



# SORRY BUSINESS

A guide to cultural competency and engagement  
between the Coroners Court of Queensland and  
Aboriginal and Torres Strait Islander people

## ACKNOWLEDGEMENT

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## INTRODUCTION

Sorry business is the Aboriginal English term used by the Aboriginal and Torres Strait Islander community to describe the mourning period when a family member dies and all responsibilities that follow in accordance with traditional lore and custom. Traditional lores and customs are observed and practiced by Aboriginal and Torres Strait Islander people to this day and are important to recognise.

The objects of the *Coroners Act 2003* (the Act) include requiring the reporting of particular deaths, establishing procedures for the investigation of those deaths, and to help prevent deaths from similar causes happening in the future by allowing Coroners at inquest to comment on matters connected with deaths, including matters related to:<sup>i</sup>

- public health or safety; or
- the administration of justice.

This guide will provide CCQ with a framework for navigating the concerns that Aboriginal and Torres Strait Islander people may raise when the death of an Aboriginal person or Torres Strait Islander falls within the jurisdiction of the Act.

This document contains some generalisations about Aboriginal and Torres Strait Islander people. If you are in any doubt, you should speak with the family or next of kin to identify the specific cultural protocols observed under traditional lore and custom.

## LIVED EXPERIENCES OF ABORIGINAL AND TORRES STRAIT ISLANDER PEOPLE

The lived experiences of Aboriginal and Torres Strait Islander people have a direct correlation on their health and mortality outcomes. Following colonisation in Australia, policies, laws and social norms have affected Aboriginal and Torres Strait Islander people in Queensland and include:

- the dispossession from traditional lands;
- stolen generation;
- stolen wages;
- institutional racism;
- loss of identity - language, kin and culture;
- the enactment and implementation of *The Aboriginal Protection and Restriction of the Sale of Opium Act 1897* (Qld) (the Protection Act) (repealed 1984);
- exclusion prior to the 1967 referendum; and
- the effects of the Northern Territory intervention for bordering Queensland communities and transient communities.

These events have contributed to entrenching disadvantage and inter-generational trauma for Aboriginal and Torres Strait Islander people.

Entrenched disadvantage such as poorer living conditions, decreased access to health care and justice also contribute to Aboriginal and Torres Strait Islander people being more likely to be affected by major social issues in communities such as the over representation of Aboriginal and Torres Strait Islander people in the criminal justice system and in prison, issues relating to drugs and alcohol, domestic and family violence, lack of employment opportunities, intergenerational welfare dependence, as well as poorer health and education outcomes.

Inter-generational trauma occurs when a person witnesses or experiences trauma and that is transmitted across the generations. Aboriginal and Torres Strait Islander culture can be generally categorised as an oral and aural tradition where knowledge of traditional lore and custom is passed

down through the generations by Elders and those with authority to speak within their communities. That knowledge is also entwined in the lived experiences of Elders who have gone before, and those who still live today. The trauma experienced through their lives is passed down through each generation, thus creating inter-generational trauma.

Aboriginal and Torres Strait Islander people may interact with the coronial system as a result of their lived experiences. The most likely areas of interaction, due to entrenched disadvantage and intergenerational trauma, include:

- deaths in custody;
- domestic and family violence;
- deaths in care;
- child protection;
- deaths in care - disabilities;
- suicide;
- missing persons; and
- health care related deaths.

## FAMILY

The Act provides a wide definition of family member, including the encompassing the broad and complex relationships that exist within Aboriginal and Torres Strait Islander communities.

Schedule 2 to the Act defines family member to include:

- a particular person, where the coroner investigating the death is satisfied that the deceased person's wish would have been that a particular person be the deceased person's family member for the Act;
- spouse;
- adult child;
- parent;
- adult sibling;
- an adult who immediately before the deceased person's death, had a relationship with the deceased person that the coroner investigating the death considers is sufficient for being a family member of the deceased person for the Act; and
- an ATSI family member.

An ATSI family member for a deceased person who was an Aboriginal person or Torres Strait Islander means, a person who is an appropriate person according to the tradition or custom of the Aboriginal or Torres Strait Islander community to which the deceased person belonged.

Familial connections in the Aboriginal and Torres Strait Islander community include:

- grandparents;
- grandchildren;
- aunts;
- uncles;
- niece;
- nephews;
- cousins;
- cousin-sister;
- cousin-brother.

Relationships may also be described by the family of the deceased person in the following ways, namely:

- siblings of grandparents as grandmother and grandfather;
- siblings of parents as mother and father in addition to or in substitution of aunt and uncle;
- in addition to cousins as cousin-sister and cousin-brother;
- in addition to nieces and nephews as granddaughter and grandson.

These relationships and connections with the deceased person should be recognised in the same way that they are expressed.

It is important to recognise that these connections may also have involved the 'raising up' of the deceased person during their formative years and may also involve customary adoption practices that may not be legally recognised.

