

A guide to coronial services in NSW for families and friends of missing people



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FOREWORD

It is a privilege to be involved in the introduction of this guide for families and friends of missing people.

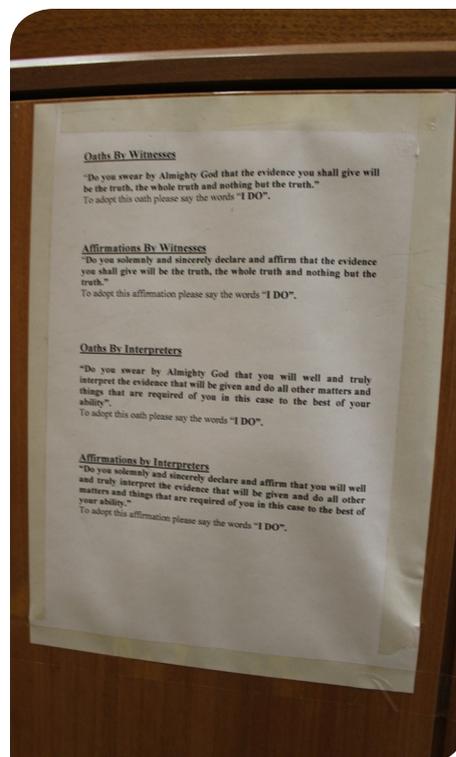
Each year in NSW many thousands of people are reported as missing. Fortunately the vast majority are located in a relatively short period of time. The few who are not leave behind family and friends who experience the grief that accompanies both the loss of their loved one as well as not knowing what has happened to them.

In addition to experiencing that grief, families and friends of missing persons will inevitably become involved in the coronial process – a process that is neither widely known nor understood. This excellent guide is designed to help remedy that lack of knowledge and understanding and hopefully ensure that the engagement with the coronial process, if it does not assist in the lessening of the grief that is experienced, will not add to it.

Paul MacMahon
Deputy State Coroner



A witness box



Oaths and affirmations

INTRODUCTION

This guide has been produced by the Families and Friends of Missing Persons Unit (FFMPU). FFMPU is unique in Australia. It is the only unit that provides counselling and support from trained professionals to families and friends of missing people. The FFMPU team is committed to providing specialist counselling, information and support to the families and friends of missing people. FFMPU is funded by the NSW government and is part of Victims Services, Department of Attorney General and Justice (DAGJ). FFMPU strives to provide resources that support and assist families through the difficult and confusing time when a loved one is missing. This guide was created following discussions with family members who raised questions about coronial matters and requested that a guide about the coronial process be created.

This guide addresses key aspects of the coronial process and endeavours to answer the frequently asked questions that families raise. It is not intended to replace specialist advice from police, lawyers, or coronial staff, but the team at FFMPU hopes it will be a helpful source of information in addition to specialist advice.

We hope that this guide assists families of missing people to better understand coronial processes, prepare for an inquest, and access relevant supports. This guide is also a useful resource for service providers, who work with families of missing people impacted by a coronial investigation.

This guide has been developed by FFMPU in consultation with the Office of the State Coroner of NSW. FFMPU would like to thank the Deputy State Coroner, Paul MacMahon, and the Coronial Information and Support Program (CISP) for the considerable time and effort in reviewing and providing input for the guide. FFMPU would also like to thank the families of missing people for their valuable input into this publication. Part of the information included in this publication has been adapted from the website of the State Coroner's Court of NSW,¹ the National Missing Persons Coordination Centre coronial publication² and the *Coroners Act 2009* (NSW) (the Act).

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USING THIS GUIDE

For many people, having a missing person's investigation reported to the Coroner can be overwhelming and confusing. You may find the coronial process and many of the terms used within this guide quite confronting. It may help to read the *Where to get help* section of this guide (see page 23) and the information sheet *Taking care of yourself through the coronial process* (see page 33), which provide advice on support options and self-care strategies through the coronial process.

There is no need to read this entire guide prior to an inquest. Some of the information provided in this guide may be relevant to your needs and some may not. This resource may be useful to have on hand to refer to as needed, reading the sections specific to your needs as time progresses.

You may find that friends or extended family ask questions about the coronial process. If you do not feel comfortable answering these questions, one idea might be to direct people to this guide for assistance in understanding the process.

Contact **FFMPU** for support in relation to reading this guide, coronial processes, or any issues relating to a missing person:

P..... 1800 227 772

Contact the police Officer in Charge (OIC) of the missing person's investigation and/or the Coronial Information and Support Program (**CISP**) if you have specific questions about the progress of a coronial investigation:

P.....(02) 8584 7777

Please note that while this guide is current to coronial practices in 2014, coronial practices and legislation may be subject to change. FFMPU will endeavour to update this guide as changes occur.

The *Abbreviations* section (below) and *Glossary* section (see page 35) of this resource may help clarify any terms used in this document.

ABBREVIATIONS

The Act.....	Coroners Act 2009 (NSW)
BDM.....	Registry of Births, Deaths and Marriages
Brief.....	Brief of evidence
CISP.....	Coronial Information and Support Program
DAGJ.....	Department of Attorney General and Justice
DPP.....	Director of Public Prosecutions
FFMPU.....	Families and Friends of Missing Persons Unit
OIC.....	Officer in Charge
P79B.....	P79B 'Report of Suspected Death to the Coroner'
SNOK.....	Senior next of kin

THE CORONIAL PROCESS IN NSW

What is a Coroner?

Under the Act, a Coroner in NSW is required to be qualified as an Australian lawyer. Coroners are judicial officers and are usually also Magistrates. The Governor of NSW may appoint any qualified person to be a Coroner.

In NSW there are different types of Coroners:

- The **State Coroner** must be a Magistrate and their appointment is for a fixed term. The State Coroner's duties include:³
 - (a) overseeing and co-ordinating coronial services in NSW;
 - (b) ensuring that all reportable deaths and suspected deaths that fall in their jurisdiction are properly investigated;
 - (c) ensuring inquests are held when required by the Act or when it is considered desirable in the State Coroner's opinion; and
 - d) issuing guidelines to other Coroners to assist them in performing their duties.
- **Deputy State Coroners** must also be Magistrates and are appointed for fixed terms. The functions of a Deputy State Coroner include exercising any functions delegated by the State Coroner.
- **Coroners** and **Assistant Coroners** support the State and Deputy State Coroners and are located in Local Courts across NSW. In NSW, every Local Court Magistrate is also a Coroner and may be assisted by an Assistant Coroner. The Minister may appoint any member of staff of the NSW Attorney General's Department to be an Assistant Coroner.

What do Coroners do?

Coroners investigate certain kinds of deaths and suspected deaths to seek to answer the following key questions:⁴

- Has a person died? If so:
 - Can that person be identified?
 - When and where did he or she die?
 - The manner of death, that is, the way a person dies, including the surrounding circumstances. For example in a coronial investigation possible manner of death findings include natural causes, misadventure, suicide (self-inflicted death), homicide, or an open verdict (undetermined).
 - What was the direct cause of death? That is, the immediate physical (medical) cause of death.

Coroners try to find out what happened and seek to determine the facts surrounding a death or suspected death. Coroners **do not** lay blame, find people guilty of criminal offences, or determine civil liability.

Coronial investigations may result in the holding of a public hearing (an inquest). If warranted, following an inquest, a Coroner may make recommendations to government and other agencies with a view to preventing future fatalities and improving public health and safety.

Further information is provided in *The Inquest* section of this guide (see page 17).

Coronial legislation

Coronial legislation varies around Australia, with each state and territory having its own Coroners Act.

Coronial procedures in NSW may differ from other states. It is best to seek information about coronial procedures from the Coroner's Court in the relevant jurisdiction where the missing person's coronial investigation is being handled. Links to other Coroner's Court websites may be found on the National Coronial Information System (NCIS) website:

W <http://www.ncis.org.au/links>

Where are coronial matters handled?

For a missing person's investigation to fall in the jurisdiction of the State Coroner's Court of NSW there has to be some tie to the state of NSW. That is, at the time of the suspected death, the missing person:

- was last sighted in NSW and the matter is being investigated by NSW Police;
- resided in NSW; or
- was travelling to or from NSW.

Where more than one state or territory has jurisdiction, the State Coroners will need to consult to determine which state or territory will have jurisdiction to carry out the investigation and inquest.

In NSW, the State Coroner and Deputy State Coroners usually handle coronial matters at the Glebe Coroner's Court but they may also travel to suburban or regional courthouses to conduct inquests.⁵ In other regional areas, an inquest may be conducted at the Local Court by the local Magistrate in his or her capacity as a Coroner.

Inquests expected to last more than five days must be reported to the State Coroner and will be conducted by the State Coroner or one of the Deputy State Coroners. Missing persons' investigations are required to be reported to the State Coroner but the coronial investigation (and inquest) may be conducted by the State, Deputy, or local Coroners.

REPORT OF A MISSING PERSON'S INVESTIGATION TO THE CORONER IN NSW

When is a missing person's investigation reported to the Coroner?

In NSW, the OIC is required to report the matter to the State Coroner as soon as the investigation leads police to reasonably believe the missing person is deceased or *"after 12 months when the missing person has not been located and there is no sign of life"*.⁶ Some investigations may be reported to the Coroner earlier than 12 months if police believe there is enough evidence of a suspected death occurring. If a police investigation is continuing at 12 months the Coroner may choose not to investigate the matter at this point and may refer it back to police.

How do police report a missing person's investigation to the Coroner?

Police report the missing person's case to the Coroner by completing the form P79B *'Report of Suspected Death to the Coroner.'* The P79B sets out the details of:

- the missing person
- their disappearance
- any attempts to locate them
- the basis on which their death is now suspected
- the missing person's 'senior next of kin' (SNOK).

The OIC usually keeps the family informed about the report of a missing person's case to the Coroner. Families are also entitled to ask the OIC about any plans to report a missing person's investigation to the Coroner.

