

THE CORONERS COURT IN THE NORTHERN TERRITORY:



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

This Guide to The Coroner's Office of the Northern Territory 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 Office 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 Office of the Northern Territory via phone or email: (08) 8999 7770 or at nt.coroner@nt.gov.au
- Northern Territory Legal Aid Commission via phone: 1300 019 343
- North Australia Aboriginal Justice Agency via phone: 1800 898 251
- Darwin Community Legal Service via phone: 300 860 529
- National Legal Hotline via phone: 1300 636 846



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FACT SHEET 1

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

The Coroner's Office of the Northern Territory is an office that is set up to investigate and help understand the cause of certain types of deaths including suicide and those due to self-harm.

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" where there are hearings in a court room.

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 Office 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



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What types of death will a Coroner investigate?

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

These include:

- a death that appears to have been unexpected, unnatural or violent or to have resulted, directly or indirectly, from an accident or injury;
- a death that happened during or as a result of anaesthetic and is not due to natural causes;
- where a person who, immediately before death, was a person held in care or custody; or
- where the identity of the person is unknown.

If a person who normally lived in the Northern Territory died somewhere else and their cause of death is unknown, this is also a type of death reportable by law.



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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 Coroner's Office, usually from a police officer or a medical practitioner, the deceased person is taken into the care of the coroner investigating the death. The coroner will then begin their investigation.

During the initial stages of the coroner's investigation, the following steps occur:

- the senior next of kin is informed that the death has been reported to the coroner;
- an autopsy is performed, if necessary (for more information, see Fact Sheet 8: What happens after the Coronial Process, including if you wish to object to an autopsy being performed); and
- a decision is made on whether to hold an inquest.

The gathering of information stage

An investigation will 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 identify of the deceased;
- the time and place of death;
- the cause of death; and
- the circumstances of the death.

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 Department of the Attorney-General and Justice website unless a coroner orders it not to be published.

A coroner may comment on a matter, including public health or safety or the administration of justice, connected with the death being investigated.

A coroner must not, in an investigation, include a finding or comment a 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 in a court room in the Darwin or Alice Springs Local 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, immediately before death, a person held in care and custody;
- the death was caused or contributed to by injuries sustained while the deceased was held in custody;
- the person's identity is unknown

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

- the body of the person is in the Northern Territory or it appears to the coroner that the cause of death occurred in the Northern Territory; and
- the coroner suspects unlawful killing.

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

If the coroner decides not to hold an inquest, they must inform the senior next of kin in writing outlining their decisions why.

If the coroner decides not to hold an inquest, within 14 days after receiving notice of the decision, a person may apply to the Supreme Court of the Northern Territory for an order that an inquest be held.

Who can attend?

Generally, anyone can attend an inquest that is open to the public. 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.
- A lawyer representing the Coroner's Office and community, who is commonly known as counsel assisting the coroner.
- An organisation who had care or custody of the person when they died.
- An organisation or person connected to the circumstances of the death.

Interested persons

An interested person has rights during an inquest if they can establish that they have a sufficient interest in the inquest. These rights include the right to:

- receive a copy of any statement that the coroner intends to consider at the inquest;
- appear at the inquest or be represented by a lawyer;
- call, examine and ask witnesses questions; and
- make submissions to the coroner at the inquest.

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.

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

- ensure the investigation is being conducted in a timely and proper manner;
- fix a delivery date for the coronial brief of evidence;

- provide any directions including in relation to potential witnesses and the scope of the inquest;
- receive submissions on issues that family and others may wish to be explored; and
- any other issues the coroner may consider relevant to the timely progression of the investigation or inquest.

After the coronial brief of evidence is delivered to the coroner, a directions hearing will be held to:

- hear from the people involved and to find out what the issues in the inquest should be;
- talk through issues that may impact the coroner's decision on whether an inquest is in fact required;
- work out how long the inquest may go for;
- determine who the witnesses will be;
- hear from other people involved who want to raise any other related issues; and
- any other issues the coroner may consider relevant to the timely progression of the investigation or inquest.

