

# Swift, Certain and Fair Approaches to Sentencing Family Violence Offenders:

## Discussion Paper

### Submission to Sentencing Advisory Council

---



March 2017

**fare**

---



## About the Foundation for Alcohol Research and Education

The Foundation for Alcohol Research and Education (FARE) is an independent, not-for-profit organisation working to reduce the harm caused by alcohol.

Alcohol harm in Australia is significant. More than 5,500 lives are lost every year and more than 157,000 people are hospitalised making alcohol one of our nation's greatest preventive health challenges.

For over a decade, FARE has been working with communities, governments, health professionals and police across the country to reduce alcohol harm by supporting world-leading research, raising public awareness and advocating for changes to alcohol policy.

In that time FARE has helped more than 750 communities and organisations and backed over 1,400 projects around Australia.

FARE is guided by the World Health Organization's (2010) *Global strategy to reduce the harmful use of alcohol* for stopping alcohol harm through population-based strategies, problem directed policies, and direct interventions.

If you would like to contribute to FARE's important work, call us on (02) 6122 8600 or email [info@fare.org.au](mailto:info@fare.org.au).

## Contents

|   |    |
|---|----|
| Summary .....   | 4  |
| Recommendations .....   | 5  |
| Alcohol’s role in family violence .....                       | 6  |
| Applying swift, certain and fair approaches in Victoria ..... | 7  |
| Application of swift, certain and fair approaches .....       | 9  |
| Alcohol exclusion orders .....                                | 11 |
| Vulnerable populations.....                                   | 13 |
| Victim survivors.....   | 13 |
| People with alcohol-use disorders.....                        | 14 |
| People with Fetal Alcohol Spectrum Disorders .....            | 15 |
| Conclusion.....   | 17 |
| References .....  | 18 |

## Summary

The Foundation for Alcohol Research and Education (FARE) welcomes the opportunity to make a submission on the *Swift, Certain and Fair Approaches to Sentencing Family Violence Offenders: Discussion Paper* (Discussion Paper). FARE's submission supports the submission made by Deakin University Violence Prevention Group. FARE has focused on public health responses only as this is reflective of FARE's area of expertise.

FARE notes that part of the reason for the development of this Discussion Paper is due to a recommendation made by FARE to the Victorian Royal Commission on Family Violence in 2015. This presented a comprehensive response to alcohol-related family violence, particularly focused on reducing the availability and promotion of alcohol across Victoria. This is because the increased availability of alcohol contributes to increases in family violence. FARE's submission contained 17 recommendations, with the recommendation to pilot a project with 'swift and certain' responses for alcohol-related offences being one.

While FARE appreciates that the Discussion Paper is an examination of the feasibility of applying swift certain and fair (SCF) approaches to family violence, FARE maintains that we must do more to prevent family violence from occurring by recognising and addressing contributing factors, with alcohol being one. To reduce the incidence of family violence across the whole population, strategies are needed that address these factors. For alcohol, this includes limiting the physical and economic availability as well as the ever-growing promotion of alcohol in our society.

Victoria has seen unprecedented growth in alcohol outlets in recent years, making it the "liquor outlet density capital of Australia."<sup>1</sup> In 2012-13 there were 19,978 active liquor licences in Victoria. This increased by 21 per cent over ten years.<sup>2</sup> More recently, supermarkets in Victoria such as ALDI and Costco have begun selling alcohol in their stores.<sup>3</sup>

To coincide with the unprecedented levels of alcohol availability, the incidence and rates of alcohol-related harm has also increased. The following Victorian indicators demonstrate this:

- Increase in alcohol-related ambulance attendances by 146 per cent between 2003 and 2011 (to 8,349 attendances). Over that same period, the trend per 100,000 population increased by 112 per cent.
- Increase in alcohol treatment episodes by 28 per cent between 2003-04 and 2012-13 to 21,460 episodes. In that same period, the trend per 100,000 population increased by ten per cent.
- Increase in alcohol-related hospital admissions by 53 per cent between 2002-03 and 2010-11 to 29,694 admissions. In that same period, the trend per 100,000 population increased by 33 per cent.
- Increase in alcohol-related assaults by 30 per cent between 2002-03 and 2010-11 to 6,768 assaults. In that same period, the trend per 100,000 population increased by 13 per cent.<sup>4</sup>

Additionally the research report, *The hidden harm: Alcohol's impact on children and families* (2015) examined the seriousness and level of intervention required for child protection cases that involved alcohol in Victoria between 2001 and 2005. This found that a carer's alcohol use was involved in more than a third (33 per cent) of all substantiated child protection cases. For cases requiring an order from the Children's Court, alcohol was involved in 42 per cent (3,531) of these.<sup>5</sup>

Implementing controls over the availability of alcohol and its promotion are vital to preventing and reducing the severity of family violence. Introducing policies to do so will have an immediate and positive impact on the incidence of family violence, while enhancing the safety and wellbeing of children affected by family violence.

## Recommendations

1. FARE recommends that the role of alcohol be adequately acknowledged by the Sentencing Advisory Council in understanding family violence as well as in the application of 'swift certain and fair' (SCF) approaches.
2. FARE recommends that alcohol harm prevention strategies are advocated for by the Sentencing Advisory Council in order to reduce overall family violence impacts.
3. FARE recommends that a pilot project be undertaken for those people arrested or convicted for alcohol-related offences to take two alcohol breath tests per day or wear a continuous alcohol monitoring bracelet with 'swift, certain and modest sanctions' for people who are found to be in breach of these conditions.
4. FARE recommends that this pilot be established on the existing evidence base of SCF approaches and not extended to family violence offenders at this stage.
5. FARE recommends that the most appropriate application of SCF approaches would be as a condition of family violence intervention orders where the incident has had definite alcohol involvement (as per the L17 Risk Assessment and Risk Management report) or evidenced by the applicant.
6. FARE recommends an investigation of options to expand alcohol exclusion orders to be able to restrict alcohol on private premises, following examples set by Western Australia and the Northern Territory.
7. FARE recommends that due to the subjective nature of intoxication that alcohol exclusion orders are based on whether the perpetrator had drunk alcohol (as defined by the L17 police Risk Assessment and Risk Management Report) rather than whether he/she was intoxicated at the time of the offence.
8. FARE recommends that the perpetrator of family violence remain held to account for their actions and that contraventions include binary conditions such as the offender failing to attend counselling appointments, court appearances or hearings, failing to attend behaviour management programs, or failing to attend or complete alcohol and other drug (AOD) treatment.
9. FARE recommends that referral to alcohol and other drug treatment services be available to all magistrates within the Victorian court system.
10. FARE recommends that investment be made to better support the integration and coordination between behaviour change programs and AOD treatment services.
11. FARE recommends that justice professionals undertake professional development in order to understand how Fetal Alcohol Spectrum Disorders (FASD) affects people's lives and their understanding of court proceedings.
12. FARE recommends that court proceedings be able to be understood by all; this includes making special accommodations for individuals with FASD such as ensuring written documents are in plain-English and use of simple direct language.

