

THE CORONERS COURT IN NEW SOUTH WALES:



THIRRILI

A guide for Aboriginal and Torres Strait Islander families

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 Coroners 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 Coroners Court of New South Wales 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 of New South Wales 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 Coroners Court of New South Wales for Aboriginal and Torres Strait Islander people includes 8 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 Coroners 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

The Coroners Court of New South Wales via phone or email: 02 8584 7777 or at lidcombe.coroners@justice.nsw.gov.au

The Aboriginal Coronial Information and Support Program of the Coroners Court via phone or email: 02 8584 7777 or at ACISP@dcj.nsw.gov.au
The Coronial Inquest Unit at Legal Aid NSW is via phone: 1300 888 529

Further information on the Community Coronial Advocate and Support Officer at the Aboriginal Legal Service can be found at: https://www.alsnswact.org.au/deaths_in_custody

The Aboriginal Legal Service of NSW via phone: 1800 765 767

A community legal centre can be found via Community Legal Centres Australia: CLCA website



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FACT SHEET 1

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



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The Coroners Court of New South Wales is a specialist 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. The 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 the identity of the deceased person, when and where they died, how they died and suggest changes to 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 Coroners 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 Coroners 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.



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FACT SHEET 2

What types of death will a Coroner investigate?



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Coroners do not investigate all deaths, only deaths that are “reportable” or “examinable”.

Reportable deaths include:

- those that are unexpected, unnatural or violent, or caused by an accident or injury;
- those that happen unexpectedly during or after a medical procedure;
- those that happen when the person who died was in the care of a mental health facility; and
- when the cause of death is unknown.

Examinable deaths include:

- deaths that occur in custody or as a result of a police operation; and
- deaths of children and disabled persons.

There must also be a connection with New South Wales, such as the death occurring in New South Wales or that the deceased usually lived in New South Wales.



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FACT SHEET 3

How a Coroner investigates a death



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Initial stage

- Once a report of a death is received by the Coroners Court of New South Wales, usually from the police or health and emergency professionals, the deceased person is taken into the care of the Coroners Court and a coroner will begin their investigation.
- Usually, New South Wales Police will inform the deceased's family that the coroner will be investigating their loved one's death. A family member, or friend, will be asked by the police to formally identify their loved one's body (for more information, see Fact Sheet 5: Next of Kin and the Coroners Court).

The gathering of information stage

An investigation may vary with the circumstances of the death but usually includes:

- reviewing the deceased's medical history and circumstances of the death;
- attending the scene of the death;
- conducting a post-mortem examination (for more information, see Fact Sheet 5: Next of Kin and the Coroners Court and Fact Sheet 8: My loved one's body and things);
- reviewing statements from witnesses, including family members and friends of the deceased; and
- obtaining specialist reports from experts and external investigators such as police, doctors, engineers or the fire brigade.

Based on all of the information and evidence gathered, the investigating coroner will decide if the death requires further investigation, or if the death was due to natural causes and whether an inquest is required.

The Coroners Court will communicate with the senior next of kin throughout the investigation process (for more information, see Fact Sheet 5: Next of Kin and the Coroners Court).

Making a finding

A coronial finding is the formal document that a coroner prepares writes an investigation into a death and it is usually the last step in the investigation.

If the coroner has decided not to hold an inquest, the senior next of kin and other interested parties (discussed further below) will receive a letter telling them that the investigation has been finalised and what the coroner has determined as the cause and manner of death.

If an inquest has been held, the coroner will deliver a finding after the inquest has concluded. A copy of the inquest finding is published on the Coroners Court of New South Wales' website unless a coroner orders it not to be published.

A finding usually includes:

- the identity of the deceased;
- the cause of the death; and
- the circumstances of the death.

It may include recommendations that may help prevent similar deaths occurring in the future.

A coroner must not include in a finding or comment any statement that a person is, or may be, guilty of an offence.



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Inquests into a death

An inquest is a public hearing of the investigation into a death which is held at the Coroners 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.

Coroners investigate all deaths that are reported to the Coroners Court, whether or not an inquest is held.

Inquests are public hearings where people are called to the Coroners Court to give evidence about the death. Inquests are only held for a small number of deaths reported to the Coroners Court of New South Wales.

