

LAW REFORM COMMITTEE

Inquiry into Coroners Act 1985

Melbourne — 20 September 2005

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Mr B. O'Shea, member, Law Institute of Victoria Council and;

Mr A. Closey, solicitor, criminal law and litigation lawyers section, Law Institute of Victoria.

The CHAIR — Welcome to this afternoon's session of the public hearings of the parliamentary Law Reform Committee. I welcome Bill O'Shea and Andrew Closey from the Law Institute of Victoria. I also acknowledge the presence of the coroner, Graeme Johnstone, and the deputy coroner, Iain West. This is a public hearing. It is being recorded by Hansard. Your submission today will be placed on our web site after you have had an opportunity to correct any aspects of the transcript. If you would like to present to us for 20 to 25 minutes and then open it up for questions, we find that a really useful way to get into the issues.

Mr O'SHEA — Thanks very much, Chair. I wear two hats in a way. I am here as a former president of the Law Institute and a member of the Law Institute Council, presenting this submission on behalf of the Law Institute, but I am also legal counsel at Bayside Health, which is responsible for the Alfred, Sandringham and Caulfield hospitals. Bayside Health has made a separate submission to this committee, and I am happy to come back and speak to that submission should you require that. On the other hand, if there were 10 minutes left at the end of today, rather than perhaps lose that time, I would be happy to touch on the Bayside Health submission, which I have with me. I do not know whether you have got the Bayside — —

The CHAIR — Let us try to do that, because at this stage we have no further public hearings scheduled.

Mr O'SHEA — So you will not be intending to hear from any of the health networks? If you are, I am happy to come back. I am not fussed either way.

The CHAIR — Sure. Let us see how we go with time. I want to make sure the Law Institute gets its proper time.

Mr O'SHEA — Absolutely, so do I. There are five issues that we are addressing in our submission, questions 4, 14, 22, 35 and 42, and I would like to deal with those in turn. The first is the question of deaths in care and custody. Our view is that we would like to see a better definition of deaths in custody and deaths in care, as foreshadowed in the discussion paper. In particular we are concerned about individuals dying in circumstances where they are either escaping from custody or escaping from apprehension, so they are either in custody and escaping or perhaps suspected of a crime or whatever and are trying to escape, and they die in that process. We do not believe the current definition of deaths in custody or deaths in care adequately covers those cases. They would be cases, for example, where police were using deadly force to apprehend somebody, or if a person died when run over on a road while trying to escape apprehension where perhaps the direct cause of death was not the police or those pursuing them. We would like there to be at least a review of the definition of deaths in custody to cover that possibility. We are also concerned about the vulnerability of children and young persons, and we have mentioned that in our submission as well. We would like particular attention paid to that in the definition to the extent that is possible. I am happy to take any questions from the committee on that point. Given we have only got these five to work through, do you want to speak to me about that, or I am happy to go through all five of them? I am in your hands on that.

The CHAIR — Go through them briefly, yes.

Mr O'SHEA — To summarise, the last sentence of our submission is:

that 'deaths in custody' and 'deaths in care' should extend to deaths that are in any way attributable to 'in care and in custody' events.

That is, deaths when in custody or care, or attempts to escape custody or care. That would also cover psychiatric patients where there is an attempt to bring them into custody, for example, through a CAT team and the sort of deaths that would arise before they were certified or before they were necessarily covered by the Mental Health Act.

Question 14 is the issue relating to police assistance with coroner's investigations. The Law Institute supports changes to the act to give the coroner the power to require investigating police officers to report directly to the coroner and for the coroner to issue directions regarding coronial investigations. In other words, the coroner should be able to do that without going through Victoria Police directly and should be able to issue directions, again without going through Victoria Police. We would support a direct role for the coroner in that respect. This is a difficult issue, but we have some concerns that there will be cases where a coronial investigation will involve the police, and the death might well involve the police. In an ideal world we would like to see some ability for deaths that involve the police to be investigated by some independent body, not the police. That is a fairly controversial issue at the moment, but there might well be grounds either through the police integrity commission or some other

body in Victoria which could take that role on and assist the coroner directly, as the police would normally do, where the police are actually involved in the death. The difficulty we have with that is the inevitable lack of resources that would be available to support such an investigation, but we would see it as a potential conflict for the police to be directly involved in a situation where they themselves might have played a role in the death. Again, I say while we support a direct connection for the coroner with the police and not through police headquarters, ideally we would like to see that done by an independent body in the case of police involvement.