Torres Strait Islander communities also include the in-laws of the deceased person, known as a Marigeth/s. The Marigeth plays an important role in the customary protocols surrounding the death of a Torres Strait Islander person.

Extended family may also be an important relationship to the deceased person. Extended family may have no biological connection to the deceased person but may form part of the wider community that the deceased person was a member of prior to death.

## DEATH IN ABORIGINAL COMMUNITIES

It is important to acknowledge that Aboriginal people in Australia are not part of a homogenous mass and are also distinct from Torres Strait Islanders. Nations, tribes, clans and languages groups make up the fabric of Aboriginal society and each person's experience may be varied depending on their personal history.

For many communities, ceremonies are conducted following a person's death. The spirit of the deceased person is believed to continue after their death and that the spirit must be given time to leave the body and rest. A person's spirit can be disrupted if traditional lore is not observed.

In some remote communities in Queensland the whole community is closed down to allow for sorry business. In some cases, people outside of the community will not be allowed to enter the community until sorry business has concluded. This can cause difficulty when there are multiple deaths in a community.

At times throughout history, Aboriginal people have been forbidden to practise traditional lore around death and dying and was particularly prevalent in Aboriginal Missions where there were a number of different tribes and clans placed in the same location. Some Aboriginal people have also embraced Christian practices which are also recognised or incorporated into the protocols around death.

## REFERRING TO THE DECEASED PERSON

It is a common protocol amongst Aboriginal people to cease referring to the name of the person who has died. There are many reasons as to why this is done, including as a sign of respect and allowing the spirit of the deceased person to rest. By referring to the name, it is believed that the spirit is called back to this world and is prevented from travelling into the spirit world.

### How should I refer to the deceased person?

Ask the next of kin for instructions on how the name of the person can be used. If it is not practical to obtain this information from the next of kin, the deceased person should be referred to by their surname.

It is also important to realise that images and voice recordings of the deceased person will also cause significant distress to the family. Instructions should also be obtained about how images and voice recordings should be used.

It is important that CCQ staff make a note of the preferred name in CCMS as well as on the physical file. It may also be appropriate to include and encourage the use of the preferred naming convention for incoming and outgoing communication with third parties.

## IDENTIFYING TRADITIONAL CONNECTION

It is important for Coroners and CCQ staff to identify where the deceased person is culturally connected to. In most cases, an Aboriginal person will identify with belonging to a traditional owner group from which they are a descendant of.

Aboriginal people feel strongly connected to the land and in most cases will wish to be returned to their traditional lands. However, this may not always be possible. In some circumstances Aboriginal people cannot return to their traditional lands because generations have been forcibly removed, the land is freehold and native title is extinguished or the person has lost connection.

Aboriginal people may also strongly identify with a particular area that does not belong to their traditional lands; which is known as a historic connection. Most notably this occurs where Aboriginal people had been forcibly removed from their traditional lands and after a number of generations their ancestral connection is unknown or has diminished over time, such that they feel a stronger connection in the communities which they lived and worked in. This includes Deed of Grant in Trust (DOGIT) communities and Christian missionary communities that were set up around Queensland and interstate. Some of the Queensland communities include Mornington Island, Yarrabah, Palm Island, Woorabinda and Cherbourg. In those communities there were a number of tribal groups that were placed in the one community in circumstances where it was forbidden to speak or practice their traditional lore and customs; particularly during the operation of the Protection Act.

Aboriginal and Torres Strait Islander people can also be transient and may have lived far away from their traditional lands when they died, including interstate.

By identifying the deceased person's connection, it is recognising their traditional or historical connection and also alerting the Coroner to any issues that may arise in relation to transportation of the deceased.

### How do I identify the deceased person's traditional connection?

Ask the next of kin if the deceased person identified with a particular traditional owner group. If so, what is the name and spelling of the group and where the traditional lands of that people are located.

Please note that the birthplace of an Aboriginal person will not necessarily identify the traditional connection of that person and should be avoided.

For assistance in identifying the nation, tribe, clan or language group a copy of the map of *Indigenous Australia* can be used online from the Australian Institute for Aboriginal and Torres Strait Islander Studies at [www.aiatsis.gov.au](http://www.aiatsis.gov.au). A copy of the maps can also be purchased.

## TRANSPORTING THE DECEASED

If the Coroner has determined that an autopsy is necessary and the body must be transported, the next of kin may raise concerns. It is important that the next of kin is aware of the process involved, including that some regional centres do not have the ability to store the body or perform an autopsy, as well as explaining the role of Forensic and Scientific Services (FSS).<sup>ii</sup>

In some instances, Aboriginal people will want to view the body, sometimes before an autopsy has been performed. The reasoning may be that the family wish to perform a smoking ceremony to allow the spirit of the deceased person to move on. However, it may be more practical and appropriate for this to take place at the coronial mortuary following autopsy or when the body has been released to the funeral director.