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

- the coroner has concerns that the person may have died as a result of homicide;
- the person's identity is unknown;
- the death occurred when the person was in custody or as a result of a police operation; or
- the coroner is concerned that the circumstances surrounding the death have not been sufficiently disclosed during the investigation process.

Who can attend?

Generally, anyone can attend an inquest. People who may wish to attend include:

- Family members of the deceased.
- 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.
- Interest Parties. Interested parties are discussed further below.

Interested parties

A person, or organisation, who has an interest in a coronial investigation may write to the Coroners Court of New South Wales registering their interest. If the coroner agrees that the person, or organisation, has an interest in the investigation, they will be kept informed at key stages of the investigation such as if and when the coroner decides to hold an inquest, when the matter is listed for inquest and when the investigation has been finalised.

An interested party is not automatically entitled to participate in the inquest and/or to ask witnesses questions. An interested party is first required to apply to the coroner for permission (and obtain that permission) to do so.

Determining the scope of an inquest

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



The coroner determines the scope of the inquest before the inquest begins by conducting smaller hearings known as directions hearings. A directions hearing is held by the coroner to:

- hearing applications made by interested parties who wish to participate at the inquest;
- work out how long the inquest may go for;
- determine who the witnesses will be; and
- work out any other preliminary or procedural issues, including the location for the inquest and any special arrangements for facilities that may be required.

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. The coroner should be addressed as 'Your Honour' when you are in Court.
- 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. Counsel assisting the coroner will then ask the witness any questions. The lawyers representing the senior next of kin or other interested parties who have been given permission to participate at the inquest will then ask the witness any questions.
- Once all witnesses have been heard, the coroner may allow a statement from the deceased's family to be read to the Coroners Court.
- Final submissions will be made to the coroner. These submissions may be said in Court out loud or may be submitted in writing to the coroner.
- Once the coroner believes that all relevant evidence has been heard, they will adjourn (postpone) the matter so that they can complete their finding.
- The Coroners 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 an inquest can choose to have a lawyer represent them. However, the Coroners Court cannot help a family choose a lawyer. Please see the contact details on the Summary and Acknowledgment page of this toolkit for further information on legal assistance available.

Coronial Aboriginal Support Program

The Coronial Aboriginal Support Program consists of first nations team members who provide cultural support and communicate directly with first nations families throughout the coronial process.

Every family will receive an initial call from a Coronial Information Support Program worker. During that call, inform the staff member that you identify as Aboriginal or Torres Strait Islander and that you would like to have contact with a Coronial Aboriginal Support officer.

A family meeting usually occurs within a few weeks of the death being reported to the Coroners Court of New South Wales to explain the coronial process, expected timeframes, and to discuss cultural considerations and concerns with the family. A Coronial Aboriginal Support officer will attend court hearings with first nations families to ensure cultural sensitivity is delivered throughout the hearing.

The Coronial Aboriginal Support officers also provide culturally focused advice and support to the coroner on aspects of the coronial investigation, including in relation to medical examinations and the body of the deceased, and appropriate steps to be taken throughout the coronial.

For further information regarding first nations cultural considerations please see Fact Sheet 6: Cultural Protocols in Coronial Investigations.



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Diagram of the coronial investigation process

The NSW Coroners Court provides the following diagram to describe their investigation process: <https://coroners.nsw.gov.au/the-coronial-process/overview-of-the-coronial-process.html>