In respect of question 22, which is the privilege against self-incrimination, our administration law and human rights committee and our criminal law committee have considered this in some depth. We have also had a look at the New South Wales legislation involving the issue of certificates and our view — and it is expressed in our submission — is that the privilege against self-incrimination is so important in our community that we believe it outweighs the public interest in waiving the privilege against self-incrimination in coronial cases. In other words, we do not believe that privilege should be waived and that persons should be compelled to give evidence, notwithstanding they might incriminate themselves in a coronial hearing.

However, it might be possible for a certificate-type system to apply to civil liability. In other words, it might be possible for a witness as in New South Wales — I think it is section 33AA of the New South Wales act which enables a person to submit to a coroner that they do not wish to testify because they might, in the case I am giving, be liable to a civil action. The coroner can consider that and require them to give the evidence and at the end of giving the evidence the coroner can issue a certificate if he or she believes that evidence could expose the witness to civil liability. If that could be achieved in the civil context, the Law Institute would support that, but we do not support it in the criminal context. It is a difficult issue because often coronial inquiries can be enmeshed with criminal and civil liability and it is very difficult to say that you can compel a witness to give evidence in respect of civil liability but not criminal. If the witness claimed only that there was a civil liability and therefore wished not to give evidence, perhaps that might be fair enough if it was the call of the witness, but inevitably it can give rise to problems if the evidence strays into the criminal area. Nevertheless we are not opposed to the giving of the certificate as in New South Wales, but, again, only in relation to civil liability.

Question 35 is probably the hottest topic currently and that is the issue of what statements the coroner may make available at an inquest to any person with a sufficient interest. We have given our view in relation to the McGauran case publicly and we have reiterated it in this submission as an example of where information was given to a member of the public, in this case a member of Parliament, in relation to a person's medical file. Our view would be, expressed at the time, that in respect of this issue there should be guidelines, regulations or a code of practice drawn up by the government stating clearly the circumstances under which court files, be they coronial files or any other files, are made available to members of the public. I have not looked at this in any great depth legally, but when you look at the Health Records Act and the definition of 'institution', or whatever the word is in the Health Records Act for whoever keeps health records — collects, maintains and keeps health records — there might well be an argument that the coroner's office, for example, is a body that is bound by that and therefore subject to the Health Records Act.

Now that might or might not be the case, but if that is the case then the obligations on disclosure of health records would apply and I think the issue just needs to be made clear. To what extent should the health records, for example, or the personal information on an individual held by a court including the coroners court, be released to third parties in just the same way as hospitals and health services are bound to protect that information. Certainly the Law Institute would not like to see a repeat of the McGauran case. It was just unfortunate the file was not sealed at the time it was applied for, but there might be some way in which in future a case like that can be avoided if there were regulations or guidelines put in place to remove any doubt about the power to release. We would be concerned if it was merely a protocol and therefore it had no sanctions attached to it. The Health Services Act imposes a criminal obligation on hospitals not to release health information; they can be charged with a crime. We would want to see these guidelines for courts to have similar strength to those that apply to hospitals. A mere protocol or a guideline with no sanctions attached we would not think to be satisfactory. Perhaps we have not made that crystal clear in our submission, but certainly that is our view. We do not want to see anything that can be circumvented without any penalty attaching to it.

