

Book Review

Disability and the Queensland Criminal Justice System

Dan Toombs

Thomson Reuters

206 pp \$79.00

Reviewed by BJM

Before you mentally turn off, thinking that this is a Queensland book and of no interest to Tasmanians, let me set you straight. Whilst it focusses on the relevant laws in Queensland, this book raises issues which apply to everyone, no matter where they practice.

Queensland has a Mental Health Court, dedicated to providing for the detention, admission, assessment and treatment of persons having, or believed to have, a mental illness (*Mental Health Act 2000 s5*).

This Court has jurisdiction over indictable offences only. Because much of this book is focused on the issues that arise in relation to summary offences, we can be confident that it will consider the sorts of problems that Tasmanian lawyers regularly face in representing a person who they suspect might have a mental disease.

In summary offences, there is generally a paucity of time on the part of professionals and the Courts, to enable us to identify when such issues should be pursued and if so, by what means. For we are not simply dealing with whether a person had the mental capacity to form the necessary intent, but also, one must decide how to best put these matters before the Court and what submissions should be made on penalty. We are also talking about conditions such as acquired brain injury, alcohol related diseases, ADHD and so on.

This book illustrates its points, with some fine examples, ones which reflect my own experience in Tasmania. Consider the case of the person convicted on numerous occasions of shoplifting when it should have been obvious to someone with the time and opportunity to investigate, that she had no comprehension of the illegality of this act, who, on the very day that the Mental Health Court was setting aside her past convictions, was being threatened by a magistrate with prison if she shoplifted again. This is a sad reflection on the system itself. Magistrates are so busy, that we cannot expect them to be able to look into a crystal ball and differentiate between the professional recalcitrant shop lifter and one who has an underlying mental condition which accounts for their conduct. As the spokesperson for our client we must be able to recognise the warning signs and obtain appropriate professional advice for our clients so that we can put the necessary material before the Court. If we don't do this, no one else will. This girl, called Melissa in the book, is required to sign bail documents when it is or should be apparent that she cannot understand the purport of what she is signing, but still, this requirement continues. Her mother's story is related by the author, including, being required to stand alongside her daughter in the dock and be upbraided as if the parents were somehow responsible for their daughter's conduct.

One specific point which I think is well made is that we tend to ask our clients whether they understand what we are saying and accept a "yes" as confirming that they do. For some years my own practice has changed to asking the client to tell me in their own words, their understanding of what I have said. You might, like me, be amazed at how often they have not understood us. This lack might be due to our failure to articulate clearly or it might be due to the client suffering from a mental illness. The almost hilarious transcript in the book, of a police officer's attempts at explaining the police caution to such a suspect, is worth reading. We are not told if he persisted with his interview, but it quickly became clear that the suspect had no

ability to comprehend concepts such as their right to terminate the interview, their right to not answer and so on.

I commend this book to anyone who represents clients in the Magistrates' Court or the Supreme Court as I hope it will serve to educate and remind us that our obligations of representation may extend well beyond the simple questions of guilt or innocence and extend to those of whether our client has a mental illness which requires special consideration by the Court either by way of a defence per se, or in mitigation.