If you are unsure why a missing person's investigation has been reported to the Coroner you can ask the OIC or CISP for advice.

Can I request that a missing person's investigation be reported to the Coroner?

The first step would be to ask the OIC to report the missing person's investigation to the Coroner.

If police do not report the matter to the Coroner, family of the missing person (or a person whom the Coroner determines has sufficient interest) can write to the Coroner requesting a review of the missing person's case. Any written application to the Coroner should outline:

- Your contact details and relationship to the missing person.
- The name of the missing person.
- The details of the investigation (OIC name/rank, police station, event number, details of disappearance).
- Why you believe the missing person is deceased.

If the Coroner feels a coronial investigation is warranted, the police are required to formally report the suspected death and then investigate the suspected death on behalf of the Coroner.

Further advice about making written submissions to the Coroner can be accessed by contacting CISP.

What will the Coroner do after a missing person's investigation is reported to the Coroner's Court?

On receipt of the P79B the Coroner on duty will usually order a brief of evidence (brief) to be prepared. The brief includes all police reports and witness statements compiled by police in the missing person's investigation. The Coroner sets the date that the brief is due, however, police are able to request an extension of time for submission of this brief, if required. The order of the brief is in effect the assumption of jurisdiction.

The Coroner will order the brief and assume jurisdiction if he or she forms the belief the police investigation has established that it is likely that the missing person may be deceased. Accepting jurisdiction does not mean the Coroner has made a formal finding that the person is deceased but considers the circumstances are such as to warrant further investigation.

The SNOK and other interested parties listed with the Coroner's Court will be notified in writing once the Coroner assumes jurisdiction.

I received a letter that the Coroner has assumed jurisdiction. Does that mean they will decide the missing person is deceased?

Knowing that the Coroner has assumed jurisdiction can be a difficult and confusing time. For some families there may be a feeling of relief that some clarification may come from having the Coroner examine all the available information, for others it may feel too soon or inappropriate when the person has not been found.

Receiving the news that the Coroner is investigating a suspected death can be distressing, and may feel like a decision has already been made. It is important to understand that when the Coroner assumes jurisdiction, this does not automatically mean that a finding of death will be made.

How do I manage a missing person's financial affairs prior to a coronial decision?

When a person is missing there can be difficulties in managing the person's financial and property affairs. Section 54 of the *NSW Trustee and Guardian Act 2009*⁷ allows an application to be made to the Supreme Court after a person has been missing for at least 90 days, to declare the person missing and appoint a financial manager. Families considering an application to manage the financial affairs of a missing person may benefit from seeking legal advice and accessing the NSW Trustee & Guardian website:

W www.tag.nsw.gov.au

FFMPU may be able to assist with legal referrals upon request. Contact FFMPU for further information:

P 1800 227 772

THE CORONIAL INVESTIGATION

What happens during a coronial investigation?

After the Coroner assumes jurisdiction, the 'coronial investigation' commences. Every coronial investigation is different and depends on the circumstances of the case. The Coroner reviews the presented evidence and decides what kind of investigation is necessary. At any point during the coronial investigation, if the Coroner thinks it appropriate, the Coroner may request that police carry out further investigations. This may include obtaining evidence from expert witnesses.

During the coronial investigation, the Coroner will usually engage the assistance of a Coronial Advocate. Coronial Advocates are police officers specially trained in coronial law. In more complex cases, the Coroner may be assisted by a solicitor from the Crown Solicitor's Office instead of a Coronial Advocate. The Coronial Advocate or Crown Solicitor assisting the Coroner is also known as the 'Counsel Assisting'.

There are usually key steps in a coronial investigation:

1. **The progress of a coronial investigation is reviewed through 'call over' or 'mention' hearings:** During a coronial investigation, cases are managed by a 'call over' or 'mention' system. A call over or a mention is a short hearing for the Coroner to sort out what will happen with the coronial investigation. The Coroner may ask for certain tasks to be completed and will check in on the progress of set tasks. For example the Coroner may set a call over or mention date to check in on the police progress in completing the brief. Police are able to request time extensions for completing the brief if required. There are often a number of mentions or call over dates during the course of a coronial investigation. Call overs or mentions are considered to be administrative or internal reviews, therefore families are not expected to attend and are not usually advised about these dates. However, if you would like to be kept informed about call over/mentions, you can speak to the OIC or CISP for advice.
2. **Coroner reviews the brief:** Once the brief is submitted, the Coroner will review the material. Time will be needed for the Coroner to review the evidence and ensure all investigations are complete before making a decision about an inquest. The Counsel Assisting the Coroner (Coronial Advocate or Crown Solicitor) also reviews the brief and conferences with the Coroner. The Coronial Advocate or Crown Solicitor usually assists the Coroner by communicating with the OIC regarding issues such as further enquiries to be made and additional statements or evidence needed to complete the brief.
3. **Decision about an inquest:** After reviewing the brief and any other relevant material, the Coroner will decide about listing the matter for inquest. Section 27(1) of the Act outlines that an inquest must be held if "*it has not been sufficiently disclosed to the Coroner whether the person has died, or it appears to the Coroner the identity, date, place, cause and/or manner are not sufficiently disclosed.*" Therefore, an inquest is considered mandatory in almost all missing persons' cases where there is no location of the missing person (alive or deceased). In some investigations, prior to listing the matter for inquest, the Coroner may set a date for a directions hearing.
4. **Directions hearing (in some cases):** A directions hearing is a public hearing in a courtroom that the Coroner may choose to hold prior to an inquest in order to decide matters such as:
 - the scope of the inquest;
 - inquest date/s;
 - the final witness list; and
 - evidence he or she plans to call.

The Coroner may also set out what else he or she needs in order to complete preparations for the inquest. Directions hearings are not always held. Families, legal representatives, and other interested parties are able to attend a directions hearing if desired. You can notify the Court Registry if you wish to receive notification of a directions hearing.

How long does the coronial investigation take?

The length of time varies. Coronial investigations can be both complex and lengthy. Most can take months/years to progress to inquest.

What is the role of police in a coronial investigation?

The police are considered to be agents for the Coroner. The OIC is required to provide the brief to the Coroner and, if needed, the Coroner has the power to direct the police to complete additional investigations before the matter progresses to inquest. The OIC will usually be required to attend an inquest as a witness to present evidence about the police investigation.

How do I get information about the progress of a missing person's case with the Coroner's Court?

Speak with the OIC: Family members can contact the OIC if they have questions about the progress of a coronial investigation. The OIC usually keeps the family informed about the report of a missing person's case to the Coroner and has an on-going role in keeping the family informed as the case progresses through the coronial system and once an inquest date is set.

Contact CISP: Families and interested parties can seek information about coronial procedures and the progress of a coronial investigation by contacting CISP.

When do I receive written notifications from the Coroner's Court?

The Coroner's Court informs the SNOK in writing at key stages of the coronial investigation:

- When the Coroner assumes jurisdiction;
- When the matter is listed for inquest; and
- When the matter is finalised with the Coroner.

If you wish to receive written notifications it is advised that you contact CISP to check whether you are listed as the SNOK with the Court Registry.

The SNOK is the family member who is recognised by the Coroner as the main point of contact for coronial matters, and the main decision maker when decisions need to be made. If you are listed as the SNOK and you do not want this responsibility you can delegate this responsibility to someone else by writing to the State Coroner's Court of NSW. The SNOK is determined by s6A of the Act. Further information about the SNOK is available on the State Coroner's Court of NSW website.

W www.coroners.lawlink.nsw.gov.au

If you are not listed, and wish to be listed as the SNOK or as an interested party with the Coroner you can make a written submission to the Coroner outlining:

- your contact details;
- the details of the missing person's case;
- your relationship with the missing person;
- what you would like to gain from your involvement; and
- what information you would like to receive from the Coroner's office (for example, notifications of hearings, the brief, transcripts).

You will need to satisfy the Coroner that there is a genuine need for your interest in the matter. Families can direct their request to the State Coroner's Court of NSW or to the relevant Local Court.

Can I request a copy of the brief?

The SNOK, or a person with appropriate interest in the information (as determined by the Coroner) may apply in writing to the State Coroner's Court of NSW at any time for a copy of the brief. Usually the brief will only be released once all parts have been received and reviewed by the Coroner. Some family members report that reading the brief helped them to prepare for the inquest. Reading the brief may also assist you in identifying any questions or issues you wish to raise with the Coroner. Family members report that reading the brief can be distressing, particularly if confronted with new evidence. This can be an important time to reach out for support from family, friends, and service providers, such as FFMPU.

Can I raise questions with the Coroner or speak to the Coroner during the coronial investigation?

If, during the course of the coronial investigation, you have information or questions you would like to raise with the Coroner the best thing to do is to write directly to the Coroner at the relevant court prior to an inquest. It is not possible to speak with the Coroner in person or over the phone.

Interested parties are welcome to put any information and questions for the consideration of the Coroner in writing. The Coroner will then determine whether any issues written to them are 'coronial issues' that fall within the scope of the coronial jurisdiction, or issues that the Coroner is unable to address. It is a good idea to provide a copy of any written communication with the Coroner to the OIC.

If you need more information about how to write to the Coroner contact CISP or FFMPU for information.

How do I request that certain issues be raised at an inquest?

If you wish to raise issues or questions at an inquest it is advised that you submit these issues to the Coroner in writing **prior to the inquest**, wherever possible. This will give the Coroner time to review the submission and may prevent the unnecessary delay of a hearing if further information needs to be sought as a result of the issues raised.

What if I have concerns about media and information that may be presented at an inquest?

Coronial inquests are generally open to the public, including the media, though not all inquests attract media attention. Some families have concerns about the issues that may be raised in a public forum and potentially published. The Coroner has the power to prohibit the publication of evidence by granting a non-publication order under s74 of the Act.⁸ However, this does not mean that the media will not attend the inquest.