The final area is question 42, which is the right for legal representation. The issue here is that a lot of bereaved families who appear at a coroner's inquest often believe the counsel assisting the coroner is somewhat taking the role of a prosecutor in a criminal law case and that in some way the family will be vindicated or will have its day in court through the agency of the counsel assisting the coroner. For most of them it is their first and only opportunity

to attend a coronial hearing or a coronial inquest and they sometimes find that despite the best efforts of counsel assisting, strictly speaking counsel assisting is not really charged with the responsibility of taking a family under their wing and advancing their case to the best possible extent to the coroner. For families that have the means to brief counsel, there is no difficulty. They can brief counsel and be adequately represented at a hearing, but many families do not have that ability and so they really put themselves in the hands of counsel assisting. Sometimes that can be an unequal contest between the body defending perhaps a potential adverse finding and the bereaved family. That imbalance could be better protected by providing for a mechanism to give those families some representation.

Our submission is that where there is the death of a relative or a domestic partner and that partner or relative has a disability prior to death and there is a prima facie connection between that disability and the death, then Victoria Legal Aid should be able to fund — in cases of need in accordance with VLA's normal guidelines — representation for that family at the coroner's inquest. I am not sure to what extent that operates in other states. Certainly the Law Institute is well aware of the pressure that legal aid is under with funding, but it believes there are cases where families of deceased persons who have died with a disability wanting to know why they cannot get adequate representation, especially if they cannot afford adequate representation.

The other issue, of course, is that often for those families there are issues between them and the deceased person, particularly in psychiatric cases where they might well have had divisions with the deceased person — disagreements and a falling out prior to death and the family itself might be internally divided and feeling guilty about the death particularly in cases of suicide. We believe it would be better for that family to have representation and someone to speak for them than to try to either speak for themselves or rely on counsel assisting. That is not, of course, to criticise counsel assisting. It is just simply the nature of the role of counsel assisting as opposed to someone who would represent the interests of the bereaved family. The Law Institute's view is endorsed by the Mental Health Legal Centre, which has also made a recommendation through our administrative law and human rights committee that people with independent experience and knowledge who could provide insight into the life of the deceased should be available to assist families in cases where persons have died with a disability and where there is some connection between the disability and the death. So that is our submission.

The CHAIR — Thank you. That was succinct and clear. Perhaps we could take up the question of police assistance with coroner's investigations. You mentioned in your verbal presentation that you thought maybe the Office of Police Integrity — —

Mr O'SHEA — Yes, that is just off the top of my head. I think it has a bit on its plate at the moment. If it is a police matter and police are involved in the death, you need someone who can investigate the police who is not the police. If the Office of Police Integrity was part of the police, then it would be inappropriate. I am thinking of the division of the Ombudsman's office that is looking at police complaints. That is probably what I intended to say — someone who is independent of the police.

Mr DALLA-RIVA — However, it would be fair to say that any matters involving police deaths alleging a homicide would require a skill base that would be far in excess of what an ordinary investigator would have. I raised the issue earlier as well. I am concerned about where you draw the skill base from to conduct the investigation, given it is well known that the homicide squad is usually seen as the cream of the crop of a large organisation of 10 000 plus police officers; it is very difficult to get into that role. I am concerned about recommendations of a separate entity which may not have the skill base. In all honesty you may find that elements of criminality alleged against police may fall because the quality of the investigation and the skill base — not necessarily the resources — is diminished because the skill base is not there.

Mr O'SHEA — It is a good point, Richard. That is the weakness of this, apart from the resources.

Mr DALLA-RIVA — Yes.

Mr O'SHEA — We acknowledge that. However, there might be other ways. For example, it might be that the coroner's office has a group of police who are solely there to investigate. I am not suggesting that we have a full-scale homicide squad-type investigation of deaths, it is more about assisting the coroner to put together a brief of evidence for the matter. A recent case is the Kaufmann case and the recent inquiry into a CAT team death, which is a very tragic case. Clearly, the police will investigate that because someone was killed on the street. No-one is suggesting that the homicide squad would not be involved in it. But it is a question of who would be involved for the coroner in respect of assembling the brief of evidence into the death for the purposes of a coronial inquiry as