Delay in viewing the body may contribute to a longer period of sorry business if preparation of the body cannot take place in accordance with traditional lore and custom.

In circumstances where the body is not suitable to be viewed, for example if there the body is not visually identifiable or there are traumatic injuries, the family should be advised as soon as possible in accordance with the State Coroner's Guidelines.<sup>iii</sup>

Another important issue to consider is whether weather conditions are appropriate for transporting the body to and from a community. Many Aboriginal and Torres Strait Islander communities in Queensland are regional and remote and are inaccessible at certain times of the year. If transportation occurs to or from these communities, funeral directors should speak with the local Aboriginal or Torres Strait Islander Council for advice about whether transportation is suitable at that time of the year.

### Smoking ceremony

Some Aboriginal people may wish to conduct a smoking ceremony at the location of death or of the deceased person's body and belongings. Smoking ceremonies are conducted to encourage the spirit of the deceased person to pass on. If requested, families should be given an opportunity to perform a smoking ceremony if it is safe and appropriate to do so. In most instances, it would be appropriate once the body of the deceased person has been released.

## COMMUNICATION

Aboriginal and Torres Strait Islander culture is predominately oral, making verbal communication highly important. Knowledge is passed down intergenerationally by storytelling, depiction through art, songs, dance and other ceremonies.<sup>iv</sup>

Often, the experience of Aboriginal and Torres Strait Islander people is that there is a distrust of Government for past failures and injustices committed. Therefore, it is important for CCQ staff to build rapport with the next of kin and family, as it will assist to build confidence in the coronial process.

### Language and Literacy

Aboriginal and Torres Strait Islander people may speak English as their second or third language. There may be some situations where an interpreter is required to communicate with the next of kin or family. Interpreters may be difficult to locate and are often not accredited through the National Accreditation Authority for Translators and Interpreters (NAATI). If an interpreter is needed, it may be necessary to seek assistance from the deceased person's family members to assist the next of kin.

Aboriginal English is also regularly spoken and certain words have a different meaning. An example includes the word *deadly* which means *awesome* or *cool* in Aboriginal English, as opposed to an interpretation in a coronial context, such as the *use of deadly force*.

It is also important to also be aware that literacy levels vary amongst Aboriginal and Torres Strait Islander people and that not all families have access to internet or phone services.

In some cases, CCQ staff may need to spend some time over the phone discussing the coronial process, particularly if the next of kin has literacy issues or is unable to mail or email their concerns for the Coroner's consideration.

Aboriginal and Torres Strait Islander people may have a transient lifestyle. It is important to recognise this factor when letters to the next of kin that go unanswered.

#### What do I do if issues with language and literacy arise?

Contact the next of kin and confirm the preferred method of contact. If there are issues with language and an interpreter is required, seek assistance from other family members. If there are no other family members, seek permission from the next of kin to call on assistance from the local Community Justice Group located closest to them.

It is important to recognise that Aboriginal people may not want to include people from outside of their family when dealing with sorry business. Therefore, it is important to seek their consent before involving another Aboriginal or Torres Strait Islander person to assist you in achieving an outcome.

If the next of kin has literacy issues, spend time over the phone explaining the coronial process to the next of kin. Alternatively, the next of kin can be referred to a free coronial assistance legal services or the Aboriginal and Torres Strait Islander Legal Service for assistance.

If written correspondence is returned to sender or contact is lost, attempts should be made to re-establish contact with the next of kin to confirm current contact details.

## Gender Issues

It is important to recognise that Aboriginal culture and ceremonies includes a separation of men's and women's business which is considered secret and sacred. This will be particularly important in the context that the death is sexual in nature, including health care related deaths.

### What should I do if an issue arises where there is men's and women's business?

Ask the next of kin if they would prefer to speak with someone from their own gender. If the next of kin feels comfortable, ask them to explain what the particular issue is. The next of kin may also want reassurance about confidentiality of the investigation and/or findings.

If the Coroner is of the opposite gender and there is an issue raised about men's or women's business, it will be important to inform the next of kin of the gender of the Coroner and that the Coroner will be made aware of the particular concerns raised.

## LGBTI Community

There are many among the Aboriginal and Torres Strait Islander community who identify as Lesbian, Gay, Bisexual, Trans and Intersex. The Trans community in the Aboriginal and Torres Strait Islander community is also described as Sistergirls and Brotherboys.

It can often be difficult for the Aboriginal and Torres Strait Islander LGBTI community, due to cultural responsibilities and religious beliefs. Culture has specific gender roles divided between women and men's business and can be rigid in the acceptance and inclusion of LGBTI members within the community. This can be particularly so in respect of initiation processes or transmission of knowledge from Elders in their community.

