The Coroners Court in WA

THE CORONERS COURT IN WESTERN 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 Western 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 Western 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 coroner 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 Western Australia via phone or email: (08) 9425 2900 or 1800 671 994 or at coronerscourt@justice.wa.gov.au
- The Coronial Counselling and Information Service of the Coroner's Court via phone or email: (08) 9425 2900 or at coroner@justice.wa.gov.au
- Legal Aid WA via phone: (08) 1300 650 579
- The Aboriginal Legal Service of Western Australia via phone: 1800 019 900
- A community legal centre can be found via Community Legal Centres Australia: CLCA website

FACT SHEET 1

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

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The Coroner's Court of Western Australia 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, if possible, the identity of the deceased person, how the death occurred and the cause of death. The coroner may suggest changes to try and prevent the same thing happening to someone else. The coroner also may, if appropriate, comment on any matter connected with the death if it relates to public health or safety or the administration of justice.

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?

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Coroners do not investigate all deaths, only deaths that are reported to them by law.

These include:

- a death that is unexpected, unnatural or violent, or caused by an accident or injury;
- a death that happens unexpectedly during or after a medical procedure;
- a death that happens when the person who died was in custody or care;
- a death that appears to have been caused or contributed to by any action of a member of the Western Australia Police Force; and
- when the identity of the person, or cause of death, is unknown.

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

The coroner is not required to investigate a death where the coroner decides the death was caused by natural causes or the death is a "reportable death" only because it had been unexpected.

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 coroner, usually from the police, doctors or hospital, the deceased person is taken into the care of the Coroner's Court and a coroner will begin their investigation.
- The coroner receives from the police a brief containing all the relevant information, including witness statements, police reports, toxicology report, photos and other forensic material.

The gathering of information stage

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.

- An investigation may vary with the circumstances of the death but may include:
    - attending the scene where the death occurred;
    - taking possession of anything which the coroner reasonably believes is relevant to the investigation; or
    - directing a pathologist or a doctor to perform a post mortem examination on the body (for more information, see Fact Sheet 5:Next of Kin and the Coroner's Court and Fact Sheet 8: My loved one's body and things, if you wish to object to an autopsy being performed).

- The Coroner's Court will communicate with the senior next of kin throughout the investigation process.

Making a finding

In most cases, the coroner will complete a "Record of Investigation Death Form", which includes the coroner's findings.

When investigating a death, if possible, the coroner must make the following findings:

- the identity of the deceased
- how the death occurred;
- the cause of the death; and
- the detail needed to register the death with Births, Deaths, and Marriages.

If there is no mandatory requirement to hold an inquest into the death and the coroner decides that there is no public interest to be served in making a finding as to how the death occurred, a coroner does not have make a finding as to how a death occurred.

A coroner may comment on any matters connected with a death, including matters relating to public health or safety or the administration of justice.

Where the death is of a person held in care, a coroner must comment on the quality of the supervision, treatment, and care of the person while in that care.

A coroner must not include a finding, comment, or any statement that a person is, or may be, guilty of any offence or civilly liable for something. However, a coroner may report to:

- the Director of Public Prosecutions if the coroner believes that an indictable offence has been committed in connection with a death which the coroner investigated; or
- the Commissioner of Police if the coroner believes that a simple offence has been committed in connection with a death which the coroner investigated.

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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:

- the deceased was a person held in care, immediately before death and it appears that the death was caused, or contributed to, while the deceased was a person held in care;
- it appears that the death was caused, or contributed to, by any action of a member of the Western Australia Police Force.

In other cases, a coroner may decide to hold an inquest into a death if the coroner believes it is desirable to do so.

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

Any person may ask that a coroner hold an inquest into a death which the coroner has the power to investigate. To do so, your request must be in writing and include reasons why you believe an inquest is needed. Importantly, making a request does not mean an inquest will be held.

