The Coroners Court in SA

THE CORONERS COURT IN SOUTH AUSTRALIA:

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 South Australia 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 Coroner's Court of South Australia 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

The Coroner's Court of South Australia via phone or email (including Counselling, information, and support service provided by Social Workers): (08) 8204 0600 or at coroner@courts.sa.gov.au

Legal Services Commission South Australia via phone or email: 1300 366 424 or at LSC.Correspondence@lsc.sa.gov.au

Aboriginal Legal Rights Movement via phone or email: 1800 643 222 or at info@alrm.org.au

A community legal centre can be found via Community Legal Centres (SA) via phone: 1300 860 529

If you are struggling with the death of a loved one, you can call 13YARN (13 92 76) for free support.

FACT SHEET 1

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

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The Coroner's Court of South Australia is an expert court that is set up investigate the cause of certain types of deaths including suicide and those due to self-harm. A coroner is a representative of the Coroner's 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 the 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?

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

These include:

- a death that is unexpected, unnatural, unusual or violent;
- when the cause of the death is unknown;
- a death that occurs during or as a result of, or within 24 hours, of certain medical procedures or receiving medical care;
- where the person was at the time of death in certain types of custody or care;
- where no certificate was given to the Registrar as to the cause of death; or
- a death that occurs on an aircraft during a flight, or on a vessel during a voyage.

There must also be a connection with South Australia, such as the death occurred in South Australia or that the deceased resided in South Australia at the time of death.

FACT SHEET 3

How a Coroner investigates a death

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Initial stage

The initial stage of a coroner's investigation includes:

- receiving a report about the death from the police, a doctor/hospital, or another reporting organisation;
- admitting the deceased person into the care of the Coroner's Court;
- contacting the senior next of kin to inform them about the coronial process and to obtain more information about the deceased, as well as the family's wishes with respect to the deceased's post-mortem examination (for more information, see Fact Sheet 9: My loved one's body and things); and
- requesting information about the preliminary medical examination of the deceased.

The gathering of information stage

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

- gathering a range of information from police, family, friends, medical practitioners, witnesses, technical experts, and any other relevant persons to assist the coroner to form a picture about what happened and why. More often than not, a coroner is able to make a written finding into a death based on this information, without having to hold an inquest;
- attending the scene of the death (if safe and appropriate to do so);
- directing that an autopsy be performed on the deceased (for more information, see Fact Sheet 9: My loved one's body and things, including if you wish to object to an autopsy being performed);
- requesting the Police provide statements, reports, and information about the death; and
- conducting research and considering potential recommendations.

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:

- the identity of the deceased;
- the cause of the death;
- 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 copy of the inquest finding is published on the Coroner's Court of South Australia website unless a coroner orders it not to be published.

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, public authority or organisation that may help prevent similar deaths.

A coroner **must not** include in a finding any statement that a person is, or may be, guilty of an offence. However, a coroner may include a comment that they have made a notification to the Director of Public Prosecutions that they believe a serious criminal offence may have been committed in connection with the death.

Sometimes a coroner is **not** required to make a finding if an inquest into the death was not held, and the coroner decides that there is no public interest in making a finding.

FACT SHEET 4

Inquests into a death

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An inquest is a public hearing 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 death is unexpected, unnatural, unusual or violent;
- the cause of the death is unknown;
- a death occurs on an aircraft during a flight, or on a vessel during a voyage;
- a death occurs during or as a result of, or within 24 hours, of certain medical procedures or receiving medical care;
- the person was at the time of death in certain types of custody or care; or
- no certificate was given to the Registrar as to the cause of death.

In other cases, a coroner may decide to hold an inquest if:

- the circumstances surrounding the death are unclear; and/or
- there are broader issues of public health and safety that the coroner believes need to be examined.

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

- Any relative whom the State Coroner decides has a sufficient interest may request an inquest into a death. To do so you need to complete the required form and give reasons why you believe an inquest is needed. Importantly, making a request does not mean an inquest will be held.
- For further information for legal assistance, see the Fact Sheet 8: What happens after the coronial process.

