The Coroners Court in ACT

THE CORONERS COURT IN AUSTRALIAN CAPITAL TERRITORY:

A guide for Aboriginal and Torres Strait Islander families

THIRRILI

Losing a family or community member to suicide is heart-breaking. Families and communities deeply feel the loss of a loved one to suicide especially during times of sorry business. What can make things harder is when the death of a loved one to suicide is investigated by a coroner. Speaking and hearing about the loss of a loved one to suicide can be very emotional. The coronial process can be complicated and long, holding up the time when a deceased person can finally rest, and families and communities can heal from grief.

Even though it can be hard for families to go through, it is an important way for mob to have their say and voice heard and make the coroner see opportunities for change so this doesn't happen to someone else.

Thirrili and Norton Rose Fulbright have partnered together to help guide Aboriginal and Torres Strait Islander families and communities through some of the challenges of dealing with the Coroner's Court during times of sorry business and have their voice heard. We pay our respect to the First Nations people of Australia whose Country was never ceded. We acknowledge the devastating impact of suicide on Aboriginal and Torres Strait Islander people.

This guide helps explain the role and processes of the Coroner's Court of the Australian Capital Territory when it investigates a death. It tells you about the kinds of deaths investigated by a coroner and the difference between an investigation and an inquest. The guide also explains how the Coroner's Court can support you and your loved ones throughout the coronial process and how the Coroner's Court can respect cultural protocols.

This Guide to the Australian Capital Territory Coroner's Court for Aboriginal and Torres Strait Islander people includes 9 fact sheets with information for families and communities to make the process of dealing with the coroners easier and more manageable.

Disclaimer: The legal information in this Guide is to help guide you through some of the challenges of dealing with the Coroner's Court during times of sorry business. It is not legal advice. Please consult with your local Aboriginal Legal Service or other legal professional to make sure this information is right for you.

For more help contact

Pro bono legal assistance via phone or email: (02) 6247 0300 or at pbch@actlawsociety.asn.au

The Aboriginal Legal Service via phone or email: (02) 6120 8810 or at canberra@alsnswact.org.au

A community legal centre can be found via the Community Legal Centres Australia database search https://clcs.org.au/legal-help/ _or via phone or email: (02) 9160 9500 or at info@clcs.org.au

The Coroners Court in ACT

FACT SHEET 1

What is the Coroners Court and the role of a Coroner?

THIRRILI

The Coroner's Court of the Australian Capital Territory is an expert court that was set up to investigate and help understand the cause of certain types of deaths including suicide and those due to self-harm.

A coroner is a representative of the Court and is the main person in charge of the investigation.

The role of the coroner is to investigate the death to find out when and where the person died, how they died, and suggest changes to try and prevent the same thing happening to someone else.

In some investigations, a coroner will also hold an 'inquest' which are public hearings where people are called to the Coroner's Court to give evidence.

The coronial process is slow. It can take months or even years. It can take a long time because the coroner may need to talk to many other people about the circumstances of the death, such as a hospital, the police, or a government service.

The Coroner's Court does not have the power to:

- conduct a criminal trial;
- find someone guilty of a crime;
- order that compensation be paid to the family of the deceased; or
- send a person to prison.

FACT SHEET 2

What types of death will a Coroner investigate?

THIRRILI

Coroners do not investigate all deaths, only deaths that are reportable by law.

These include:

- a death that is unnatural, violent or unknown;
- a death under suspicious circumstances;
- a death that happens unexpectedly during or after a medical procedure;
- when a person has not been attended by a doctor at any time within the period commencing 6 months before the death;
- when a person has or is suspected to have died in circumstances that, in the opinion of the Chief Coroner, should be better ascertained; or
- a death that happens when the person who died was in custody or care.

There must also be a connection with the Australian Capital Territory, such as the death occurring in the Australian Capital Territory or that the deceased usually lived in the Australian Capital Territory.

The Coroners Court in ACT

FACT SHEET 3

How a Coroner investigates a death

THIRRILI

Initial stage

- Once a report of a death is received by the Coroner's Office, usually from the police, a doctor or a hospital, the deceased person is taken into the care of the Coroner's Office and a coroner will be begin an inquest.

