

Diversion for Dementia: Access to Criminal Justice for People with Dementia

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Outline

What is dementia?

Dementia & Crime

Mental Health and Cognitive Impairment Forensic Provisions Act 2020 (NSW)

s14 – diversion out of criminal justice system

5 Case examples of s14 for people with dementia

Common issues and challenges



What is Dementia?

A syndrome characterised by cognitive decline due to brain injury or disease.

1/10 people over 65 yrs,

3/10 over 85 yrs have a diagnosis of dementia (WHO).

Onset typically over 65 yrs, but certain dementia types have younger onset <65 yrs.



Types of Dementia

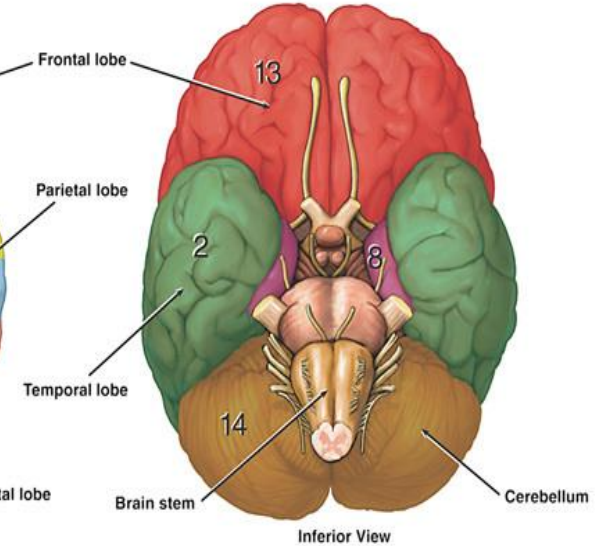
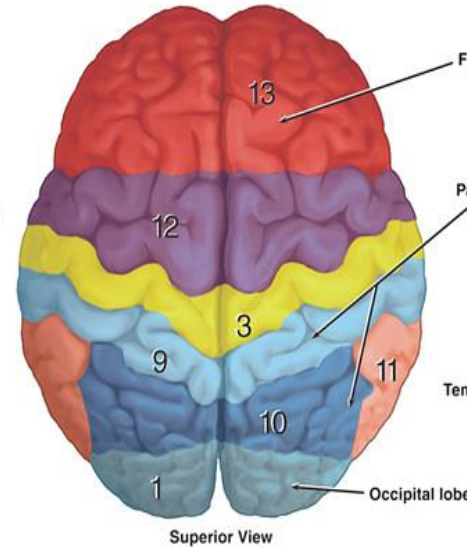
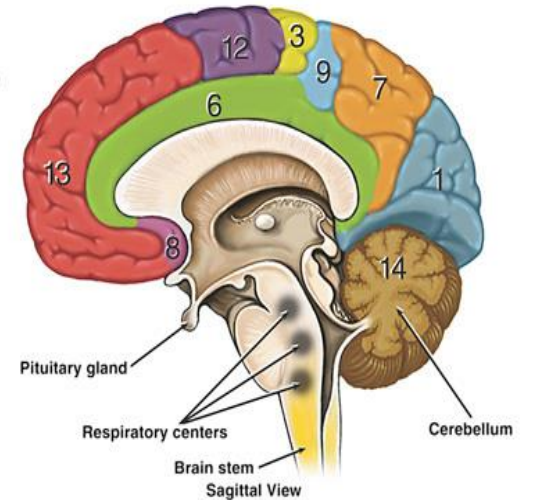
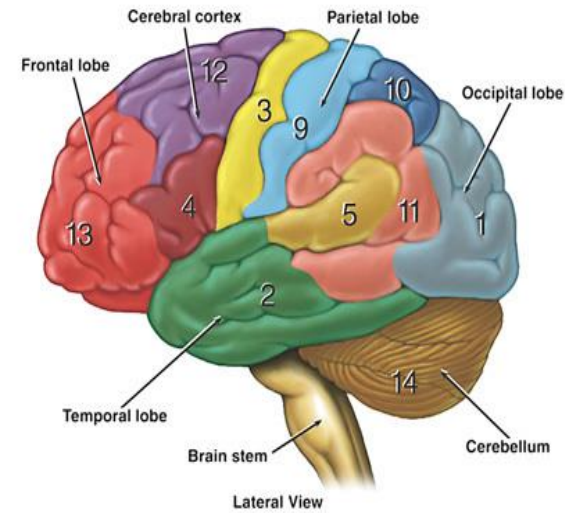
Alzheimer's Dementia (AD) - most common, prominent memory impairment.

Behavioural variant Fronto-temporal dementia (Bv-FTD) – prominent social and emotional changes.

...and many other dementia types including Lewy Body, Huntington's and Alcohol related dementia.

