



Launch of Videos for Justice Professionals:

'Understanding Foetal Alcohol Spectrum Disorder'
Produced by Telethon Kids Institute
Legal Aid Commission of WA

29 April 2015

by

The Honourable Wayne Martin AC
Chief Justice of Western Australia

Wednesday, 29 April 2015

Introduction

It is a pleasure and a privilege to have been invited to assist in the launch of the series of educational videos prepared by the Telethon Kids Institute and which are designed to inform justice professionals about Foetal Alcohol Spectrum Disorder (FASD). The information provided in the sequence of five videos includes the range of symptoms likely to be displayed by sufferers - many of them behavioural rather than physiological (although they are neurological in origin), the procedures for assessment of the condition, and the need for services and a management plan to reduce the risk that sufferers will just become another statistic in the revolving doors to our courts and prisons.

Acknowledgement of the traditional owners

Because of the topic we are addressing this evening, it is more than usually appropriate to acknowledge the traditional owners of the lands on which we meet, the Whadjuk people who form part of the great Noongar clan of south-western Australia and I pay my respects to their Elders past and present, and acknowledge their continuing stewardship of these lands.

Of course, FASD is not confined to Aboriginal people, but it is a tragic fact that Aboriginal people are grossly over-represented amongst those who suffer from the condition, in the same way as Aboriginal people are grossly over-represented in the criminal justice system of this State and indeed this country.

Thanks

There are a number of people and organisations who deserve our gratitude for their contribution to this important project. First and foremost, of course, is the Telethon Kids Institute, which has borne the responsibility of preparing these important videos. I know that the production of the videos has been very much a team effort, and in that context it is invidious to nominate particular individuals, because of the risk of omitting reference to others who should also be nominated, but I propose to take that risk and mention in particular Heather Jones who has coordinated the project and who is the manager of Telethon Kids Institute FASD projects generally, and Professor Carol Bower and Associate Professor Raewyn Mutch, who have contributed much of the content used in the videos including, in Raewyn's case, providing the services of her daughter acting as the subject in some of the videos.

The videos that are being launched this evening are one part of a suite of projects being undertaken by the Telethon Kids Institute in the area of FASD including research into the epidemiology of the condition in Western Australia, studies of the health and adverse life outcomes of those who suffer from the condition, including educational outcomes, the development of diagnostic and screening instruments, and perhaps most importantly, the development of minimisation and prevention strategies.

Canada is generally thought to lead the world in the area of research and management of FASD. However, the ground-breaking work now being undertaken by the Telethon Kids Institute and others in this State is receiving entirely appropriate international recognition, and

has the capacity to bring this State and country into line with world's best practice if given appropriate support and recognition by relevant agencies of government.

Next, I would like to thank the Legal Aid Commission of Western Australia, not only for its hospitality this evening, but also for the generous and enthusiastic support which it has provided for the development of these videos. Staff of the Commission feature prominently in the videos and make a significant contribution to their impact, as do staff at the Aboriginal Legal Service of Western Australia and I thank the ALS for its contribution to the development of these videos.

Next, I would like to thank the Department of the Attorney General, represented this afternoon by the Director General of that department, for making funding available from the proceeds of crime fund to cover the costs of developing these videos.

The objective of the videos

Despite the valiant efforts of the Telethon Kids Institute, FASD remains a somewhat mysterious and poorly understood range of disorders and disabilities. Foetal Alcohol Syndrome has only been recognised as such since the late 60s, which is, of course, less than 50 years ago. Because physical symptoms are only apparent to an observer in a relatively small number of often but not always the more severe cases, diagnosis of the condition is difficult, often compounded by the location of sufferers in remote parts of the State far from qualified clinicians.

However, what we do know for certain is that the behavioural symptoms of the condition are inherently likely to pre-dispose sufferers to intersection with the criminal justice system. When those intersections occur, it is essential that those who are engaged in the system, either directly, like police, lawyers, magistrates, judges and corrections officers, or less directly, like officers of the Department of Child Protection and Family Support and health professionals providing services to those within the justice system, have an awareness of the condition, and are alert to the possibility that the person with whom they are dealing may suffer from the condition, and of the consequences which might flow from a diagnosis, in terms of disposition of the case before the court, and management and treatment options.

We also know for certain that there are cases coming before our courts in which offenders are not being screened for FASD even though the likelihood that they may suffer from the condition practically screams off the pages of the reports relating to them, and even though they have been before the courts and assessed by justice system professionals many times. Two such cases have been documented in decisions published within the last few months - one by the Court of Appeal,¹ and the other by the President of the Children's Court.² There is no reason to suppose that these are isolated examples.

The videos which are being launched this evening fill a very large gap in the information available to all relevant professional groups in a format which is very user-friendly - five videos each of about 5

¹ *AH v The State of Western Australia* [2014] WASCA 228.

² *The State of Western Australia v BB (a child)* [2015] WACC 2.

minutes duration which can be viewed whenever convenient to the relevant practitioner or official.

Lack of resources

Unfortunately, while these new videos provide an invaluable resource, the reality is that screening and diagnostic services are thin on the ground in regional and remote Western Australia where they are needed, and where management and treatment plans, and the facilities needed to reduce the risk of aberrant behaviour by sufferers are virtually non-existent.

But that is exactly why these videos are so valuable - they represent an important first step. As long as the professional groups that I have mentioned do not understand this condition and its consequences, or do not know how to deal with them, courts are most unlikely to order diagnostic testing. If sufferers are not diagnosed, there is no demand for health or disability agencies to develop management and treatment plans, nor for executive government to provide facilities within which sufferers can be housed in order to reduce the risk of further offending. On the other hand, if justice system professionals are alive to the possibility that a child or adult brought before a court may suffer from FASD, there are things that the court can do in order to address the shortcomings in diagnostic and treatment services to which I have referred. Under the Sentencing Act, courts can order the provision of reports prior to sentence, including medical reports. Under the same Act, the court can require the Department of Corrective Services to endeavour to prepare a management plan which can be supported by conditions imposed by the court on a

community-based order. Of course, if management services and facilities do not exist, they cannot be included in such plans, but if courts call for such plans and facilities, this will add to the demand to develop and provide them.

So these videos are a vital first step. They will provide various professional groups engaged in or associated with the justice system with the information they need to initiate actions which have the capacity to contribute to the provision of diagnostic, management and treatment services and facilities which we need to prevent persons who suffer from a debilitating condition through no fault of their own from a life of repeated offending and incarceration. They have the capacity to improve community safety, in the longer run, by enabling the justice system to deal more appropriately with FASD affected offenders, thereby reducing the prospects of reoffending. That is why I am very pleased to have the opportunity to launch these important videos this evening.