The gathering of information stage

- An investigation may vary with the circumstances of the death but usually includes:
  - gathering information including from police, family, friends, medical practitioners (obtaining copies of medical records), witnesses, technical experts, and any other relevant persons;
  - attending the scene of the death (if safe and appropriate to do so);
  - directing that a post-mortem examination be performed on the deceased (for more information, see Fact Sheet 9: My loved one's body info sheet), including if you wish to object to a post-mortem examination being performed); and
  - appointing an investigator to make inquiries and prepare a report on certain issues.

Making a finding

- A coronial finding is the formal document that a coroner writes after an investigation of a death, and it is usually the last step in the investigation.

- A finding usually includes:
  - that the person has died (if it is a suspected death);
  - the identity of the deceased;
  - the cause of the death;
  - when and where the death occurred;
  - the circumstances of the death; and
  - comments or recommendations made by the coroner aimed at preventing similar deaths.

- There are two kinds of findings:
  - a 'finding without an inquest', which is where a coroner makes a finding on the available information without a public hearing. Most coronial investigations end with a finding without an inquest; and
  - an 'inquest finding', which is where a coroner delivers a finding after a public hearing is held.

- A coroner **may**:
  - comment on any matter connected with a death, including matters relating to public health and safety or the administration of justice; and/or
  - make recommendations to any Minister, the Attorney General, public authority or organisation about the risks to public safety.
- If an inquest is held into a death in care or death in custody, the findings must include a comment about the quality of care, treatment and supervision of the deceased that, in the opinion of the coroner, contributed to the cause of death.

FACT SHEET 4

Inquests into a death

THIRRILI

An inquest is generally a public hearing of the investigation into a death which is held at the Coroner's Court. An inquest is an inquiry that tries to find out why the death happened and, if appropriate, to make recommendations to prevent deaths occurring in the same or similar circumstances in the future. An inquest is not a trial to decide if someone is legally responsible for a death.

There are some deaths which a coroner **must** hold an inquest, including if:

- a person dies violently or unnaturally in unknown circumstances;
- a person dies of unnatural causes in custody or in care;
- a person dies under suspicious circumstances;
- a person's death is attributable to an operation or procedure;
- a person dies and the doctor has not given a cause of death certificate;
- dies not having been attended by a doctor at any time within the period commencing 6 months before the death;
- a person dies after an accident where the death appears to be directly attributable to that accident; or
- a person's death, in the opinion of the Chief Coroner or the Attorney-General, should be better ascertained.

Can I request an inquest be held into the death of a loved one?

- A relative or friend of a deceased person can ask that a coroner hold a hearing into a death. Importantly, making a request does not mean an inquest will be held. If the coroner decides not to hold a hearing, the immediate family of the deceased will be notified.
- Please see the Summary and Acknowledgment page for further information for legal assistance on this issue.

Who can attend?

- Generally, anyone can attend an inquest. People who may wish to attend include:
- Family members of the deceased. Family members may also be called as witnesses. You will be given advanced notice and receive a document issued by the Coroner's Court called a summons if you are required by a coroner to appears as a witness and give evidence.
- Expert witnesses. Expert witnesses are people who specialise in certain fields and help the coroner understand complex information relating to the death they are investigating.
- Police witnesses. Police witnesses are often the police officers who were the first responders to the scene of the death and tell the coroner what they did, heard and/or saw at the scene.
- General witnesses. General witnesses are the individuals who did, heard or saw something that may help the coroner with their investigation.
- Media. Journalists and media outlets may attend inquests and report on what is said during the inquest.
- Interested Parties. People that the coroner has given permission to attend as an 'interested party'.

In relation to an inquest, anyone who is 'immediate family' can participate in an inquest, and must be kept informed of the particulars and progress of the inquest, which means that a family member may be able to:

- give evidence at a hearing (and can be represented by a lawyer);
- examine or cross examine a witness (if they are unrepresented);
- ask the coroner to request evidence from a particular person; and
- ask the coroner to reconsider a decision or a finding made in an inquest.