Who can attend?

Generally, anyone can attend an inquest that is open to the public. People who may 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 of South Australia called a summons if you are required by a coroner to appear 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.

However, in certain circumstances, the coroner may exclude individuals or the public generally, or prohibit the publication of evidence.

Persons with a sufficient interest

A person with a sufficient interest in the subject or result of an inquest has particular rights during an inquest. These rights include the right to:

- appear personally or with legal representation at an inquest; and
- ask witnesses questions during the inquest.

A nominated representative, who is usually a legal practitioner engaged by the family of the deceased, has the right to appear in an inquest and ask witnesses questions during the inquest. (for more information, see Fact Sheet 8: What happens after the coronial process?).

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?

During the inquest, the coroner may:

- require that a person appear before the inquest;
- require the production of any relevant records or documents;
- require any person to make an oath or affirmation (a promise) to answer truthfully any questions asked during the inquest.

At an inquest:

- 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 hand down 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 and how many witnesses and submissions there are. 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, known as a "nominated representative" (for more information, see Fact Sheet 8: What happens after the coronial process?).

FACT SHEET 5

Next of Kin and the Coroners Court

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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?

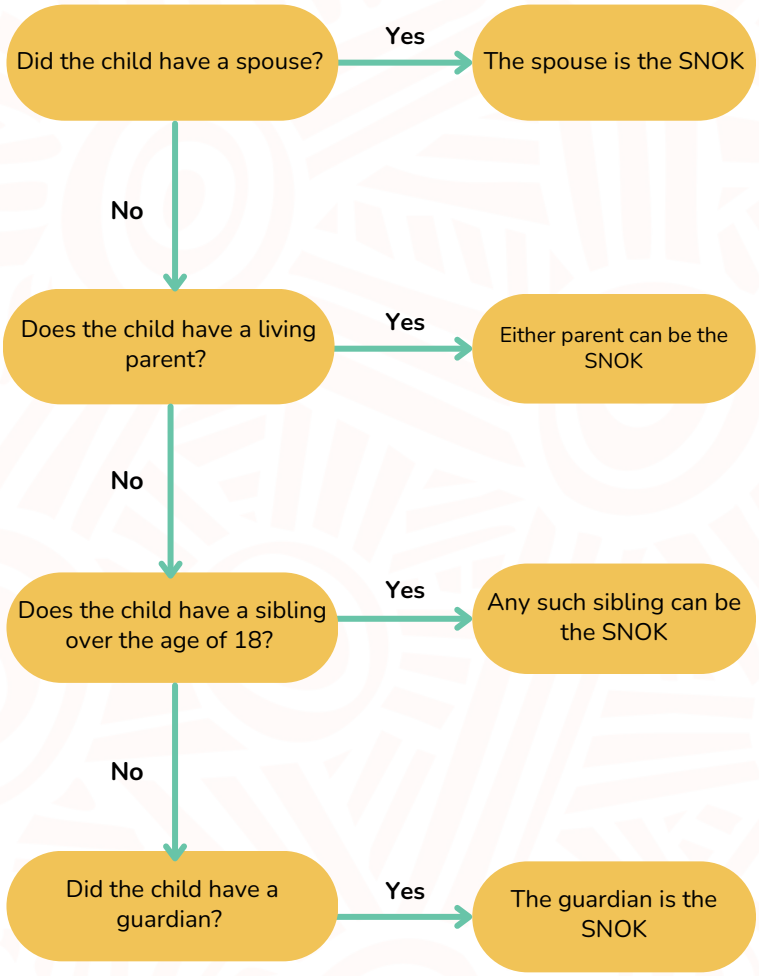
Family

'Family' means the 'senior next of kin' (SNOK) of a deceased person and any person considered to be related to the deceased according to Aboriginal or Torres Strait Islander kinship rules.

