

Submission to: Senate Select Committee on Regional and Remote Indigenous Communities

Attention: Bill Bannear, Senior research officer.

From: Heather Douglas, Associate Professor, School of Law, The University of Queensland, 4072.

I am writing to respond to two of the terms of reference from your current reference:

- * the impact of state and territory government policies on the wellbeing of regional and remote Indigenous communities;
- * the health, welfare, education and security of children in regional and remote Indigenous communities

The focus of this submission is on **Fetal Alcohol Spectrum Disorder (FASD)**.

I have attached a paper on the sentencing issues associated with FASD to this submission.

As the committee will be aware, **Indigenous people are disproportionately diagnosed with FASD**. While FASD is by no means limited to the Indigenous community, FASD is disproportionately diagnosed among Indigenous people. Langton suggests that 25 Indigenous children per 1,000 live births suffer from FASD. A Western Australian study estimated that FASD affected 2.97 Indigenous children per 1,000 live births. This disproportionate diagnosis results largely from socio-economic circumstances rather than any genetic predisposition.

FASD is currently **under-diagnosed in the Australian community** as a result of:

1. lack of paediatric expertise associated with its diagnosis;
2. difficulty in getting an accurate history of maternal drinking patterns during pregnancy, (in part because of the stigma associated with such behaviour but also because in many cases the FASD sufferer may no longer be in contact with his biological mother) ;
3. sometimes doctors and other practitioners forget to ask about maternal drinking during pregnancy.
4. lack of visual cues- although a number of physical factors especially small facial features, the majority of FASD sufferers do not have these features or 'grow out' of them.
5. Most sufferers score normally on intelligence tests
6. Source of secondary effects (diagnosed mental illness, criminal justice contact etc) complicates picture.

The lack of diagnosis leads to a lack of appreciation of needs and there is, relatedly, a lack of appropriate / accessible services, especially in remote communities.

Criminal justice system issues:

1. Approximately 60% of FASD sufferers come into contact with the criminal justice system.
2. FASD may lead to inability to comprehend the plea or police directions about right to silence in a police interviewing context, FASD sufferers can be highly suggestible.
3. FASD may lead to problems with completing standard programs provided by probation and parole authorities and prisons. Breach of such requirements may lead to further enmeshment in the criminal justice system.
4. It is likely that many individuals who have FASD are coming into contact with the criminal justice system and have not been and are not diagnosed with FASD. An appropriate diagnosis may impact on whether the person is fit to plead, whether certain evidence should be excluded and what kinds of sentencing options are appropriate. A diagnosis may be pivotal to fair trial and appropriate sentencing practice.

What needs to happen:

1. Focus on community prevention – labels of alcohol (eg. Canadian model).
2. More research information.
3. Qualified physicians.
4. Better diagnostic information.
5. Better and more appropriate services: eg. Supervisory options in the community and targeted programs.