What happens during an inquest?

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

- When the inquest begins, the lawyers representing the family of the deceased or other interested parties introduce themselves and say who they are representing. If the family is not represented by a lawyer, the coroner's assistant or counsel assisting the coroner will inform the coroner that family members are present in the courtroom.
- The coroner will read an opening summary.
- Witnesses will be called one at a time to talk about their knowledge of the death. In some cases, a witness statement may be read out. The coroner's assistant or counsel assisting the coroner will then ask the witness any questions. The lawyers representing the family of the deceased or other interested parties will then ask the witness any questions. If the family is not represented by a lawyer, the coroner's assistant or counsel assisting the coroner will check with the family to see if they would like the witness to be asked any questions.

- When all witnesses have been heard, the coroner will ask for any final submissions. These submissions may be said 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 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 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 (for more information, see Fact Sheet 5: Next of Kin and the Coroner's Office, including details on available legal assistance).



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Next of Kin and the Coroner's Office

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

- A Senior Next of Kin (SNOK) is a person who make decisions when someone dies suddenly. If the deceased is First Nations, a person who, according to the customs and traditions of their traditional community, is a decision maker or is considered 'family' can be the SNOK.

What role does the SNOK have?

The SNOK is the main point of contact for the Coroner's Office. The SNOK will have certain rights or be informed of certain matters, including the following:

- the purpose of the coronial process;
- the identification of the deceased person;
- visiting the deceased person;
- visiting the place of death;
- details and updates of investigations including the evidence being provided to the coroner wherein the SNOK can request copies of relevant reports;
- when the coroner reaches a decision;
- whether an autopsy will be conducted; and
- if a body will be exhumed.

FAQ: What is an inquest? What is a hearing?

An inquest is an investigation into the death. During an inquest, a Coroner considers different evidence about when, where, and how a deceased person died. A hearing is a type of court proceeding to help the coroner hear evidence for the inquest. These hearings are open to the public, so any person can attend.

Inquests

- In relation to an inquest, a SNOK:
- will be informed, in writing, that an inquest will or will not be held;

- can be a witness in the hearing, if called by the coroner (and be legally represented);
- can call and examine witnesses;
- can have access to a statement the coroner intends to consider at the inquest;
- can receive copies of any reports related to the inquest made by:
 - the Chief Executive Officer; and/or
 - the Commissioner of the Northern Territory Police Force.

FAQ: What is an autopsy or post-mortem examination?

An autopsy or post-mortem examination is an examination of the body of a deceased person to determine how they died. In an autopsy, a doctor might preserve some bodily materials that are evidence of the cause of death. An autopsy is sometimes ordered by the coroner.

Autopsies or post-mortem examinations

In relation to an autopsy (also known as a post-mortem examination), a SNOK can:

- request an autopsy; and
- ask that an autopsy not be performed.

If, despite this request, the coroner decides that an autopsy is necessary:

- the coroner must immediately inform the SNOK that an autopsy will be performed; and
- the SNOK can apply to the Supreme Court of the Northern Territory for an order that an autopsy not be performed.

Exhumations

In relation to an exhumation, a SNOK:

- must be given at least 48 hours written notice;
- can ask the coroner not to exhume the body; and
- may apply to the Supreme Court of the Northern Territory for an order that the body is not exhumed.

FAQ: What is an exhumation?

The coroner might need to investigate the remains of the deceased person after they have already been buried or cremated. To do so, they will have to remove the deceased from their resting place.

Release of body

The Coroner's Office will keep the deceased's body for the purposes of the investigation. A SNOK can apply for the release of the body to them, so they can prepare funeral arrangements.

Special rules govern burials and cremations. If the deceased left a will, then the executor will be given control of the body. If they did not leave a will, and an administrator has not been appointed, the SNOK will be the person the body is released to.