Functional Areas of the Cerebral Cortex

- 1 **Visual Area:**
Sight
Image recognition
Image perception
 - 2 **Association Area**
Short-term memory
Equilibrium
Emotion
 - 3 **Motor Function Area**
Initiation of voluntary muscles
 - 4 **Broca's Area**
Muscles of speech
 - 5 **Auditory Area**
Hearing
 - 6 **Emotional Area**
Pain
Hunger
"Fight or flight" response
 - 7 **Sensory Association Area**
 - 8 **Olfactory Area**
Smelling
 - 9 **Sensory Area**
Sensation from muscles and skin
 - 10 **Somatosensory Association Area**
Evaluation of weight, texture, temperature, etc. for object recognition
 - 11 **Wernicke's Area**
Written and spoken language comprehension
 - 12 **Motor Function Area**
Eye movement and orientation
 - 13 **Higher Mental Functions**
Concentration
Planning
Judgment
Emotional expression
Creativity
Inhibition
- ## Functional Areas of the Cerebellum
- 14 **Motor Functions**
Coordination of movement
Balance and equilibrium
Posture



Dementia and Law

Dementia is a neglected topic in elder law research (Doron, 2020).

Scarce research attention on the intersection between dementia and criminal law.

Offenders with dementia are a challenge to the criminal justice system.

- Determining criminal responsibility
- Assessment of fitness to stand trial
- Appropriate sentencing.



Dementia and Crime

Agitation and aggression are common in all types of dementia.

High rates of dementia diagnoses in physically violent elderly offenders.

Physical aggression and criminal behaviour are more likely in people with Bv-FTD than AD (Liljegren et al, 2015, 2018).



Australian criminal offenders with dementia

(Reutens et al., 2024)

Australian court cases 1995-2020.

62 offenders with dementia, most common subtype vascular (19.35%) followed by FTD (16.13%).

Homicide (typically intimate partner), assault, driving offences.

46/62 had executive dysfunction (stated by expert witness or by nature of dementia type).

CRIME

Dementia sufferer murders wife, then forgets he killed her

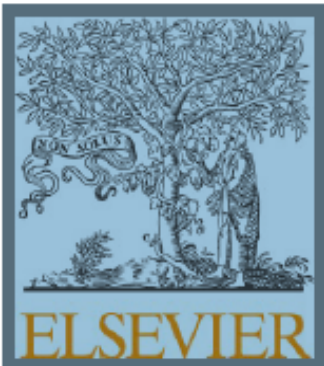
An 82-year-old man has murdered his wife and forgotten that he killed her, according the Süddeutsche Zeitung (SZ).

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Dementia sufferer unfit to stand trial over wife's murder

AN ELDERLY man who frequently tells people he is waiting for his wife to visit him in a Sydney jail has been found unfit to stand trial on a charge of murdering her.



Contents lists available at [ScienceDirect](#)

International Journal of Law and Psychiatry

journal homepage: www.elsevier.com/locate/ijlawpsy

Homicide and dementia: An investigation of legal, ethical, and clinical factors of Australian legal cases[☆]

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Sentencing and placement of offenders with dementia: a significant contemporary challenge for the criminal justice system

John Anderson & Ameer Baird

Accuracy and timing of dementia diagnosis

Timing of diagnosis and determination of fitness to plea

Accurate diagnosis necessary for appropriate sentencing and special verdict.

Challenge of appropriate placement of offenders with dementia.

Ageing & crowded prison population.



Mental Health and Cognitive Impairment Forensic Provisions Act 2020 (NSW)

An Act with respect to criminal proceedings involving persons with a mental health impairment or **cognitive impairment** and the care, treatment and control of those persons; and for other purposes.

Section 5 – Definition of cognitive impairment includes ‘dementia’.

MHCIFPA section 5

5 Cognitive impairment

- (1) For the purposes of this Act, a ***person has a cognitive impairment*** if—(a) the person has an ongoing impairment in adaptive functioning, and
- (b) the person has an ongoing impairment in comprehension, reason, judgment, learning or memory, and
- (c) the impairments result from damage to or dysfunction, developmental delay or deterioration of the person’s brain or mind that may arise from a condition set out in subsection (2) or for other reasons.
- (2) A cognitive impairment may arise from any of the following conditions but may also arise for other reasons—
- (a) intellectual disability,
- (b) borderline intellectual functioning,
- (c) dementia,**
- (d) an acquired brain injury,
- (e) drug or alcohol related brain damage, including foetal alcohol spectrum disorder,
- (f) autism spectrum disorder.

MHCIFPA section 14

14 Orders Magistrate may make

- (1) A Magistrate **may** make an order to **dismiss a charge and discharge the defendant**—
 - (a) **into the care of a responsible person**, unconditionally or subject to conditions, or
 - (b) on the condition that the defendant attend on a person or **at a place** specified by the Magistrate for assessment, treatment or the provision of support for the defendant's mental health impairment or cognitive impairment, or
 - (c) unconditionally.
- (2) An order to dismiss a charge against a defendant does not constitute a finding that the charge against the defendant is proven or otherwise.