Persons with a sufficient interest

A person (or entity) who has a sufficient interest in the subject matter of an inquest has rights during a hearing. The coroner will decide who is a person with 'sufficient interest' and it can commonly include families, friends, medical services and affected government agencies. The rights of a person who has a sufficient interest include the right to:

- appear in person at the hearing or to be represented by a lawyer;
- to ask witnesses questions about matters relating to the inquest to which the hearing relate; and
- request that the coroner ask another person to give evidence relevant to the inquest (although, the coroner is not obliged to comply with the request).

Determining the scope of an inquest

The coroner decides the best way to run the inquest and what information and issues to look at and who they want to hear from as witnesses.

What happens during an inquest?

Even though each inquest is different, most follow these procedures:

- When the inquest begins, the lawyers representing the family of the deceased or other interested parties introduce themselves and say who they are representing. If the family is not represented by a lawyer, the coroner's assistant or counsel assisting the coroner will inform the coroner that family members are present in the courtroom.
- The coroner will read an opening summary.
- Witnesses will be called one at a time to talk about their knowledge of the death. In some cases, a witness statement may be read out. The coroner's assistant or counsel assisting the coroner will then ask the witness any questions. The lawyers representing the family of the deceased or other interested parties will then ask the witness any questions. If the family is not represented by a lawyer, the coroner's assistant or counsel assisting the coroner will check with the family to see if they would like the witness to be asked any questions.
- When all witnesses have been heard, the coroner will ask for any final submissions. These submissions may be said in Court out loud or may be submitted in writing to the coroner. If the family of the deceased are not represented by a lawyer, the coroner may ask them if there is anything they wish to say.
- When the coroner believes that all relevant evidence has been heard, they will adjourn (postpone) the matter until they complete their finding.
- The Coroner's Court staff will let you know when the coroner is ready to give their finding.

How long does an inquest go for?

It varies. The length of an inquest depends on how complex the circumstances surrounding a death are and how many witnesses and submissions need to be considered. Some inquests may only last a few hours, while others may occur over several weeks or months.

Legal representation for family members

Families attending a hearing can choose to have a lawyer represent them.

If family members with a sufficient interest wish to be represented, they will need to seek leave (permission) from the coroner to do so.

The Coroner's Court cannot help a family choose a lawyer. For further information on legal assistance available, please see:

- Lega Aid ACT can be contacted via phone or email: (02) 6243 3411 or 1300 654 314 or at legalaid@legalaidact.org.au
- Pro bono legal assistance can be contacted via phone or email: (02) 6247 0300 or pbch@actlawsociety.asn.au
- The Aboriginal Legal Service can be contacted via phone or email: (02) 6120 8810 or at canberra@alsnswact.org.au
- A community legal centre can be found via the Community Legal Centres Australia database on the website or via phone or email: (02) 9160 9500 or at info@clcs.org.au

THIRRILI

Working with families and communities after suicide

1800 805 801

24/7 Australia-wide

In partnership with

NORTON ROSE FULBRIGHT

The Coroners Court in ACT

FACT SHEET 5

Next of Kin and the Coroners Court

THIRRILI

This fact sheet explains which family members and friends can make important decisions in the coronial process. This fact sheet does not apply to deaths in custody.

Who can make decisions after someone dies?

Immediate Family
When someone dies suddenly, immediate family members will be able to make decisions and be informed about important information. For a First Nations person, this can be any person who, in accordance with the traditions and customs of the deceased person's community, had a responsibility for or interest in the welfare of a deceased person.

Someone can be listed as a member of the immediate family at any time, including, for example, after all coronial processes are complete.

If you want to be considered 'immediate family' you must email the coroner and explain your connection to the deceased. You should provide evidence of your connection if you have any.

Family Representative
The coroner must select one or more persons from the immediate family to be the 'family representative'. This person will receive information from the coroner to share with the rest of the immediate family.

What role does Immediate Family, or a Family Representative have?