opposed to a criminal file. There would be two files. There would be a file for the homicide squad, which it would run; but there would be someone independently looking at the death for the coroner, who might well be able to shed light on the cause of the death, which is the coroner's primary focus in terms of how to make recommendations for improvement, rather than who was the culprit. The coroner has a different focus to the police. If the coroner could have the assistance of people who could look at that, then we think that would be better in the case of a police death. It might be a group of forensic pathologists or others that we could identify who could do it, or it could be a dedicated group of Victoria Police based at forensic services, as we have now, the sort of people who are the counsel assisting. Certainly, we are not recommending that the homicide squad be pushed aside every time police are involved in a death; quite the reverse. We want the death investigated from a criminal point of view, as it always is. But in an ideal world, and I stress in an ideal world, the coroner would have someone independently advising him or her on the circumstances.

Mr DALLA-RIVA — I agree with what you say but it is fair to say that the coroner attends all police deaths — police shootings or deaths involving police. I do not think there is one case where the coroner or his deputy has not attended personally at the crime scene. I understand where you are heading, I am just trying — —

Mr O'SHEA — Take the Kaufmann case. We believe there is a grave lack of training in mental health for police and, dare I say it, magistrates. There is a serious lack of understanding of mental health and how you deal with it. I am now speaking with my Law Institute of Victoria hat on, although I could well speak with my Bayside Health hat on as well. For example, we had a recent case at Bayside Health which illustrates the point, where a patient alleged he was being stalked by his carer. He was a psychiatric patient. He turned up at the Magistrates Court and got an intervention order against his carer. The order was given without question; it was virtually given over the counter alleging this carer was following him around and basically stalking him. The carer then found he was facing a criminal penalty to continue to care for this psychiatric patient in breach of an intervention order. After the statutory period — eight days, I think — the carer had to go back to the Magistrates Court and argue that he was the carer and needed the order overturned. In those eight days the patient could have self-harmed. At no point did the magistrate ask the question: is this patient a mental health patient? At no stage did the magistrate have any comprehension that this might be a mental health issue.

We believe the same is true for the police, notwithstanding what has been done to improve the position with police and mental health patients. They still turn up with guns out. They still turn up with crime scene ribbons outside the house when an 18-year-old son has a psychotic episode, and I have had a recent example drawn to my attention. While the psychotic 18-year-old might not end up being shot, there is every likelihood that it could happen and the family is terrorised. There is still a complete lack of understanding in the police of how to deal with these issues. One of the ways would be to have someone other than the police advising the coroner. Recommendations could be made so we do not have another Kaufmann, another death of a psychiatric patient simply because the police are investigating it and no-one really bothers to ask the critical question: how better can we deal with mentally ill people given we no longer have institutionalisation?

Mr DALLA-RIVA — It is certainly an issue that we have discussed and heard evidence on in relation to follow-up recommendations and how we ought apply those so we do not go through the same sort of process again.

Mr LUPTON — You are not dealing with the question of whether the coroner should attend at the scene — —

Mr O'SHEA — No.

Mr LUPTON — Which he already does, and that is very commendable, but that there be somebody appropriately trained who can oversee the preparation of the brief.

Mr O'SHEA — Correct. And that is quite a lot of work. It is assembling the brief, looking at the circumstances, talking to the family, finding out what happened and looking at it with a dispassionate view, not with the inevitable self conscious conflict that police have given they have shot and killed, for example, a psychiatric patient.

The CHAIR — On that matter, the coroner himself indicated that perhaps it should be police who are specifically assigned to his office. Do you have any views about that?

Mr O'SHEA — That is the fall-back position, as Richard mentioned, if it is impossible to get people with adequate training, which I guess is more than likely, although there may be a few police in the force who may be available. But given there are none available, the alternative would be to have dedicated police working at the coroner's office who could do that. My only concern is: what happens when there is a psychotic episode in Kyabram or Mildura or Bairnsdale? Who turns up then? Do the police in Bairnsdale really know how to deal with a psychotic 18-year-old with a machete? It is a very difficult area. The more these cases are looked at by the coroner's office and recommendations made, the better able we are to get something done about it.

