

# The Elder Court: A proposed specialised court for older criminal offenders

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# Clinical Background: Older offenders

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

Increase in offending rates for persons aged 50+ years since 2000 (Judicial Commission of NSW)

Older offenders increasingly contributed to all types of offences, most notably driving, drug and violent/sexual offences.

# Challenges of court for elderly offenders

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Mobility and sensory difficulties (visual and hearing impairment)

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

Anxiety and fatigue

Misunderstanding court procedures



# What is Dementia?

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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.



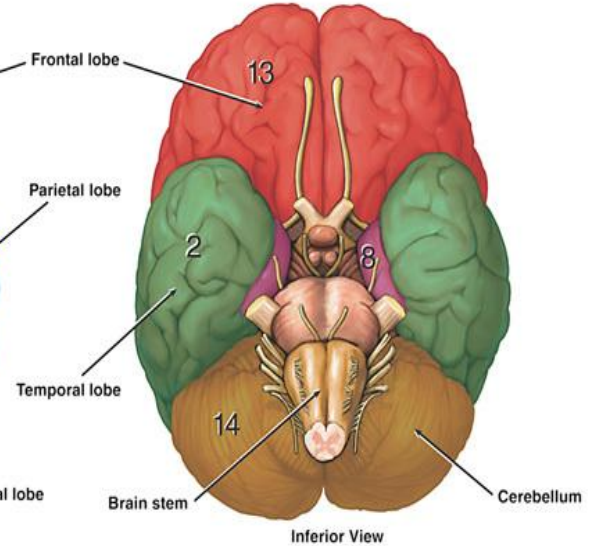
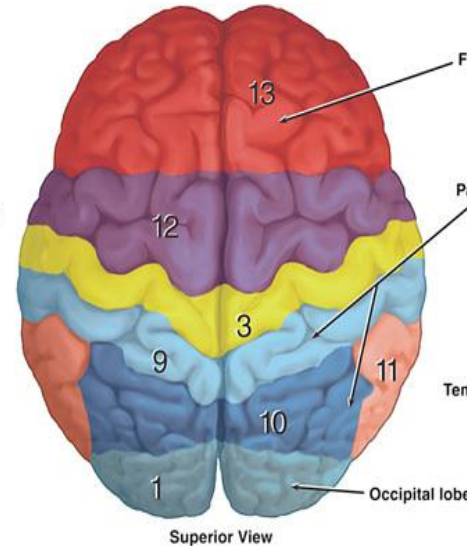
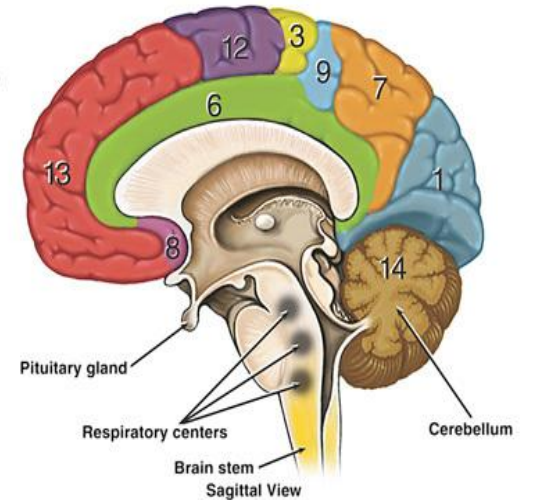
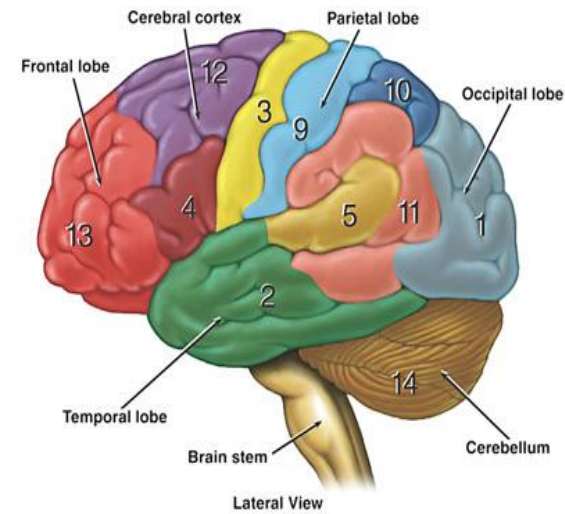
# Types of Dementia