If you wish to pursue a non-publication order you may seek legal advice to do so. If you choose not to seek legal advice you are encouraged to put your request for a non-publication order to the Coroner in writing **prior to an inquest**, clearly identifying what type of information you do not want published and the reasons for requesting the order. It is important to understand that the Coroner can decline a request for non-publication.

If you have questions or concerns about media involvement it may be helpful to:

- contact FFMPU and/or CISP for support or advice around media involvement
- read the FFMPU pamphlet *Someone is missing: can the media help you?*⁹

Will I have a say in the inquest dates?

Closer to the inquest the Counsel Assisting the Coroner may contact the SNOK to clarify available dates. The Coroner makes the final decision about whether this can be accommodated within the available court dates. Once an inquest date is set, families can request (in writing), a change of date due to extenuating circumstances; however this may not be possible. Be aware that if a court date is vacated it may be many months before the hearing date can be rescheduled.

Talking to children about an inquest

Some families contact FFMPU for advice about how to inform children about an inquest and whether children should attend an inquest. There is no one size fits all answer to these questions. If you have questions about this it is advisable to contact FFMPU for advice specific to your circumstances and the children impacted.

In talking to children it is often helpful to:

- Keep your explanation simple and truthful. Stick to the information that is known.
- If you don't know the answer to a question it is okay to say 'I don't know'.
- Tell them it is okay to feel upset, to ask questions, to talk about what is happening, to agree or disagree with the process.
- Be aware of support and information available for children by contacting FFMPU. FFMPU offers support groups and publications for children and young people who have a loved one missing.
- Allow opportunities for discussion and support before and after an inquest.

In deciding whether children should attend an inquest:

- Keep in mind that sometimes evidence presented at an inquest may be distressing and/or graphic in nature. In deciding whether your child should attend it may help to read the brief and seek advice from CISP to prepare you for the type of evidence that may be presented at the inquest.
- It is advisable to inform the OIC and/or CISP of any people planning to attend the inquest.

What happens if the missing person is located during a coronial investigation?

If a missing person is located alive during the course of a coronial investigation, the coroner will need to be satisfied that the missing person is alive. An inquest is still considered mandatory. The inquest held may be short and somewhat informal in which the evidence of life is presented to the Coroner.

If a missing person is located deceased during the course of a coronial investigation, the current investigation of a suspected death will usually be closed and a new investigation into their death will be reported to the Coroner by police.

THE INQUEST

What is an inquest?

An inquest is a formal hearing in a courtroom concerning the death or suspected death of a person. The inquest is led by the Coroner to gather more information about whether a death has occurred and, if so, the cause and circumstances of the death.

An inquest is different to other court cases: the Coroner cannot attribute blame and the hearing is inquisitorial rather than adversarial. That is, an inquest is not a trial with a prosecutor and a defendant. Coroners have more flexibility than other jurisdictions with the type of evidence they can accept.

During an inquest, the Coroner may call witnesses (under oath) to give evidence of their knowledge of the circumstances of the suspected death and exhibits may be presented. The Coroner, the Counsel Assisting the Coroner, a lawyer representing an interested party, or an interested party (at the discretion of the Coroner) may ask questions of witnesses.

After hearing the evidence the Coroner will make findings. In a missing person's case, the Coroner firstly has to make a finding in respect of whether, on the balance of probabilities, he or she believes the missing person is deceased. If the Coroner finds that the missing person is deceased then he or she is required to continue the inquest and, if there is sufficient evidence available, make findings as to five issues:

- identity
- date
- place
- cause
- manner of death

More information about who might be at an inquest is provided in the information sheet *Who's who at an inquest* (see page 29).

How long does an inquest last?

Inquests can vary from an hour to many weeks depending on the complexity of the case and the number of witnesses called to give evidence. Generally, you will be notified of the amount of time allotted for the inquest; however the Coroner may finish the inquest early or extend the inquest to accommodate further witnesses or evidence.

Will witnesses be called to give evidence at an inquest?

At an inquest, the Coroner can subpoena witnesses and call experts to give evidence of their knowledge of the circumstances of the suspected death and/or the circumstances surrounding the missing person's disappearance. If the Coroner requires clarification of evidence, they may call witnesses to give evidence. If not, the witness' statement will be tendered as their evidence at an inquest. Any persons called to give evidence will be notified in writing prior to an inquest.

Witnesses are not always called to provide evidence. In some circumstances a hearing may be an 'OIC only' inquest, where the OIC is the only witness called to provide evidence.

Will I have a say in which witnesses will be called at an inquest?

Interested parties may choose to have input in the process by making a written submission to the Coroner, prior to an inquest, identifying what witnesses they feel should be called and the reasons why they should be required to give evidence. Some family members or interested parties write to the Coroner to nominate themselves as individuals wishing to provide evidence at an inquest. The Coroner will consider any written applications and make the final decision about the witnesses to be called at an inquest.

Can I question witnesses?

During an inquest, family members and interested parties can ask questions of witnesses in a number of ways. Some families choose to employ a solicitor to ask questions on their behalf while other families choose to have one family member act as a representative. Alternatively, family can ask questions of witnesses through the Counsel Assisting the Coroner.

If you are not a relative of the missing person and wish to ask questions of witnesses, it is advised you seek leave to appear at the inquest by making a written request to the Coroner **prior to an inquest**. You must demonstrate to the Coroner that you have something instrumental to add to the inquest by appearing. If the Coroner considers you to have sufficient interest, leave may be granted. This means you will be given permission to question witnesses.

Do I need legal representation for an inquest?

The family of the missing person is considered an interested party and may choose to be legally represented however this is not essential. This is a decision for the family to make. Families seeking legal advice may try contacting any of the legal agencies listed in the *Where to get help* section of this guide (see page 24).

Can I provide information to the Coroner at an inquest?

At an inquest interested parties may give statements, documents or other relevant items to the Coroner. If you wish to submit or display a photo of the missing person to the Court you may notify the Counsel Assisting the Coroner but this is entirely at the discretion of the Coroner.

If you are a relative and wish to tell the Coroner's Court about your missing loved one, the Coroner may invite you to do so, or you may choose to let the Counsel Assisting the Coroner know of your wish to address the Court. However, an address to the Coroner's Court which is not provided as a witness under oath is not going to have bearing on the coronial finding.

Will the Coroner's Court cover my travel and accommodation costs for an inquest?

Only witnesses who are subpoenaed to attend an inquest will have their costs paid by the DAGJ. Subpoenaed witnesses with questions about travel costs will need to speak to the OIC who will complete the necessary paperwork.

Who can attend the inquest?

Inquests are generally open to the public, meaning that any person is usually able to attend, including families and friends. In certain circumstances, the Coroner has the power to exclude individuals, or the public generally, from attending proceedings, but this is a rare occurrence.

Decisions about who will attend an inquest can be difficult. Families and friends may have different beliefs about who should attend. For example, sometimes people want others there for support while others may want privacy. Where possible, discuss with your family and friends prior to the inquest if you have specific ideas or requests about people attending on the day. However, it can be difficult to understand that you may not have control over who is present in the courtroom. There may be other people at an inquest that you may not want there, but are entitled to be there. You can notify coronial staff on the day if you wish to be seated separately to others attending on the day.

Further details about people that might be present at an inquest are provided in the information sheet *Who's who at an inquest* (see page 29).

Do I need to attend the inquest?

There is no legal requirement to be present at an inquest unless you are subpoenaed to attend as a witness. The decision is one for each family member to make. The inquest and the evidence presented may be distressing. Some family members choose to attend because they wish to be involved in the process and to have the opportunity to raise questions or concerns. Some choose not to attend. If you are having difficulty making this decision, consider speaking to an FFMPU counsellor and reading the brief to help you make a decision that is right for you.

What kind of support is available at an inquest?

A member of the FFMPU team can be available to support you at an inquest if requested.

You can make contact with CISP if you wish to speak about accessing support.

How do I deal with media at an inquest?

The *Coronial investigation* section of this guide (see page 15) briefly identifies ways to seek non-publication orders (if desired) and sources of support and information around media involvement.

Media are not always present at an inquest; however, some inquests do attract media attention and family members may find that they are approached for comment and/or photos during or after an inquest. This may be a welcome opportunity for some while others may find this intrusive. Some suggestions about dealing with media include:

- Prior to an inquest, it may help to discuss potential media involvement amongst family and with the OIC. You might decide whether a family representative will talk to the media, and if so, the topics you are comfortable discussing.
- Remember you can always politely decline and ask for privacy if you do not wish to speak with media at that time. Unfortunately the Coroner's Court cannot stop media taking photos out the front of the Court (although they can prevent publication if a non-publication order is in place), nor do they have back exits to avoid media.
- If you choose to speak to media you do not have to answer all questions.
- You can ask for time to think about a request to speak with media. Media may be operating on a deadline so it may help to ask when they need a response.
- Identify if there are any images/photos you wish to provide to media (you may wish to have copies available on the day if you expect and want media involvement).
- You can have a support person with you during contact with the media.
- Media are able to report on any information presented in an inquest (unless a non-publication order is in place). Speaking with media may allow you the opportunity of a voice in what is printed, but be aware that media may also choose to select a different angle in what they report.

Coroner's findings and recommendations – The conclusion of an inquest

Usually, before the Coroner makes a finding, a submission (oral or written) is made by the Counsel Assisting the Coroner and other interested parties. A submission is a suggestion of what the Coroner should find based on the evidence heard. If the Coroner thinks it appropriate, he or she may invite family or interested parties to make a comment or submission before making a finding.

After hearing the evidence the Coroner will make findings. A finding is a narrative outlining what the Coroner has decided in the matter. The length of a finding can vary from a single page to numerous pages depending on the complexity of the investigation. The finding will be read out in court by the Coroner. In a missing person's case, the Coroner firstly has to make a finding in respect of whether on the balance

of probabilities he or she believes the missing person is deceased. If the Coroner finds that the missing person is deceased then he or she is required to continue the inquest and, if there is sufficient evidence available, make findings as to five issues:

- identity
- date
- place
- cause
- manner of death.

