
Book reviews

Editor: Judge Michael Shanahan

DISABILITY AND THE QUEENSLAND CRIMINAL JUSTICE SYSTEM

Disability and the Queensland Criminal Justice System, 1st edition by Daniel Toombs: Thomson Reuters, Australia, 2012, ISBN 9780455229966, 206pp, softcover.

Disability and the Queensland Criminal Justice System is an innovative publication based on first hand experience with the apparent complexities faced by defendants who suffer a disability, and their advocates, as they are processed through the criminal justice system.

Daniel Toombs was inspired to explore this area of law during his time at the Advocacy & Support Centre where he encountered a large number of people who suffered from a disability that were struggling to understand how to navigate the Queensland court system. With Sue Gordon, a disability advocate, the author obtained funding for the “Disability Law Project”, a program designed to provide representation and support for relevant defendants in Toowoomba and Ipswich, with promising results. This text draws on the experiences and research associated with the project and offers a thorough introduction to the complex and challenging journey that disability sufferers and their families encounter in the courts.

The book serves as a perfect introduction to this area of law. Presumably, many practitioners are aware that a different pathway through the courts exists for disability sufferers but perhaps aren’t in a position to point a potential candidate in the right direction. Similarly, practitioners may not be aware that the “pathway” legislated in the *Mental Health Act 2000* (Qld) may not provide adequate protection for all disability sufferers and consider all potential disabilities a defendant may have. The author has prepared a very effective final product, one that assumes a basic knowledge of the criminal justice system and a reader’s knowledge that protections exist somewhere for disability sufferers, but that also is effective in connecting the dots for those of us with limited experience in this field.

The text follows a logical structure as it works through the obvious starting questions in the opening chapters – What is a relevant disability? What are the sources of disability law? What is the effect of mental health legislation in Queensland? Similarly, Chs 8 and 11 effectively address questions as to the application of the *Mental Health Act* to the Mental Health Court, Mental Health Review Tribunal and the Court of Appeal. The author effectively breaks down the legislation and offers his own useful insight as to the effectiveness of these judicial bodies.

The chapter titled “Considerations for Representing a Person Who may have a Disability” is a true highlight of the text serving as a walkthrough of sorts for lawyers when faced with a client to whom the protections may apply. The discussion that follows outlines relevant practical considerations for lawyers to assist representing these clients in police interviews, bail applications or in applying for medical reports or assessments. Chapter 6 provides further assistance with respect to a defendant’s fitness to plead – another problematic aspect of the conflict between disability legislation and the criminal system. The remainder of the substantive text, including chapters on the defence of insanity under the *Criminal Code* and sentencing principles, touch on how these areas are relevant and adds to the holistic value of the book without necessarily going beyond the analysis expected in a standard text on criminal law in Queensland.

Another helpful and beneficial aspect of this text are the case studies that are referred to throughout. Of particular interest is the story of Melisa (as told by her own mother) – a young woman who has experienced these complexities as she worked her through the system ultimately to become the subject of the landmark Court of Appeal decision of *R v AAM; Ex-parte A-G (Qld)* [2010] QCA 305. These case studies aren’t merely tales of extreme application of the provisions to highlight the principles – rather they are simple, realistic tales of encounters the author experienced through the Disability Law Project and the steps that were, or ought to have been taken to afford people the protection that the legislation was intended to provide.

The author expresses his appreciation for the steps that have been taken in this field over the past 15 years but also makes some major criticisms of the failures of the legislative framework in its

current form. Throughout the text, Toombs complains of the difficulties in applying the legislation to a defendant suffering from an intellectual disability or an acquired brain injury and secondly, he highlights the failure of the framework to extend its legislative reach to the defending of summary charges in Magistrates Court. These criticisms are given further weight in a compelling foreword prepared by the Honourable Justice Ann M Lyons, a Judge of the Supreme Court of Queensland and Mental Health Court who shows a clear appreciation of the text and a strong support of the author's opinions therein. Both Lyons J and the author rely on the comments made by President McMurdo of the Court of Appeal in *R v AAM; Ex parte A-G (Qld)* [2010] QCA 305, a judgment that would seem likely to provoke the legislature to make the changes to rectify their concerns.

However, far from being overbearing or obnoxious, the author's contentions only highlight his passion and concern for this area of the law and the people who are most affected by it. The strong focus on mental disabilities is reflective of the author's belief that this is where the current flaws in the system lie and thus, is where practitioners should be most cautious and aware when assisting their clients or giving advice. It is undoubtedly a positive and unique contribution to any discussion of disability, mental health, criminal law and any intersection between these areas within the Queensland system. *Disability and the Queensland Criminal Justice System* is essential reading for any lawyer who finds themselves on the frontline of the criminal justice system or for any criminal lawyer who finds themselves unaware of the intrinsic difficulties of a pathway that they might know to exist but would be unable to effectively guide a defendant suffering from a disability through.

Isaac Buckley

AUSTRALIAN INSOLVENCY LAW

Australian Insolvency Law, 2nd edition by Christopher Symes and John Duns: LexisNexis Butterworths, Australia, 2012, ISBN 9780409329247, 469pp, softcover.

The topic of insolvency, and subsequently insolvency law, has been prominent in the last few years as a consequence of the global financial crisis and its ramifications in both Australia and abroad. *Australian Insolvency Law* (2012) is the second edition to the original 2009 publication.

The principal authors of the text, Christopher Symes and John Duns, are both Associate Professors at the University of Adelaide and Monash University, respectively. This academic influence resonates strongly throughout the structure and contents of the book, which is aimed primarily at undergraduate students.

To this effect, the text provides a basic framework and overview of insolvency law in Australia, with the contents partitioned between personal insolvency and corporate insolvency law. Helpfully, especially to contextualise the topic for an undergraduate audience, the text commences with an historical outline of insolvency law and a reflection upon its contemporary significance. The introductory chapter also proposes a set of principles suggested to be "essential for good insolvency law and practice". These principles provide a quasi ideological framework to assist in conceptualising the objectives of the substantive content that follows.

Each chapter commences with a set of learning objectives accompanied by a list of key cases and legislation, and concludes with an example problem designed to reinforce the subject matter addressed in that chapter. The text also provides useful summaries of the key cases, as well as helpful references to further reading.

The subject matter is logically set out, both within and across the chapters, and flows in a manner that provides for a simplified understanding of insolvency law. The personal insolvency section of the text guides the reader through the bankruptcy process, issues relating to the bankrupt estate, and the different forms of agreements and arrangements. With respect to corporate insolvency, the text follows the rational progression of initially stepping through the process of, and matters relating to, receivership and voluntary administration, followed by deeds of company arrangement and then liquidation. An entire chapter is also dedicated to insolvent trading.

The introductory and framework nature of the text is very much evident in the brief manner in which it deals with many areas. Therefore, to gain a more indepth and technical understanding of