## Alcohol's role in family violence

The interplay between alcohol and family violence is complex. Alcohol is a significant contributor to family violence, increasing both the likelihood of violence occurring and the severity of harm.<sup>6</sup>

Alcohol use can be both a consequence of and precursor to stress and violence. Alcohol affects both cognitive and physical functioning.<sup>7</sup>

The World Health Organisation has gathered a body of evidence on the relationship between alcohol use and intimate partner violence and concluded that:<sup>8</sup>

- Alcohol use and intimate partner violence may be linked to the same underlying factors (such as low socio-economic status or impulsive personality).
- Heavy alcohol use may cause or exacerbate relationship stress which increases the risk of conflict.
- Alcohol use affects cognitive and physical function, resulting in perpetrators of intimate partner violence using a violent resolution to relationship conflicts, rather than a non-violent resolution.
- Excessive drinking by at least one partner can aggravate existing relationship stressors such as financial problems, thus increasing the probability of violence.
- Alcohol use is often used by perpetrators as a justification to violence, or excuse for the violence.
- Experiencing intimate partner violence can result in increased alcohol consumption by the victim as a coping mechanism.
- Intergenerational effects may occur, with children who are witnesses to their parents' violence being more likely to have problematic drinking later in life.

Family violence does not occur in a vacuum. How alcohol is used and/or misused in our society, and societal expectations about alcohol and violence are important factors. Alcohol consumption is influenced by social context, age, gender, and cultural background. Occasions when alcohol is highly present such as Christmas, sporting events and school holidays, are high risk for family violence. The increased physical and economic availability of alcohol contributes to family violence, and its promotion contributes to increased consumption. These factors also tie to societal views about alcohol and contribute to the normalisation of excessive alcohol use, aggression, and family violence.

Thus addressing alcohol use across the population, in particular funding prevention programs will result in rates of family violence decreasing.

### Recommendations

1. FARE recommends that role of alcohol be adequately acknowledged by the Sentencing Advisory Council in understanding family violence as well as in the application of SCF approaches.
2. FARE recommends that alcohol harm prevention strategies are advocated for by the Sentencing Advisory Council in order to reduce overall family violence impacts.

## Applying swift, certain and fair approaches in Victoria

The reduction or cessation of alcohol use has been demonstrated to reduce family violence and improve family relations and functioning. A survey of Australians in recovery from substance addiction (with alcohol being the primary drug of concern for 66 per cent of participants) found that half of participants reported being a victim or perpetrator of family violence in the active addiction phase, compared to less than ten per cent in the recovered or recovery phase. Addressing the person's alcohol use was associated with marked improvements in other life outcomes that are often risk factors for family violence, such as improved financial situation, fewer legal problems, and higher participation in education and the workforce.<sup>9</sup>

Justice projects that directly target the alcohol-related offences through swift and certain punishment have been effective in reducing crime.<sup>10</sup> These programs have also led to reductions in family violence due to the identification of offenders previously hidden or unknown in the family violence system.

Examples of these project are outlined below:

### ***24/7 Sobriety Program, South Dakota***

The 24/7 Sobriety Program in South Dakota, USA commenced in 2004. The program requires people arrested or convicted for alcohol-related offences to take two alcohol breath tests a day or wear a continuous alcohol monitoring bracelet with immediate, consistent yet modest sanctions. Specifically, an offender who refused or failed a test would be taken into immediate custody and appear before a judge within 24 hours. The program originally targeted repeat drink drivers but has since been modified to include other alcohol-related crimes (including family violence) and adopted in more jurisdictions across the USA.<sup>11</sup>

Between January 2005 and March 2017 there were 44,404 participants in the probationary breath test, with 9.28 million tests administered and a 99.07 per cent pass rate.<sup>12</sup> SCRAM technology (Secure Continuous Remote Alcohol Monitoring) bracelets were introduced in October 2006 and since had 9,768 participants with 75 per cent of individuals being fully compliant. A quarter of the participants were noncompliant accounting for 1,519 confirmed drinking events and 5,671 confirmed tampers.\*<sup>13</sup> The 24/7 program now also uses drug patches and ignition interlock for some participants in the program.

This project found a nine per cent reduction in intimate partner violence arrests following the implementation of the program.<sup>14</sup> This occurred despite the fact that the program initially targeted drink driving reoffenders before expanding to perpetrators of broader types of alcohol-related crimes.

### ***Hawaii Opportunity Probation with Enforcement (HOPE)***

The most well documented, successfully implemented SCF program, the the *Hawaii Opportunity Probation with Enforcement* (HOPE) program, commenced in 2004. HOPE started as a pilot program to reduce probation violations by drug offenders and others at high risk of recidivism, under the high-intensity supervision of First Circuit Judge Steven Alm and local Probation Officers (POs).<sup>15</sup> It addressed

---

\* Multiple noncompliance was from a small minority of single individuals

the failure to comply with conditions, as well as the long delays in response to probation violations, where typically offenders would accumulate a long list of violations before action was taken.

Participants are subject to random drug tests, which may increase or decrease in frequency depending on the outcomes of the tests. If a probationer fails a drug test, he or she is arrested immediately and taken to jail. A hearing takes place within 72 hours of the probation officer filing a “Motion to Modify Probation” form.<sup>16</sup> An evaluation of this program found that compared to a control group, HOPE participants were less likely than the comparison group to be arrested for a new crime (21 per cent compared to 47 per cent) and to have a positive urine test (13 per cent compared to 46 per cent).<sup>17</sup>

The original HOPE model targeted offenders at high risk of reoffending and those with a history of recidivism, particularly drug offenders but also including those with the most serious criminal histories and those that the system is committed to monitoring closely (e.g. sex offenders and family violence offenders). These participants are identified through risk assessment tools that looked at criminal history, substance abuse, family and marital relationships personal companions, attitudes and employment.

Long-term compliance has positive outcomes for both the individual as well as the community as a whole. The HOPE program resulted in reduced criminal justice costs, reduced crime, reduced criminal recidivism, shorter probation periods and improved quality of life.<sup>18</sup>

Evaluations of the program in 2007 and 2016 have found a significant reduction in new crimes committed, positive substance use tests and missed PO appointments for HOPE participants compared to those in routine probation.<sup>19,20</sup> The 2016 report found that the return to prison rate for HOPE probationers was 13 per cent compared to 27 per cent non-HOPE participants, and new crime arrests were 22 per cent higher for routine probationers. Furthermore, HOPE probationers perceived a higher risk of sanctioning compared to non-HOPE, which in turn resulted in better compliance; and surveys of POs found them believing that HOPE made them more effective at their job.<sup>21</sup> The swift, certain and fair sanctioning of HOPE positively affected offender’s compliance, PO case management, court expenses and effectiveness as well as jail costs.

HOPE is ‘jail-utilisation neutral’ meaning that HOPE probationers spend equal amount of time in jail compared to regular probations but have increased positive outcomes and long-term compliance. Probationers under HOPE averaged 19 days in jail compared to 20 for regular probationers.<sup>22</sup> HOPE probationers receive more sanctions under the SCF program, resulting in better uptake of responsibility for one’s actions and increased compliance rates. Regular probationers are less likely to receive sanctions for noncompliance but when they do, they are generally severe and result in long periods of incarceration.