Some members of the LGBTI community can feel isolated in addition to the other social pressures such as homophobia, racism, sexism and discrimination. There is also a lack of recognition and support services available to the Aboriginal and Torres Strait Islander LGBTI community, however this is improving through community-based organisations such as '2 Spirits'.

2 Spirits provides, amongst other things, one-on-one cultural support, community forums, yarning circles and community outreach.

It may be relevant to consider whether the next of kin is fully accepting of a deceased person's identity within the LGBTI community. This may pose an issue if the deceased person's spouse wishes to participate in the coronial process and there is conflict with other members of the deceased person's family.

## DEATH IN TORRES STRAIT ISLANDER COMMUNITIES

Torres Strait Islanders have a distinct culture and customs from Aboriginal people and have unique mourning and funeral practices. Torres Strait Islander culture also embraces Christianity through the Coming of the Light. Christian beliefs have been integrated into cultural practices and are observed with equal importance.

Similar to Aboriginal people, business in a community will not take place during the period of sorry business. Reference to the deceased person should also be avoided. However, if in doubt seek clarification from the next of kin or Marigeth/s.

Issues in Aboriginal communities relating to communication and transportation of the deceased person's body may arise in Torres Strait Islander communities. Communication will assist CCQ staff to navigate issues that may arise. If there are language difficulties, ask the next of kin if there are translators who may be able to assist.

## MARIGETHS

When a Torres Strait Islander person dies, it is the responsibility of the deceased person's in-laws of both genders to make arrangements to assist the deceased person to pass on into the spirit world. This person is known as a Marigeth (*spirit hand*). The responsibility of a Marigeth includes communicating with family, handling of the body at the mortuary, preparation and dressing of the body and burial.

The Marigeth is responsible for informing families of the 'sad news' of the person's passing and to provide support and meals for those who visit the deceased person's family. This is particularly relevant to the role of next of kin and communication with CCQ staff.

### Koey Marb

Koey Marb describes the journey of the deceased person into the spirit world and translates to 'the long walk home'.

It is the role of the Marigeth to prepare the body for burial as they are the *spirit hand* who guides the deceased person on their long walk home. A Marigeth of the same gender is also responsible for dressing the body in preparation for burial.

On the Island of Mabuiag, dancing ceremonies are performed, and a feast is arranged in the weeks following death to assist the spirit to travel on.<sup>v</sup>

### Why is the role of a Marigeth important?

The Marigeth may not be the spouse, parent, child, sibling or grandparent of the deceased person who is ordinarily nominated as next of kin. The role of the Marigeth should not be disregarded as having authority to engage with CCQ. By not including the Marigeth, it may cause disharmony for the family and protocols to assist the deceased person to travel into the spirit world may not be completed, causing further distress to the family.

The role of the Marigeth is extremely important in relation to the need to view the body. If the body is not suitable for viewing, this will become an issue for the Marigeth, as a Marigeth of the same gender as the deceased is responsible for preparing the body for burial, including dressing the body.

If viewing of the body is not appropriate, the next of kin and family should be informed with the assistance of Coronial Counsellors. Strong reactions are likely to follow from the decision, with possible anger from the Marigeth/s as it is likely they will feel that they haven't performed their cultural responsibility to the deceased person.

## KULAW GUDPUDAY

Another protocol that is observed by Torres Strait Islanders is Kulaw Gudpuday (tombstone unveiling). This can occur anywhere between 12 months to five years after burial of the deceased person and represents the conclusion of the mourning period.

The Marigeth is responsible for covering the cost of the tombstone and engraving which is presented to the deceased person's family. The tombstone is also covered in colourful fabric and money envelopes.<sup>vi</sup>

### When will a tombstone unveiling be relevant to the role of CCQ?

It is important to recognise the date when the proposed kulaw gudpuday will take place. Kulaw gudpuday may be delayed in circumstances where the next of kin or the family are waiting for an autopsy report to be provided, the conclusion of the investigation, inquest or findings.

It is also important not to hold an inquest or deliver findings on the date or anniversary of the kulaw gudpuday.

CCQ staff should ask the Marigeth when kulaw gudpuday is planned or has taken place.

## NEXT OF KIN

Aboriginal and Torres Strait Islander families have diverse and complex relationships. It may be difficult to navigate who the appropriate person is to liaise with depending on how cultural protocols are observed. Some family members may have greater cultural responsibility than the immediate family members which can include the responsibility of liaising with CCQ.

## WHO IS THE NEXT OF KIN AND WHO HAS AUTHORITY?

As outlined above, Torres Strait Islander communities rely on the Marigeths to organise the transportation, preparation and burial of the deceased person. The Marigeths are the in-laws of the deceased person, meaning there may be multiple people who have cultural responsibility to liaise with the CCQ.

Whilst a Marigeth has primary responsibility, it should not prevent other immediate family members from contacting the CCQ for accessing information during the coronial process. Alternatively, if it is clear that there is only one senior next of kin and CCQ staff are inundated with communication from a variety of family members, it may be appropriate for the family to be informed to obtain information from the senior next of kin.