If the Coroner's Court refuses to hold an inquest, you can apply to the Supreme Court of Western Australia within 7 days of receiving notice of the refusal or if a reply to the request has not been given within 3 months of it being made.

Interested parties

Interested persons include -

- a spouse, de facto partner, child, parent or other personal representative of the deceased;
- any of the deceased person's next of kin;
- a beneficiary under a policy of insurance issued on the life of the deceased person;
- an insurer who issued such a policy of insurance;
- a person whose act or omission, may in the opinion of the coroner have caused, or contributed to, the death;
- a person appointed by an organization of employees to which the deceased person belonged at the time of death, if the death of the deceased person may have been caused by an injury received in the course of employment or by an industrial disease;
- the Commissioner of Police.

A coroner may make available any statements that the coroner intends to consider to any person with a sufficient interest.

An interested person has particular rights during an inquest. These rights include the right to:

- appear, or be represented by a lawyer, at an inquest;
- ask witnesses questions; and
- present submissions to the coroner arguing against the making of a finding adverse to the interests of the interested person.

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.

If a coroner reasonably believes it is necessary for the purpose of an inquest, the coroner may:

- require a person to attend as a witness or to produce any document or other materials;
- inspect, copy and keep for a reasonable period anything produced at the inquest;
- require a witness to answer questions;
- do anything else the coroner believes is necessary.

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. Please see the contact details at the start of this document for further information on legal assistance available.

Families may raise issues with counsel assisting the coroner or the police officer assisting the coroner who can then ask questions relevant to those issues, if appropriate, but cannot act as the family's legal representative.

FACT SHEET 5

Next of Kin and the Coroners Court

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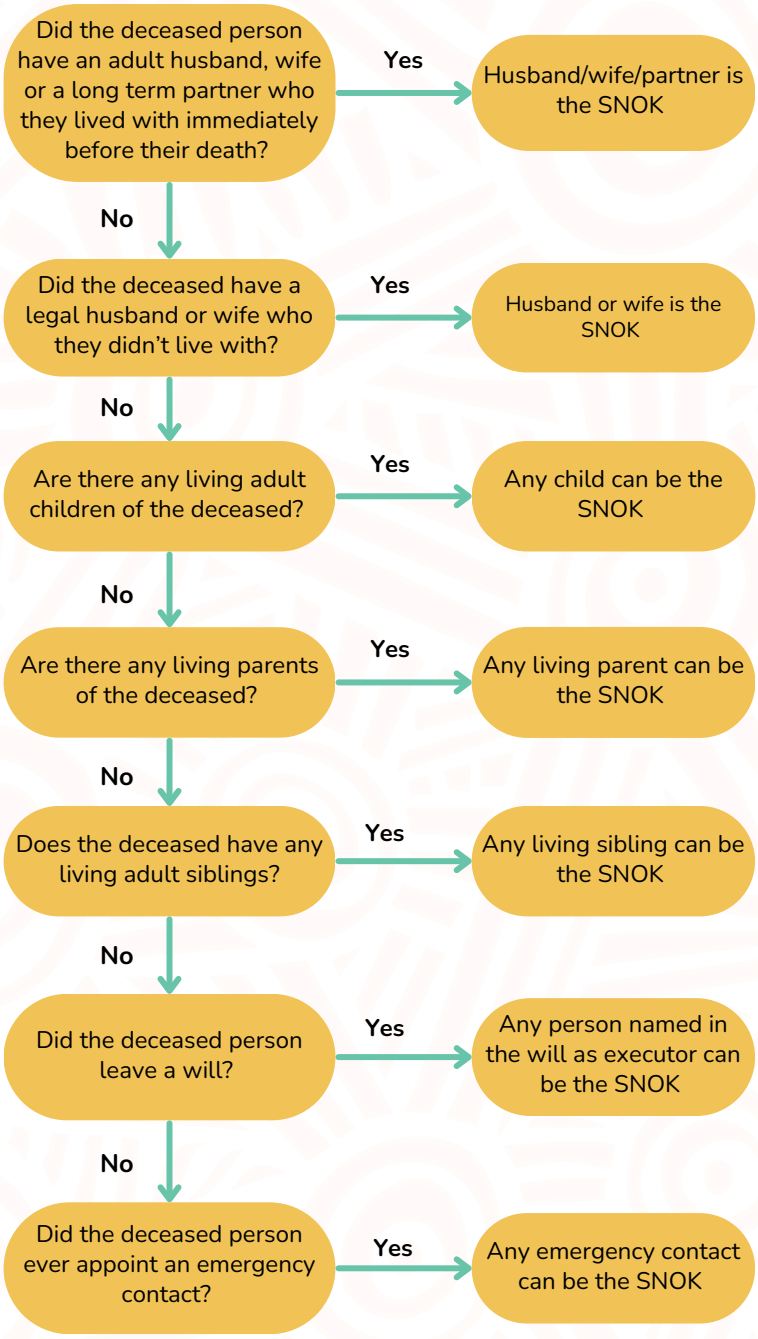
This fact sheet explains which family members and friends can make important decisions in the coronial process. This fact sheet does not apply to deaths in custody.