### ***Northern Territory COMMIT***

*The Northern Territory Compliance Management or Incarceration in the Territory (COMMIT) program started on 27 June 2016 as a 12-month trial based in Darwin. It aims to reduce crime and drug use while also reducing court and prison expenses.<sup>23</sup> The participant selection criteria included high-risk offenders, where management is focused on case management and behaviour change; those with a history of alcohol or drug offences, criminogenic risk factors; and those with a history of condition breaking, to engage with the offender early and help reduce the risk of noncompliance.<sup>24</sup> The six-month evaluation is yet to be available.*

While none of the current SCF programs looked specifically at family violence offenders they have had impacts on family violence rates. This is potentially because they have identified family violence



offenders previously hidden. Data from the New South Wales Bureau of Crime Statistics (BOCSAR) found that when violent offenders re-offend, their next offence is not usually another violent offence. Instead, violent offenders who re-offend commit a wide variety of offences, including driving without a licence, drive while disqualified, possess illicit drugs and property damage. Indeed, 12.5 per cent commit drink driving offences.<sup>25</sup>

Therefore, establishing a pilot project based on the existing projects and evidence base is recommended. This should be based on the risk behaviour of alcohol-related offences. If and when this trial is found to be effective it could be widened to include family violence offenders. It is noted that the HOPE program does include family and domestic violence offenders as high risk of recidivism within the program.

SCF measures do work but application to family violence offenders is unknown. FARE, therefore, recommends that the Victorian Government establish a pilot of alcohol-related offences.

### Recommendations

3. FARE recommends that a pilot project be undertaken for those people arrested or convicted for alcohol-related offences to take two alcohol breath tests a day or wear a continuous alcohol monitoring bracelet with 'swift, certain and modest sanctions' for people who are found to be in breach of these conditions.
4. FARE recommends that this pilot be based on the existing evidence base of SCF approaches and not extended to family violence offenders at this stage.

## Application of swift, certain and fair approaches

FARE's recommendation to the Victorian Royal Commission was to:

*Pilot a project for perpetrators that require people arrested or convicted for alcohol-related offences to take two alcohol breath tests a day or wear a continuous alcohol monitoring bracelet with "swift, certain and modest sanctions" for people who are found to consume alcohol.<sup>26</sup> (Page 28).*

FARE recommends that SCF approaches would be most applicable as a condition of family violence intervention orders, which are applied at Magistrates' Courts. These intervention orders (both interim and final) have conditions that restrict the respondent's behaviour, such as intentionally damaging or threatening to do so, the protected person's property, attempting to locate the protected person and committing family violence against the protected person.

Magistrates should be able to apply alcohol restrictions as a condition of a family violence intervention order. This could be based on evidence provided by the applicant or as identified by the police when a family violence incident has had definite alcohol involvement. The police in Victoria are required to complete an L17 Risk Assessment and Risk Management form when attending a family violence incident. A brief by the Crime Statistics Agency outlines that:

*The L17 form provides for police to record whether they believe either the perpetrator or the victim was under the influence of alcohol at the time of the family violence incident, along with whether a range of other perpetrator, victim and relationship level risk factors were present. There are options for flagging either party as 'Alcohol use definite', or 'Alcohol use possible.'<sup>27</sup> (Page 3).*

Victoria is the only jurisdictions in Australia to collect this data and thus uniquely placed to identify family violence offences that have involved alcohol, allowing for SCF approaches to be applied to those people only.

The Crime Statistics Agency brief outlines that police are required to complete an L17 Risk Assessment and Risk Management report and that the:

*The Victoria Police Code of Practice for the Investigation of Family Violence states that police complete the form for all family incidents, interfamilial-related sexual offences and instances of child abuse reported to them, and that prior to leaving the scene of a family incident, police officers must collect 'all the information needed to complete the Family Violence Risk Assessment and Risk Management Report'.<sup>28</sup> (Page 3)*

The Crime Statistics Agency brief identified that between Jan 2014 to Dec 2015 identified 121,251 family violence incidents. Of these, 25,736 (21.2 per cent) were flagged as definite alcohol use. Alcohol use by the perpetrator but not the victim in 14,017 incidents (11.6 per cent) and 2,055 (1.7 per cent) by the victim but not the perpetrator. Around 8 per cent (9,664) involved both perpetrator and victim's alcohol. The remaining 95,515 (78.8 per cent) not have any recorded alcohol use.<sup>29</sup>

In terms of victim's safety, this research found that the perpetrator's alcohol use was associated with increased severity and frequency of violence. The brief states that:

*In terms of the risk factors recorded by police on the L17 form, incidents involving perpetrator alcohol use were statistically more likely to have the following recorded: firearm licence/access to firearms, perpetrator choked victim, perpetrator controlling behaviours, perpetrator harm or threaten to harm/kill children, perpetrator harm or threaten to harm/kill other family member, perpetrator harm or threaten to harm/kill pets, perpetrator history of mental illness/depression, perpetrator threatened to harm victim, perpetrator threatened to kill victim, perpetrator unemployed, perpetrator suicidal ideas/attempted suicide, victim social isolation, relationship pregnancy or new birth, children present, and/recent escalation in severity/frequency of violence<sup>30</sup> (Page 5).*

This data indicates of the 14,017 incidents (perpetrators alcohol use), 8,323 offences were recorded and 6,719 offenders charged. These 6,000 offenders could thus form the cohort for a pilot SCF project, as outlined in FARE's submission to the Victorian Royal Commission.

## **Recommendation**

5. FARE recommends that the most appropriate application of SCF approaches would be as a condition of family violence intervention orders where the incident has had definite alcohol involvement (as per the L17 Risk Assessment and Risk Management report) or evidenced by the applicant.

## Alcohol exclusion orders

The Discussion Paper notes that “Victorian Courts have the power to impose an alcohol exclusion order prohibiting an offender from entering or remaining in licensed premises or the area surrounding major events” (Page 75). These exclusion orders can be included as a specific condition to a Community Correction Order (CCO) or imposed as a separate order additional to a sentence.

The Discussion Paper notes the limitations of these orders being restricted to licensed premises or surrounding major events. It also notes that alcohol exclusion orders are underutilised. Stating that “... that the limited nature of the order (which does not prevent consumption of alcohol in the home) and the challenges of enforcement may explain why it is seldom imposed.”<sup>31</sup>

As such, the Victorian Government may wish to consider a modified version of declaring a home to be a ‘Liquor restricted premises’. This provision is available in Western Australia through:

*Part 5B of the Liquor Control Act 1988 enables the owner or occupier of a private premises or privately owned land to apply to the Director of Liquor Licensing (“the Director”) to have the premises declared a restricted residence for a specified period.*

*Private premises are considered to be:*

- *Residential premises, including single unit/apartment within a complex or building.*
- *Crown land leased or occupied under a licence or agreement.*
- *Privately owned land, including any buildings on the land.*<sup>32</sup>

An application for a premises to be declared liquor restricted can be made by the owner, the occupier or by a prescribed class of person.<sup>†</sup> Additionally, police have the power to enter a restricted premises if they believe an offence is being committed. Once granted a penalty of \$2,000 applies if alcohol is brought into or consumed within the declared area or residence.<sup>33, 34</sup>

Similar provisions exist with the Northern Territory for ‘Alcohol-restricted premises’. The government leaflet explains, “If friends or relatives cause trouble while drinking alcohol at your home, or you are concerned about antisocial behaviour from people drinking in your area, you can apply to have your home declared alcohol free.”<sup>35</sup>

FARE recommends that the Sentencing Advisory Council investigate options to expand alcohol exclusion orders to be able to restrict alcohol on private premises, following examples set by Western Australia and the Northern Territory.