Sometimes the evidence presented to the Coroner does not allow a finding about one or more of these matters (the date, place, manner and cause of death), this is referred to as an open finding. The Coroner will not determine who is guilty of an offence nor will they determine any civil liability.

In some inquests the Coroner may also make recommendations about public health or safety or the administration of justice, to help prevent a similar event from happening again. Generally the Coroner will not make recommendations unless it relates to a systemic issue of concern in the community nor will they make recommendations if another authority is already responding to the systemic issue that has been identified.

[Will the Coroner determine the person responsible for the death and/or disappearance of the missing person?](#)

It is not the role of the Coroner to determine guilt or lay blame for a suspected death. The Act prohibits Coroners from making any findings, comments or recommendations suggesting that a person has committed any offence.

In some cases, the Coroner may form the view that a known person may have contributed to the suspected death, and there is sufficient legally admissible evidence to refer the matter to the Director of Public Prosecutions (DPP). If the Coroner forms this view during or at the end of an inquest, the Coroner may suspend the inquest and refer the inquest papers to the DPP. The DPP will then consider whether to pursue indictable charges against that person. The Coroner must also suspend the inquest if he or she is advised that a person has been charged with an indictable offence connected with the suspected death. At the conclusion of the criminal proceedings the Coroner will review the matter again.

AFTER THE CORONIAL FINDING

Is the investigation closed if the Coroner finds the missing person is deceased?

The coronial investigation is closed unless new evidence becomes available; however, the police investigation remains open until the missing person is located. This outcome is the same even if the finding is 'open' in terms of time, place, manner, and cause of death. While the police investigation remains open, it is often suspended at the local police level until new evidence becomes available, or police make a decision to investigate further. The NSW Police Missing Persons Unit will regularly review the file and conduct potential matching searches against unidentified bodies. Families are encouraged to talk to the OIC about what happens with the police case following a pronouncement of death and the best police contact person for the case after the coronial decision.

What happens to the investigation if the Coroner determines there is not enough evidence that the missing person is deceased?

In situations where there is insufficient evidence for the Coroner to determine, on the balance of probabilities, that a missing person is deceased, the Coroner is required to terminate the inquest (s80 of the Act). The case is then referred back to police for further investigation until such time as further evidence may establish a death has occurred or the person is located.

What if the missing person is found to be alive after the Coroner has pronounced them to be deceased?

The decision can be reversed. In such circumstances, the State Coroner would order a fresh inquest and the earlier decision reversed at that hearing. Contact with agencies such as NSW Registry of Births, Deaths and Marriages (BDM) will be required for administrative reasons.

What happens if new evidence comes to light after a pronouncement of death?

Make contact with the police officer responsible for the missing person's investigation about any new evidence relevant to the case.

A Coroner may re-open an inquest if the Coroner is of the view that the discovery of new evidence or facts makes it necessary or desirable in the interests of justice to hold the inquest.

Can I access records of the inquest?

The person listed as the SNOK and other interested parties (as decided by the Coroner) will usually receive a written notification from the Coroner's Court about the Coroner's formal findings relating to the key questions before the Coroner – whether a person has died and, if so, the identity of the deceased and the date, place, cause and manner of death. If the Coroner has made a pronouncement of death, receiving this formal notification in the mail can be a particularly challenging experience for families and an important time to reach out for support.

All inquests are also sound recorded and written transcripts of these proceedings are made from these recordings. Some families wish to request an official transcript of proceedings following an inquest.

A number of coronial findings, recommendations, and information about how to access coronial documents can be accessed on the State Coroner's Court of NSW website:

W www.coroners.lawlink.nsw.gov.au

Not all findings are published to the Coroner's Court website for a variety of reasons including the protection of privacy due to non-publication orders.

Government responses to coronial recommendations can now be viewed on the Justice Legal website:

W www.lsb.lawlink.nsw.gov.au

How do I obtain a death certificate?

The Coroner's Court does not issue the death certificate. The death certificate is a document issued by BDM. If the Coroner makes a pronouncement of death, the Coroner's Court will send notification to BDM. Families will then need to make contact with BDM regarding the appropriate paperwork to request a death certificate. A fee is attached to the issuing of a death certificate. To find out more, contact BDM or visit their website:

P..... 13 77 88

W www.bdm.nsw.gov.au

Applying for a death certificate can be a challenging task for families both emotionally and practically. Some families may choose not to apply for a death certificate following a coronial decision. Others may find they need to access a death certificate to assist them in managing a missing person's financial affairs.

How does the coronial decision impact the management of a missing person's financial affairs?

Families with questions about managing a missing person's financial affairs following a coronial pronouncement are encouraged to seek legal advice specific to their case. If the Coroner makes a pronouncement of death any financial management orders granted by the Supreme Court to manage a missing person's financial affairs will cease and their affairs may be dealt with as per a deceased estate.

What if I am unhappy with the coronial outcome?

If you are not satisfied with a decision made by the Coroner, you may write to the NSW State Coroner at the Coroner's Court in Glebe, or the relevant Local Court outlining your concerns.¹⁰ The State Coroner will review the matter.

If an inquest has not been held you may ask the Coroner for written reasons for his or her decision, provided you are a person with a sufficient interest in the death. According to the Act, the Coroner must supply these reasons.

You may also make an application to the Supreme Court of NSW to review a decision of the Coroner. The Supreme Court can direct that an inquest or inquiry be held, where the Coroner has dispensed with one. If a coronial inquest has been held, the Supreme Court can direct that a fresh hearing be held if it is necessary or in the interests of justice.

P..... 1300 679 272

E..... supremecourt.enquiries@courts.nsw.gov.au

W www.supremecourt.lawlink.nsw.gov.au

WHERE TO GET HELP

Accessing information about the police investigation

NSW Police

Families are encouraged to make contact with the OIC for specific information about the police missing person's investigation and the progress of the investigation with the Coroner's Court.

Support for families and friends of missing persons

Families and Friends of Missing Persons Unit (FFMPU)

FFMPU is a support service for families and friends of missing people. FFMPU provides a range of services including: free and confidential counselling, information, and referrals; support in relation to coronial proceedings; support groups for adults and young people in various locations across NSW; organisation of missing persons events; and missing person's publications. The FFMPU team can be available to support you at an inquest if requested.

P..... 1800 227 772 (9am-5pm, Mon to Fri)
E..... ffmpu@agd.nsw.gov.au
W www.missingpersons.lawlink.nsw.gov.au

Coronial information and support

Coronial Information and Support Program (CISP)

CISP provide information and support to persons affected by deaths or suspected deaths reported to the Coroner in NSW. CISP can assist those who have contact with the NSW coronial jurisdiction to understand coronial processes and provide support and referral to families and friends where an inquest is to be held. CISP are based at the NSW State Coroner's Office in Glebe. This service responds to calls from families rather than contacting families who have a case referred to the Coroner. CISP welcomes contact from families with questions about the coronial process in NSW.

P.....(02) 8584 7777 (9am-4pm, Mon to Fri)
W http://www.coroners.lawlink.nsw.gov.au/coroners/info_families.html

State Coroner's Court of NSW

Families with questions about court dates and whether they are listed as the SNOK can contact the Registry of the State Coroner's Court or the relevant Local Court.

P.....(02) 8584 7777 (9am-4pm, Mon to Fri)
W http://www.coroners.lawlink.nsw.gov.au/coroners/contact_us.html

Families wishing to submit issues in writing to the State Coroner's Court of NSW should address it to: **Attention: State Coroner or Registrar of the Court, PO Box 308 Camperdown NSW 1450.** The information can be sent by fax or email:

F.....(02) 9660 7594
E..... local_court_glebe@agd.nsw.gov.au
W www.coroners.lawlink.nsw.gov.au

Other Local Courts

If families have a matter being handled in a regional court, CISP or Local Courts can provide the best contact details to send correspondence regarding the case. Court locations, contact details, listing and sitting arrangements are available on the following web page:

W http://www.localcourt.lawlink.nsw.gov.au/localcourts/court_locations.html

Legal support

NSW Families seeking legal advice or referrals may try contacting any of the following agencies or professionals.

Legal Aid Coronial Inquest Unit

P..... (02) 9219 5156 or (02) 9219 5000

W <http://www.legalaid.nsw.gov.au/what-we-do/civil-law/coronial-inquest-matters>

The Law Society of NSW

P..... (02) 9926 0300

P (outside Sydney)..... 1800 422 713

E..... crs@lawsociety.com.au

W www.lawsociety.com.au/community/findingalawyer/index.htm

LawAccess

P..... 1300 888 529

W www.lawaccess.nsw.gov.au

Community Legal Centres NSW

P..... (02) 9212 7333

E..... clcnsw@clc.net.au

W www.clcnsw.org.au

A private solicitor

Review of coronial decisions

If you are not satisfied with a decision of the Coroner you may write to the Registrar at the court where the suspected death was reported outlining your concerns. You may also write to the State Coroner's Court of NSW (**Attention: State Coroner or Registrar of the Court, PO Box 308 Camperdown NSW 1450**).

You may also make application to the Supreme Court of NSW to review a decision of the Coroner.

Supreme Court of NSW

P (General enquiries)..... 1300 679 272

E..... supremecourt.enquiries@courts.nsw.gov.au

Accessing a death certificate

NSW Registry of Births, Deaths and Marriages (BDM)

If the Coroner makes a pronouncement of death, they will send notification to BDM. Families will then need to make contact with BDM regarding the appropriate paperwork to request a death certificate. A fee is attached to the issuing of a death certificate.

P..... 13 77 88
E..... bdm-webmail@agd.nsw.gov.au
W www.bdm.nsw.gov.au

Financial management orders

Families considering an application to manage the financial affairs of a missing person may benefit from:

- Accessing the NSW Trustee and Guardian website for information relating to missing persons:

W <http://www.tag.nsw.gov.au/managed-clients-landing-page.html>

- Engaging a legal representative to assist with the application.
- Contacting FFMPU to discuss support and referral needs.