FAQ: What is an executor? What is an administrator?

An executor is the person the deceased named in their will to look after their affairs. Where there is no will, the court decided who will take this role, called an 'administrator'.

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

Anybody can:

- attend an inquest;
- be summoned by the coroner to give evidence as a witness at a hearing;
- have access to the record of the file of the inquest, if permission is granted by the coroner.
- request that an autopsy be performed, and apply to the Supreme Court of the Northern Territory for an order that the autopsy not be performed if their request is refused; and
- apply to the Supreme Court of the Northern Territory for an order that some or all of the findings made in an inquest are void because of some fraud, false evidence, failure to consider some evidence or because the proceedings were not conducted appropriately.

A family member can have access to the record of the file of the inquest, even if the coroner declares it private.

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

Whether someone has a 'sufficient interest' will be determined by the Coroner. It might include family, the Police Force, or the North Australian Aboriginal Justice Agency.

For more help contact

- Northern Territory Legal Aid Commission can be contacted via phone: 1300 019 343
- North Australia Aboriginal Justice Agency can be contacted via phone: 1800 898 251
- Darwin Community Legal Service can be contacted via phone: 1300 860 529
- The Coroner's Office of the Northern Territory can be contacted via phone or email: (08) 8999 7770 or at nt.coroner@nt.gov.au
- Northern Territory Coroners Office Grief Counsellor can be contacted via phone or email: (08) 8999 7507 or at Alison.Grant@nt.gov.au



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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 if you need help getting the coroner to understand your traditions.

Making the coroner understand our sorry business and culture

- If an inquest is held, the first stage is a directions hearing, in which the coroner will ask family members to make submissions on any issues they wish – this 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 next of kin and anyone with a sufficient interest (as determined by the coroner) can view the body.

Country obligations

- Submissions can be made to the coroner regarding Country obligations however the coroner is not bound to observe them.

Smoking ceremony at an inquest

- You or your lawyers can contact the court staff in advance of the hearing to try to request this.

Culturally significant items and acknowledgment of country

- You or your lawyers can contact the court staff in advance of the hearing to request the display of culturally significant items and a specific acknowledgement to country.

Using the name and images/videos of the deceased

- The deceased's next of kin can request that the name of the deceased person not be used. A similar request can also be made for photos or videos to not be used.

Next of kin

- Determining the next of kin involves a consideration of who is a decision maker or family, according to the customs and traditions of the deceased's community (for more information, see Fact Sheet 5: Next of Kin and the Coroner's Office)..

Language

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

Men's or women's business during the coronial hearing

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

More help

- The Coroner's Office of the Northern Territory can be contacted via phone or email: (08) 8999 7770 or at nt.coroner@nt.gov.au
- Northern Territory Legal Aid Commission can be contacted via phone: 1300 019 343
- North Australia Aboriginal Justice Agency can be contacted via phone: 1800 898 251
- Darwin Community Legal Service can be contacted 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





The role of the police in the coronial process

This fact sheet explains the role of the police force in a coronial process 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?

- The Northern Territory 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 which the coroner will use to help find out the cause and circumstances of the death.

Communicating with the police

- Families of the deceased can raise any issues and concerns surrounding the conduct of the police investigation including concerns in relation to the circumstances of the death.
- The police may request a statement from family members about the deceased and the circumstances of the death.
- Traditions and customs around Sorry Business are important time for family and community. You can ask the police to respect your traditions and there are no unnecessary phone calls, visits, and questions at this important time.
- Sometimes a coroner might ask someone to give evidence to the Court. A coroner's clerk or 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 Office, the coroner may ask the police to arrest them.
- Families do not need a lawyer when they give a statement to the police, but you are allowed to have one if you want.





What happens after the coronial process?