FARE also notes that the Discussion Paper notes that the court can make an alcohol exclusion order if it is satisfied (on the balance of probabilities) that the offender was intoxicated at the time of the offending. FARE cautions against this, as intoxication is a relatively subjective term. The Victorian *Liquor Control Reform Act 1998* defines intoxication under section 3AB as “a person is in a state of intoxication if his or her speech, balance, co-ordination or behaviour is noticeably affected and there are reasonable grounds for believing that this is the result of the consumption of liquor.”<sup>36</sup> The Victorian Commission for Gambling and Liquor Regulation’s *Liquor licensing fact sheet: Intoxication*

---

<sup>†</sup> The only prescribed class of person allowed in these regulations is the Chief Executive Officer of the Department for Child Protection is the only class of prescribed person in the regulation.

*guidelines* expands on this legal definition and lists 25 signs which may indicate that a person is intoxicated.<sup>37</sup> However, the factsheet also states that “*these signs are not exhaustive or, in a particular case, not necessarily conclusive of intoxication*”.<sup>38</sup>

Given the subjective nature of intoxication, proving intoxication for the purpose of making an alcohol exclusion order, would be difficult. In addition, it is important to note that family violence incidents can occur without the perpetrator or victim survivor being intoxicated.

Additionally some perpetrators consciously drink in order to be able to give themselves ‘time-out’ to behave in ways they know are unacceptable and this includes violence against women.<sup>39</sup> This can be a form of premeditation and control over their violence. When a perpetrator is drinking they are less aware of physical force they are using; they are less concerned about consequences; and display increased emotionality which can lead to greater likelihood of violence occurring.<sup>40</sup>

The social expectations about alcohol consumption and violence are also important to understand. VicHealth’s *Australians’ Attitudes to violence against women: Findings from the 2013 National Community Attitudes towards Violence Against Women Survey* found that nine per cent of people believed that violence against women can be excused in certain circumstances if the perpetrator is affected by alcohol.

For these reasons, it would be better for alcohol exclusion orders to be based on whether the perpetrator had drunk alcohol rather than whether he/she was intoxicated at the time of offending. An assessment of alcohol consumption should be based on information listed against the ‘alcohol use definite’ category in the L17 Victoria police Risk Assessment and Risk Management Report completed by the police when attending a family violence incident.

This A brief by the Crime Statistics Agency outlines that:

*The L17 form provides for police to record whether they believe either the perpetrator or the victim was under the influence of alcohol at the time of the family violence incident, along with whether a range of other perpetrator, victim and relationship level risk factors were present. There are options for flagging either party as ‘Alcohol use definite’, or ‘Alcohol use possible’<sup>41</sup> (Page 3).*

## **Recommendations**

6. FARE recommends an investigation of options to expand alcohol exclusion orders to be able to restrict alcohol on private premises, following examples set by Western Australia and the Northern Territory.
7. FARE recommends that due to the subjective nature of intoxication that alcohol exclusion orders are based on whether the perpetrator had drunk alcohol (as defined by the L17 police Risk Assessment and Risk Management Report) rather than whether he/she was intoxicated at the time of the offence.

## Vulnerable populations

FARE has the following concerns with the following groups with the application of SCF approaches:

- Victim survivors
- People with alcohol-use disorders
- People with Fetal Alcohol Spectrum Disorders

### Victim survivors

The Discussion Paper suggests that detection of the contravention of a CCO may be reliant on a victim's/survivors reporting of that contravention. FARE is concerned that this would lessen victim's safety with the onus being placed on them to report contraventions. FARE agrees with the sentiment expressed in the Discussion Paper that it likely to place undue stress on them.

*As discussed at [3.194]–[3.199], the potential to increase risk to victim survivors must be carefully considered. Relying on victim survivors to report contraventions of any order would place them in a position where they are tasked with monitoring the offender's compliance with the order. This could be seen to place undue stress on victim survivors, requiring them to engage in procedural matters such as providing statements to police within SCF timeframes.<sup>42</sup> (Page 85)*

To be fair to all offenders and increase victim's safety FARE recommends the implementation of randomised testing which may include alcohol and other drug testing. The randomisation element seems to an essential element of the HOPE and HOPE like program.<sup>43</sup> This is because the onus is on the on perpetrator to remaining alcohol and drug free. From the literature, the binary nature of these conditions appears to be important.

Therefore, to be effective, FARE recommends that the perpetrator remain accountable for their actions, this could include a series of binary conditions such as failure to attend counselling appointments, court appearances or hearings, failure to attend behaviour management programs, failure to attend or complete alcohol and other drug (AOD) treatment services. Failure to do these things should result in swift, certain and fair sanctions being applied.<sup>‡</sup> Having these binary conditions removes the need for the victim to monitor the actions of the perpetrator and ensure victims are not blamed for the perpetrators further incarceration or the sanctions being felt by the perpetrator.

These contraventions should commence as binary conditions but over time could include 'satisfactory participation,' for example their participation in behaviour change programs. Noting as mentioned in the Discussion Paper that

*The HOPE program in Hawaii, for example, now includes swift, certain and fair responses to non-binary conditions for family violence offenders such as failure to 'satisfactorily participate' in programs and unlawfully contacting victim survivors. While the former represents violation of a condition, the latter, in Victoria, could constitute further criminal offending<sup>44</sup> (Page 85).*

---

<sup>‡</sup> This issue is covered in the Discussion Paper under question 12: what contraventions should trigger a SCF approach.

## Recommendation

8. FARE recommends that the perpetrator of family violence remain held to account for their actions and that contraventions include binary conditions such as the offender failing to attending counselling appointments, court appearances or hearings, failing to attend behaviour management programs, failing to attend or complete alcohol and other drug (AOD) treatment.

## People with alcohol-use disorders

The Discussion Paper asks under Question 9 if courts should “have expanded powers to prohibit family violence offenders from consuming alcohol entirely (and not just at certain places)?”

FARE does not support the ability for courts to be able to prevent people from consuming alcohol entirely. This is because courts are not in a position to be able to assess who may or may not have alcohol-use disorder or alcohol dependence. An abrupt reduction in alcohol intake in a person who has been consuming alcohol excessively for a prolonged period of time may result in the development of an alcohol withdrawal syndrome; this can be a life threatening condition.<sup>45</sup> People suffering from acute alcohol withdrawal, or those at high risk of developing acute alcohol withdrawal, should be admitted to hospital for medical care.<sup>46</sup>

That said referral to alcohol-treatments programs by the court may be appropriate, as long as those referrals can be undertaken quickly and that the candidate is willing to undertake treatment. To be effective there needs to be arrangements to coordinate responses between AOD services, the courts and perpetrator behaviour change programs.