### Appointing multiple senior next of kin

Where CCQ has been informed that there are Marigeths appointed to represent the family, the Marigeths should be appointed as the next of kin.

It may be appropriate for the Coroner to allocate one or two people who have status as the senior next of kin. There may be particular issues relating to gender that may be uncomfortable to discuss with members of the opposite gender. This can occur for either Aboriginal or Torres Strait Islander families. In such cases it may be necessary to have a senior next of kin for each gender.

### What should I do if someone raises the issue of Men's or Women's Business?

Whilst gender issues may not be openly raised by the next of kin with CCQ staff, comments referring to 'men's business' or women's business' are strong indicators of gender issues. As a result, only men or women can speak about those issues with their respective gender. This includes discussing the issue with any CCQ staff from the opposite gender.

The staff member should ask whether there is men's business or women's business that the Coroner should be mindful of and whether the person would prefer to speak to someone of their own gender.

### Nominated spokesperson

Under Aboriginal traditional lore, an Elder or a family member may be nominated by the next of kin to speak on their behalf by way of a cultural responsibility. In circumstances where the next of kin nominates a spokesperson, that person has authority to communicate with CCQ on behalf of the family. However, if the nomination is withdrawn at any point by the next of kin, the nominated person should be advised that they are no longer the appropriate person to speak on behalf of the next of kin, as it has been withdrawn.

There may be instances where there is conflict between families, however CCQ should refer the issue back to the family to resolve. It may also mean that a Coroner has to consider whether multiple persons as the next of kin. If conflict cannot be resolved, families should be referred to free coronial assistance legal service or the Aboriginal and Torres Strait Islander Legal Service. It is not appropriate to involve community Elders or Community Justice Groups unless the family has requested this.

### Kupai Omasker

As part of Torres Strait Islander culture, the practice of traditional adoptions ('Kupai Omasker') continues today. Kupai Omasker is not legally recognised, however the Queensland Government has committed to recognising the practice.<sup>vii</sup>

### What issues arise where there has been kupai omasker?

The most common issue for children that have been adopted through Kupai Omasker is that records held by Births, Deaths and Marriages (BDM) do not record the child on documents relating to the adoptive parent such as birth and death certificates. At times it can be the first time the adopted person becomes aware of Kupai Omasker. The result can mean that they cannot establish requisite standing as next of kin, despite Ailan Kastom and connection to their parent, siblings, nieces or nephews.

Alternatively, where a child's birth parent has died, other siblings that remained with the birth parent may have objections to including the other sibling because of Kupai Omasker. This is because they were not raised up with their birth parent and are not recognised as their sibling.

These issues may be resolved when Parliament enacts legislation formally recognising the practice which is likely to include legal recognition on records maintained by BDM.

## CONFLICT BETWEEN FAMILY MEMBERS WITH COMPETING INTERESTS

As with any family, some Aboriginal and Torres Strait Islander families can be dysfunctional and there may be long standing or recent issues that are exacerbated by the death of their loved one.

Issues may arise at various times and include whether or not an autopsy should be performed. It may also relate to who the body of the deceased person can be released to for funeral arrangements. Other issues that impact on this include where the deceased person should be buried or whether they should be cremated.

Some families may be able to resolve these issues. However, there may be a need to inform families that they will need to make an application to establish priority of standing in the Supreme Court of Queensland. In most cases, families will not have the financial means to bring an action in the Supreme Court of Queensland let alone the cost of funeral and burial or cremation.

If conflict cannot be resolved, families should be referred to free coronial assistance legal service or the Aboriginal and Torres Strait Islander Legal Service. It is not appropriate to involve community Elders or Community Justice Groups unless the family has requested this.

A Coroner may also choose to invite submissions, about release of the body, from each claimant and provide reasons in accordance with Chapter 6 of the State Coroner's Guidelines. If the Coroner decides it is necessary, the Coroner may seek submissions be made in person before the Coroner. By doing this, it may facilitate a discussion between family members or prompt families to seek legal or community assistance.

Consideration should also be given to the deceased person's cultural connection to country and any funeral preparations that should be observed as previously outlined above.

In circumstances where a decision has been made to cremate the deceased person, issues may arise if a suggestion is made to distribution the ashes among disputing family members. Most Aboriginal people believed that splitting the ashes will split the spirit of the deceased person.

## NEXT OF KIN CONCERNS

Next of kin concerns may assist an investigation and provide the family with an opportunity to provide a glimpse of the deceased person's life. However, it may not be possible for Aboriginal and Torres Strait Islander people to provide written concerns due to access to internet and/or literacy issues. In cases where written concerns cannot be provided, it may be appropriate for the next of kin to outline their concerns over the phone to a CCQ staff member.