Crisis support

Lifeline

A national 24-hour telephone counselling and referral service. This service is staffed by dedicated volunteers, who have undergone training to ensure they are capable of handling all sorts of calls. They are ready to listen and provide emotional and crisis support.

P..... 13 11 14
W www.lifeline.org.au

Support for victims of crime

Victims Access Line

Provides a single entry point for victims of crime in NSW to assist them in accessing services.

P (Freecall from fixed lines)..... 1800 633 063
E..... vs@agd.nsw.gov.au
W www.victimsservices.lawlink.nsw.gov.au



A bar table



A view from the public gallery



A public gallery

USEFUL WEBSITES AND PUBLICATIONS

State Coroner's Court of NSW website

W www.coroners.lawlink.nsw.gov.au

Coroners Act 2009 (NSW) No 41

The current coronial legislation relevant to coronial proceedings can be accessed online:

W <http://www.legislation.nsw.gov.au/maintop/view/inforce/act+41+2009+cd+0+N>

Coronial forms

Forms to apply for coronial documents or waiver fees are accessible online:

W http://www.coroners.lawlink.nsw.gov.au/coroners/forms_fees.html

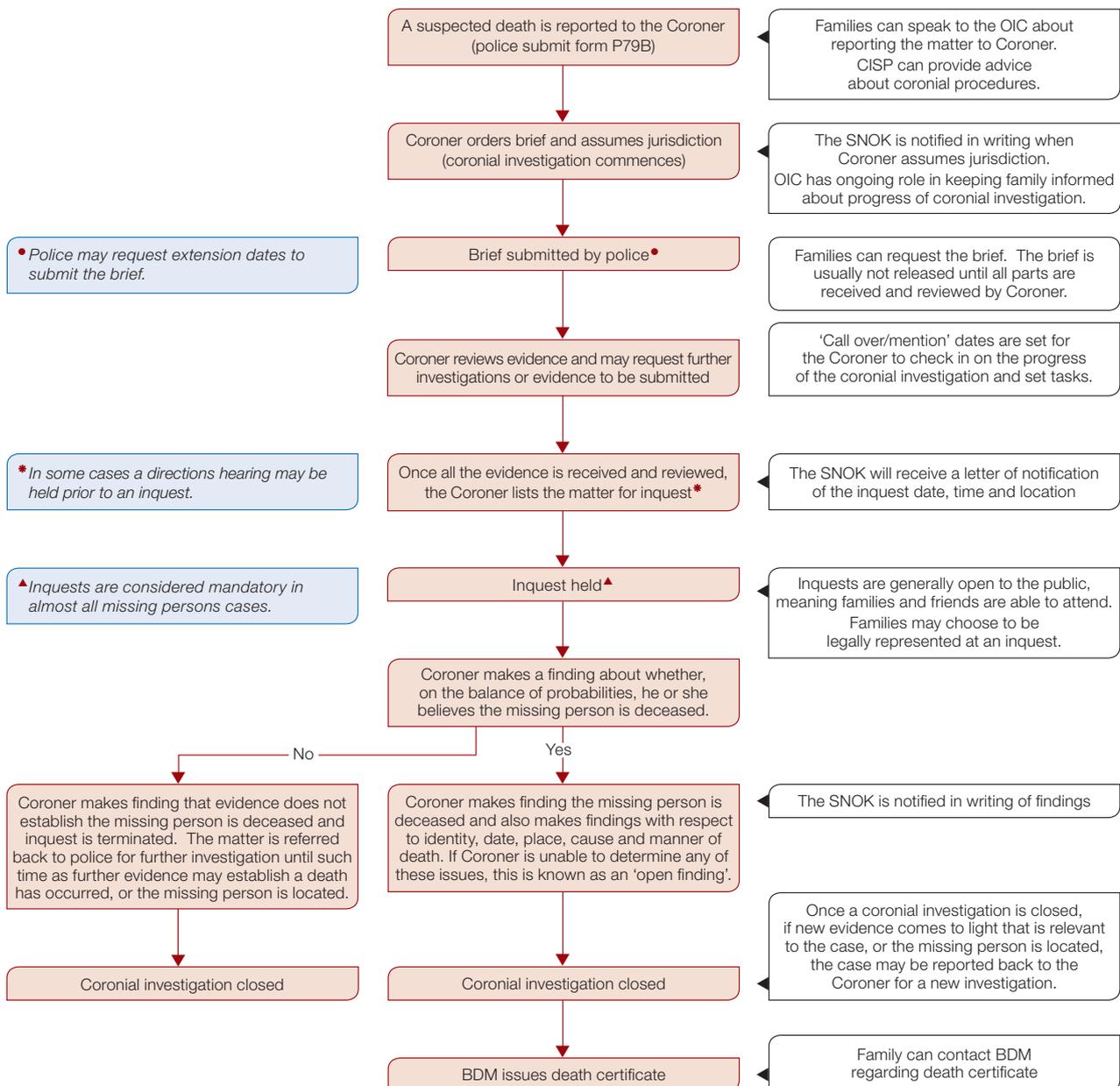
Justice Legal website

Contains the **Premier's Memorandum 2009-12, Responding to Coronial Recommendations** and details government responses to coronial recommendations in NSW:

W <http://www.lsb.lawlink.nsw.gov.au/lsb/coronialrecommendations.html>



Steps in the coronial process



Key

BDM NSW Registry of Births, Deaths and Marriages • Brief Brief of evidence • FFMPU Families and Friends of Missing Persons Unit
CISP Coronial Information and Support Program • OIC Officer in Charge • SNOK Senior next of kin

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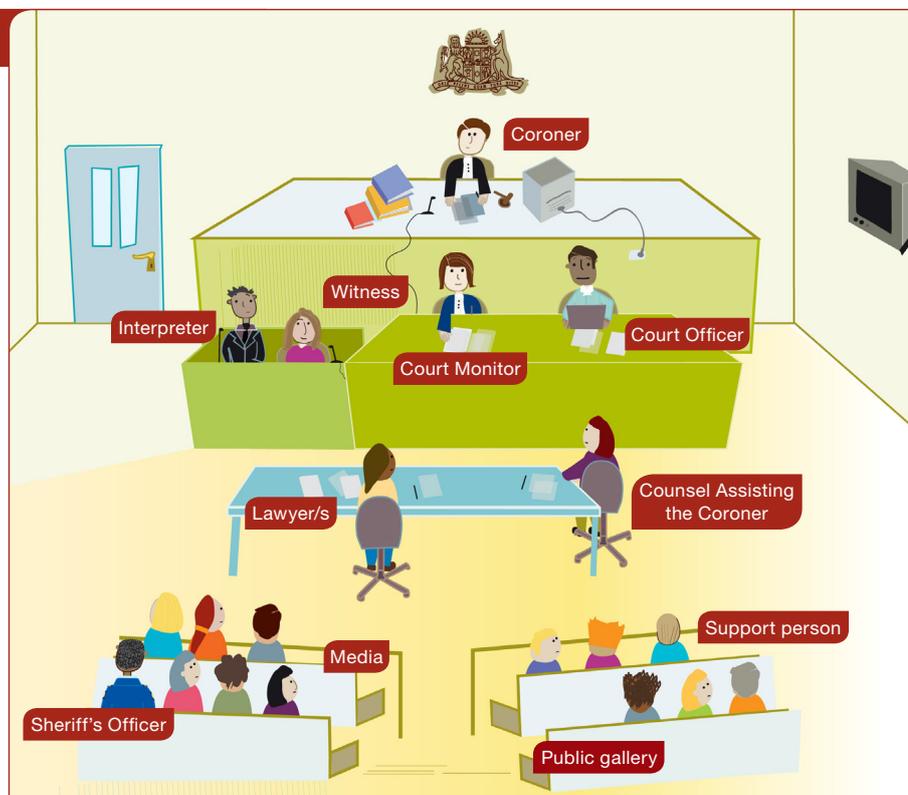
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Who's who at an inquest

Coroner

Coroners are judicial officers and usually also Magistrates. The Coroner wears a black robe and presides over the proceedings from a large desk at the front of the courtroom called the bench. The inquest is led by the Coroner to gather more information about a suspected death. He/she listens to all of the evidence and, at the conclusion of the inquest, makes a finding. In a missing person's case, the Coroner firstly has to make a finding in respect of whether, on the balance of probabilities, he/she believes the missing person is deceased. If the Coroner finds that the missing person is deceased then he/she is required to continue the inquest and, if there is sufficient evidence available, make findings as to five issues: the identity, date, place, cause and manner of death. Coroners do not apportion blame or determine guilt in their investigations.



Counsel Assisting the Coroner

The Counsel Assisting the Coroner (Counsel Assisting) is usually a Coronial Advocate or Crown Solicitor. A Coronial Advocate is a plain clothes police officer specially trained in coronial law who assists the Coroner during an inquest. In more complex cases, the Coroner may be assisted by a solicitor from the Crown Solicitor's Office. They sit at a table in the middle of the courtroom called the bar table.

Court Monitor

The Court Monitor electronically records the inquest and types certain parts of what is being said.

Court Officer

The Court Officer helps the Coroner with documents used in the case, such as exhibits. They also administer the oath or affirmation to the witnesses, which is a promise to tell the truth.

Interpreter

Sometimes, an interpreter will help a witness understand what is being said by translating questions and answers into another language or other form of communication such as Auslan. Interpreters are arranged by the court. Notify the court of any special requirements that you may have prior to an inquest. For example, hearing or speech difficulties, or requests for interpreters.

Lawyers

Interested parties may be legally represented at an inquest. The family of the missing person is considered an interested party and may choose to be legally represented, however this is not essential. There may be a number of lawyers in the courtroom or there may be no other lawyers at an inquest. Their job is to represent the interests of the party they represent. Lawyers sit at the bar table, speak to the Coroner and ask questions of the witnesses.