FARE notes that the Victorian Adult Parole Board can already require offenders to not consume alcohol (condition 11) as well as submit to testing for alcohol consumption (or use of a drug of dependence or prohibited poison) as directed by the Secretary to the Department of Justice (condition 13). Additionally if the person is deemed suitable to undergo or submit to alcohol and other drug treatment program (condition 12).<sup>47</sup> Another option is the Drug Treatment Orders but these are only available through the Victorian Drug Court. FARE believes that options for referral to alcohol and other drug treatment should be available to magistrates within the Victorian court system.

FARE feels that addressing an individual’s reason for using alcohol and other drugs, through treatment is more likely to be effective than only monitoring their alcohol use. SCRAM technology (Secure Continuous Remote Alcohol Monitoring) is effective at being able to monitor an individual’s alcohol consumption but it will not assess and understand the reasons why that person is drinking.

This issue is acknowledged in the Discussion Paper, which outlines that the criticism of programs like HOPE is because of the focus on reducing recidivism and compliance with conditions rather than rehabilitation or treatment. FARE notes that it is important to understand the reasons how a perpetrator’s drinking is linked to their offending, such as premediated alcohol use. The Discussion Paper also outlines that too often offenders do not complete or comply with behaviour change programs or fully participate in these. This needs to be strengthened and there needs to be coordination and two-way collaboration between AOD treatment services and men’s behaviour change programs. Magistrates should order perpetrators of alcohol-related family violence to engage AOD support services and engage with men’s behaviour change services.

## Recommendations

9. FARE recommends that referral to alcohol and other drug treatment services be available to all magistrates within the Victorian court system.
10. FARE recommends that investment be made to better support the integration and coordination between behaviour change programs and alcohol and other drug treatment services.

## People with Fetal Alcohol Spectrum Disorders

FARE is concerned that people with Fetal Alcohol Spectrum Disorders (FASD) may be unfairly impacted by SCF proposals and may fail to meet conditions set by the court system due to their disability.

People with FASD face a range of health and social challenges. FASD is a lifelong disability resulting from prenatal alcohol exposure.<sup>48</sup> It is predominantly brain based but can include facial abnormalities, speech and language delays, intellectual and learning disabilities, memory problems, inattention, deficits in executive functioning, internalising and externalising behavioural problems, hyperactivity and social impairments.<sup>49</sup>

The 2013 Consensus Statement on Legal Issues of FASD from Alberta, Canada states:

*The neurological impairments associated with FASD are likely to collide with the law, which generally assumes a level of intent, foresight and awareness. The evidence shows that, unless diagnosed, those with FASD are likely to be disadvantaged at the point of initial contact with police, in relation to the understanding of legal rights and options as well as the ability to respond to investigative processes (particularly interrogations), at the bail stage, the trial stage, the sentencing stage (where it is assumed by way of deterrence that the risk of adverse consequences will lead to an avoidance of those consequences), and the post-sentencing stage. At each of these stages, it is assumed that offenders are capable of making choices, understanding the consequences of their action, and learning from their mistakes. These assumptions do not accord with what is known about the functional disabilities associated with FASD<sup>50</sup> (Page 12).*

Unfortunately being able to receive a diagnosis is limited in Australia and there is only one project within a criminal justice setting. This is at Banksia Hill Youth Detention Centre in Western Australia. It aims to screen all detainees over a one year, provide a provisional diagnosis as well as an assessment of individual strengths and difficulties and make recommendations for improved management of the young person.<sup>51</sup> Preliminary findings suggest that 30 to 40 per of the detainees have FASD.

Prevalence rates of FASD within the criminal justice population are unknown in Australia but from the small body of available literature internationally, people with FASD have higher rates of incarceration compared to the average population. A study conducted in the US found that 60 per cent of individuals known to have FASD reported being in trouble with authorities, charged and/or convicted and 42 per cent had been incarcerated for a crime.<sup>52</sup> A Canadian study used Relative Risk Calculations to estimate that on any given day in 2008/2009, youth with FASD were 19 times more likely to be in prison than those without.<sup>53</sup> However, due to the lack of information on FASD prevalence it is likely that these estimates are low.

People with FASD are a vulnerable population. The underlying brain damage can limit how well they are able process information, understand and meet the expectations set for them. Strategies that aim to change the behaviour of a person with FASD are likely to fail, not due to a lack of the individual's

desire to change, but their ability to be able to do so. The Consensus Statement on Legal Issues of FASD outlines that:

*Those with FASD facing criminal charges may often not fully appreciate the criminal nature and consequences of their actions, nor may they fully understand the legal proceedings and potential outcomes of their cases. Problems with memory, organizing, and contextualizing may make it difficult for them to remember or to relate important facts that would assist counsel in presenting a proper defence. It is characteristic of individuals with FASD to be suggestible and to have a desire to please others, and, therefore, to agree with leading questions. They may believe that a confession (true or false) is required and may therefore face an increased risk of giving false confessions and being wrongfully convicted.<sup>54</sup> (Page 12).*

By continually failing to meet expectations, people with FASD develop a sense of failure, which can lead to depression and other mental health issues.<sup>55,56</sup> People with FASD are vulnerable to exploitation and often guided into criminal behaviour,<sup>57</sup> they can be used as a scapegoat, negatively influenced by their peers, victimised and exposed to more serious criminal elements.<sup>58</sup>

Correctional facilities and the criminal justice system are not generally prepared to identify or address the needs of individuals with FASD within the overall offender population. In Manitoba, Canada the FASD Youth Justice Program, which commenced in 2004, has a series of red flags to trigger diagnosis referral. These include repeated 'failure to comply', lacking empathy, disrupted or poor school experiences, unable to connect their actions with consequences, not affected by past punishments, crimes that involve risky behaviour for little gain and superficial relationships and friendships.<sup>59</sup> Coordinators from the program attend sentencing hearings to ensure the court proceedings are fully understood and to answer any court questions on FASD.

People with FASD are a vulnerable population. They have difficulty understanding rules and requirements, which in turn makes them susceptible to problems with authorities. Often things worded a particular way are misinterpreted but when worded differently they are understood. This needs to be taken into consideration by the courts, as well as the Victorian Government when designing the SCF program. The Consensus Statement on Legal Issues of FASD notes that:

*The neurodevelopmental deficits associated with FASD challenge the basic principles of sentencing, which assume that offenders are capable of making choices, understanding the consequences of their actions, and learning from their mistakes so as not to repeat them... Similarly, rehabilitation, as it is conventionally understood, is largely a neurodevelopmental process premised on the ability to understand, to learn, to remember, and to make choices. As none of these assumptions fits well with what is known about FASD, failure to take FASD into account during sentencing constitutes an injustice to offenders and to society at large. The offenders fail because they are held to a standard that they cannot possibly attain, given their disabilities.<sup>60</sup> (Page 24).*

It is therefore important that court proceeding and sentencing options are understood by all, including those with FASD. One set of strategies to achieve this is DEAR, which stands for:

- **Direct language:** Use simple and direct language. This population has difficulty using and understanding abstract concepts. Explain things slowly to allow more time to process the information. Ask the interviewee for their understanding of what has been said to ensure they understand the direction or question.