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.

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



FAQ: Who is a 'parent'?

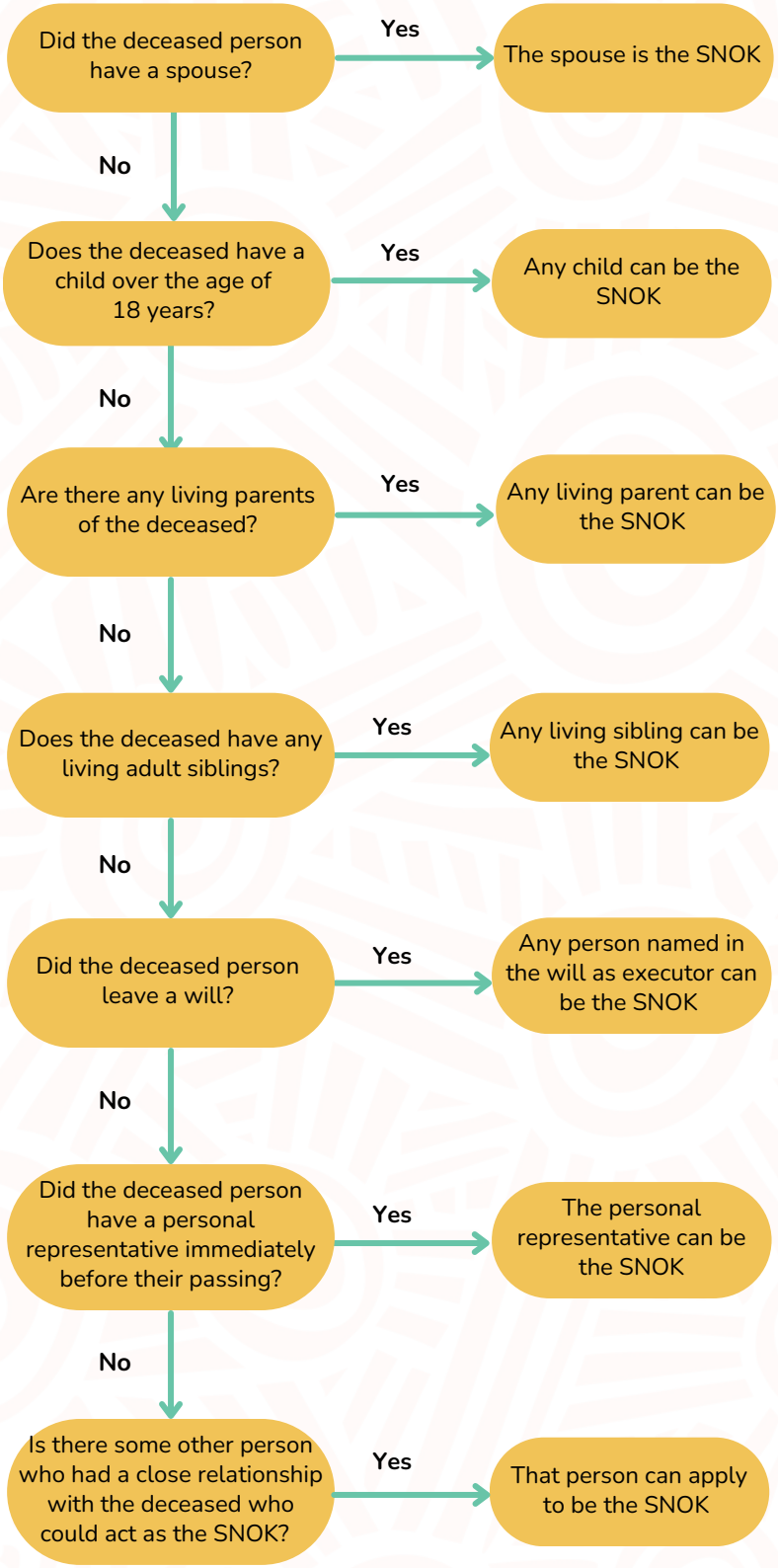
A parent can include a step-parent, a person regarded as a parent under Aboriginal traditional custom or other cultural traditions of a community, and a person who exercised parental responsibility for the child (even if not the legal guardian of the child).

