



ATSILS
Aboriginal and
Torres Strait Islander
Legal Service (Qld) Ltd

Legal Fact Sheet

Assistance for Families

Coronial Matters



Are you dealing with an unexpected death in the family?

ATSILS can provide you with culturally competent legal assistance and representation to enable you to exercise your human rights.

This fact sheet explains:

- ATSILS Role in Assisting Families and Loved Ones
- Deaths in Custody
- Deaths in Care
- The Steps of a Coronial Investigation
- Autopsies
- Coronial Inquests
- Monitoring the Implementation of Coronial Recommendations

ATSILS is a non-profit, Aboriginal and Torres Strait Islander community-based organisation with 25 locations across Queensland. We provide innovative and professional legal services covering criminal, civil and family law areas.

Freecall 24/7



1800 012 255

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1. Aboriginal and Torres Strait Islander Legal Service's Role in Assisting Families and Loved Ones

Many Aboriginal and Torres Strait Islander families who have lost loved ones experience the coronial process and its aftermath as traumatic, mystifying, frustrating and disempowering.

ATSILS is skilled in, and committed to providing caring, compassionate and effective legal support for distraught Aboriginal and Torres Strait Islander families and communities who are dealing with an unexpected death.

Aboriginal and Torres Strait Islander families need legal assistance and representation services that is culturally competent to be able to exercise their human rights.

That is their rights to fully participate in the inquest – yet legal assistance is often not affordable, and appropriate support is not always available.

Inquests present Aboriginal and Torres Strait Islander families and communities with a special experience of disadvantage.

These families and communities are often people who are experiencing a devastating situation, only to have to then deal with agencies and procedures unknown to them and from which they often feel totally excluded.

Often, they are searching for answers to the death of a loved one during their grieving processes, and they are often dependent upon an inquest to help them find answers, to explain why the death occurred, and to assist them to move on with their lives.

Effective and culturally competent legal representation can identify issues of special concern, suggest lines of investigation, provide a focus for the inquest, identify similar cases and suggest practical recommendations.

ATSILS can assist families during the early stages of a coronial investigation with issues such as:

- Providing information on arranging a funeral, including whether the family is eligible for financial assistance towards funeral costs, and information on the Department of Justice and Attorney-General's Funeral Assistance Scheme;
- Providing information on cremations, which is regulated by the *Cremations Act 2003* which ensures that the body of a person whose death is suspicious, or should otherwise be reported to the coroner, is not cremated without discovery; and under the *Cremations Act*, a cremation cannot occur unless permission has been given by the coroner or an independent doctor;
- Providing information and assistance if families object to an internal autopsy being performed, on cultural or religious grounds; as well as any objections to the retention of whole organs or body parts such as the brain or heart for further testing and analysis. These organs are retained until the pathologist has conducted the necessary tests;
- Providing assistance to obtain coronial documents;
- Providing representation at pre-inquest conferences, inquests; or providing assistance to obtain a grant of aid from Legal Aid Queensland or pro bono representation;
- Providing a mediation service when there is a dispute between family members over which member of a family a body can be released for burial, and possible representation in the Supreme Court in certain situations;
- Providing assistance if submissions to the State Coroner or representation in the District Court when an investigating coroner decides not to hold an inquest and the family wants an inquest to be held.

2. Deaths in Custody

Definition: The person who has died was either in custody, escaping from custody or trying to avoid custody.

Once a death is reported, the coroner must investigate the circumstances of the death to establish:

- the identity of the deceased
- when and where they died
- how the death occurred
- what caused the death.

The coroner controls and coordinates each step of the investigation. Police officers usually assist the coroner to gather evidence.

A coronial investigation may take several months. The length of the investigation will depend on the unique circumstances of the case.

3. Deaths in Care

Definition: The person who died:

- had a disability and lived in either a level three accredited residential service (commonly referred to as a hostel) or a residential service funded or provided by Disability Services Queensland or Queensland Health or
- was subject to involuntary assessment or treatment under the Mental Health Act 2000 and was either being taken to or detained in an authorised mental health service, detained because of a court order, or undertaking limited community treatment or
- was a child awaiting adoption under the Adoption of Children Act 1964 or was a child placed in care under the Child Protection Act 1999.

4. The Steps of a Coronial Investigation

1	The death is reported to the coroner, usually by police.
2	Police will collect some initial information about the circumstances of the death from family members, friends and witnesses.
3	A relative or friend who knows the deceased may be asked to identify the deceased at the mortuary. Sometimes identification will be made by clothing or possessions, or in a small number of cases, through DNA testing.
4	After looking at the initial information the coroner may ask for more details to be provided. For example, the coroner may require the police to obtain medical records or further statements from witnesses.
5	In most cases, the coroner will order an autopsy to help determine the cause of death. Family and cultural concerns are considered before ordering an internal autopsy.
6	Once the autopsy is complete and the coroner is satisfied with the information, the body is released for burial or cremation.
7	The coroner may then use wide powers of investigation and request additional reports, statements or information. This additional information may be gained from investigators, police, doctors, engineers, workplace health and safety inspectors, mining inspectors, air safety officers, electrical inspectors or other witnesses.
8	The coroner will make a decision on whether to hold an inquest into the death. Families can also request the coroner to hold an inquest.
9	The coroner will detail the findings in a report at the end of the investigation and a copy will be sent to the family. If an inquest is held, the findings may be very lengthy.