- **Engage** support system: Be sure to ask whether they carry with them the card of a mentor, advocate, or case worker who can offer support and/or act as interpreter. Given that this population frequently does not understand the consequences of providing police with incriminating statements, avoid leading questions and, if possible, do not begin instruction or inquisition until a member of their support system is present.
- **Accommodate** needs: Conduct the interview in a quiet place without distractions. Give the individual space and avoid physical confrontation. Remember that some individuals with FASD also have a Sensory Integration Disorder and may experience a light touch on the shoulder as a hit and react accordingly. Avoid touch unless necessary.
- **Remain** calm: Do not rush, as this will cause stress and may result in the individual becoming overwhelmed. This population is characterised by an inability to manage their emotions; situations may escalate quickly. It is necessary to maintain a calm and collected demeanour.<sup>61</sup>

At the very least, ensure that written documents are in plain-English version and read out to offenders. It is also important that justice professionals undertake professional development to understand FASD and its impacts on the judicial system. This is currently available through the Telethon Kids Institute.

## Recommendations

11. FARE recommends that justice professionals undertake professional development in order to understand how Fetal Alcohol Spectrum Disorders (FASD) affects people's lives and their understanding of court proceedings.
12. FARE recommends that court proceedings be able to be understood by all, this includes making special accommodations for individuals with FASD such as ensuring written documents are in plain-English and use of simple direct language.

## Conclusion

Alcohol is significantly implicated in family violence. The consumption of alcohol by either the victim survivor and/or perpetrator can be a factor or contribute to a circumstance that leads to family violence occurring. Unfortunately when a perpetrator is drinking they are less aware of physical force they are using; they are less concerned about consequences and display increased emotionality which can lead to greater likelihood of violence occurring.

It is critical that perpetrators of family violence be held to account for their actions. A key component of this is the justice system responding in timely and appropriate fashion.

However, none of the current SCF programs specifically target family violence offenders. Therefore, establishing a pilot project based on the existing projects and evidence base should be pursued. This is echoed by Deakin University Violence Prevention Group's submission, which outlines the importance of ensuring that any SCF program are implemented as per the existing evidence base around targeting repeat alcohol and other drug use. Any pilot should be evaluated before any adaption of the model takes place (to family violence offenders for example).

## References

- <sup>1</sup> Roche, A.M. & Steenson, T. (2014). Liquor licensing in Australia: An overview of the legislative frameworks. Chapter 2 in Manton, E., room, R., Giorgi, C., Thorn, M., eds. (2014). *Stemming the tide of alcohol: Liquor licensing and the public interest*. Canberra: FARE in collaboration with The University of Melbourne, p.11.
- <sup>2</sup> Foundation for Alcohol Research and Education. (2014) *The state of play: Alcohol in Victoria*. Canberra: FARE, p.10.
- <sup>3</sup> Heffernan, M. (2 April 2015). Where are our beer caves? Convenience stores want US-style alcohol sales. Sydney Morning Herald. Retrieved from: <http://www.smh.com.au/business/retail/where-are-our-beer-caves-convenience-stores-want-usstyle-alcohol-sales-20150401-1mcul9.html>
- <sup>4</sup> Foundation for Alcohol Research and Education. (2014) *The state of play: Alcohol in Victoria*, Canberra: FARE, p.11.
- <sup>5</sup> Laslett, AM., Mugavin, J. Jiang. H., Manton, E., Callinan, S., MacLean, S., & Room R. (2015). *The hidden harm: Alcohol's impact on children and families*. Canberra: Centre for Alcohol Policy Research, Foundation for Alcohol Research and Education, p.87.
- <sup>6</sup> Laslett, A-M., Catalano, P., Chikritzhs, Y., Dale, C., Doran, C., Ferris, J., Jainullabudeen, T., Livingston, M, Matthews, S., Mugavin, J., Room, R., Schlotterlein, M. and Wilkinson, C. (2010). The range and magnitude of alcohol's harm to others. Fitzroy, Victoria: AER Centre for Alcohol Policy, Research, Turning Point Alcohol and Drug Centre, Eastern Health.
- <sup>7</sup> World Health Organization (2006). WHO facts on: Child maltreatment and child abuse. World Health Organization, Geneva. Retrieved from: [http://www.who.int/violence\\_injury\\_prevention/violence/world\\_report/factsheets/fs\\_child.pdf](http://www.who.int/violence_injury_prevention/violence/world_report/factsheets/fs_child.pdf)
- <sup>8</sup> World Health Organization. (n.d.). *Intimate partner violence and alcohol fact sheet*. Retrieved from: [http://www.who.int/violence\\_injury\\_prevention/violence/world\\_report/factsheets/ft\\_intimate.pdf](http://www.who.int/violence_injury_prevention/violence/world_report/factsheets/ft_intimate.pdf)
- <sup>9</sup> Best, D. (2015). *The Australian Life in Recovery Survey*. Melbourne: Turning Point in partnership with South Pacific Private.
- <sup>10</sup> Kleiman, M.A.R. (2009). *When brute force fails: How to have less crime and less punishment*. Princeton University: Princeton University Press.
- <sup>11</sup> Montana Department of Justice. (n.d). *The Montana 24/6 Sobriety program*. Retrieved from: <https://dojmt.gov/247-sobriety-program/>
- <sup>12</sup> South Dakota Office of the Attorney General (2017). 24/7 Sobriety Program: 24/7 Statistics. Retrieved from: <http://apps.sd.gov/atg/dui247/247stats.htm>
- <sup>13</sup> South Dakota Office of the Attorney General (2017). 24/7 Sobriety Program: 24/7 Statistics. Retrieved from: <http://apps.sd.gov/atg/dui247/247stats.htm>
- <sup>14</sup> Kilmer, B., Nicosia, M., Heaton, P., and Midgette, G. (2012). Efficacy of Frequent Monitoring with Swift, Certain, and Modest Sanctions for Violations: Insights from South Dakota 24/7 Sobriety Project. *American Journal of Public Health*, v. 103, no. 1, Jan. 2013, p. e37-e43.
- <sup>15</sup> Hawaii State Judiciary. (2017). *HOPE Probation*. Retrieved from: [http://www.courts.state.hi.us/special\\_projects/hope/about\\_hope\\_probation](http://www.courts.state.hi.us/special_projects/hope/about_hope_probation)
- <sup>16</sup> National Institute of Justice. (n.d.). *Program Profile: Hawaii Opportunity Probation with Enforcement (HOPE)*. Retrieved from: <https://www.crimesolutions.gov/ProgramDetails.aspx?ID=49>
- <sup>17</sup> Hawken, Angela, and Mark Kleiman. (2009). *Managing Drug Involved Probations With Swift and Certain Sanctions: Evaluating Hawaii's HOPE*. Washington, D.C.: U.S. Department of Justice, National Institute of Justice. Retrieved from: <http://www.ncjrs.gov/pdffiles1/nij/grants/229023.pdf>
- <sup>18</sup> Institute for Behaviour and Health, Inc. (2015). *State of the Art HOPE Probation*. Maryland: Rockville. Retrieved from: [http://www.courts.state.hi.us/docs/news\\_and\\_reports\\_docs/State\\_of\\_%20the\\_Art\\_of\\_HOPE\\_Probation.pdf](http://www.courts.state.hi.us/docs/news_and_reports_docs/State_of_%20the_Art_of_HOPE_Probation.pdf)
- <sup>19</sup> Hawken, A. & Kleiman, M. A. R. (2009). *Managing Drug Involved Probationers with Swift and Certain Sanctions: Evaluating Hawaii's HOPE*. Document No. 229023. Award No. 2007-IJ-CX-0033. Washington, DC: National Institute of Justice. Retrieved from: <http://nicic.gov/Library/024156>
- <sup>20</sup> Hawken, A., Kulick, J., Smith, K., Mei, J., Zhang, Y., Jarman, S., Yu, T., Carson, C. and Vial, T. (2016). *HOPE II: A Followup Evaluation of Hawaii's HOPE Probation*. Award No. 2010-IJ-CX-0016. Washington, DC: National Institute of Justice. Retrieved from: <https://www.ncjrs.gov/pdffiles1/nij/grants/249912.pdf>

