

BOOK REVIEW

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DAN TOOMBS, *DISABILITY AND THE QUEENSLAND CRIMINAL JUSTICE SYSTEM* (LAWBOOK CO. 2012) 206PP

Over the past 15 years Queensland has witnessed major changes in the way that the criminal justice system deals with people with a mental disability. The changes brought about by the *Mental Health Act 2000* (Qld) were followed by the *Forensic Disability Act 2011* (Qld). In 2012 the Court of Appeal decision of *R v AAM ex parte A-G (Qld)* [2012] QCA305 was handed down in relation to fitness to plead in summary cases.

The author's stated aim of writing the book was to imbue:

... the same sense of idealism I had when I started the Disability Law Project some six years ago. My hope is that it will go towards facilitating the necessary learning and urge a "holistic address" of those adaptive challenges that are intrinsically embedded in this complex malaise of disability and the Queensland criminal justice system.¹

This is an aim that is difficult to achieve in 206 pages. However, the publication is a useful handbook, meeting the dual function of providing an analysis of the law together with practical guidance. The author also provides some interesting theoretical discussion and analysis, although in places there is a limited analysis of legal principles.

Throughout the book the author provides a number of case studies or stories of people with a disability and their dealings within the criminal justice system. The first case study is found in the introduction. It is the story of Melissa and is told from the perspective of her mother.² The introduction helps focus the reader on the difficulties faced by people with a disability when they find themselves involved in a criminal justice system that offers, at times, imperfect solutions for people with an intellectual disability, mental illness, or acquired brain injury. Throughout the book we are given further insight through the use of short case studies and Chapter 12 is devoted entirely to case studies.

Although the introduction provides a helpful insight, it could have been useful to provide the reader with further information about the schematic approach of the book. The first three chapters are introductory and provide the reader with a general overview of the relevant disabilities, the legislative framework, and the issues requiring further reform.

Chapter one introduces the idea of what is a relevant disability in terms of criminal responsibility in the Queensland jurisdiction. The chapter discusses the

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¹ D Toombs, *Disability and the Queensland Criminal Justice System* (Lawbook Co. 2012) xiv.

² *Ibid* [0.10].

ambiguities in the system and also provides a summary of mental illness, intellectual disability, and acquired brain injury.

In expanding upon these concepts, the author refers to section 11 of the *Disability Services Act 2006* (Qld) together with the definition of disability, and section 12 of the *Forensic Disability Act 2011* (Qld) and the definition of intellectual disability.³ However the relevance of these definitions are not explained or expanded upon in terms of the context of chapter one.

Chapter two is entitled 'Disability and the Queensland Criminal Justice System'. It offers a theoretical overview of some of the issues facing people with a disability who have allegedly committed an offence.

In chapter three, the author focuses on sources of disability law. This chapter provides the reader with a background to the legislative framework for people with a disability. The author also provides the reader with further material on the current state of law reform in this field.

From chapter four onwards the author focusses on the criminal justice process by introducing the reader to the principles, purposes, and procedures contained within the *Mental Health Act 2000* (Qld).

Practical guidance from initial police investigations and interview procedures through to court appearances are provided in chapter five. There is a section within this chapter that provides a very useful guide on taking instructions from a person who may have a disability. The author provides advice on how to approach questioning in a reassuring, non-threatening way. A list of sample questions is provided. These sample questions may help the interviewer to understand the person's background and give some insight into their disability. The author also discusses the decisions of the Supreme Court of Victoria (Court of Appeal) in *R v Allen, Kesavarajah and Moses* (1993) 66 A Crim R 376, and the subsequent appeal to the High Court in *Kesavarajah v The Queen* (1994) 181 CLR 230. Readers from a non-law background may miss the fact that the subsequent appeal to the High Court was allowed, the conviction quashed, and a new trial ordered. The author's understanding of the facts in this case appears to differ from the High Court's consideration of the facts.

At paragraphs [6.30] and [6.100] the author provides two separate summaries of *Eastman v The Queen* (2000) 203 CLR 1. From the reader's perspective it may be more logical and easier to follow if the author addressed the case summaries in one place.

Unsoundness of mind, the partial defence of diminished responsibility, intentional intoxication, and automatism are introduced in chapter seven. The legal analysis is very limited. The legal analysis of diminished responsibility does not provide the reader with the relevant section of the *Criminal Code*, nor does it discuss the limited circumstances in which it may apply.

³ Ibid [1.90].

Chapters eight and nine consider the jurisdiction and procedures of the Mental Health Court and Intellectual Disability in the Mental Health Court. These chapters provide a good overview of both. At paragraph [9.40] the purpose of the *Forensic Disability Act 2011* (Qld) is discussed and the relevance of the definition of 'intellectual disability', as defined in s 12 of the *Forensic Disability Act 2011* (Qld) and referred to in chapter one of the book, become apparent. However, although the *Disability Services Act 2006* (Qld) is mentioned, its relevance is not expanded upon.

The final chapters deal with sentencing and appeals against Mental Health Court decisions. Chapter 12 provides the reader with further case studies. This is followed by a very comprehensive list of useful contacts.

The book is somewhat unusual in its content as it tries to provide theoretical discussion, legal analysis, and practical advice in a small handbook. However, the book does provide the reader with a good starting point. Due to size restrictions, some areas are dealt with in an introductory way only. Despite this, the case stories and background material offer the reader plenty of scope for further thought and research. The practical material on taking instructions from a person who may be suffering from a disability will be of great practical assistance to practitioners.