



MEDIA RELEASE – Mental health defence not a free pass

13 August 2018

Queensland Advocacy Incorporated (**QAI**), as a Queensland leader in representing people on involuntary mental health orders, would like to respond to comments in the article entitled '[Brisbane bus driver's killer won't stand trial](#)' published by the Brisbane Times on 10 August 2018, wherein a member of the legal profession critiqued the laws relating to people with mental illness who are alleged to have committed offences.

We are not aware of the particulars of the matter which was decided before the Mental Health Court and addressed in the article. However, QAI strongly refutes any assertion that reliance on a mental health defence is “an easy way out” in any circumstances.

The current Mental Health Act has been in force since March 2017, following years of community and stakeholder consultation.

The Mental Health Court, made up of a Supreme Court judge who is assisted by two independent psychiatrists, makes decisions about whether a person is entitled to a mental health defence based on the evidence of often numerous psychiatrists who have assessed the defendant. A person who is provided a mental health defence has been found, due to disability or mental illness, to lack the legal capacity necessary to be held accountable for their actions or to properly instruct their lawyers for a fair trial. Both concepts have been long embedded in the Australian criminal legal system. Moreover, a person who successfully relies on a mental health defence will commonly find themselves on a forensic order, which by default requires their detention in a mental health or other facility, and can impact on their liberty indefinitely.

The end result is that a person who satisfies the high threshold of a mental health defence can be subject to more restrictive treatment than a person sentenced through the usual court process.

For more information

Queensland Advocacy on 07 3844 4200 (business hours) QAI is an independent, community-based, individual, systemic and legal advocacy organisation for people with disability in Queensland, Australia. Its Mental Health Legal Service provides advice and representation to people receiving involuntary treatment for mental illness across the State.

Media enquiries

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