5 Cases: s14 'dementia'

Case	Gender/Age	Charge	Dementia type /diagnostic differentials
1	M/82	Possess knife w/o reasonable excuse, commit animal cruelty, intimidation	Vascular, Bv-FTD
2	M/85	Sexual touching	Vascular, Vascular/AD, Bv-FTD
3	M/82	Possess prohibited weapon unregistered firearm, AVO	Vascular, AD, Vascular/AD
4	M/73	AVO and AoABH	AD, Alcohol
5	F/76	Destroy/damage property, common assault, stalk /intimidate, AVO	Vascular or AD, Vascular/AD

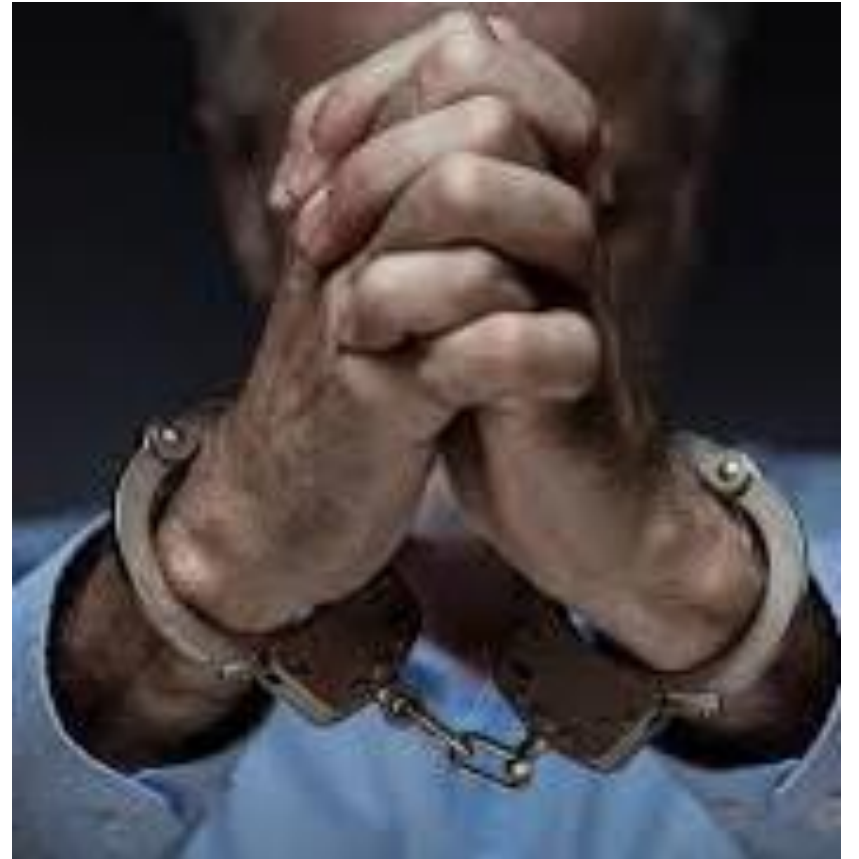
Common issues

Unable to recall criminal offence

Difficulty understanding legal process/court proceedings and potential outcomes

'Treatment plan' for dementia?

Delays



Case 5: Delays

76yo female, charged with various offences against husband.

Lawyer first met her 10 April 2024 at hospital. Matter finalised 7 November 2024.

- Await Legal Aid funding to obtain report.
- Wait time to get appointment with geriatrician/neuropsychologist, then await report.
- Difficulty obtaining instructions (reduced mobility, unable to attend office or use technology, required home/hospital visits).
- Lack of family support.
- Admitted to hospital/awaiting residential aged care placement after report obtained but before hearing.
- Adjournment, seek leave for the matter to be dealt with by the Court in her absence.

At the Mercy of the Magistrate

Some are more inclined than others to grant section 14's

Lack of understanding of dementia

Impact of age of magistrate/personal experience with dementia?



Challenges of court for elderly offenders

Mobility and sensory difficulties (visual and hearing impairment)

Cognitive difficulties (language – expressive and receptive, memory, attention, speed of processing)

Anxiety and fatigue.

Not understanding court procedure:

e.g. Case 1 - 82yo possess knife charge when he attended court for other charges.



Elder Court

Specialised court/list for elderly offenders (70 yrs +).

Fast tracked cognitive assessments, geriatrician review.

Legal practitioners and judicial officers experienced with the needs of elderly people.



Police interactions with people with dementia



Two police officers charged with assaulting 92-year-old man with 'likely dementia' in Sydney

Ex-officer jailed after rough arrest of woman with dementia

Conclusion

Ageing population = growing number of offenders with dementia facing the criminal justice system.

Neurodegenerative nature of dementia requires a unique approach at all stages of criminal justice system.

Need for education, law reform and new policies to ensure just outcomes for this highly vulnerable population.



Thank you



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