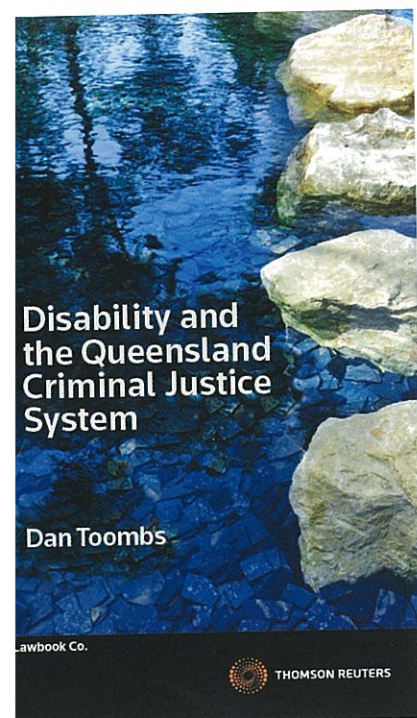


Clients with disability

Pitfalls and issues in the criminal justice system by Ben Fraser



Title: Disability and the Queensland Criminal Justice System
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People with a disability are disproportionately overrepresented in the criminal justice system.

Queensland Court of Appeal president Justice Margaret McMurdo has said that it "is well documented that mental illness is a common and growing problem amongst those charged with criminal offences".¹

People with a disability are more likely to be arrested, to be questioned, to be unable to understand their rights, to be persuaded to confess, to be refused bail and are more likely to be imprisoned.²

In some respects, the Queensland criminal justice system has evolved to better cater for the needs of people with a disability. The introduction of the *Mental Health Act 2000* and reforms concerning intellectually disabled people (such as the *Forensic Disability Act 2011*) are significant steps toward a proper recognition of the rights of people with a disability who have been charged with an offence.

Even so, much remains to be done. A person with a disability cannot rely on the provisions of the *Mental Health Act* if charged with summary offences, an issue that Justice McMurdo has said may require legislative reform (*R v AAM; ex parte Attorney-General (Qld)*).³

Disability and the Queensland Criminal Justice System highlights the issues affecting people with disabilities interacting with the criminal justice system, and considers those which may arise in representing a disabled person. The book outlines the legal regime that impacts on a person who has been charged with an offence and who has a mental health issue, is intellectually disabled or has an acquired brain injury. It discusses the legal and practical issues associated with representing people with disabilities and makes practitioners aware of the legal issues and options for those with disabilities which may have an appreciable effect on their legal outcomes.

Chapters 1 to 4 are introductory and describe the broader issues of representing a client with a disability. Chapter 1 contains useful definitions for mental conditions and acts as a useful guide for identifying a person's disability. Chapter 2 orients the reader into understanding the position of disabled people in the wider criminal justice system.

Chapters 3 and 4 introduce the mental health legislation in Queensland (principally the *Mental*

Health Act 2000) and the Commonwealth, and consider whether the laws are consistent with Australia's international obligations.

Chapters 5 through to 11 consider issues which may arise in representing a client at each stage of the process. Chapter 5 provides practical tips that include tools to determine if a person has a disability, information on bail hearings and the client's potential difficulties with complying with bail conditions. The relevant cases and provisions are also included.

Chapters 6 and 7 survey the *Criminal Code* and common law principles surrounding the insanity defence, fitness to plead and give instructions.

Chapters 8, 9 and 11 cover the operations of the Mental Health Court. Chapter 9 focuses on intellectual disability and the reforms to the area after the *Mental Health Act* was found to be inadequate for their needs. Chapter 11 considers the appeal avenues from a Mental Health Court decision and outlines the Mental Health Review Tribunal's role in periodically reviewing Mental Health Court decisions.

Chapter 10 outlines the issues associated with sentencing, including the basic sentencing orders, without much discussion of the role disability has on sentencing – more information on this aspect of sentencing would have been useful.

Throughout the book, and especially in chapter 12, the author includes stories of people with disabilities and their engagement with the criminal justice system, illustrating the importance of having a practitioner attuned to the legal needs of people with a disability.

The chapters are pithy, providing a summary of relevant issues in an easily understood way. The book outlines the operation of the legislation governing the area and contains some useful practical tips for a lawyer who may be unfamiliar with the relevant issues. Legislation is extracted for ease of reference and thoroughly explained although, in some cases, this leads to repetition of the content of the extracted section.

Overall the book is an excellent resource and a launch pad into further examination of the salient areas of the law. This handy guide sets out the landscape in which a practitioner operates, showing where the pitfalls and common issues are. The book is something that a practitioner working or interested in the area should have close to hand.

Ben Fraser is an assistant parliamentary counsel with the Queensland Government. Any views expressed are his own and not necessarily those of his employer.

Notes

- ¹ *R v AAM; ex parte Attorney-General (Qld)* [2010] QCA 305 at [9].
- ² Toombs, Dan, *Disability and the Queensland Criminal Justice System* (2012), pp 44-45 [2.100].
- ³ [2010] QCA 305 at [9].