Next of Kin and the Coroners Court

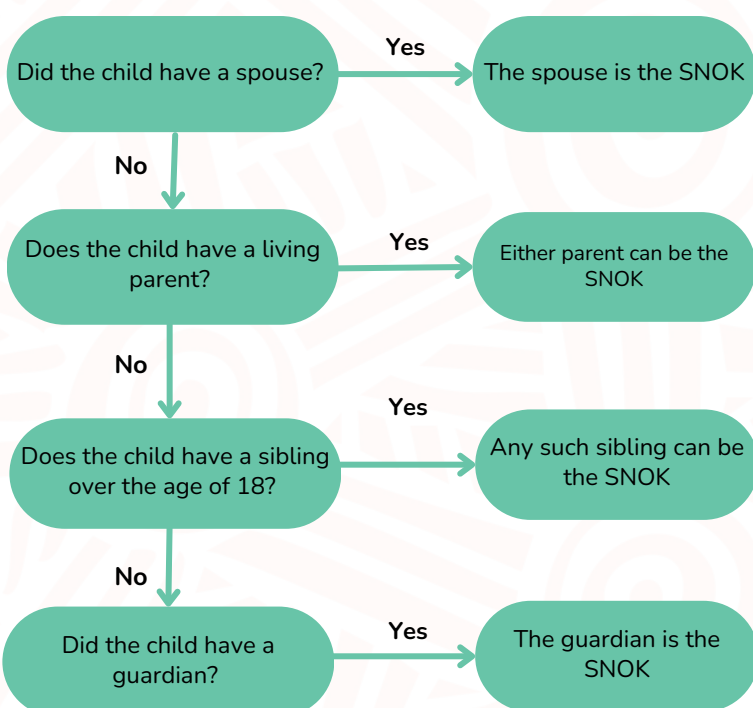
This fact sheet explains which family members and friends can make important decisions in the coronial process. This fact sheet does not apply to deaths in custody.

Who can make decisions after someone dies?

Senior Next of Kin

The following flow chart will help you determine who is the **SNOK**, in order to make decisions when someone dies suddenly. The SNOK is the first available person from the flow chart.

When the deceased person was a child (i.e. under the age of 18)



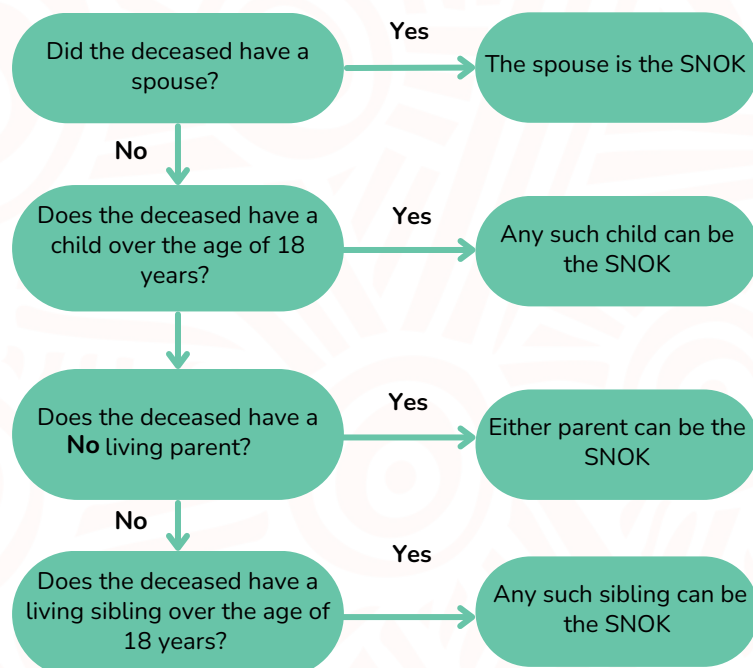
FAQ: Who is a 'parent'?

A parent can include a step-parent, a person regarded as a parent under Aboriginal traditional custom or other cultural traditions of a community, and a person who exercised parental responsibility for the child (even if not the legal guardian of the child).

FAQ: Who is a 'sibling'?

A sibling can include an adopted sibling, a step-sibling, and a person regarded as a sibling under Aboriginal traditional custom or other cultural traditions of a community.

When the deceased person was an adult



FAQ: Who is a 'child'?

A child can include an adopted child, step-child, foster child, and a person regarded as a child under Aboriginal traditional custom or other cultural traditions of a community.

What role does the SNOK have?

A SNOK will be the person notified about the following:

- the arrival of the body at the morgue;
- if the coroner wants to conduct a post-mortem investigation; and
- if the coroner wants to keep organs or tissue for investigation.

A SNOK can:

- appoint another person to be the SNOK instead;
- be provided with a specialist social worker from the Forensic Medicine Social Work service;
- request, in writing, that a post-mortem investigation not be conducted; and
- appeal a decision of the coroner to do a post-mortem investigation or keep organs/tissue.

I am not the SNOK. What rights do I have?