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.

The Coroners Court in SA

When the deceased person was an adult



FAQ: What if the deceased had more than one spouse?

The most recent spouse is the SNOK.

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

FAQ: What is an 'executor'?

An executor is the person appointed in a will to manage the deceased's affairs when they die.

FAQ: What is a 'personal representative'?

A 'Personal representative' may include someone appointed to manage the deceased's affairs while they were alive (i.e., via a statutory declaration, power of attorney, or some other document).

FAQ: How do I apply to be a SNOK?

You need to contact the Coroners Court and explain your relationship with the deceased.

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What role does the SNOK have?

The SNOK is the main point of contact for the Coroners Courts. The SNOK will be informed about:

- the purpose of the coronial process;
- the identification of the deceased process;
- visiting the deceased person.

A SNOK will be:

- *notified as to whether or not an inquest will be held; and*
- *notified of the official cause of death once determined by the State Coroner*

A SNOK can:

- *find out the provisional cause of death on the afternoon of the autopsy by ringing the Coroner's Court;*
- *appear at an inquest and examine and cross examine witnesses;*
- *give consent to the coroner to not investigate the cause of death of the deceased when the coroner suspects that it is likely due to natural causes (this means that the death certificate will list the cause of death as 'undetermined natural causes');*
- *request a copy of the autopsy report; and*
- *collect the deceased's valuables.*

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

Anyone who is family of the deceased can:

- *nominate a person (including a lawyer) to appear at an inquest and examine and cross examine witnesses; and*
- *if no inquest is held, apply to be provided with all records held by the State Coroner in respect of the event.*

People with a 'sufficient interest':

Any person with a 'sufficient interest' can appeal an inquest finding to the South Australian Supreme Court. A person is deemed to have a 'sufficient interest' where the finding:

- affects the person's financial interests;
- reflects adversely on the person's competence in their trade, profession or occupation; or
- the person has some other interest sufficient according to the Supreme Court's opinion.

Anyone with a 'sufficient interest' as determined by the Coroner's Court can appear at an inquest and examine and cross-examine witnesses.
The general public

Any person can:

- view documents, such as a transcript of evidence and orders from the Coroner's Court proceedings; and
- make an application to the State Coroner for permission to view material such as that not received in open court or photos and videos.

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

You should contact the Coroner's Court to explain why you think you should be recognised as the SNOK. The Coroner's Court can be contacted via +61 8 8204 0600 or coroner@courts.sa.gov.au.

More help

- Coroner's Court of South Australia (for general queries and to engage the social worker support service) can be contacted via phone or email: (08) 8204 0600 or at coroner@courts.sa.gov.au
- Legal Services Commission South Australia: can be contacted via phone or email: 1300 366 424 or at LSC.Correspondence@lsc.sa.gov.au
- Aboriginal Legal Rights Movement can be contacted via phone or email: 1800 643 222 or at info@alrm.org.au

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FACT SHEET 6

Cultural Protocols in Coronial Investigations

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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

- Family members (or lawyers on your behalf, if you so choose) can appear at an inquest as an opportunity to tell the coroner about what customs you would like to be observed during the process.

Visiting a deceased person

- The deceased person can be visited if the coroner allows. Contact the Coroner's Court on (08) 8204 0600 to make this request.

For more information, see Fact Sheet 9: My loved one's body and things.

Smoking ceremony at an inquest

- You or your lawyers can contact the court staff in advance of the hearing to request a smoking ceremony (see below for contact details).

Culturally significant items and Acknowledgment of Country

- You or your lawyers can contact the court staff in advance of the hearing to display cultural symbols at a hearing (see below for contact details).