5. Autopsies

An autopsy is also known as a post mortem. It is a detailed medical examination of a person's body after death which can help explain how and why the person died¹.

During the autopsy the body of the deceased is treated with respect and great care is taken to preserve the dignity of the person.

If a person objects to an internal autopsy being performed they should **contact the coroner**, or seek assistance from ATSILS as soon as possible to express these views.

Coroners place great emphasis on the views of the family members and are required to consider any concerns raised by a family member or other person with sufficient interest when making the final decision about whether an autopsy is required.

6. Inquests

An inquest is a public hearing conducted by the coroner and is held in the closest **Magistrates Court** to where the death occurred.

An inquest is held when there is doubt about the facts of the case or if it is in the public interest to hold an inquest.

An inquest is not a trial. Inquest proceedings are less formal than those in conventional court hearings and the coroner is able to seek information in any way they consider appropriate. Although coroners are not bound to follow the normal rules of evidence, they are obliged to apply the principles of procedural fairness.

The coroner will hear evidence from people who have information about the death. These witnesses may be police officers, family members, doctors, experts, eyewitnesses or members of the public.

Most coronial investigations do not proceed to an inquest. However, an inquest must be held if:

- the death occurred while the person was in custody
- the death occurred while the person was in care and raises issues about that care
- the Attorney-General directs an inquest to be held
- the state coroner orders an inquest to be held
- the District Court upholds an appeal against a decision not to hold an inquest

A person can request that an inquest be held by writing to the investigating coroner. This request should include the reasons why an inquest should be held. The coroner must respond to a request within six months.

The length of an inquest may vary from hours to weeks depending on its complexity, the number of witnesses and the number of parties who have been given leave to appear.

The coroner will normally adjourn the matter at the end of an inquest to allow time to consider the evidence and write their **findings**. The findings must, if possible, include the deceased's identity and the details of when, where, how and what caused them to die.

The coroner may also make recommendations about broader issues to prevent similar deaths occurring in the future.

Parties are then called back to court for the delivery of the coroner's findings. If a person is dissatisfied with the findings they can apply to the state coroner or District Court to have the findings set aside, and ATSILS might be able to assist with this process.

7. Monitoring the Implementation of Coronial Recommendations

Monitoring the implementation of coronial recommendations is another difficult issue for coronial systems. One view is that the person who makes the recommendation, that is, the coroner, is best placed because of their familiarity with the case and general experience to assess whether the recommendation has been implemented and, if so, how effectively.

Another view is that the role lies with the Attorney-General as the chief law officer of each of the states and territories. Others have suggested that the role lies with a variety of other government ministers.

8. Conclusion

ATSILS is committed to assisting families through the coronial process, as many families and communities experience the coronial process and its aftermath as neither fair nor healing.

A family's trauma often begins with, and is exacerbated by, a lack of access to free legal representation, and families commonly experience additional suffering and frustration during the investigation and, if it takes place, the inquest.

Another key aspect of the role of ATSILS is explaining the contents of police reports, autopsy and toxicology reports to family members in a sensitive and culturally competent manner, preparing briefs, and briefing counsel to appear at conferences, meetings and inquests, appearing at inquests and making written submissions with a view to ensuring that similar avoidable deaths do not occur in the future.

ATSILS enjoys a mutually supportive relationship with the Office of State Coroner, and the State Coroner has, on the whole, supported our organisation's many written submissions, and acknowledged the importance of RCIADIC recommendations, and the rights of prisoners to received medical care to the same standard as the rest of the community.

9. Obtaining Legal Advice

ATSILS provides innovative and professional legal services for Aboriginal and Torres Strait Islander people across Queensland.

Freecall 24/7  1800 012 255

We can be contacted toll free on **1800 012 255**, 24 hours a day, 7 days a week. We have 25 offices located across Queensland so you will be put in touch with the closest regional office that is able assist you with your legal needs. In some instances, ATSILS might have a conflict of interest and will not be able to provide you with legal advice. If this is the case, you may wish to try Legal Aid Queensland on their Indigenous Information line on **1300 65 01 43**.

This Factsheet is not intended to provide legal advice and has been provided for the purpose of providing information only. Whilst all reasonable care has been taken in the preparation of this information, no liability is assumed for any errors or omissions.