- 
- <sup>21</sup> Hawken, A., Kulick, J., Smith, K., Mei, J., Zhang, Y., Jarman, S., Yu, T., Carson, C. and Vial, T. (2016). *HOPE II: A Followup Evaluation of Hawai'i's HOPE Probation*. Award No. 2010-IJ-CX-0016. Washington, DC: National Institute of Justice. Retrieved from: <https://www.ncjrs.gov/pdffiles1/nij/grants/249912.pdf>
- <sup>22</sup> Hawken, A. & Kleiman, M. A. R. (2009). *Managing Drug Involved Probationers with Swift and Certain Sanctions: Evaluating Hawai'i's HOPE*. Document No. 229023. Award No. 2007-IJ-CX-0033. Washington, DC: National Institute of Justice. Retrieved from: <http://nicic.gov/Library/024156>
- <sup>23</sup> Northern Territory Government (2016). Department of Correctional Services Annual Report 2015-2016. Retrieved from: [https://correctionalservices.nt.gov.au/data/assets/pdf\\_file/0007/379771/Corrections-Annual-Report-2015-16.pdf](https://correctionalservices.nt.gov.au/data/assets/pdf_file/0007/379771/Corrections-Annual-Report-2015-16.pdf)
- <sup>24</sup> Northern Territory Department of the Attorney General and Justice (2016). *Report of Consultation: Review of the Domestic and Family Violence Act*. Retrieved from: [https://justice.nt.gov.au/data/assets/pdf\\_file/0006/364326/Report-on-Consultation-Outcomes-Domestic-and-Family-Violence-Act-Review.pdf](https://justice.nt.gov.au/data/assets/pdf_file/0006/364326/Report-on-Consultation-Outcomes-Domestic-and-Family-Violence-Act-Review.pdf)
- <sup>25</sup> Wan, WY. and Weatherburn, D. (2016). *Violent criminal careers: A retrospective longitudinal study*. Contemporary Issues in Crime and Justice Number 198, September 2016. Retrieved from: <http://www.bocsar.nsw.gov.au/Documents/CJB/Report-2016-Violent-Criminal-Careers-A-retrospective-longitudinal-study-cjb198.pdf>
- <sup>26</sup> Foundation for Alcohol Research and Education (2015). *FARE submission to the Victorian Royal Commission into Family Violence*. Foundation for Alcohol Research and Education, Canberra.
- <sup>27</sup> Sutherland, P., McDonald, C. and Millstead, M. (2016). *In brief: Family violence, alcohol consumption and the likelihood of criminal offences*. Crime Statistics Agency, In Brief No. 7. Victoria. Page 3.
- <sup>28</sup> Sutherland, P., McDonald, C. and Millstead, M. (2016). *In brief: Family violence, alcohol consumption and the likelihood of criminal offences*. Crime Statistics Agency, In Brief No. 7. Victoria. Page 3.
- <sup>29</sup> Sutherland, P., McDonald, C. and Millstead, M. (2016). *In brief: Family violence, alcohol consumption and the likelihood of criminal offences*. Crime Statistics Agency, In Brief No. 7. Victoria.
- <sup>30</sup> Sutherland, P., McDonald, C. and Millstead, M. (2016). *In brief: Family violence, alcohol consumption and the likelihood of criminal offences*. Crime Statistics Agency, In Brief No. 7. Victoria. Page 5.
- <sup>31</sup> Sentencing Advisory Council (2017). *Swift, Certain and Fair Approaches to Sentencing Family Violence Offenders Discussion Paper*. State of Victoria, Victoria. Page 75
- <sup>32</sup> Government of Western Australia, Department of Racing, Gaming and Liquor. *Information Bulletin and Lodgement Guide: Liquor Restricted Premises*. Accessed 17 March 2017: [http://www.rgl.wa.gov.au/docs/default-source/rgl/liquor\\_restricted\\_premises.pdf?sfvrsn=14](http://www.rgl.wa.gov.au/docs/default-source/rgl/liquor_restricted_premises.pdf?sfvrsn=14)
- <sup>33</sup> Government of Western Australia, Department of Racing, Gaming and Liquor. *Information Bulletin and Lodgement Guide: Liquor Restricted Premises*. Accessed 17 March 2017. Retrieved from: [http://www.rgl.wa.gov.au/docs/default-source/rgl/liquor\\_restricted\\_premises.pdf?sfvrsn=14](http://www.rgl.wa.gov.au/docs/default-source/rgl/liquor_restricted_premises.pdf?sfvrsn=14)
- <sup>34</sup> Department of Racing, Gaming and Liquor. *Liquor Control Act 1988 – A Guide for Local Government*. Government of Western Australia. Retrieved from: [http://www.rgl.wa.gov.au/docs/defaultsource/rgl/liquorcontrolact1988\\_aguideforlocalgovernment.pdf?sfvrsn=6](http://www.rgl.wa.gov.au/docs/defaultsource/rgl/liquorcontrolact1988_aguideforlocalgovernment.pdf?sfvrsn=6)
- <sup>35</sup> Northern Territory Government (2015). *Public housing safety: Alcohol-restricted premises*. Retrieved from: [https://housing.nt.gov.au/data/assets/pdf\\_file/0005/34682/Alcohol\\_restricted\\_premises\\_FS10.pdf](https://housing.nt.gov.au/data/assets/pdf_file/0005/34682/Alcohol_restricted_premises_FS10.pdf)
- <sup>36</sup> *Liquor Control Reform Act 1998* (Victoria) s.3AB (Austl.). Retrieved from: [http://www.austlii.edu.au/au/legis/vic/consol\\_act/lcra1998266/](http://www.austlii.edu.au/au/legis/vic/consol_act/lcra1998266/)
- <sup>37</sup> Victorian Commission for Gambling and Liquor Regulation. (2013). *Liquor licensing fact sheet: Intoxication guidelines*. Retrieved from: [https://www.vcglr.vic.gov.au/sites/default/files/uploadLiquor\\_licensing\\_fact\\_sheet\\_-\\_Intoxication\\_guidelines.pdf](https://www.vcglr.vic.gov.au/sites/default/files/uploadLiquor_licensing_fact_sheet_-_Intoxication_guidelines.pdf)
- <sup>38</sup> Victorian Commission for Gambling and Liquor Regulation. (2013). *Liquor licensing fact sheet: Intoxication guidelines*. Retrieved from: [https://www.vcglr.vic.gov.au/sites/default/files/uploadLiquor\\_licensing\\_fact\\_sheet\\_-\\_Intoxication\\_guidelines.pdf](https://www.vcglr.vic.gov.au/sites/default/files/uploadLiquor_licensing_fact_sheet_-_Intoxication_guidelines.pdf)
- <sup>39</sup> Victorian Health Promotion Foundation (VicHealth). (2014). *Australians' attitudes to violence against women*. Findings from the 2013 National Community Attitudes towards Violence Against Women Survey (NCAS), Victorian Health Promotion Foundation, Victoria.
- <sup>40</sup> Braaf, R. (2012). *Elephant in the room: Responding to alcohol misuse and domestic violence*. Australian Domestic & Family Violence Clearinghouse Issues Paper no.24.