Who can make decisions after someone dies?

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.



FAQ: What if the deceased had more than one husband/wife/partner?

The most recent husband/wife/ partner is the SNOK.

FAQ: What is 'legal marriage'?

If you are legally married, you will have a marriage certificate.

FAQ: Who is a 'child'?

Child means biological, adoptive, foster or surrogate. Having a 'parent-like' relationship is not enough.

FAQ: Who is a 'parent'?

Parent means biological, adoptive, foster or surrogate. Having a 'parent-like' relationship is not enough.

FAQ: Who is a 'sibling'?

Sibling means biological, adopted, surrogate and half siblings.

FAQ: What is an 'executor'?

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

What role does the SNOK have?
In the first 24 hours, the SNOK will be contacted by a police officer. They might be asked to come and identify the person and also asked if they know of any facts that could help understand the cause of death.

The SNOK is the main point of contact for the Coroner's Court's. The SNOK will be informed about:

- the purpose of the coronial process;
- that counselling services are available;
- that the body is under the control of the coroner;
- that an autopsy will probably be performed;
- that anybody in the flowchart may touch the body, unless it is dangerous to do so;
- that anybody in the flowchart can view the body;
- that anybody in the flowchart will be told about the investigation and findings; and
- that they can ask for copies of the evidence used in the investigation.

FAQ: What's 'removal and use of tissue'?

Sometimes some cells, organs and blood samples are removed from the deceased's body so doctors can analyse them to help decide the possible cause of death. Sometimes, you might be asked to consent to donating these samples to help save another life.

Autopsies or post-mortem examinations
An autopsy or post-mortem is an examination of the body of a deceased person to determine how they died. A SNOK has rights in relation to autopsies.

A SNOK can:

- appoint a doctor to be present at the autopsy;
- request an autopsy;
- object to an autopsy; (you can do this by calling the Coroner's office or the Police Coronial Investigation Unit immediately);
- consent to the removal and use of tissue; and
- apply to the Supreme Court of Western Australia for an order that an autopsy not be performed.

FAQ: What's an emergency contact?

An emergency contact is someone appointed to be contacted in the case of an emergency. Someone might have emergency contacts on their phone or when filling out forms.

Exhumations
An exhumation is the removal of a buried body from its resting place. A coroner may decide to order an exhumation to help determine how a person died. A SNOK will be told if the coroner wants to perform an exhumation. A SNOK has rights in relation to exhumations.

A SNOK can:

- object to an exhumation; and
- apply to the Supreme Court of Western Australia for an order that an exhumation not take place.

Inquests
An inquest is a type of court proceeding (for more information, Fact Sheet 4: Inquests into a death). During an inquest, a coroner considers different evidence about when, where and how a deceased person died.