The CHAIR — Could I ask you about the issue of privilege against self-incrimination? You draw a distinction between civil and criminal. The coroner in his submission, and a number of other witnesses, have indicated they would like to see the privilege abrogated with the caveat that that evidence could not be used in any other subsequent hearing. Why do you draw that distinction, and why would you not be comfortable with that abrogation subject to that caveat?

Mr O'SHEA — We believe the privilege against self-incrimination is a fundamental human right that should not be abrogated at all and ought to be preserved. I mean, it is for the Crown to prove its case and it is not for a person to be compelled to give evidence to incriminate themselves. It is a centuries-old tradition, a law and principle that we do not believe — —

The CHAIR — These are not criminal proceedings; this is a coronial hearing. If the evidence cannot be used in a subsequent hearing, what would be the objection — —

Mr O'SHEA — It is effectively inviting people to incriminate themselves in public to let everybody know what the circumstances are and to effectively open themselves up to further investigation by the authorities, if that were the case. That is what it will lead to. The end does not justify the means, I do not think. It might well be said, 'Shouldn't these people be brought to justice?'. There are lots of examples of where you can say that. But in our view that is a fundamental principle that should be preserved.

Mr LUPTON — If an indemnity is given — —

Mr O'SHEA — Yes; it happened in New South Wales, as I understand it.

Mr LUPTON — If an indemnity is given against subsequent prosecution, it is, of course, no longer a privilege against self-incrimination because you would not be incriminating yourself?

Mr O'SHEA — Yes.

Mr LUPTON — So in a sense that should take away the problem, but it would really leave it as being a situation where people would be protected from embarrassing themselves. That is what you — —

Mr O'SHEA — It depends on the extent of the certificate. For example, would it apply in a federal jurisdiction? I do not know whether our coroner has a power to give a certification to protect someone from a federal offence. It is limited to the scope of the certificate. I do not know to what extent what they say might fall outside the certificate. I do not think it is just embarrassment. I think it is a fundamental principle and we should not depart from it. It would appear from my understanding of section 33 AA in the New South Wales act that, if I am not wrong, a person can be required to incriminate themselves and is given a certificate. It is for you, I guess, to know how that is working; I have not looked at the way that has worked. But knowing New South Wales and its attitude to human rights, I am not surprised that that is in New South Wales; it is perhaps why Bob Carr is suffering some of the electoral — why the government — —

Mr LUPTON — He is not suffering at all.

Mr O'SHEA — No, why he had to leave in a hurry. New South Wales is a state that has eroded human rights in a fundamental way — to a point where you cannot even advertise in Albury that you do personal injury law, but you can in Wodonga.

The CHAIR — It is different between the convicts and free settlers.

Mr O'SHEA — It is, so I would not necessarily be guided by New South Wales. Notwithstanding it is a Labor government and purports to be for the battler, not so in terms of human rights — not in terms of the rule of

law, but basic human rights in New South Wales have been eroded. It has been harder in most areas, including tort law reform, than in other states, so I do not see that as a precedent. But I would be interested to know how it is working and to what extent, for example, the federal authorities would intervene in a case where somebody did give incriminating evidence in a coronial inquiry in New South Wales.

The CHAIR — It would be interesting to get feedback from your colleagues at the institute in New South Wales.

Mr O'SHEA — Indeed. I will certainly follow that up, yes.

The CHAIR — Andrew, did you want to say something?

Mr CLOSEY — Bill in fact covered it. It is really just in terms of the New South Wales provisions being expressed in terms of an indemnity certificate against action in a New South Wales court. When it was spoken about there was clearly concern as to how that would operate, both between states and federally. The position was that the privilege against self-incrimination should be paramount. I suppose it was a back step on that to whether the concern actually extended to civil penalty. That is how the submission was finally expressed; in principle there was some agreement that clearly the nature of the work that the coroners court is charged with requires careful consideration of those factors. Ultimately, in the end, the Law Institute committee's view was that privilege against self-incrimination was paramount.