**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



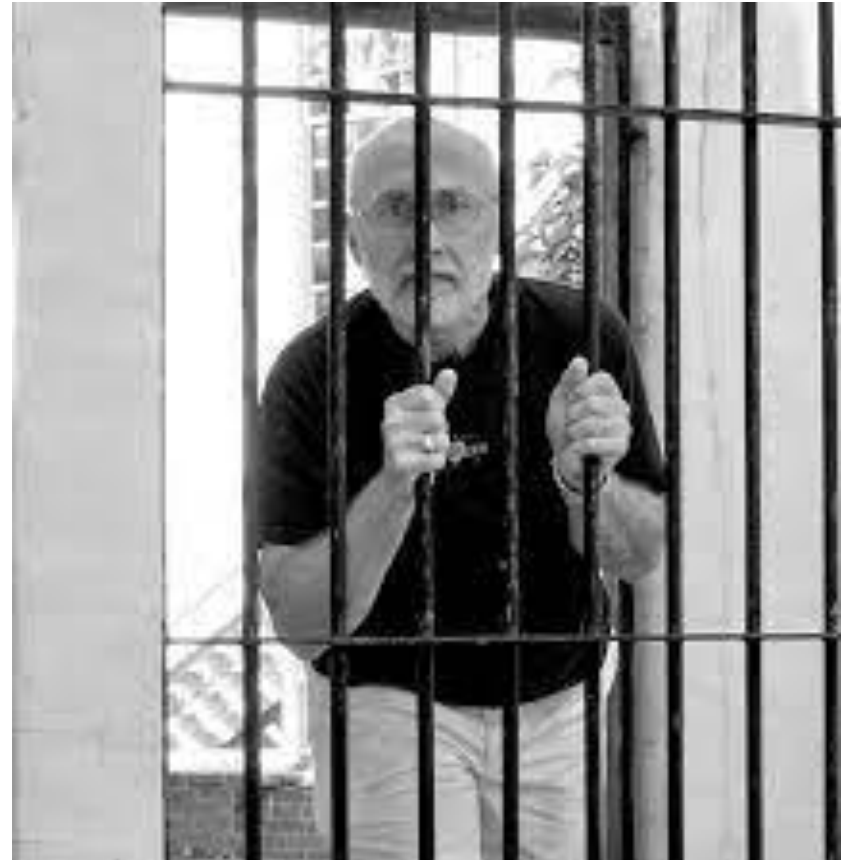
# Dementia and Crime

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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).



# *Common issues of offenders with dementia*

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Unable to recall criminal offence

Arrested, charged and interviewed alone by Police

Difficulty understanding legal process/court proceedings and potential outcomes

Delays due to hospital or aged care admissions

Distressing experience for family members.



# Case 1: Mrs. A

76yo, cognitive concerns but no dementia diagnosis at time of offences.

Destroy/damage property, common assault and stalk/intimidate with intention to cause physical or mental harm) committed in a domestic violence context against her husband.

- Interview with Mrs A's lawyer

*“These are difficult, time-consuming matters. Legal Aid funding barely scratches the surface of the time involved”.*

*“The whole system needs to change with the ageing population”.*

Baird A (2025) **Diversion for dementia: Access to justice for people with dementia**, *Justice Ideas* Vol 2024(1). Sydney: Law and Justice Foundation of NSW.

## Case 2: Mr. G

88yo, dementia diagnosis 3 months prior to offence.

Driving with mid-range prescribed concentration of alcohol, and previous charge of unregistered firearms.

- Interview with Mr G's daughter/carer

*“Police shouldn't do anything until a carer, a family member or a lawyer are there. They shouldn't escalate the situation”.*

*“It was a waste of the court time and a waste of money. He didn't understand any of it. All the legal jargon went over his head. It took all day, and he didn't engage at all”*

# Conceptual Framework Therapeutic Jurisprudence

More aptly described as an interdisciplinary approach to law, a useful lens, perspective or simply a way of looking at the law in a richer way (Wexler, Winick)

The law's effect on physical and psychological well-being of those affected by its processes (Slobogin, Wexler and Winick). Allows law to develop as psychology develops – improving legal processes and outcomes.