Media

Media are not always present during an inquest. If there is media interest in a case, journalists are usually allowed to sit and listen in court. Members of the media are allowed to write down what is said in court and sometimes it will be reported in the news. Media is not allowed to print information subject to a non-publication order (an order made by the court that certain details of the case not be published or broadcast).

Public gallery

Inquests are generally open to the public, meaning that any person is usually able to attend including families and friends. Families and friends are welcome to bring support persons to an inquest. Members of the public are generally allowed to watch and listen in court. They sit at the back of the court in a section called the public gallery. People in the public gallery are not allowed to talk or interrupt the court. In certain circumstances, the Coroner has the power to exclude individuals, or the public generally, from attending proceedings.

Sheriff's Officer

The Sheriff's Officer is responsible for the security of the court. A Sheriff's Officer is not always present at an inquest; they may be outside the courtroom. If you have concerns pertaining to your safety at an inquest speak to the Coroner's Court prior to an inquest to ask about safety measures that may be put in place.

Support person

Sometimes a witness will have a support person who can sit near them in the courtroom. The support person is not permitted to answer the questions being asked of the witness.

Witness

If the Coroner requires clarification of evidence they may call witnesses to give evidence at an inquest. The Coroner can subpoena witnesses and call experts to give evidence of their knowledge of the circumstances of the suspected death and/or the circumstances surrounding the missing person's disappearance. In some circumstances a hearing may be an 'Officer in Charge (OIC) only' inquest, where the OIC is the only witness called to provide evidence.

Witnesses will be called to the stand, asked to swear to tell the truth, will be seated in the witness box and will provide evidence by speaking into a microphone. The witness gives evidence about what they know.

The Coroner, the Counsel Assisting, a lawyer representing an interested party, or an interested party (at the discretion of the Coroner) may ask questions of witnesses and the witness gives evidence about what they know.

Witnesses are not allowed to talk about the case to other witnesses. Witnesses are allowed to stay inside the courtroom after they have finished giving evidence.

Note: Information in this sheet is derived from the website of the State Coroner's Court of NSW:

Wwww.coroners.lawlink.nsw.gov.au



Preparing for an inquest

Before an inquest

- Keep in contact with the **OIC** if you have questions about the progress of a coronial investigation.
- Contact **CISP** with questions about coronial processes. CISP can also provide practical information about attending court and court protocols and procedures:

P..... (02) 8584 7777

- Inform the relevant Coroner's Court in writing, prior to an inquest, if you:
 - want to be listed as the **SNOK** or an interested party to receive notifications or documents from the Coroner's Court;
 - have any information or questions for the consideration of the Coroner, including requests to provide evidence or to suggest witnesses to be called; questions you wish to raise at the inquest; or requests for non-publication orders.

It is a good idea to send a copy of any written requests for the Coroner to the OIC.

- Consider requesting the **brief**. The SNOK and interested parties may apply in writing to the Coroner's Court prior to an inquest for a copy of the brief. Reading the brief may help prepare for an inquest. However, it may also be distressing and can be an important time to reach out for support.
- Coronial investigations can be complex and lengthy. Stay in contact with support people (family, friends and/or service providers) during this time and let people know what you find helpful.
- Contact **FFMPU** who offer a range of support services to families and friends of missing people, including support in relation to coronial matters:

P..... 1800 227 772

E..... ffmpu@agd.nsw.gov.au

- Consider whether you will be seeking legal representation during the coronial process. Legal representation is not required and is ultimately a decision for the family to make.

Once an inquest date is set

- The court will notify the SNOK in writing regarding an inquest date, time and location. You can then make preparations to attend the inquest, if desired. Think about whether you need to request time off work/study, organise care for dependents, arrange transport/parking, and whether you would like a support person or family member to attend the inquest with you.
- If you are subpoenaed to attend as a witness, speak to the OIC who can assist in claiming for travel/accommodation. Contact CISP if you have questions about giving evidence at an inquest.
- Think about who might attend the inquest. Unless you are subpoenaed to attend you are not legally required to attend an inquest. Not all family members choose to, or are able to be there. Speak with family and friends about your wishes, concerns, and plans. Where possible, communicate with the OIC and/or the court about who is planning to attend the inquest.
- Notify the OIC prior to an inquest if you have any security concerns about individuals who may attend the inquest.
- Notify the court of any special requirements that you may have. For example, hearing or speech difficulties, requests for interpreters, and requests for video or teleconference facilities (usually for overseas or interstate witnesses).

The day of the inquest

Bring with you

- Support person/s, for example friends, family, an FFMPU counsellor, if desired.
- A list of any questions you wish to raise. A pen and paper may be handy.
- Something to read or occupy you, as there may be times when you need to wait.
- Money for food, parking, or anything you may require while at court.
- A copy of your statement if you are subpoenaed to attend as a witness.

Arriving at court

- Ask staff at the front desk about the location of the courtroom and how to identify the **Counsel Assisting**. It may help to notify the Counsel Assisting when you arrive.
- You can ask the Counsel Assisting questions about the inquest, including how you raise questions or issues during the inquest.

Safety at court

- Advise the court staff if you have any security concerns so the Sheriff's Officer can be notified.

Other people in the courtroom

- Inquests are generally open to the public (unless the Coroner orders otherwise). There may be other people at an inquest that you may not want there, but are entitled to be there. You can notify any coronial staff on the day if you wish to be seated separately to any other people attending on the day.

Court breaks

- The court has scheduled morning tea and lunch breaks – so you will have a chance to take a break during longer inquests. If you feel you need extra breaks you can ask the Coroner.

Courtroom rules

- The Coroner will control the proceedings and wear a black robe.
- Bow towards the Coroner when you enter or leave the courtroom.
- You can address the Coroner as “your Honour”.
- Switch off mobile phones and any radio receivers or transmitters before entering the courtroom.
- Tape recorders and cameras are not permitted in the court without specific approval.
- Be polite and maintain a respectful manner in court.
- Courtrooms do not permit photographs, eating, drinking, smoking, wearing hats, or sunglasses during proceedings.
- Visitors must comply with any non-publication orders.

Asking questions

- If you wish to raise questions during an inquest you may do so through the Counsel Assisting, a legal representative if you have one, or a family representative. The Coroner may determine how questions are asked.
- If you have difficulty hearing proceedings let the Counsel Assisting know.

Dealing with the media

- Court cases are generally open to the public and the media unless the court is closed. Media are not always present at inquests.
- The media (if present) may be interested in the missing person's case and may want to talk to you about it. Remember you do not have to answer media questions if you do not wish to.
- Contact FFMPU for support and read the FFMPU media pamphlet *When someone is missing: Can the media help you*. Further tips about dealing with media are provided in the *A guide to coronial services in NSW for families and friends of missing people* (both available from FFMPU).

Witnesses

- Witnesses will be called to the stand to be sworn in by the Coroner's Officer under oath or affirmation and seated in the witness box to give their evidence.
- If you are called as a witness you will have been asked to provide a statement to police. It may help to bring a copy of your statement with you to refresh your memory.
- You will be asked questions which expand on the statement you provided.
- The Coroner may request other witnesses to be called if more evidence is needed to clarify an issue.

The coronial decision

- Once the coroner is satisfied that all the relevant evidence has been heard, they will usually adjourn (postpone) the matter so that they can make their findings. The findings are read out in court, sometimes on the same day but in more complex cases it may take weeks or months.

Key

Brief.....	Brief of evidence
Counsel Assisting.....	Counsel Assisting the Coroner
FFMPU.....	Families and Friends of Missing Persons Unit
CISP.....	Coronial Information and Support Program
OIC.....	Officer in Charge
SNOK.....	Senior next of kin



Taking care of yourself through the coronial process

Many family members describe the 'emotional roller coaster' they experience during a coronial investigation. Rapid and unexpected emotional changes are not uncommon particularly at key times during the investigation (for example, the report to the Coroner, reading the brief, hearing evidence, hearing or receiving the findings).

What might help

- Remember there is no right or wrong way to feel. Try to be kind to yourself during this time.
- Acknowledging your feelings is important. This may include talking to someone you trust about what you are going through (for example, a friend, family member, counsellor, your GP) or writing your thoughts and feelings in a journal.
- Link in with Families and Friends of Missing Persons Unit (FFMPU) counselling and/or family support groups. This can help provide a place to talk and connect with others who are experiencing similar things.
- Feeling distracted and stressed is normal, so take care with activities that require concentration, such as driving.
- Be careful of using drugs or alcohol to alleviate pain. Research has shown that many drugs and alcohol negatively impact mood and problem solving skills.

The coronial process is often lengthy and can be physically and emotionally exhausting.

What might help

- Try to maintain healthy sleep, eating, and exercise patterns wherever possible. This can help your ability to keep going emotionally and physically.
- Consult your GP if you have any health concerns. Don't ignore signs that you may be unwell.
- Give yourself permission to take a break from focussing on the coronial investigation from time to time. Take time to out to do something nice for yourself. For example, see friends, see a movie, get a massage. Breaks may help you to be able to cope in the long run.
- Take one day at a time.

Understanding legal processes and what to expect from an inquest can be confusing and overwhelming at times.

What might help

- Seek information about coronial procedures and what to expect from the Coronial Information and Support Program (CISP) and FFMPU. Seeking information may help reduce stress. As one family member shared:

"Hearing from [coronial staff]... helped me to understand how the coronial inquest works and how it could help with our case. I am less fearful of going to Coroner's Court now".

Differences in family perceptions are normal. People within the same family may hold differing beliefs about whether the coronial investigation is helpful, appropriate, or timely, who should attend an inquest and the level of involvement each person should have in the process.

What might help

- Where possible, talk to each other about differing beliefs and coping styles and roles during a coronial investigation. Try to be supportive of different coping styles.
- Consider accessing FFMPU counselling and/or support groups; this may provide a safe forum to voice differing perceptions about the coronial process.

Making decisions about the inquest process can be challenging; from how to talk to children and young people about what is happening, to who will attend an inquest.