Immediate family and/or family representative are the main point of contact for the Coroner's Court. They will be informed about updates and findings in relation to the inquest, which includes the following:

- being contacted by the Emergency Services Agency or the police to explain the coronial process;
- if an inquest is going the be held, being advised of the time and place of any hearings for the purposes of the inquest;
- being told in writing if the coroner decides not to hold a hearing, with an explanation as to why;
- receiving, by post, a written copy of the coroner's decision (upon request).

Place of death or other significant locations
An immediate family member may want to inspect the place of death or another location that may have contributed to the death. They can ask to do so by written request. The coroner may allow you or your representative (i.e. a lawyer) to do this.

The coroner may say no to these requests. If they deny your requests, they must give you written notice with an explanation for their decision. If you disagree with this, you can submit an application asking the Chief Coroner to reconsider your request.

Autopsy
An autopsy is an examination of the body of the deceased person to determine how they died. Immediate family have rights in relation to autopsies and can:

- ask a coroner to not conduct an autopsy examination (and outline concerns to the Policing Coronial Liaison Officer);
- ask to be present at the autopsy (or be represented by someone, like a doctor);
- ask the coroner to dispense with a post-mortem exam if the manner and cause of death are sufficiently disclosed; and
- ask for another autopsy examination to be conducted, by the same doctor or another doctor of your choice.

The Coroners Court in ACT

FAQ: What is a post mortem examination?

An autopsy or post mortem examination is an examination of the body of a deceased person to determine how they died. An autopsy is sometimes ordered by the coroner.

The coroner may say no to these requests. If they deny your requests, they must give you written notice with an explanation for their decision. If you disagree with this, you can submit an application asking the Chief Coroner to reconsider your request.

After an autopsy is complete, the immediate family:

- can request a copy of the autopsy report. Immediate family will need to choose a doctor who will receive the report and then explain it to them. This information is not automatically released to family immediately as it contains sensitive details that not all family members want to see; and
- will be informed about the release of the body.

Exhumation and ashes

An exhumation is the removal of a buried body from its resting place. A family representative has rights in relation to exhumations.

A family representative will:

- be informed if the coroner needs to investigate the remains of the deceased person after they have already been buried or cremated; and
- be informed when the body or ashes can be returned.

FAQ: Who is a person with 'sufficient interest'?

The Coroner will decide who is a person with 'sufficient interest'. It can commonly include families, friends, medical services and affected government agencies.

I am not a member of the immediate family or a family representative. What rights do I have?

Anybody can:

- attend hearings; and
- request a copy of the coroner's findings or other documents (if you are immediate family or representatives of the deceased).

A person with 'sufficient interest' (including all immediate family) can:

- request access to documents or evidence;
- appear at a hearing, be represented by a lawyer and examine and cross examine witnesses;
- ask the coroner to request evidence from a particular person;
- ask the coroner to correct errors in a finding or a report; and
- ask the coroner to reconsider a decision or a finding.

What can I do if the coroner won't accept me as the immediate family or a family representative despite my role in the community?

You should email the coroner at coroners@courts.act.gov.au with evidence that shows your relationship with the deceased person.

More help

- ACT Coroner's Court can be contacted via phone or email: (02) 6207 1754 or at coroners@courts.act.gov.au
- Coronial Counselling Service can be contacted via phone or email: (02) 6122 7191 ACTCCS@rarc.relationships.org.au
- Canberra StandBy Suicide Bereavement Response Service can be contacted via phone or email: 0421 725 180 or standby@supportlink.com.au
- Legal Aid ACT can be contacted via phone or email: (02) 6243 3411 or 1300 654 314 orlegalaid@legalaidact.org.au
- Pro bono legal assistance can be contacted via phone or email: (02) 6247 0300 or at pbch@actlawsociety.asn.au
- Aboriginal Legal Service can be contacted via phone or email: (02) 6120 8810 or at canberra@alsnswact.org.au

THIRRILI

Working with families and communities after suicide

1800 805 801

24/7 Australia-wide

In partnership with

NORTON ROSE FULBRIGHT

The Coroners Court in ACT

FACT SHEET 6

Cultural Protocols in Coronial Investigations

THIRRILI

This fact sheet explains the role of culture in a coronial inquest when a family member dies and who you can speak to for help getting the coroner to understand your traditions.

