

## **FASD screening caution – ‘mental impaired’ laws a danger**

Screening for FASD and other signs of impairment in the legal system would be useful, but unless ‘mental impaired’ laws change another generation of people face the risk of indefinite detention without procedural fairness or judicial scrutiny.

Developmental Disability WA CEO Taryn Harvey today told ABC Regional Drive that she supported calls for FASD screening to break the cycle of youth crime, but claimed the State’s ‘mental impaired’ law meant people identified through screening as having impairments risked indefinite detention.

“You cannot talk about justice and screening without also talking about our ‘mental impaired’ law. This State’s law is a disincentive to identifying when people need support to understand the legal process because of impairment. It’s a legal gamble with people’s lives,” Ms Harvey said.

WA’s ‘mental impaired accused’ legislation establishes an extra-judicial process for alleged offenders who can’t be tried due to cognitive or intellectual disability, or serious mental illness. It has long been criticised by legal authorities and advocates for lacking procedural fairness and judicial review.

Ms Harvey wants significant changes to the law before any standardised screening for impairments is introduced. She fears that otherwise it might identify people with impairments and then subject them to the risk of indefinite detention. Ms Harvey said the law as it stands breaches human rights.

“I believe there are significant benefits to screening young offenders and tailoring interventions and supports to meet their needs and prevent future offending. But we need to change this law to provide the basic protections of procedural fairness in decision making,” Ms Harvey said.

The Criminal Law (Mental Impaired Accused) Act 1996 was originally enacted to protect people with impairments, but disability, mental health advocates and legal advocates say it needs significant reform. They are awaiting the findings of a review of the legislation by the Government in late 2014.

“We cannot keep trying to work around this law. It is unjust and unfair and it breaches human rights. The Mental Impaired Accused Review Board has been operating well under the Judge Cocks, and I commend him. But that good leadership is no substitute for sound legislation,” Ms Harvey said.

Advocates are awaiting the release of the Government’s review of the legislation and its response. The Attorney-General’s office has declined to indicate when the review and response will be released.