Using use the name and images/videos of the deceased

- The coroner will use the name of the deceased in a hearing, but you can ask for a different name to be used instead. Tell the AEU what you would like your loved one called.
- Videos or photos may be used of the deceased. Speak to the Coroner's Court about how this can be managed.

Next of kin

- The process for determining the next of kin does not involve a consideration of Indigenous kinship relationships, but the broader definition of family under the relevant legislation includes Aboriginal and Torres Strait Islander kinship rules (for more information, see Fact Sheet 5: Next of Kin and the Coroner's Court).

Language

- The Coroner's Court can try to organise an interpreter who speaks your language at the hearing. You or your lawyers can contact the court staff in advance of the hearing to attempt to request this.

Men's or women's business

- You can make submissions to the coroner regarding the rules of men's or women's business, but the coroner is not bound to observe them.

More help

The Coroner's Court of South Australia can be contacted via phone or email: (08) 8204 0600 or at coroner@courts.sa.gov.au

Legal Services Commission South Australia can be contacted via phone or email: 1300 366 424 or at LSC.Correspondence@lsc.sa.gov.au

The Aboriginal Legal Rights Movement can be contacted via phone or email: 1800 643 222 or at info@alrm.org.au

If you are struggling with the death of a loved one, you can call 13YARN (13 92 76) for free support

FACT SHEET 7

The role of the Police in the coronial process

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This fact sheet explains the role of the police force 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?

- The South Australian police are required to report sudden or unexplained deaths to the coroner.
- The police will start gathering information immediately after a death to provide an initial report to the coroner.
- If the coroner decides the death was not due to natural circumstances, the police are directed to carry out a full investigation.
- The police may ask for reports from experts and statements from witnesses, including family and friends as a part of their investigation.
- The police provide a report to the coroner about their investigation (a brief of evidence) which the coroner will use to help find out the cause and circumstances of the death of a loved one.

Communicating with the police

- 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.
- A coroner might ask someone to give evidence to the Court when they can provide relevant information to the coronial proceedings. The police will send a formal request (summons) to the people the coroner wants to give evidence. If someone refuses to attend the Coroner's Court, the coroner may ask the police to arrest them.
- Families do not need a lawyer when they give a statement to the police, but they are entitled to one if they want. To cover the cost of the lawyer, families can make an application for legal assistance to the Legal Services Commission SA.

More help

The Coroner's Court of South Australia can be contacted via phone or email: (08) 8204 0600 or at coroner@courts.sa.gov.au

Legal Services Commission South Australia can be contacted via phone or email: 1300 366 424 or at LSC.Correspondence@lsc.sa.gov.au

The Aboriginal Legal Rights Movement can be contacted via phone or email: 1800 643 222 or at info@alrm.org.au

·If you are struggling with the death of a loved one, you can call 13YARN (13 92 76) for free support

FACT SHEET 8

What happens after the coronial process?

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This fact sheet explains the legal 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 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 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 set aside and reopening investigations

It is part of the State Coroner's role to ensure that all relevant aspects of a matter are investigated, and that next of kin (for more information, see Fact Sheet 5: Next of Kin and the Coroner's Court) are given efficient service and treated with sensitivity. If you are not satisfied with any aspect of the coronial process, you may raise your concerns with the State Coroner in writing. The State Coroner will consider any concerns that you may have.

A coroner may re-open an inquest at any time or the Attorney-General may direct that an inquest be reopened, but must not in the inquest make any finding, or suggestion, of criminal or civil liability. If an inquest is re-opened, the Court may do one or more of the following:

- confirm any previous finding;
- set aside any previous finding;
- substitute a finding that appears supported by the evidence.

On the application of either the Attorney-General or a person who has a sufficient interest in the finding, the Supreme Court may:

- confirm or set aside the coroner's finding;
- substitute a finding that appears supported by the evidence;
- order that the inquest be re-opened, or that a fresh inquest be held;
- make any other order (including an order for costs) that may be necessary in the circumstances.