Making the coroner understand our sorry business and culture

- Immediate family members can appear at an inquest – this can be used as an opportunity to tell the coroner about what customs you would like to be observed during the process.
- You may be able to make submissions to the coroner regarding these obligations, but the coroner is not bound to observe them.

Visiting a deceased person

- The deceased person can be visited by immediate family. The immediate family can also send a representative (e.g. a doctor) to view on their behalf.

Smoking ceremony at an inquest

- You or your lawyers can contact the court staff (see below for contact details) in advance of the hearing and may be able to request this.

Culturally significant items and Acknowledgment of Country

- You or your lawyers can contact the court staff (see below for contact details) in advance of the hearing and may be able to request the display of culturally significant items and a specific Acknowledgement of Country.

Using use the name and images/videos of the deceased

- You can inform the coroner at the start of the hearing that you would like to be informed in advance about this. You can leave the hearing at any time you like.

Next of Kin

- Court staff will determine the next of kin. For an Indigenous deceased, the staff will look to any person who had a responsibility, or an interest in the welfare, of the deceased according to their traditions and customs (for more information, see Fact Sheet 5: Next of Kin and the Coroner's Court).

Language

- You or your lawyers can contact the court staff (see below for contact details) in advance of the hearing to attempt to organise an interpreter who speaks your language to be at the hearing.

Men's or Women's business

- You may be able to make submissions to the coroner regarding men's and women's business. However, the coroner is not required to observe men's and women's business.

More help

- ACT Coroner's Court can be contacted via phone or email: (02) 6207 1754 or at coroners@courts.act.gov.au
- Aboriginal Legal Service can be contacted by phone or email: (02) 6120 8810 or at canberra@alsnswact.org.au
- If you are struggling with the death of a loved one, you can call 13YARN (13 92 76) for free support

The Coroners Court in ACT

FACT SHEET 7

The role of the police in the coronial process

THIRRILI

This fact sheet explains the role of the police in a coronial inquest when a family member dies suddenly. The fact sheet explains what to expect when talking to the police throughout the coronial process.

What is the role of the police?

- Following a 'reportable death', the Coroner's Court arranges for members of the Australian Federal Police to investigate the circumstances of the death.
- The police conduct a thorough investigation including gathering of evidence, consulting with witnesses and providing a report to the coroner.
- A coroner may use the help of the police to subpoena an individual to give evidence or produce documents.

Communicating with the police

- The police are expected to provide updates on the status of the investigation and the coronial process to the families of the deceased including when and why there are delays. The police will update families after the coroner has made their findings.
- Families of the deceased can raise any issues and concerns surrounding the conduct of the police investigation including concerns in relation to the circumstances of the death.
- The police may request a statement from family members about the deceased and the circumstances of the death. You only need to provide a statement to police if you want to.
- Families do not need a lawyer when they give a statement to the police, but they are entitled to one if they want. All families of First Nation Peoples are entitled to have legal representation and legal advice relating to the coronial process.
- Traditions and customs around Sorry Business are an important time for family and community. You can ask the police to respect your traditions and that there are no unnecessary phone calls, visits, and questions at this important time.

More help

- Legal Aid ACT can be contacted via phone or email: (02) 6243 3411 or 1300 654 314 orlegalaid@legalaidact.org.au
- Aboriginal Legal Service can be contacted via phone or email: (02) 6120 8810 or at canberra@alsnswact.org.au

The Coroners Court in ACT

FACT SHEET 8

What happens after the coronial process?

THIRRILI

This fact sheet explains the steps that can be taken after a coroner has handed down their findings and any available legal options for families when contesting the findings of the coronial process. You should always get your own legal advice is before taking legal action.

Where can I get a copy of the coroner's findings?