People who are not the SNOK, but are a:

- spouse or long term partner;
- parent;
- child above the age of 16; or
- person who resided with the deceased,

can:

- appear in the coronial court proceedings (including to call and examine witnesses), or be represented by a lawyer in those proceedings;
- apply for a cremation; and
- apply for an exhumation of the deceased.

What can I do if the coroner won't accept me as the SNOK despite my role in the community?

If you are not eligible to be a SNOK, and you think you should be, you can make an application to the NSW Supreme Court.

Alternatively, you can apply to be an 'interested party' by contacting the court. This will not give you the same rights as the SNOK, but will mean that you are kept informed of when:

- the coroner decides to stop or proceed with an inquest;
- the matter is listed for an inquest;
- and the matter is finalised.

More help

- The Coroners Court of NSW can be contacted via phone or email: (02) 8584 7777 or at lidcombe.coroners@justice.nsw.gov.au.
- The Coroners Court provides a Coronial Information and Support Program can be contacted via phone or email: (02) 8584 7777 or at ACISP@dcj.nsw.gov.au.
- Legal Aid NSW has a Coronial Inquest Unit which provides free legal advice and representation and can be contacted via phone: (02) 9219 5156 or (02) 9219 5000 (for regional matters call 1300 888 529).
- The Aboriginal Legal Service of NSW can be contacted via phone: 1800 733 233.



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Cultural Protocols in Coronial Investigations

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

- The Aboriginal Coronial Information and Support Program (ACISP) will contact you after the coroner decides to investigate your loved ones death, to talk about cultural and ceremonial matters. They will support you through the hearing.
- An ACISP Officer will talk to the coroner on your behalf to explain how the hearing can be run in a way that is culturally appropriate to the deceased person's family and community.

Visiting a deceased person

- The ACISP will work with the family around the viewing of the body (for more information, see Fact Sheet 8: My loved one's body and things).

Determining the deceased's country

- An ACISP Officer will consult with the deceased's next of kin to find out which tribal community the deceased person identified with and their community and kin connections.

Culturally significant items and Acknowledgment of Country

- You can request to hold ceremonies that are important to your family or tribal community, such as a smoking ceremony. You can also ask for symbols or items that are of cultural significance to the deceased or their family to be displayed. You can also ask for a Welcome to Country or an Acknowledgement of Country. Speak to the ACISP Officer about what you would like included.

Smoking ceremony at an inquest

- An ACISP Officer can help to ask for a smoking ceremony.

Using the name and images/videos of the deceased

- The coroner will listen to what the family wants the deceased person to be called during the hearing. You should tell the ACISP Officer what name the family would like used.
- There may be images and voice recordings of your family member used during the hearing. Coroners in NSW look to create a culturally safe environment and are mindful of sensitive material. They will usually have a discussion with you and your family prior to the start of an inquest to hear your view.

Next of kin

- For information, see Fact Sheet 5: Next of Kin and the Coroners Court.

Language

- An ACISP Officer will be available to assist with any of your own language needs during the proceedings. They can communicate any of your translation requirements directly to the coroner.

More help

- The Aboriginal Coronial Information and Support Program can be contacted via phone or email: (02) 8584 7777 or at ACISP@dcj.nsw.gov.au
- The Aboriginal Coronial Information and Support Program of the Coroners Court can be contacted via phone or email: (02) 8584 7777 or at ACISP@dcj.nsw.gov.au





What happens after the coronial process?

This fact sheet explains the steps that can be taken after a coroner has handed down their findings and any available legal recourse for families when contesting the findings of the coronial process. You should always get your own legal advice before taking any 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, a case number, type of death, or location of death using the search field.

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, 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 an entirely fact-finding process and will not find anyone guilty of a crime, or solve any of the problems experienced by the family or 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 set aside and reopening investigations

- You may write to the NSW State Coroner at the Coroners Court in Lidcombe, Sydney to review the matter.

- If an inquest is not held you may ask the coroner for written reasons for his or her decision, provided you are a person with a sufficient interest in the death.
- If the coroner finds that the discovery of new evidence or facts makes it necessary or desirable in the interests of justice to hold the inquest, then they may re-open an inquest.
- The Supreme Court can also direct that an inquest or inquiry be held. If a coronial inquest or inquiry has been held, the Supreme Court can direct that a fresh hearing be held if it is necessary or in the interests of justice.