As a SNOK, you can:

- come to the inquest;
- be represented by a lawyer; and
- present evidence and arguments to the coroner.

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

Anybody can:

- receive counselling from the Coroner's Court's counselling service; and
- request an autopsy.

An interested party can:

- appear at an inquest; and
- be provided any information about the inquest.

FAQ: Who is an 'interested party?'

An interested party includes:
an insurer; someone who would benefit from a life insurance policy; the Commissioner of police; and someone who may have been involved in the death.

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

The State Coroner takes cultural considerations into account. You will need to provide evidence that you had a 'family-like' relationship with the deceased. The State Coroner will consider your evidence and decide.

You can write to the State Coroner by email at coronerscourt@justice.wa.gov.au or letter to: Level 10, Central Law Courts, 501 Hay Street, PERTH WA 6000

More help

- Coroner's Court of Western Australia can be contacted via phone or email: (08) 9425 2900 or 1800 671 994 or at coronerscourt@justice.wa.gov.au
- Coronial Counselling and Information Service can be contacted via phone or email: (08) 9425 2900 or at coroner@justice.wa.gov.au
- Legal Aid WA can be contacted via phone: (08) 1300 650 579
- Aboriginal Legal Service can be contacted via phone: (08) 9265 6666

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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

- The State Coroner takes cultural considerations into account. The deceased's next of kin and any interested parties can appear at an inquest to make submissions which can be used as an opportunity to tell the coroner about what customs you would like to be observed during the process.

Visiting a deceased person

- The State Coroner takes cultural considerations into account. The deceased's next of kin and any interested parties can appear at an inquest to make submissions which can be used as an opportunity to tell the coroner about what customs you would like to be observed during the process.

A deceased person's country obligations

- The coroner is not bound to take into account the deceased's country obligations, but the next of kin or an interested party can make submissions at an inquest hearing explaining how and why the coroner should take such obligations into account.

Smoking ceremony at an inquest

- You or your lawyers can contact the court staff (see below for contact details) in advance of the hearing to request a smoking ceremony, but there is no guarantee it will be allowed.

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 to request the display of culturally significant items and a specific acknowledgement to country. There is no guarantee that this will be allowed.

Using 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 the use of the name and images/video of the deceased. You can leave the hearing at any time you like.

Next of kin

- Determining the deceased's next of kin does not involve any consideration of Indigenous kinship relationships in Western Australia. Rather, there is a test based on Western understandings of familial relationships (for more information, see Fact Sheet 5: Next of Kin and the Coroner's Court).

Language

- The Coroner's Court of Western Australia can try to organise an interpreter who speaks your language at the hearing. You or your lawyers should contact the court staff (see below for contact details) in advance of the hearing to ensure an interpreter can be organised.

Men's or Women's business

- The deceased's next of kin or an interested party can make submissions to the coroner explaining how and why men's and women's business should be separated in the process. However, the Coroner's Court of Western Australia is not bound to follow the rules of men's or women's business.

More help

- Coroner's Court of Western Australia can be contacted via phone or email (08) 9425 2900 or at coroner@justice.wa.gov.au.
- Aboriginal Legal Service of Western Australia can be contacted via phone:1800 019 900
- If you are struggling with the death of a loved one, you can call 13YARN (13 92 76) for free support.

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FACT SHEET 7

What happens after the coronial process?

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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 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, 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 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

- A person can ask a coroner to hold an inquest into a death which the coroner has jurisdiction to investigate. This request must be made in writing and contain reasons for the request.
- If the coroner does not investigate, the person may apply to the Supreme Court for an order that the inquest be held. This application must be made within seven (7) days after receiving notice of the refusal, or if a reply to a request for an inquest to be held has not been given within three (3) months after the request was made, the person may apply to the Supreme Court for an order that an inquest be held. The Supreme Court may make an order that an inquest be held if it is satisfied that it is necessary or desirable in the interests of justice.
- Any person may also apply to the Supreme Court for an order that some or all of the findings of an inquest are void.
- In the event that the Supreme Court finds in their favour, it may declare order the State Coroner to either:
  - hold a new inquest, or direct any coroner, other than the coroner who held the first inquest, to hold a new inquest; or
  - re-open (or direct another coroner to re-open) the inquest and re-examine any finding.