If operational issues restrict a CCQ staff member from taking concerns of the next of kin over the phone, the next of kin should be referred to a service provider who may be able to assist. Consideration should be given to whether there are any service providers available to the next of kin's and they have the means of accessing those services. Limitations may include disabilities of the next of kin or if issues of confidentiality have been raised by the family.

Issues of confidentiality may arise in small communities where staff at the service provider may be closely linked or are part of same the community as the deceased person or their next of kin. There may be details of the deceased person's death or family dynamics which should not be disclosed to other members of the community. If this is the case, CCQ should takes steps to assist the next of kin to outline their concerns over the phone.

E.g. The death of the deceased person is believed to have been caused by her de facto spouse in circumstances where there was domestic violence. The de facto partner's

mother is the Director of the local Aboriginal Medical Service which is the only other service provider in the remote community, besides the Police. The next of kin, the deceased person's father, has a disability and regularly attends the medical service. The next of kin is angry with Police and unwilling to speak to them about his concerns, because he has raised allegations that they failed to follow up a complaint he made about his daughter's relationship. There is no ability for the next of kin to receive assistance from the other service providers.

## BURIAL ASSISTANCE

Some Aboriginal and Torres Strait Islander communities do not have financial capacity to pay for burial. Where possible, Aboriginal and Torres Strait Islander people should be informed of the Burial Assistance scheme, including the eligibility requirements and the conditions of the assistance provided. Other issues that are important to discuss relate to the extent of assistance and the limitations regarding tombstones, flowers and whether a smoking ceremony could be performed. Again, CCQ staff should be mindful of the person's ability to access information about burial assistance depending on their literacy levels or access to internet and should be assisted accordingly.

Where an application for burial assistance has been approved, it is important to explain what is and isn't included.

Issues around transporting the body may be relevant for families to understand, particularly where the deceased person is being returned to a remote community and whether burial assistance provides for transportation. Other issues, such as whether transportation of the body has to be delayed due to poor weather (i.e. during wet season), may also arise.

## AUTOPSY EXAMINATION

Aboriginal and Torres Strait Islander people may object to an autopsy being performed, or request that a less intrusive examination be performed. For some communities an internal autopsy will cause significant trauma to the family and is believed that it will not allow the spirit of the deceased person to pass on, particularly if retention is necessary.

However, there may be a next of kin who demands an autopsy be performed. This may be in the context of distrust of Police due to longstanding historical tension with Aboriginal and Torres Strait Islander people.

There are some also Aboriginal societies that have practised autopsies under traditional lore. This may have involved an Elder who holds authority to determine whether a person had been spiritually harmed (e.g. payback). This may involve examining the body to identify whether there are items that are not meant to be there, such as a feather, stone or bone. An examination may also involve taking a sample of blood or hair of the deceased person.<sup>viii</sup>

If the family of the deceased person has made a request for a sample of the hair, it may be appropriate to release the sample. If it is not appropriate or practical during the coronial investigation process, it may be appropriate to inform the family that this can be done upon release of the body to the funeral director following autopsy.

## INTERNAL EXAMINATION

The process of internal examination may be confronting for any next of kin. The concerns of Aboriginal and Torres Strait Islander people may be intensified in this situation because of cultural beliefs.

Some Aboriginal societies believe the deceased person should not be interfered with in any way or have any parts of the body removed, even temporarily.

Alternatively, families may feel strongly that an autopsy should be performed. This is more likely to occur in circumstances where there is a sudden death or where there is tension between the family and Police.

Where a deceased person has been examined and there is a need for retention, the family may raise issues about the deceased person's spirit not being able to properly move on. Further, the family may say that the deceased person's spirit is split between this world and the spirit world, if an internal examination or retention takes place.

If a Coroner or the Pathologist believes it is necessary to perform an internal examination where there is an objection by the next of kin, they should be referred to the Coronial Counsellors to assist in navigating whether the next of kin has strong views about identifying the cause of death and whether the internal autopsy will assist.

In circumstances where an internal examination has been ordered, and the Pathologist requires partial retention of the body; the issue of retention should be explained by the Coronial Counsellors to the next of kin and possibly the wider family group to ensure proper understanding and the correlation with determining cause of death. The next of kin should also be informed of the consequences of not performing further investigations for which retention becomes necessary.

It may be appropriate to refer the next of kin and/or family to obtain legal advice in relation to the need for retention under section 24 of the Act.

## RELEASE OF THE BODY

Aboriginal and Torres Strait Islander people have complex family relationships that extend beyond the stereotypical immediate relationship structures such as mother, father, husband, wife, brother, sister, child/ren and grandparents.

There is also potential for multiple members of the immediate family to request release of the body depending on how closely connected the deceased person was to that family member. It is important to recognise the importance of 'raising up' someone where a parent or guardian has not had an active role in the deceased person's formative years. In circumstances where a child has been raised up by another family member, it is highly likely that family member will seek equal or higher recognition than the parent.