- Following an investigation by a coroner into the death, the coroner will hand down a written finding. The findings are put on a database available to the public: Austlii database. You can search for a particular finding by name, case number, type of death or location of death using the search field.
- Each member of the immediate family (or their lawyer or other representative) will be sent, by post, a written copy of the coroner's decision, if requested.

What is a coroner's finding and what does it mean for the deceased's family?

- A finding by the coroner is made following an investigation into a death and provides the identity of the deceased, the time, date and place of death, a summary of the evidence relating to the circumstances of the death, and in some cases the coroner's comments or recommendations aimed at preventing similar deaths.
- A finding handed down by the coroner is not the same as a judgment handed down by a judge in a court room. It is a fact-finding process and will not find anyone guilty of a crime, or solve any of the problems experienced by the community affected by the death.
- Speak to a lawyer about options if you wish to take further legal action after a coroner has made their findings.

Applying to have findings reconsidered and reopening investigations

- A person dissatisfied with a coroner's decision about whether a death is a reportable death may apply for an order, from the State Coroner or District Court, about whether it is a reportable death. An application must be made within 14 days after the person receives written reasons for the decision. If the State Coroner or the District Court orders that the death is a reportable death, the coroner is taken to have considered the death to be a reportable death.
- The Coroner's Court can set aside some or all of the findings and order that an investigation be re-opened if a coroner is satisfied that there are new facts and circumstances that should be considered. If the Coroner's Court refuses to re-open an investigation, a person who made the request may appeal to the Supreme Court.
- A person dissatisfied with a finding at an inquest may apply to the Chief Coroner to ask the coroner to reconsider the decision and alter the finding. You can appeal the decision to the Supreme Court, ask for a fresh inquest, or (in rare cases) request the inquest be quashed and a new inquest be held.

The Coroners Court in ACT

FACT SHEET 9

My loved one's body and things

THIRRILI

This fact sheet explains what happens to the body of your loved one if a medical examination is required, what you can do if you object to a medical procedure happening, and when and who can get the body when the coroner is ready to release it.

What happens to the body?

- If the body requires medical examination, the body will be transported to the ACT Forensic Medicine Centre.

Preliminary examination

- A preliminary investigation, also known as an ancillary examination, includes things like collecting fingerprints, looking inside at the teeth and inside the mouth, and taking samples of blood and urine.
- Members of the immediate family can make a request to the coroner to view the body or to be present. The coroner will consider the request and has the discretion to decline it.

Autopsy

- An autopsy is a type of medical procedure performed by a pathologist. It might also be referred to as a "post-mortem".
- An autopsy involves internal and external examinations on the body using techniques like those used in surgical operations. The chest, abdomen and skull are examined, and some organs are examined. This may involve removing the organs.
- The purpose of the autopsy is to establish the cause of death.

What can I do if I object to the autopsy?

- An immediate family member can ask the Chief Coroner to reconsider the decision of the coroner by putting the request in writing to the Chief Coroner.
- If a member of the immediate family does not want the autopsy to happen, they should tell the ACT Policing Coronial Liaison Officer their concern and put then put this in writing to the coroner (for more information, see Fact Sheet 5: Next of Kin and the Coroner's Court, including about who is considered to be a member of the immediate family).
- The coroner may take advice from the pathologist, including whether a less invasive form of examination will be enough. The coroner makes the decision whether or not the autopsy will happen. The coroner may decide that it is in the public interest or in the interests of justice for an autopsy to be done.

What is exhumation?

- If the body has already been buried and an autopsy is needed, the body may need to be removed from the ground or burial site. This is called exhumation.
- A coroner may authorise the exhumation of a body for post-mortem examination if the body is buried, or for the recovery of the ashes if the body has been cremated.

When can I get the body?

- The coroner will authorise the release of the body as soon as they can. The coroner will also issue a certificate authorising the release of the body if the coroner is satisfied that there is no reason that the body should not be buried, cremated or taken out of the ACT for burial or cremation.

What if I can't pay for the transport of the body or funeral costs?

- You may be eligible for assistance to from the ACT Government's Funeral Program to help with the costs of the funeral.