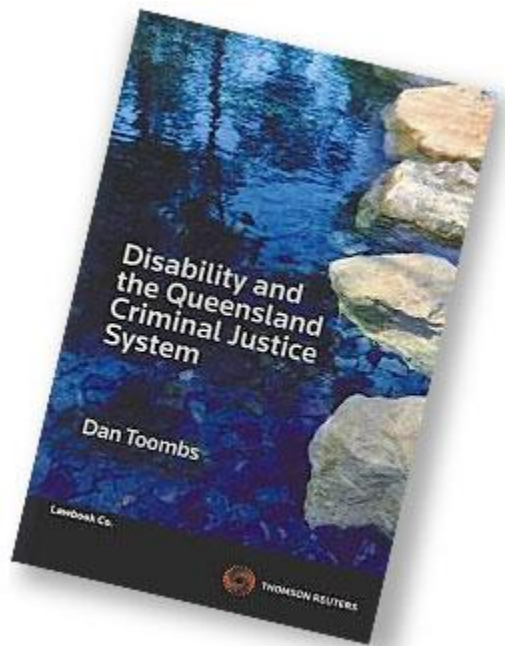


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### Book Review: Disability and the Queensland Criminal Justice System



Author: Dan Toombs  
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Reviewed by: Elizabeth Gass

*"No-one should be punished because they have a disability; no-one should go to jail because they have a disability; and their illness certainly should not be criminalised. Vulnerable people in Australia are being jailed for behaviours that emanate from their disabilities."*

These words are contained in the introduction to this book in which Melisa's mother tells how Melisa was born with an intellectual disability, compounded in adulthood by challenging behaviours and further complicated by a diagnosed personality disorder. Melisa had an extensive criminal history for extremely petty offences, such as stealing gift cards. Melisa's story puts a very human face to the issues raised in the book and is sobering reading indeed. Melisa's situation raises inter alia the very real dilemma regarding the question of fitness to plead if only summary offences have been charged.

This dilemma is highlighted in the important 2010 Queensland Court of Appeal decision of *R v AAM; ex parte A-G (Qld)* [2010] QCA 305 and discussed in the book.<sup>1</sup>

In the foreword the Honourable Justice Ann M Lyons states:<sup>2</sup>

*“Dan Toombs makes a novel contribution to our understanding of this intersection between mentally impaired offenders and the criminal justice system in Queensland ... In this one text there is a convenient summary of the applicable laws as well as a very helpful analysis of the issues involved in answering the real dilemma of whether a person is fit to give instructions and to plead to the charges. This book also contains a very practical guide to identifying the possible presence of a mental disability and a summary of some of the analytical tools used to assess intellectual disability and mental illness. Importantly, the impact that a current involuntary treatment order (ITO) or a forensic order (FO) has in this regard is also explored as well as the possible options that those orders may present.”*

The author, Dan Toombs, expresses his hope that this book will facilitate learning and resolution of the prevailing adaptive challenges that are “intrinsically embedded in this complex malaise of disability and the Queensland justice system.”<sup>3</sup>

The book contains 12 chapters in 206 pages. It is easy to read and has a strong practical bias. The passion of the author for his topic and the need for law reform in this area come through the book clearly.

The focus of the book is the challenges facing those with mental illness, intellectual disability and acquired brain injury who become involved with the Queensland criminal justice system and the challenges facing their legal representatives and support people.

The title and the use of the term ‘disability’ throughout the book are, however, misleading. In this book, ‘disability’ appears to be restricted to mental illness, impaired capacity and acquired brain injury. ‘Disability’ is generally considered to be an all-encompassing term, not so restricted. For example, the *Disability Services Act 2006* defines ‘disability’<sup>4</sup> as being a person’s condition that is attributable to an intellectual, psychiatric, cognitive, neurological, sensory or physical impairment, or a combination thereof; and which results in a substantial reduction of the person’s capacity for communication, social interaction, learning, mobility or self care or management and the person needing support. It would be more informative for the potential reader if the title and the terminology used throughout the book reflected the focus of the book more accurately.

The first 5 chapters set the scene. Chapter 1, “What is a relevant disability” usefully sets out some of the common conditions associated with mental illness and defines intellectual disability and acquired brain injury. Chapter 2, “Disability and the Queensland criminal justice system” overviews some of the research related to prevalence of mental illness, intellectual disability and acquired brain injury within the criminal justice system. Chapters 3, 4 and 5 discuss “Sources of disability law”, “Queensland mental health legislation” and “Considerations for representing a person

who may have a disability”, respectively.

Chapters 6 to 8 provide useful information about the important issues of fitness to plead, the defence of unsoundness of mind and the somewhat complex operation of the *Mental Health Act 2000* and the Mental Health Court.

There are some negative aspects to this book. In some chapters, one finds repetition and some lack of logic and consistency in the way topics are organised. There are several errors that should have been picked up by careful proof reading and expression is occasionally not as precise as it should be. Many of the chapters include reproduction of provisions from various Acts. Already, some of these are out of date. It would have been useful to include information as to what date law was current when the book was written. For the assistance of readers without a legal background, it could have been clearly stated that law does undergo frequent change and some guidance usefully provided as to how to find the most up to date version of the provisions that are reproduced in full in the book. Despite the negative aspects, I would recommend this book to those who are involved with people with mental illness, impaired capacity and acquired brain injury and their journey through the Queensland criminal justice system.

### **Elizabeth Gass**

#### Footnotes

1. See for example pages vii, 86-87, 130-132
2. at page ix
3. at pages xiii-xiv
4. s 11 *Disability Services Act 2006*