On appeal, the Court may re-hear witnesses or receive fresh evidence. Any application must be made within one month after publication of the finding although the Supreme Court has a discretion to allow a longer time.

Who is a person with sufficient interest?

The court will consider a person as having sufficient interest in a finding made on an inquest where the finding:

- effects the person's financial interests
- reflects adversely on that person's competence in his or her trade, profession or occupation; or
- the person has some other interest sufficient to grant the application.

More help

The Coroner's Court of South Australia can be contacted via phone or email: (08) 8204 0600 or at coroner@courts.sa.gov.au

Legal Services Commission South Australia can be contacted via phone or email: 1300 366 424 or at LSC.Correspondence@lsc.sa.gov.au

The Aboriginal Legal Rights Movement can be contacted via phone or email: 1800 643 222 or at info@alrm.org.au

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FACT SHEET 9

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 my loved one's things that were with them when they died?

- If a person dies in hospital, or is dead on arrival at a hospital, then that hospital will be responsible for personal items. Similarly, if the death occurs in an institution, property will remain with the institution for collection by next of kin.
- If a person dies at home, personal items will either be handed to relatives by the police or taken for safe keeping to the local police station.
- If the deceased is admitted to the city mortuary, clothing and personal items are generally handed over to the funeral director. However, if the clothing is contaminated in any way it will be disposed of. This is for work, health, and safety reasons.
- Generally, valuables and clothing may be collected by the next of kin. However, if any of these items are required as evidence, they will not be available until sometime after the police and the State Coroner have concluded their investigations.
- Disputes over the ownership of valuables or any other property is not a coronial matter and therefore coronial staff are not permitted to become involved. Such matters should be referred to the executor of the estate, and if there is no will, the Public Trustee.

What happens to the body?

- If the body requires medical examination for a coronial investigation, it will be transported from the place of death to the Forensic Science Centre in Adelaide.

Preliminary examination

- A doctor or pathologist will do a 'preliminary examination' of the body of a deceased which is 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".
- 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.
- In some instances, a more detailed examination of an organ, like the brain or heart, might be necessary to establish the cause of death. If the pathologist thinks this needs to happen, they will require permission from the coroner to remove the organs and keep them for several weeks. If this does happen, a social worker will contact the senior next of kin to discuss options.

What can I do if I object to the autopsy?

- It is the coroner's decision as to whether an autopsy is conducted. The coroner should be advised immediately of any objection to an autopsy being conducted.
- Any objection to the autopsy must be made in writing addressed to the Coroner's Court (this can be done via email at coroner@courts.sa.gov.au).
- 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.

What is exhumation?

- If the body has already been buried and an autopsy is needed, the body may be removed from the ground or burial site. This is called exhumation.
- If this is needed, the Attorney-General will need to authorise the exhumation.

When can I get the body?

- The coroner will authorise the release of the body as soon as they can. An approach to a funeral director should be made as soon as possible. The funeral director will liaise with the State Coroner's Court regarding the release of the body.
- The body cannot be released until the post mortem is complete and the body has been formally identified. In a small number of cases there may be a delay in release, usually associated with difficulties in identification or related to the collection of evidence.
- It is recommended that a funeral service date is not set until the Coroner's Court formally releases the body of your loved one. Please discuss this with your funeral director.

What about a death certificate?

- If a finding has not yet been made by a coroner, the Registrar of Births, Deaths and Marriages is only able to issue an interim death certificate.
- Once a coroner has made a finding and advises the Registrar of Births, Deaths and Marriages, the registrar will, upon application and payment of a fee, provide you with a full death certificate.

More help

For more information about autopsies from the Courts Administration Authority of South Australia visit:
Post-mortems - CAA (courts.sa.gov.au)

For more information about the coronial process in general form the Courts Administration Authority of South Australia visit:
Practical issues for relatives - CAA (courts.sa.gov.au)