What might help

- Seek all available information prior to making decisions to help you decide what suits your particular needs.
- Consider speaking to FFMPU and/or CISP for advice specific to your circumstances.

Families report feeling isolated when someone goes missing. At times, a public inquest may invite insights, questions or comments from the community. These responses may be helpful, but at other times may feel intrusive or ill-informed.

What might help

- Let others know what you need for support. Tell them what is helpful or unhelpful to say or do.

Inquests can be emotionally challenging for families. You may find the evidence presented distressing and sometimes unexpected. It is not unusual to feel empty and drained following an inquest.

What might help

- Consider attending FFMPU support groups. For some, linking in with families who have a similar experience or who ‘understand missing’ helps reduce the sense of isolation.
- Consider having something planned after an inquest. This may be as simple as taking time off work to rest, taking time away with friends or family, organising a dinner or outing, or some other event that allows you to recharge before you get back to your usual routine.

Media involvement (if any) may bring challenges. Families may welcome opportunities for media attention to a missing person’s investigation, while others may wish for privacy during a difficult time.

What might help

- Contact FFMPU for support and read the FFMPU media pamphlet *When someone is missing: Can the media help you*. Further tips about dealing with media are provided in the *A guide to coronial services in NSW for families and friends of missing people* (both available from FFMPU).
- Consult with the OIC prior to the inquest about any concerns you may have regarding media.

Hearing the coronial decision can be difficult for many reasons: it may not have produced the desired outcome, it may not have answered all the questions you had and some family members feel pressured to accept the findings or ‘find closure’ following coronial proceedings. If the Coroner makes a pronouncement of death this can be disturbing even when it may have been anticipated.

What might help

- It is okay to agree, disagree, or feel indifferent about a coronial outcome. There is no need to force yourselves or others to accept the coronial findings if this does not feel right for you. There is no right or wrong perception. Family members can hold differing beliefs, even within the same family.
- Finding what is most helpful for you, and how to respond to a coronial outcome can be complex and may take time. Be patient with yourself through this process.
- A number of family members have talked about the importance of rituals to stay connected to their missing loved one, to celebrate their life, and to remember. It is okay to be flexible with traditions and, if desired, develop rituals and ceremonies that feel right and meaningful for you and your missing loved one. Some choose memorials, others choose smaller family gatherings, candlelight ceremonies, celebrating their birthday or visiting a place or activity special to them and their missing loved one. Families decide a time and type of ritual that is right for them.

Key contacts

Families and Friends of Missing Persons Unit

P..... 1800 227 772
E..... ffmpu@agd.nsw.gov.au
W..... www.missingpersons.lawlink.nsw.gov.au

NSW Coronial Information and Support Program

P..... (02) 8584 7777
W..... www.coroners.lawlink.nsw.gov.au

Lifeline

P..... 13 11 14

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GLOSSARY

A

Accidental death

Where a death is unforeseen or unplanned.

Admissible

Used to describe evidence that is allowed to be given in court.

Adversarial

A legal system where two (or more) opposing parties gather evidence and present their side of a case before an impartial decision maker (Judge or jury) who is tasked with determining the truth of the case. In an adversarial system it is not the duty of the Judge to seek the facts or investigate the case, rather, to impartially decide based on the evidence put before them. For example, the Australian criminal system is adversarial, typically with a prosecutor and defendant putting their cases before a Judge or jury who determine whether the defendant is guilty or not guilty of a crime based on the evidence put before them. Coroners do not determine issues such as guilt. The coronial system is considered to be inquisitorial, not adversarial.

Affirmation

A promise to tell the truth when giving evidence as a witness in court. Affirmations are used by people who do not wish to swear on the Bible or other religious book.

Assistant Coroner

Assistant Coroners are located in Local Courts across NSW and their job is to assist Coroners in their work. The Minister may appoint any member of staff of the Attorney General's Department to be an Assistant Coroner.

B

Balance of probabilities

A standard of proof. What a reasonable person feels is most likely based on all the evidence provided. This is different to the criminal standard of proof 'beyond all reasonable doubt'.

BDM

See *NSW Registry of Births, Deaths and Marriages (BDM)*.

Brief of evidence (brief)

The brief is all the evidence compiled by police in the missing person's investigation in written form, including all police reports and witness statements. The OIC is required to prepare the brief for the Coroner.

C

Call over (also known as a mention)

A short hearing where the Coroner sorts out what will happen with the coronial investigation. At a call over (or mention) the Coroner may ask for certain tasks to be completed and will check in on the progress of set tasks. A call over is considered to be an administrative or internal review, therefore families are not expected to attend. It is not a full inquest.

Cause of death

The cause of death is the immediate physical cause of death.

Civil liability

Legal or financial responsibility for a private wrong. For example, in a civil case, someone may be ordered to pay damages for an act of negligence against another party. The Coroner cannot determine civil liability.

Closed court

When no one other than a witness can sit in the public gallery. The public are excluded and the press may be excluded.

Coroner

Coroners are judicial officers and usually also Magistrates. All Coroners in NSW are qualified as Australian lawyers. The role of the Coroner is to investigate certain kinds of deaths and suspected deaths, in order to determine: whether a death has occurred, and if so, the identity of the deceased and the date, place, cause and manner of death. Coroners do not apportion blame or determine guilt in their investigations.

Coroners Act

The law that applies to coronial proceedings. The Coroner's role is governed by the Act. Coronial legislation varies around Australia, with each state and territory having its own Coroners Act. The relevant legislation in NSW is the *Coroners Act 2009* (NSW).

Coronial Advocate

Coronial Advocates are police officers specially trained in coronial law. *Also see Counsel Assisting the Coroner.*

Coronial documents

When a Coroner investigates a suspected death, the court gathers a range of documents, including the brief, transcripts and coronial findings. Information about accessing coronial documents is provided on the State Coroner's Court of NSW website:

W..... www.coroners.lawlink.nsw.gov.au

Coronial investigation

The period of time after the Coroner assumes jurisdiction, when the Coroner investigates a death or suspected death. During a coronial investigation the Coroner will review evidence and try to find out if a person died, and if so, the identity of the deceased, and the date, place, cause, and manner of death. A coronial investigation may or may not involve a public inquest.

Coronial proceedings

Any proceedings conducted by a Coroner or Assistant Coroner for the purposes of the Act concerning the investigation of a death, suspected death, fire or explosion.¹¹

Counsel Assisting the Coroner (Counsel Assisting)

The Counsel Assisting the Coroner is usually a Coronial Advocate or Crown Solicitor assigned to the case to assist the Coroner during a coronial investigation. They usually review the brief, conference with the Coroner, may communicate with the OIC regarding issues such as further enquiries to be made, and assist the Coroner during an inquest.

Court

The building where an inquest is heard.

Criminal offence (or crime)

A public wrong or offence against the government that is punishable by law. When someone commits a criminal offence the government may bring charges against them that could lead to prison, fines or other penalties. Coroners do not determine whether a criminal offence has occurred. In fact, coronial law in NSW prevents Coroners from making any findings, comment or recommendations suggesting that a person has committed any offence.

Crown Solicitor

A solicitor from the Crown Solicitor's Office. In more complex coronial cases a Crown Solicitor may be assigned to the case (instead of a Coronial Advocate) to assist the Coroner during a coronial investigation. *Also see Counsel Assisting the Coroner.*

Crown Solicitor's Office

A business unit within the DAGJ that provides legal services to the State Government of NSW and the other entities defined under s110 of the *Legal Profession Act 2004* (NSW). Further information is available on their website:

W..... www.cso.nsw.gov.au

D

Death certificate

A legal document certifying the death of a person that is issues by BDM. *Also see NSW Registry of Births, Deaths and Marriages (BDM).*

Deputy State Coroners

Deputy State Coroners must be Magistrates and assist the State Coroner by exercising any functions delegated by the State Coroner. *Also see Coroner.*

Directions hearing

A public hearing in a courtroom that the Coroner may choose to hold prior to an inquest in order to decide matters such as:

- the scope of the inquest;
- inquest date/s;
- the final witness list; and
- evidence he or she plans to call and use.

The Coroner may also set out what else he or she needs in order to complete preparations for the inquest. Directions hearings are not always held. Families, legal representatives, and other interested parties are able to attend a directions hearing, if desired.

Director of Public Prosecutions (DPP)

An independent body established by the state government to prosecute serious criminal offences.

W..... www.odpp.nsw.gov.au

E

Evidence

This is the information provided to the Coroner's Court during the course of the coronial investigation. At an inquest, the evidence is the information witnesses provide to the Coroner. If you provide a statement to police, this is provided to the Coroner's Court as part of the brief. If you are called as a witness during an inquest, this statement will form the basis of the information or evidence you are required to give in court. You may be asked further questions by the Coroner or other interested parties in order to clarify this statement and the circumstances surrounding a suspected death.

Exhibits

All the other evidence (apart from statements from witnesses) needed to help present the case, such as documents, photographs, clothing or other items relevant to the case.

Expert witnesses

A person engaged by the court or an interested party to provide a qualified opinion based on their professional expertise. Expert witnesses usually have expert knowledge on a particular topic (for example, doctors, pathologists) and may help the Coroner to understand complex information. They may be asked to provide a written statement or a report and may (in some cases) be called to provide evidence at an inquest to clarify the information provided. Expert witnesses are not always involved in coronial investigations.

F

Finding

A finding is a narrative outlining what the Coroner has decided in the matter. The length of a finding can vary from a single page to numerous pages depending on the complexity of the investigation. The finding will be delivered in court by the Coroner. The finding establishes, wherever possible, whether a death has occurred and if so, the identity of the deceased and date, place, cause, and manner of death.

G

Governor of NSW

The Governor of NSW is a representative of the Queen and performs constitutional and ceremonial functions at the state level. The Governor of NSW may appoint any qualified person to be a Coroner. Further information about the role of the Governor can be found on the following website:

W..... www.governor.nsw.gov.au

H

Hearing

A proceeding held in a courtroom where evidence is presented for the purpose of conducting some type of legal procedure. An inquest is a type of hearing in a courtroom led by a Coroner.