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 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, it will be transported to the state mortuary at Queen Elizabeth II Medical Centre in Perth.

Preliminary examination

- A doctor or pathologist will do a 'preliminary examination' which is not very invasive. This might include things like collecting fingerprints, looking inside at the teeth and inside the mouth. 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.

What can I do if I object to the autopsy?

- If the coroner believes an autopsy is needed to confirm the cause of death, the Coroner's Court will contact the senior next of kin. The senior next of kin has the right to object to an autopsy being performed. It is important to notify the Coroner's Court immediately if you want to object (for more information, see Fact Sheet 5:Next of Kin and the Coroner's Court:).
- Any objection to the autopsy must be made as soon as possible to the Office of the State Coroner by calling (08) 9425 2900 or to the Police Service's Coronial Investigation Unit by calling (08) 9267 5700.
- The coroner will take the concerns into account, but may still decide that an autopsy is required. This is 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 (for more information, see Fact Sheet 5: Next of Kin and the Coroner's Court)..

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.
- The State Coroner may authorise an exhumation when it is believed an autopsy will provide new evidence.
- If the State Coroner authorises an exhumation, they will give 2 working days' notice to the senior next of kin.
- The senior next of kin and any other person who received the notice of the exhumation may appeal to the Supreme Court against the decision of the State Coroner.

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 for the body to be release for burial or cremation.
- The senior next of kin will nominate a funeral director. The funeral director will arrange the burial, listening to the senior next of kin.
- Personal belongings (e.g. jewellery) may be removed by the police and given to the family at the place of death. Otherwise, in Perth, personal belongings are sometimes given to the funeral director to return to the family. In country areas belongings are usually collected by the family at the relevant police station.

What about a death certificate?

- If the death is subject to a coronial inquiry, the death will still be registered with the Registry of Births, Deaths and Marriages. However, until the State Coroner completes their inquiry, the cause of death can't be stated on a death certificate. An "incomplete" death registration can be issued at this point.
- At the completion of their inquiry, the State Coroner will advise the Registry of Births, Deaths, and Marriages of the cause of death. A "complete" death certificate may then be issued to the funeral, or an eligible applicant can apply directly to the Registry or a Court for a death certificate.

More help

For more information about the coronial process in general from the Coroner's Court of Western Australia visit:

- https://www.coronerscourt.wa.gov.au/_files/When_A_Person_Dies_Suddenly.pdf
- https://www.coronerscourt.wa.gov.au/F/family_information.aspx

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FACT SHEET 9

The role of the police in the coronial process

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

What is the role of the police?

After the death of a loved one.

- Police officers provide information to the next of kin. The police officer will provide a brochure, "When a Person Dies Suddenly". The police will talk to you about your role and rights in the coronial process.
- The police may contact you to identify the deceased person – you may be required to go to the State Mortuary in Perth or the local hospital, in the event the person was not identified at the place of death.
- The police may ask further questions surrounding the death of your loved one, such as their daily routines, their medical history and the people they worked with or associated with, may asked by the police or the Coroner's Office.
- The WA Police will gather information after a death to provide to the coroner. The documents the police will prepare for the coroner include:
  - Witness statements;
  - Police reports;
  - Autopsy report;
  - Toxicology report;
  - Photos; and
  - Other forensic material.

During the coronial hearing.

- Generally, the police's role in the hearing is minimal at the Inquest. The coroner will hear evidence from relevant witnesses who have information about the death.

More help

For more information about your options regarding coronial investigations:

- Aboriginal Legal Service (ALSWA)
- Legal Aid WA
- Legal Yarn: 1800 319 803 (for First Nations callers)