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 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

Any person may apply to the court for an order that some or all the findings of a coroner be set aside. To do so, a person need to apply to the Supreme Court and specify:

- which findings they want set aside, and
- the reasons for the application supported by relevant information.

The Supreme Court can set aside some or all the findings and order that an investigation be reopened if the court is satisfied that:

- there are new facts and circumstances that should be considered;
- there was fraud, failure to consider evidence, irregular proceedings, the inquiry was insufficient or there was a mistake in the record of the findings;
- the findings were against the weight of evidence.

The Supreme Court may make any order it thinks appropriate, including an order for a new inquest by the coroner's office.



Appealing decisions around dealings with the body

Where a coroner refuses a person's request to direct that an autopsy be performed on the body of the deceased, the person may apply to the Supreme Court for an order for an autopsy, within 48 hours of being notified of the coroner's decision. The Supreme Court may:

- direct the coroner to require a medical practitioner to perform an autopsy; and
- not allow disposal of the body of the deceased person until the coroner has the results of the autopsy and has ordered its disposal.

Alternatively, if the senior next of kin (for more information, see Fact Sheet 5: Next of Kin for and the Coroner's Office) objects to an autopsy being performed and asks the Coroner not to direct one, but the coroner decides it is necessary, the senior next of kin may apply to the Supreme Court for an order that the autopsy not be performed, within 48 hours of receiving notice of the Coroner's decision.

If the senior next of kin objects to a coroner's decision to exhume the deceased's body, they can apply to the Supreme Court for an order that the body not be exhumed within 48 hours of receiving notice of the order to exhume the body (for more information, see Fact Sheet 9: My loved one's body, including on what is involved in exhumations and autopsies).

More help

- The Coroner's Office of the Northern Territory can be contacted via phone or email: (08) 8999 7770 or at nt.coroner@nt.gov.au
- Northern Territory Legal Aid Commission can be contacted via phone: 1800 019 343 or at <https://www.legalaid.nt.gov.au/>
- North Australian Aboriginal Justice Agency can be contacted via phone: 1800 898 251
- Darwin Community Legal can be contacted via phone: 8982 1111 or 1800 812 953
- Go To Court National Legal Hotline: 1300 636 846



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My loved one's body and things

This fact sheet explains what happens to the body of your loved one when 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.

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 seek consent 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 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 office immediately if you want to object (for more information, see Fact Sheet 5: Next of Kin and the Coroner's Court).
- The coroner will take your concerns into account but may still decide that an autopsy is required.

- If the coroner decides the autopsy should still occur, the autopsy will be postponed for 48 hours so that 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 that your objection was refused.

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 coroner will need to authorise the exhumation. A reason the coroner may authorise exhumation is where it is believed an autopsy will provide new evidence. If the Coroner authorises exhumation, they will give at least 48 hours' notice to the senior next of kin.
- The senior next of kin can object to the exhumation by notifying in writing to the coroner of the objection. The coroner may still authorise the exhumation, and if so it will be delayed for 48 hours to allow you time to apply to the Supreme Court for an order preventing the exhumation.

When can I get the body?

- The coroner will authorise the release of the body when it is no longer needed for the purposes of the investigation.
- The representative named in the deceased's will, will need to decide on a funeral service to release the body and sign for the release of the body. If there is no representative named, then an interested relative or friend can apply for the release of the deceased's body.
- The family will then need to work with a funeral director to arrange the funeral.



What about a death certificate?

- Where a death is still being investigated by the coroner, the Registrar of Births, Deaths, and Marriages can issue a death certificate, containing a notation in the "Cause of Death" section saying "Incomplete registration - Cause of death subject to coronial enquiry".
- Once the coronial investigation is complete, the Registrar of Births, Deaths and Marriages can issue a final death certificate with a cause of death.

More help

For more information about what to do following the death of a loved one visit:

- <https://ntlawhandbook.org/foswiki/NTLawHbk/WhenSomeoneDies>



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