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Statement from DR JACQUELINE RAKOV

My view is that much of the recent reporting of this issue has disappointingly lacked nuance. In particular, the focus on wealthy or high-profile accused people risks creating the impression that suppression on mental health grounds is principally an avenue available to those with the means to pay for it. I think there is a risk that a piece framed predominantly around high-profile defendants inadvertently reinforces that impression. It does not accord with my experience whatsoever.

I have provided considerably more clinical evidence for suppression applications involving people with severe and enduring mental illness, including people receiving the Disability Support Pension and with very limited financial means, than I have for wealthy or high-profile people charged with criminal offences. Those cases, of course, are much less likely to attract media attention. They do not involve recognisable names and, inevitably, don't generate the same degree of public interest. Reports relating to suppression applications are also not, to my knowledge, ordinarily funded by Legal Aid and are therefore often prepared pro bono, certainly in my experience. I think this raises a rather different question about inequity. The issue is also what happens to people without resources, including seriously mentally ill people, when they are exposed to the criminal justice system and publicity surrounding it. People do die by suicide following criminal charges, including in circumstances where they maintain that the allegations against them are false. Criminal lawyers working in this area would be able to speak to that experience.

It is also worth making clear that I decline to support more applications than I support. A request from a lawyer will never determine my clinical opinion. If I don’t consider there to be a proper psychiatric basis for the opinion sought, I say so. I would expect the same professional independence of my colleagues.

I would also not accept the characterisation that a psychiatrist is being “exploited” merely because a lawyer seeks a clinical opinion which may ultimately be relied upon in an application under the *Open Courts Act*. My role is to assess and treat my patient and, where appropriate and where requested, provide a clinical opinion about their mental

state and the likely psychiatric consequences of particular circumstances. Whether that evidence satisfies the statutory test is ultimately a matter for the Court. More broadly, the suggestion that psychiatric evidence relevant to suppression is available only, or even predominantly, to wealthy defendants is simply inconsistent with my experience.

There have been deaths in custody since the Ralph Carr story, including the recent death of a young person in custody. Deaths by suicide in custody, and the circumstances in which people are being held, receive considerably less attention. There are obvious reasons why some of these stories are difficult to report. We as doctors are bound by confidentiality, and lawyers by their own obligations. As a result, these tragedies are sometimes only brought properly into public view years later, often through coronial proceedings and the hard work of lawyers and other professionals involved in them.

I think there is a broader point here. People deserve appropriate medical care and legal representation regardless of their wealth, status, fame or the offences of which they are accused. A suicide is a suicide regardless of net worth, infamy or opprobrium. The media has an extraordinarily powerful platform to bring attention to these issues, including the experiences of people whose names will never themselves attract public interest. I would welcome seeing more of that complexity reflected in the present discussion.