Mr MAUGHAN — Can I put to you another fundamental human right: to be able to get access to legal advice when necessary? The committee has already heard from a family in country Victoria who over a weekend were confronted with a decision that they wanted to object to an autopsy but could not get any legal advice. Is there anything the Law Institute can do to provide out-of-hours legal advice to families in such circumstances?

Mr O'SHEA — There might well be. We do give a lot of pro bono advice to families on these sorts of issues. The difficulty is the pressure of numbers and timing. The Law Institute has a referral service — but it will not be there at 10 o'clock on a Sunday night; it will be there in ordinary working hours — where a person can ring up seeking advice on an area such as that. It could easily be done pro bono for a family — or they could pay for it, depending on their circumstances. We have basically a hotline legal referral service that is available for families. In terms of 24 hours, if I was confronted with that I would refer them to the Office of the Public Advocate, frankly. I am just thinking off the top of my head here. Even though the person has died, it is very difficult for the family to know their rights under the Medical Treatment Act and the Human Tissue Act — as to what they can and cannot object to.

Mr MAUGHAN — Sure, but what if they need advice, where a person died at, let's say, midnight on a Friday night and the coroner clearly wants to conduct an autopsy because there are issues of concern to the coroner's office? Where do people who are not familiar with the law get that advice?

Mr O'SHEA — Unless Andrew can tell me anything, my view would be that all the Law Institute could offer at the moment is the referral service, which is a 9 to 5, Monday to Friday service. Obviously I could advise the family, but if I was asked by a family where to get advice, I would say to ring the 24-hour Office of the Public Advocate number. At the moment I do not think there is much else available. I suppose the other way might be that VCAT has a 24-hour number as well. I know the Alfred uses the VCAT 24-hour line regularly — if, for example, it wishes to cease treatment and the family does not agree with the medical decision. The families can then go to VCAT in the middle of the night and have that dealt with. There might be an issue there where effectively the family is seeking to injunct the coroner from carrying out an autopsy if the coroner is going to persist in that. There is that option, I guess — that is, the VCAT 24-hour number. But that is certainly something the Law Institute could well take on board as a service. We have never really offered a 24/7 service for the public in those sorts of situations, but it would be something that I would be happy to take back and raise with Council.

Mr MAUGHAN — It is a matter of that information being available?

Mr O'SHEA — It is a community service.

Mr MAUGHAN — At country hospitals and country police stations and so on?

Mr O'SHEA — Absolutely.

Mr MAUGHAN — Because the service is certainly available; it is a matter of people being aware of it?

Mr O'SHEA — There is a flip side to all this, of course, and that is that there is a lack of autopsies in Victoria; there are not enough of them. One of the issues for those in the medical profession is that they want to know what has caused someone to die, and for them often the autopsy is the only way to be certain of what has happened. A lot of them live with guilt long after someone has died, where they cannot have an autopsy performed on the patient and the patient has died for an inexplicable reason. Now that is not always a coronial case, and that is something I can talk to with another hat on. But families need proper advice, instruction and information on autopsies so that they can make an informed consent or an informed refusal. A lot of them feel that their relative will be effectively almost mutilated by an autopsy and they do not wish to be part of it. They do not understand that if it is not explained properly to them. Often young inexperienced medical staff, particularly in country Victoria, are ill-equipped to explain it fully. On the autopsy itself they can go into some detail about the end result of it all but also about that it will benefit other patients and that it might help other people in future with a similar illness who might not have to suffer the same fate. There are ways of explaining it, but unfortunately often those left to explain it and to get the consent are not best suited to explaining it to families.

Mr MAUGHAN — In general terms then, does the Law Institute favour more autopsies?

Mr O'SHEA — We have not got a view on it, in our submission. It is not something that we have considered. Certainly my health service has a view on it, which I will express at the appropriate time.