If possible, information should be sought from the family about the kinship relationship of the deceased person growing up and as an adult, as the case may be. Further discussion is outlined below under the heading next of kin.

## DECEASED PERSON'S BELONGINGS

Aboriginal and Torres Strait Islander people may request that all belongings of the deceased person be returned, including clothing and jewellery. This may be in the context of wanting to cleanse the spirit.

In circumstances where clothing cannot be returned for safety reasons, it is important that this is explained to the family as soon as possible. It may be necessary to explain that these items may be destroyed, particularly if it poses a risk of contagion.

Where belongings have been lost or destroyed unintentionally, next of kin should be notified as soon as possible explaining what has happened and any measures taken to ensure it does not occur again.

## AUTOPSY REPORT

An autopsy report can cause distress to a family from any ethnic background. However, there are particular issues that may cause distress to Aboriginal and Torres Strait Islander people.

Delays in releasing the autopsy report can cause issues for family, as it may be viewed that the deceased person cannot pass on into the spirit world until the report is released. This may arise in the context of the deceased person's name being used or that the family have concerns about the cause of death.

It is also important that the autopsy report is not released on the anniversary of the death or of the tombstone unveiling. Delays in releasing the autopsy report may also cause delay of the tombstone unveiling.

## INVESTIGATING DEATHS

Where the Coroner believes that the death should be investigated, issues may arise in relation to access to justice and understanding the process and issues that arise where Police investigate a death on behalf of the Coroner.

As part of an investigation into the death of an Aboriginal or Torres Strait Islander person, research or expert evidence should be obtained to assist the Coroner to understand the cultural and social issues that may be relevant to the deceased person.

## ACCESS TO JUSTICE

One of the major issues that arise for Aboriginal and Torres Strait Islander people and the legal system in Australia is the availability of access to justice. Whilst there is information about the coronial process on the Courts website, some families may not have access to the internet. Further, that whilst families may have access to phones, they may not have finances to call CCQ.

Aboriginal and Torres Strait Islander families should be encouraged to access free coronial assistance legal service through the following service providers:

- Caxton Legal Centre; and
- Townsville Community Legal Service.

Alternatively, families should be referred to other independent legal services, including the Aboriginal and Torres Strait Islander Legal Service.

## UNDERSTANDING THE PROCESS

When families do not have the financial capacity to engage legal representation during the coronial process or at inquest, it is important to ensure that families understand the coronial process. Understanding the coronial process may include understanding the delays involved, the decision

and timeframes around requests for inquest, as well as what happens when a decision to hold an inquest has been made.

## RELATIONSHIP WITH POLICE

From time to time the Queensland Police Service provides assistance to the Coroner as part of the coronial investigation. Police officers may be required to gather statements and evidence from witnesses in order to assist the Coroner during the coronial investigation.

The relationship between Police and the Aboriginal and Torres Strait Islander community is at times strained due to historical and recent interactions. This strained relationship may be exacerbated if the death is a death in custody or a family believes that there is police involvement or a lack thereof.

If there are circumstances where there is a strained relationship with Police, it may be appropriate to prompt the family to:

- outline their concerns in writing or over the phone;
- access free coronial assistance legal service; or
- seek other independent legal advice.

It is important to recognise that Aboriginal and Torres Strait Islander Police Liaison Officers (PLO) are there to assist Police in performing their duties and can often be associated with representing Police, rather than representing their community. If a PLO is being engaged to assist the coronial investigation process, it will be important to ascertain the family's views about that engagement, as there may be circumstances of kinship or community relationships or issues around confidentiality in the community.

## INQUESTS ISSUES

In circumstances where a Coroner decides to hold an inquest, it is important that the next of kin and families are aware that they can seek leave to appear at inquest.

Families should be encouraged to access free coronial assistance legal services to provide advice and assistance at the Pre-Inquest Conference and Inquest.

When an inquest has been listed and there has been no communication with the next of kin following written correspondence being sent, it may be useful to phone the next of kin.

Issues that may be relevant for the Coroner and Counsel Assisting to consider during the inquest should include:

- using the name of the deceased person;
- using voice recordings or images of the deceased persons;
- giving the family an opportunity to give evidence at the start of the inquest either on oath or informally;
- whether there are aspects of the inquest that may relate to men's business or women's business;
- whether the scope of the inquest should be expanded to consider the issue of specific cultural or social issues such as institutional racism.<sup>ix</sup>

If a brief of evidence is being provided to the family in preparation for the inquest, and contains voice recording and images, the family should be notified of this before receiving the brief of

evidence. Again, literacy and language issues may make it difficult for families to read the brief of evidence, increasing the need to refer families to obtain legal advice.

In circumstances where an Aboriginal and Torres Strait Islander families are unable to engage legal representation, families should be informed that they can still seek leave to appear at the Pre-Inquest Conference and/or Inquest.

