

“Is this to be their fate for the indefinite future?” Judicial interest in systemic issues in Queensland

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This PowerPoint Presentation contains general information about legal matters. The information is not legal advice and should not be treated as such.

Who we are

- QAI's Mental Health Legal Service (MHLS) is a specialist legal service dedicated to providing free and independent information, advice, referrals and representation in relation to mental health law in Queensland.
- Assistance is free, confidential and independent
- We can:
 - Provide one-off legal advice on a client's rights and obligations under the Mental Health Act 2016 (Qld);
 - Assist a client in preparing submissions for use by the client in the conduct of his or her own matter;
 - Appear before the Mental Health Review Tribunal on behalf of a client;
 - In complex cases, provide ongoing advocacy.

Mental Health Act 2016 (Qld)

Section 3

Main objects of Act

(1) The main objects of this Act are—

- (a) to improve and maintain the health and wellbeing of persons who have a mental illness who do not have the capacity to consent to be treated; and
- (b) to enable persons to be diverted from the criminal justice system if found to have been of unsound mind at the time of committing an unlawful act or to be unfit for trial; and
- (c) to protect the community if persons diverted from the criminal justice system may be at risk of harming others.

(2) The main objects are to be achieved in a way that—

- (a) **safeguards the rights of persons**; and
- (b) is the **least restrictive** of the rights and liberties of a person who has a mental illness; and
- (c) promotes the **recovery** of a person who has a mental illness, and the person's ability to live in the community, without the need for involuntary treatment and care.

(3) For subsection (2) (b), a way is the least restrictive of the rights and liberties of a person who has a mental illness if the way adversely affects the person's rights and liberties only to the extent required to protect the person's safety and welfare or the safety of others.

Attorney-General for the State of Queensland v McCann [2018] QSC 115

*“The respondent, a 31 year old indigenous man, suffers a severe mental illness. He should have a bed, care and treatment in a secure mental health facility. Instead, he spends up to 22 hours a day in a prison cell. **Is this to be his fate for the indefinite future?** “ at [1]*

Attorney-General for the State of Queensland v McCann [2018] QSC 115

“Whilst he remains a “prisoner” (despite having completed his sentence more than six years ago), the respondent is the responsibility of the Department of Corrective Services. Yet he is also subject to a Treatment Authority under the Mental Health Act. I expect that the relevant government officials will overcome whatever bureaucratic obstacles stand in the way of the respondent transitioning to a secure mental health facility for treatment and care.” at [84]

Attorney-General for the State of Queensland v McCann [2018] QSC 115

“I am conscious that this case is symptomatic of wider systemic problems which include:

- (a) The burden of prisoners with severe mental health problems;*
- (b) Too few places in facilities like The Park, with the Prison Mental Health Service having to prioritise the most acute cases for such a facility;*
- (c) Secure mental health facilities face the burden of widespread mental illness in the general community;*
- (d) “Temporary” accommodation at “the precinct” of individuals subject to supervision orders under the Act is, in reality, a place of long-term accommodation because individuals who are subject to orders under the Act struggle to find appropriate and approved accommodation in the general community.” at [79]*

Office of the Public Guardian v Department of Queensland Health, Office of the Chief Psychiatrist & Anor [2017] QSC 193

“..The reasons for his detention given by the then Director of Mental Health (since the Mental Health Act 2016, the Chief Psychiatrist) were far from satisfactory. I reserved these reasons, and publish them now, because I am concerned that N was very poorly served by health authorities who had his care, and the Public Guardian who also was responsible for his care.” at [9]

Office of the Public Guardian v Department of Queensland Health, Office of the Chief Psychiatrist & Anor [2017] QSC 193

“There is nothing before me which shows that the Public Guardian was advocating for N to be kept somewhere other than in the HDU during the eight months he was confined there. In fact there is nothing to show that the Public Guardian made any enquiries so as to know how N was being held.” at [18]

“...Enquiries were made more than eight months after N’s detention in the HDU with no leave. They indicate that the Public Guardian was not aware of N’s situation through the time of his detention. It ought to have made itself aware of N’s situation throughout this time. Once aware of it, the Public Guardian ought to have advocated against N’s detention in the Bundaberg Hospital, including by making an application to this Court if necessary.” at [25]

Office of the Public Guardian v Department of Queensland Health, Office of the Chief Psychiatrist & Anor [2017] QSC 193

“For the reasons given above, N was never lawfully detained as a classified patient. The evidence shows that the person completing the assessment under s 71(1) of the Mental Health Act 2000 was not appropriately qualified or experienced to do so. There were people in the hospital who were appropriately qualified to do so. That assessment did not have regard to the treatment criteria. N did not meet the treatment criteria. The assessment did not contain a treatment plan as required by the Act. It appears that no separate consideration was given to the requirements of ss 71(2) or 72 of the Mental Health Act 2000. Further, it appears that ss 73 and 74 of the Mental Health Act 2000 were never complied with.... it appears that, remarkably, the Director of Mental Health did not understand what the criteria for detention as a classified patient were.” at [60]

“N should not have been detained as a classified patient. He had no need for inpatient care. There was no clinical reason for him to be detained in HDU. It distressed him and caused him harm.” at [68]

Office of the Public Guardian v Department of Queensland Health, Office of the Chief Psychiatrist & Anor [2017] QSC 193

“Submissions on behalf of the Chief Psychiatrist were to the effect that it was reviewing its policies as to classified patients, and I hope that is so. In particular, there seemed to be systemic misunderstandings revealed by this case, including that a patient can be made a classified patient if vulnerable in prison; that classified patients must be kept in HDUs, and that classified patients cannot have leave. Further, there seems no system in place in the Office of the Chief Psychiatrist to review the documentation (or lack of it) which by statute must be sent to the Chief Psychiatrist. Oversight and supervision of classified patients is necessary if the Chief Psychiatrist is to fulfil his responsibilities at s 26 of the Mental Health Act 2016. “ at [81]

“The Public Guardian made submissions that it had learned lessons from the facts of this case. Once again, I hope that is so, for this case displays unjustifiable delay in attending to N’s interests, and indeed neglect of them through the time he was a classified patient.” at [82]

Advocacy

Thankyou

Questions