The CHAIR — Can I just take you back to your submission: you indicated that wherever someone with a disability has died, that person's relative should be entitled to legal aid?

Mr O'SHEA — Where the death is related to the disability; where there is a connection.

The CHAIR — I do not understand the policy rationale for that. Why the relative of a person who has died as a result of a disability as distinct from someone who has died from any other — —

Mr MAUGHAN — If it is Kerry Packer's daughter who dies, why should he get legal aid?

Mr O'SHEA — No. He would not qualify — although he does have a low taxable income.

The CHAIR — It is about the categorisation; it is not about the income.

Mr O'SHEA — It is because we think disabled people have a right to be protected. When someone dies in care there has to be a coronial inquest, and the family of that deceased, faced with the inquest — a compulsory inquest, effectively — will not always have the means.

The CHAIR — But why a person with a disability? Why not the relative of someone who has been held in police custody? I do not understand the distinction.

Mr O'SHEA — Only because of cost. You have to draw the line. At the moment there is no legal aid at all. If you wanted to extend it generally — legal aid to any family member of a deceased facing a coronial — we would not object to that, but I do not think it is feasible cost wise. Tony Parsons would be in Alfred psychiatry tomorrow if we told him that. He has a pay rise on his hands and now you are suddenly giving legal aid to everyone facing a coronial!

The CHAIR — I am trying to understand how you work out the category of 'disability'.

Mr O'SHEA — Because they are the most vulnerable. We believe families who have gone through a situation involving someone who is disabled, particularly in psychiatric cases — when you attend inquests as I have, for example, for suicides — often the family are internally divided and have had a traumatic experience leading up to the death, and they do not often speak at an inquest in a coherent way or with one voice. They need someone to represent them, to get them together, to explain the process to them and to take their views forward about the sort of care that their relative had received.

The CHAIR — So, for the relatives, the trauma associated with someone with a disability or a psychiatric illness is different qualitatively than the trauma is for someone else?

Mr O'SHEA — That is right. That is what we are saying here. We have had one recently, and it is still going on at the coroners court, where that is the case. The sister of the deceased believes that she did not do enough; the rest of the family think some things she did not do enough, some things she did. The family is internally divided 12 months after the death, and no-one is there representing them. The sister gets up and gives one lot of evidence, and the rest of the family give different evidence. It would be helpful if, for example, medical staff, or whoever else were involved in that person's care, were cross-examined by counsel representing the family who could stand for that family and not leave it just to counsel assisting.

The CHAIR — So you are extending that also to situations where someone had a mental illness or a psychiatric disability?

Mr O'SHEA — Yes, any disability. Mostly it is psychiatric that end up there.

The CHAIR — The state coroner, in his submission, indicated that objection to autopsy applications in the Supreme Court are unnecessary, expensive, challenging and time consuming for families, and that the state coroner himself should be, in effect, the last avenue of appeal on that question. Does the Law Institute have a view about that?

Mr O'SHEA — No, we have not discussed it. I can give you a view on it, but it would not be the Law Institute's, and there is no point in my giving it to you. If you want, I can refer that to our committee to send further correspondence on that. It is an issue that I think the Law Institute should have a view on, frankly, because it talks about rights of appeal and who has the last word in these matters.

The CHAIR — Also, generally, on the question of appeals to the Supreme Court, some family members have raised the issue of how expensive and time consuming they are. Others emphasised the importance of having some other independent court to which you can appeal.

Mr O'SHEA — I reckon the Victorian Civil and Administrative Tribunal would not be.

The CHAIR — If you have some views about that, it would be interesting for our committee to hear.

Mr O'SHEA — We will follow that up and send something to you. I presume you can take further information on that?

The CHAIR — Yes. We will take addendums.

Mr O'SHEA — We will certainly do that.

The CHAIR — Thank you. I think we have gone through our time. It looks like we are going to have another hearing date for some of the health and medical-related organisations. We will schedule Bayside Health at that time.

Witnesses withdrew.