohol Use Disorder and Risk of Child Contact with the Justice System in Western Australia: A Population Cohort Record Linkage Study](#)' (2017) 41(8) *Wiley: Alcoholism, Clinical and Experimental Research* 1452.

²⁰ Ibid 1455–6.

* *Note:* The research cited in relation to treatment and healing does not attempt to prescribe or recommend what is required for any individual. This will of course be determined by factors such as the individual's personal experience or condition, the advice of any relevant experts, health providers or other support persons and the availability of treatment and opportunities to recover and heal.

²¹ Australian Medical Association, [Fetal Alcohol Spectrum Disorder \(FASD\) – 2016](#) (Position Paper, 24 August 2016).

Alertness to the possibility of FASD problems among children of all ages, as well as in the youth and adult community, is important. Access to appropriate early childhood education and developmental services, as well as to behavioural, mental health and drug and alcohol services, is vital ... The earlier these issues are addressed, the better the outcomes for the individual, their family and the community ..._Research findings indicate that good stable families, with enduring relationships with their children with FASD, are critical protective factors for helping children to avoid adverse life outcomes. Therefore, interventions must be designed to enable families to support the person with FASD and to manage problem behaviours.²²

- 18 The final report of the House of Representatives Inquiry into the High Level of Involvement of Indigenous Juveniles and Young Adults in the Criminal Justice System, *Doing Time – Time for Doing*, suggests that

access to accurate and timely assessment and diagnosis of FASD would benefit children, their families and professionals working in the health and criminal justice systems. Early diagnosis would also mitigate the secondary damages associated with FASD. Diagnosis and support for Indigenous youth with FASD already in contact with the criminal justice system is also important. The Committee concludes that diagnostic interventions developed through a collaboration of education, health and justice systems are essential.²³

²² National Indigenous Drug and Alcohol Committee, *Addressing Fetal Alcohol Spectrum Disorder in Australia* (Report, 2012) 14.

²³ *Doing Time – Time for Doing* 101 [4.52].