Proposes reform to minimise negative effects and promote positive effects on well-being. (Wexler and Winick)

Promotes therapeutic principles such as voice, validation, respect and self-determination (Winick; King and Duguid; Cant, Downie and Henry).

Significant practical implications in daily work of the legal system and implications of mental health findings– therapeutic agents in the treatment of underlying causes of criminal conduct.

- Application in differing legal systems and cultural contexts, including Indigenous approaches.
- Effect of the law in action – as a social force.
- Other values considered – may converge with therapeutic or may conflict. Still may offer suggestions for carrying out a decision more therapeutically and effectively.
- Relationship to restorative justice, problem-solving courts and holistic approaches to law, e.g., mental health and court diversion programs (King).



# Conceptual Framework – Restorative Approach

- **Restorative practice**
- Restorative justice in modern criminal justice systems – restoration of victims, offenders and communities. Practice driven forms of mediation, conferencing and circles. (Braithwaite - participation of plurality of stakeholders, responsive regulation)
- Restorative practice - broader reach based on **principles and values** as an approach to dispute resolution and building, maintaining and repairing relationships – JUST relationships. (Van Ness, Strong, Zehr, Llewellyn)
- Principles: accepting accountability and repairing harms, participation, dialogue-driven process, plan for restoration/reparation, equal concern, safety, reintegration, non-domination, confidentiality.
- Values of respect, honesty and truth-telling, trust, apology-forgiveness, humility and transformation (Anderson, Islam and Li 2025)
- Importance of a language and communication between individuals and groups.
- Restorative policing – evolved from traditions of community policing and problem-oriented policy – emphasis on community, partnerships with other agencies and identifying and dealing with underlying causes of, or potential triggers for, crime in various demographic cohorts (Clamp and Paterson)



# Specialist/Problem-Oriented Courts in Australia



- **Problem-oriented courts** - seeks to use the authority of the courts to address underlying problems of individual litigants, the structural problems of the justice system and the social problems of communities (Berman and Feinblatt). Employ a collaborative approach to achieve stated goals.
- **Drug Court** – treatment model with intensive judicial supervision and monitoring, multi-disciplinary team approach in non-adversarial setting and progress towards agreed goals.
- Research findings - cost benefit analysis, reducing re-offending and overall improvement in health outcomes.

# Specialist/Problem-Oriented Courts in Australia

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- **Mental Health Court** – evolved in the US – diversion into treatment programs and monitor through treatment programs.
- Outside the formal court processes to deal specially with offenders who are unfit to plead or raise mental health and cognitive impairment defences.
- Distinctive feature is early intervention and have multi-disciplinary teams providing for intensive treatment and supervision under judicial control. (Redlich).
- Therapeutic response by delivering a range of services. Exist in Australian jurisdictions or are in special lists – pre-plea and low level offending.



# Specialist/Problem-Oriented Courts in Australia



- **Other examples** of problem-oriented courts
- Domestic & Family Violence – models in US, Canada, New Zealand and UK. Courts, Divisions or Lists - SA, WA, ACT, Victoria, NSW, Tasmania
- Alcohol – NT. Rural Alcohol Diversion - NSW
- Community – neighbourhood justice centres (Victoria)
- Koori court (Indigenous) circle sentencing
- MERIT – NSW Local Courts
- Internationally has also extended to homelessness, tribal, child welfare treatment, drink driving.
- **Other end of age spectrum: Children’s Court** – initial diversionary approach – *Young Offenders Act*.
- Age of criminal responsibility – rationale for **age-based** parameters.
- Young people all legally represented within informal court setting. Specific Children’s Magistrates (soon Judges)
- Separate legislation – care and protection, criminal proceedings.
- Adversarial features but emphasis on rehabilitation and multi-agency assessments to ascertain root causes of offending.
- Established links to various agencies, services, programs to tailor outcomes.
- **Now - ? Senior status, older person, elder.**

# Elder Court Model

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Specialised court/list for elderly offenders (65 yrs +)

Multi-disciplinary team, individualised approach –  
therapeutic model and restorative principles and values.

Fast tracked cognitive assessments, geriatrician review,  
social work input

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



# Conclusion

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Ageing population = increasing prevalence of older criminal offenders.

Criminal justice system not ideal for older offenders, particularly those with dementia.

Need for education, law reform and new policies to ensure just outcomes.

An **Elder Court** will enable greater access to justice for this vulnerable population.



*Thank you*



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