Homicide

The deliberate and unlawful killing of one person by another.

I

Indictable offence

An offence punishable by two years imprisonment or more. Less serious indictable offences are usually heard in a Local Court. More serious indictable offences are usually heard in a higher court before a Judge and jury (or Judge alone).

Inquest

An inquest is a formal hearing in a courtroom concerning the death or suspected death of a person. The inquest is led by the Coroner to gather more information about whether a death occurred and, if so, the cause and circumstances of the death. An inquest is usually open to the public. More detailed information is provided in *The Inquest* section of this guide (see page 17).

Inquisitorial legal system

A legal system in which a presiding Judge actively investigates a case, supervises the gathering of evidence and questions witnesses where necessary. A Coroner operates within an inquisitorial legal system. The inquisitorial system is different to the adversarial system. *Also see Adversarial.*

Interested parties

A person or organisation that the Coroner determines to have direct involvement or sufficient interest in the matter being investigated, or is likely to be impacted by the coronial outcome. The family of a missing person is considered an interested party. Other interested parties may include friends of the missing person, or other professionals or agencies involved with the missing person prior to their disappearance, as determined by the Coroner. In some instances, interested parties may be legally represented.

J

Judicial officer

Judicial officer means a Judge, Magistrate or other person who, whether alone or together with others, constitutes a court, but does not include a lay member of a court.¹²

Jurisdiction

The limitation of the authoritative power of the court to hear certain cases in certain areas.¹³

L

Leave to appear

Permission, granted at the discretion of the Coroner, for an interested party to actively participate in an inquest. This can allow the opportunity for an interested party to ask questions of witnesses.

Legislation

An enacted law or body of laws.

M

Magistrate

The person in charge of the Children's or Local Court who decides whether someone is guilty, not guilty or needs to be sent to the District Court for a trial. They are addressed as 'Your Honour'. Coroners are usually also Magistrates. If a Magistrate is acting as a Coroner they do not have the role of deciding guilt.

Manner of death

The way a person dies, including the surrounding circumstances. For example in a coronial investigation possible manner of death findings include:

- natural causes
- misadventure
- suicide (self-inflicted death)
- homicide
- an open verdict (undetermined).

Mention

See *Call over*.

Minister (of the NSW Government)

A politician who holds significant public office in the NSW Government.

Misadventure

Accidental death not due to a crime.

Missing person

The NSW police definition of a missing person is *"anyone who is reported missing to police, whose whereabouts are unknown, and there are fears for the safety or concern for the welfare of that person."*¹⁴

N

Non-publication order

An order made by the court that certain details of the case are not to be published or broadcast. The Coroner has the power to prohibit the publication of evidence by granting a non-publication order under s74 of the Act. However, this does not mean that the media will not attend the inquest.

NSW Registry of Births, Deaths and Marriages (BDM)

BDM record all deaths that occur in NSW. BDM uses the details from the death registration record sent by the Coroner's Court to produce a NSW death certificate.

O

Oath

A promise to tell the truth in court by swearing on a religious book that is important to the person making the promise.

Officer in Charge (OIC)

The police officer responsible for investigating the disappearance of the missing person. The OIC is responsible for reporting the missing person's police investigation to the Coroner, providing the brief to the Coroner, investigating the suspected death on behalf of the Coroner, and providing evidence as a witness at an inquest (if held).

Open finding

An open finding is the term used when the evidence presented is insufficient to enable the Coroner to make a finding about one or more of the matters of concern (whether a death occurred, identity, date, place, cause and manner of death).

P

P79B 'Report of Suspected Death to the Coroner'

A NSW Police form used to report a missing persons' case to the Coroner. The P79B sets out the details of the missing person including:

- their disappearance, and any attempts to locate them;
- the basis on which their death is now suspected; and
- details of the missing person's SNOK.

Public Gallery

Seats at the back of the court where friends, family or anyone interested can sit quietly and listen.

R

Recommendations

The Act enables Coroners to make recommendations that will improve public health or safety and help prevent future deaths of a similar kind. There must be a connection between the recommendation and the suspected death. Section 82 of the Act outlines the matters that can be the subject of a recommendation:

- (a) public health and safety,
- (b) that a matter be investigated or reviewed by a specified person or body.

Recommendations are not always made in inquests. Generally the Coroner will not make recommendations unless it relates to a systemic issue of concern in the community nor will they make recommendations if another authority is already responding to the systemic issue that has been identified.

A number of coronial findings and recommendations can be accessed on the State Coroner's Court of NSW website:

W www.coroners.lawlink.nsw.gov.au

Government responses to coronial recommendations can be viewed on the following page of the Justice Legal website:

W <http://www.lsb.lawlink.nsw.gov.au/lsb/coronialrecommendations.html>

Registrar

The manager or administrator of the court. The Registrar, Deputy Registrar, or member of the Registry staff, will usually assist you at a court counter.

Reportable death

Deaths or suspected deaths that are reportable to Coroners. In NSW, the OIC is required to report a missing person's investigation to the State Coroner as a suspected death as soon as the investigation leads police to reasonably believe the missing person is deceased or *"after 12 months when the missing person has not been located and there is no sign of life."*¹⁵

S

State Coroner

The State Coroner must be a Magistrate and has the function to oversee and co-ordinate coronial services in NSW and is assisted by the Deputy State Coroners. The State Coroner ensures that all deaths, suspected deaths, fires and explosions that fall in their jurisdiction are properly investigated. *Also see Coroner.*

Statement

Usually a written account of events signed by a witness provided to police which may be used later as evidence in an inquest. For example a family member may (in some cases) provide a statement to police about what they know about the missing person and the circumstances of their disappearance.

Senior next of kin (SNOK)

The SNOK is the family member who is recognised as the main point of contact by the Coroner and the main decision maker when decisions need to be made. The SNOK is determined by s6A of the Act. The police usually indicate the SNOK on the P79B and brief. If you are unsure who is listed as the SNOK with the Coroner's Court you can contact CISP for advice. Further information about the SNOK is available on the State Coroner's Court of NSW website:

W..... www.coroners.lawlink.nsw.gov.au

Subpoena

A court order requiring a witness to come to court to give evidence and/or bring documents to court.

Suicide

The action of killing oneself intentionally.

Supreme Court of NSW

The Supreme Court of NSW is the highest state court of NSW (other than the Court of Appeal and Court of Criminal Appeal). It has unlimited jurisdiction within the state in civil matters, and hears the most serious criminal matters.

W..... www.supremecourt.lawlink.nsw.gov.au

Suspected death

Where it is suspected that a missing person has died, but the missing person has not been located and the Coroner is yet to make a finding that the missing person is deceased. Police report suspected deaths to the Coroner.

Suspension of an inquest

Temporarily stopping an inquest.

Systemic

Coroners may make recommendations relating to matters of systemic concern that may have led to a death or suspected death. That is, issues that are prevalent in the community rather than only relating to one individual circumstance.

T

Transcript

Court transcripts are written records of what is said at an inquest. Information about accessing coronial documents is accessible on the State Coroner's Court of NSW website:

W..... www.coroners.lawlink.nsw.gov.au

W

Witness

A person who has to come to court and answers questions in front of the Coroner. At an inquest, the Coroner may call witnesses to give evidence of their knowledge of the circumstances of the suspected death, although witnesses are not always called to provide evidence. In some circumstances a hearing may be an 'OIC only' inquest, where the OIC is the only witness called to provide evidence.



A reception area



A view from a Coroner's chair



NSW State Coroner's Court

REFERENCES

- ¹ State Coroner's Court of NSW website: www.coroners.lawlink.nsw.gov.au
- ² National Missing Persons Coordination Centre Fact Sheet, *Navigating the Coronial Process: A guide for families of missing persons*, accessed at: <http://www.missingpersons.gov.au/about-us/~media/MP/Files/PDFs/Navigating%20the%20coronial%20process%202.ashx>
- ³ *Coroners Act 2009* (NSW), accessed at: <http://www.legislation.nsw.gov.au/maintop/view/inforce/act+41+2009+cd+0+N>
- ⁴ Judicial Commission of NSW. (2000). *Local Court bench book*. Sydney, NSW: Judicial Commission of New South Wales.
- ⁵ See reference 4.
- ⁶ NSW Police Force. (2013). *NSW Police Force handbook*. NSW: Crown Copyright, p.217.
- ⁷ *NSW Trustee and Guardian Act 2009*, accessed at: http://www.austlii.edu.au/au/legis/nsw/consol_act/ntaga2009258/
- ⁸ *Section 74 Coroners Act 2009* (NSW), accessed at: <http://www.legislation.nsw.gov.au/maintop/view/inforce/act+41+2009+cd+0+N>
- ⁹ Families and Friends of Missing Persons Unit, *Someone is missing. Can the media help you?* Accessed at: http://www.missingpersons.lawlink.nsw.gov.au/agdbasev7wr/missingpersons/documents/pdf/fmp05_can-media-help.pdf
- ¹⁰ Review of coronial decisions, accessed at: http://www.coroners.lawlink.nsw.gov.au/coroners/what_happens_process/inquests_inquiries/review_decision.html
- ¹¹ *Section 46 Coroners Act 2009* (NSW), accessed at: <http://www.legislation.nsw.gov.au/maintop/view/inforce/act+41+2009+cd+0+N>
- ¹² *Judicial Officers Act 1986* (NSW) No 100, accessed at: http://www.austlii.edu.au/au/legis/nsw/consol_act/joa1986155/
- ¹³ Community Relations Commission for a Multicultural NSW 2010, Legal Glossary for Interpreters, p.13 accessed at: http://www.crc.nsw.gov.au/__data/assets/pdf_file/0015/18042/Legal_Glossary_For_Interpreters.pdf
- ¹⁴ Accessed at: http://www.police.nsw.gov.au/community_issues/missing_persons
- ¹⁵ See reference 6.