Appealing decisions around dealings with the body

- The Supreme Court of NSW can make orders about the conduct of a post mortem or the retention of whole organs.
- A senior next of kin (for more information, see Fact Sheet 5: Next of Kin and the Coroners Court) may apply to the Supreme Court within 48 hours after the notice was given for an order that a relevant post mortem investigative function not be conducted.
- For more information, see Fact Sheet 8: My loved one's body and things, including on what is involved in exhumations and post mortem examinations.

More help

- Coronial Inquest Unit at Legal Aid NSW can be contacted via phone: 1300 888 529 (Mon-Fri, 9am-5pm) or visit <https://www.legalaid.nsw.gov.au/my-problem-is-about/someone-who-died/coronial-inquests/coronial-inquest-unit>
- Community Coronial Advocate and Support Officer at Aboriginal Legal Service: https://www.alsnswact.org.au/deaths_in_custody
- Aboriginal Coronial Information and Support Program – NSW Coroners Court can be contacted via phone or email: (02) 8584 7777 or at ACISP@dcj.nsw.gov.au
- The Aboriginal Funeral Transport Program: <https://www.transport.nsw.gov.au/operations/community-transport-operators/aboriginal-funeral-transport-program>



FACT SHEET 8

My loved one's body and things



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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 either the Lidcombe Mortuary or a regional hospital.
- Personal belongings on the body are often taken by the police to use as exhibits and stored at the police warehouse. Otherwise, they will be taken to the Lidcombe Mortuary.

Preliminary examination

- A doctor or pathologist will do the 'preliminary examinations' of the body of a deceased which are not very invasive. This might include things like collecting fingerprints, looking inside at the teeth and inside the mouth, and taking samples of blood and urine. The internal organs are left alone.

Autopsy

- An autopsy is a type of medical procedure performed by a pathologist. It might also be referred to as a "post-mortem". In some cases where the cause of death cannot be found, an autopsy is required.
- An autopsy includes external and internal examinations 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. When deciding the type of examination required, the religious and cultural needs of the family will be considered. Where more than one procedure is available to determine manner and cause of death, the least invasive procedures will be used.

What can I do if I object to the autopsy?

- The senior next of kin will be informed before any examination commences and they will have an opportunity to object. The senior next of kin can also object to the coroner holding the organs (for more information, see Fact Sheet 5: Next of Kin and the Coroners Court, including about who is considered to be the senior next of kin).
- Any objection to the autopsy must be made in writing addressed to the Coroners Court (this can be done via email to the coroner, stating the reasons for objection).
- The coroner will take your concerns into account, but may still decide that an autopsy is required. This is more likely to happen if the coroner believes there is a remaining suspicion surrounding the death.
- If the coroner notifies you that your objection has been refused, you can apply to the Supreme Court for an order preventing the autopsy. This application needs to be made within 48 hours of being notified by the coroner.

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.
- If exhumation is needed the State Coroner will need to issue a warrant to a police officer.
- The senior next of kin can make an urgent application to the Supreme Court requesting that the exhumation not go ahead. The application must be made within 48 hours after the notice was given.



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When can I get the body?

- The coroner will authorise the release of the body as soon as they can.
- Once the coroner has completed their investigation, control of the body will go to whoever has made the application for release and has the best claim to the body. The coroner will make an order in writing for the disposal of the body. You are not able to bury or cremate the body until the coroner authorises it.
- The senior next of kin or a delegate nominates the funeral director. The funeral director receives the remains and will then carry out the burial according to instructions from the senior next of kin.
- The Aboriginal Coronial Information and Support Program can arrange financial support for sorry business for the family. This can cover the return of the body to country. They can help the family navigate the available grants for repatriation and funeral expenses. This could include support for the body to be returned interstate.

More help

- You can notify the coroner in writing of your objection by emailing: lidcombe.coroners@justice.nsw.gov.au
- For more information about the process in general from the New South Wales Coroners Court visit: <https://www.coroners.nsw.gov.au/the-coronial-process.html>
- The Aboriginal Coronial Information and Support Program – NSW Coroners Court can be contacted via phone or email: (02) 8584 7777 or at ACISP@dcj.nsw.gov.au



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