- 
- <sup>41</sup> Sutherland, P., McDonald, C. and Millsteed, M. (2016). *In brief: Family violence, alcohol consumption and the likelihood of criminal offences*. Crime Statistics Agency, In Brief No. 7. Victoria. Page 3.
- <sup>42</sup> Sentencing Advisory Council (2017). *Swift, Certain and Fair Approaches to Sentencing Family Violence Offenders Discussion Paper*. State of Victoria, Victoria. Page 85
- <sup>43</sup> Swift Certain and Fair website: Ingredients for success. Accessed 21 March 2017. Retrieved from: <http://www.swiftcertainfair.com/ingredients-for-success/>
- <sup>44</sup> Sentencing Advisory Council (2017). *Swift, Certain and Fair Approaches to Sentencing Family Violence Offenders Discussion Paper*. State of Victoria, Victoria. Page 85
- <sup>45</sup> National Collaborating Centre for Chronic Conditions. (2010). *NICE clinical guideline 100. Alcohol-use disorders Diagnosis and clinical management of alcohol-related physical complications*. London: NHS
- <sup>46</sup> Ibid.
- <sup>47</sup> Adult Parole Board of Victoria (2015). *Parole Manual - Adult Parole Board of Victoria (Fifth Edition)*. Corrections Victoria, Victoria.
- <sup>48</sup> Barr, H. M., & Streissguth, A. P. (2001). Identifying maternal self-reported alcohol use associated with fetal alcohol spectrum disorders. *Alcoholism: Clinical and Experimental Research*, 25(2), 283-287.
- <sup>49</sup> The Parliament of the Commonwealth of Australia 2012. FASD: The hidden harm: inquiry into the prevention, diagnosis and management of fetal alcohol spectrum disorders. House of Representatives Standing Committee on Social Policy and Legal Affairs.
- <sup>50</sup> Institute of Health Economics. (2013). *Consensus statement on Fetal Alcohol Spectrum Disorders, Edmonton, Alberta*. Volume 5 – September 18 – 20, 2013. Page 12.
- <sup>51</sup> Bower, C., Mutch, R., Marriot, R., Watkins, R., Zubrick, S., Pestell, C., Fitzpatrick, J., Collins, P. and Carapetis, J. Telethon Kids Institute webpage: Banksia Hill FASD Project. Accessed 24 March 2017. Retrieved from: <https://www.telethonkids.org.au/our-research/brain-and-behaviour/disability/alcohol-and-pregnancy-and-fasd-research/banksia-hill-fasd-project/>
- <sup>52</sup> Streissguth AP, Barr HM, Kogan J, Bookstein FL. *Understanding the Occurrence of Secondary Disabilities in Clients with Fetal Alcohol Syndrome (FAS) and Fetal Alcohol Effects (FAE)*. Final Report to the Centers for Disease Control and Prevention (CDC); Seattle: University of Washington, Fetal Alcohol & Drug Unit, Tech. Rep. No. 96-06, 1996.
- <sup>53</sup> Popova, S., Lange, S., Bekmuradov, D., Mihic, A., & Rehm, J. (2011). Fetal Alcohol Spectrum Disorder Prevalence Estimates in Correctional Systems: A Systematic Literature Review. *Canadian Journal of Public Health / Revue Canadienne De Sante'e Publique*, 102(5), 336-340. Retrieved from: <http://www.jstor.org/stable/41995627>
- <sup>54</sup> Institute of Health Economics. (2013). *Consensus statement on Fetal Alcohol Spectrum Disorders, Edmonton, Alberta*. Volume 5 – September 18 – 20, 2013. Page 12.
- <sup>55</sup> Russell, V. (2008). *Living with Foetal Alcohol Spectrum Disorder: A guide for parents and caregivers*. Drug Education Network Tasmania, Communities for Children and Stronger Families.
- <sup>56</sup> Riley, E. Clarren, S., Weinberg, J. and Jonsson, E. (Eds). (2011). *Fetal Alcohol Spectrum Disorder: management and policy perspectives of FASD*. Wiley-Blackwell, Germany.
- <sup>57</sup> Bower, C. (2012). *Submission to the West Australian Legislative Assembly Education and Health Standing Committee Inquiry into improving educational outcomes for West Australians of all ages*. Subiaco, WA.
- <sup>58</sup> Streissguth, A., Barr, H., Kogan, J. and Bookstein, F. (1996). *Understanding the Occurrence of Secondary Disabilities in Clients with Foetal Alcohol Syndrome and Foetal Alcohol Effects, Final Report to the Centers for Disease Control and Prevention*. University of Washington, Fetal Alcohol and Drug Unit, Tech. Rep No 96-06
- <sup>59</sup> Chudley, A. (2013). Review of current models for assessment and screening for FASD in the youth justice system. FASD Legal Issues Consensus Development Conference, Edmonton, Alberta, Canada. Accessed 24 March 2017. Retrieved from: [www.ihe.ca/download/fasd\\_legal\\_issues\\_cdc\\_q2\\_ppt\\_2\\_chudley.pdf](http://www.ihe.ca/download/fasd_legal_issues_cdc_q2_ppt_2_chudley.pdf)
- <sup>60</sup> Institute of Health Economics. (2013). *Consensus statement on Fetal Alcohol Spectrum Disorders, Edmonton, Alberta*. Volume 5 – September 18 – 20, 2013. Page 24
- <sup>61</sup> Brown, J., Herrick, S. and Long-McGie, J. (2014). Fetal Alcohol Spectrum Disorders and Offender Reentry: A Review for Criminal Justice and Mental Health Professionals. *Behavioral Health*, 1(1).



**Foundation for Alcohol Research & Education**

PO Box 19, Deakin West ACT 2600  
Level 1, 40 Thesiger Court Deakin ACT 2600  
Ph 02 6122 8600  
[info@fare.org.au](mailto:info@fare.org.au)  
[www.fare.org.au](http://www.fare.org.au)

ISBN 978-0-9954370-6-7