If a death occurs in a remote community, consideration should be given to whether it is appropriate and possible to hold an inquest on country or whether it is more appropriate to hold the inquest in a neutral location. Consideration should be given to the number of family members who may wish to attend the inquest and their ability to attend the inquest if it is held elsewhere.

## FINDINGS

When preparing findings, consideration should again be given to the use of the deceased person's name. The appropriate naming convention should be used throughout the finding.

Information relating to the deceased person's identity as an Aboriginal or Torres Strait Islander person should also be noted and include whether the deceased person identified with a specific nation, tribe, clan or language group.

Another relevant issue is whether it is necessary and appropriate to publish findings, particularly in circumstances where men's or women's business is a relevant issue for findings. Guidance from the family should be sought prior to publishing.

## LEADING CAUSES OF DEATH IN ABORIGINAL AND TORRES STRAIT ISLANDER PEOPLE

In the 2017 census, the Australian Bureau of Statistics (ABS) recorded the leading causes of death in Aboriginal and Torres Strait Islander people residing in New South Wales, Queensland, South Australia, Western Australia and the Northern Territory. The data is a key input into the Closing the Gap strategy led by the Council of Australian Governments (COAG). The annual Closing the Gap report sets targets across key social and justice priorities, namely:

- families, children and youth;
- health;
- education;
- economic development;
- housing;
- justice, including youth justice; and
- land and water.

In 2017 the ABS reported that there were 2,988 recorded deaths of Aboriginal and Torres Strait Islander people (1,631 men and 1,357 women) at a rate of 976 per 100,000 persons.<sup>x</sup> ABS data showed that life expectancy was the highest in Queensland reporting 72.0 years for men and 76.4 years for women.<sup>xi</sup>

The ABS reported that the 20 leading causes of mortality amongst Aboriginal and Torres Strait Islander people were:

- ischaemic heart disease (344 deaths);
- diabetes (226 deaths);
- chronic lower respiratory diseases (202 deaths);
- malignant neoplasms of the trachea, bronchus and lung (184 deaths); and

- intentional self-harm - suicide (165 deaths)
- cirrhosis and other diseases of the liver (98 deaths)
- dementia, including Alzheimer disease (97 deaths);
- cerebrovascular diseases (96 deaths);
- accidental poisoning (78 deaths);
- land transport accidents (77 deaths);
- certain conditions originating in perinatal period (66 deaths);
- symptoms, signs and ill-defined conditions (64 deaths);
- malignant neoplasm of pancreas (60 deaths);
- malignant neoplasms of lymphoid (57 deaths);
- influenza and pneumonia (53 deaths);
- malignant neoplasm of liver and intrahepatic bile ducts (53 deaths);
- diseases of the urinary system (52 deaths);
- malignant neoplasm of colon, sigmoid, rectum and anus (50 deaths);
- malignant neoplasm of breast (35 deaths); and
- cardiomyopathy (32 deaths).

### *Non-communicable diseases*

The ABS reported the following average age-specific death rates for non-communicable diseases:

<b>Selected Age Group</b>	<b>2008-2012</b>	<b>2013-2017</b>
30 years - 39 years	104.2 people per 100,000	90.5 people per 100,000
40 years - 49 years	291.7 people per 100,000	293.2 people per 100,000
50 years - 59 years	706.8 people per 100,000	686.6 people per 100,000
60 years - 69 years	1,518.0 people per 100,000	1542.4 people per 100,000

Several of the non-communicable chronic diseases have common preventable risk factors including a lack of physical exercise, alcohol consumption, smoking and poor nutrition.

### **Suicide**

The ABS reported that 165 Aboriginal and Torres Strait Islander people died as a result of suicide at a rate of 25.5 deaths per 100,000 persons. By comparison, the rate of intentional self-harm deaths of Aboriginal and Torres Strait Islander people was 5.5% compared with 2.0% for non-Indigenous populations.<sup>xii</sup>

Suicide was ranked as the 2<sup>nd</sup> leading cause of death for Aboriginal and Torres Strait Islander men with 39.6 deaths per 100,000 persons and 7<sup>th</sup> for women at 11.9 deaths per 100,000 persons. For non-Indigenous people suicide was ranked at 10<sup>th</sup> and 21<sup>st</sup> leading cause for men and women, respectively.

The median age at death for suicide across the Aboriginal and Torres Strait Islander population was 29.5 years compared with 45.4 years in non-Indigenous population. Aboriginal and Torres Strait Islander people aged 55 years and over recorded lower age suicide rates than non-Indigenous people.

Suicide of Aboriginal and Torres Strait Islander children and young people occurred at a rate of 10.1 deaths per 100,000 persons, compared with 2.0 per 100,000 for non-Indigenous persons. Children

aged between 15-17 years contributed to 94.4% of all suicide deaths in young Aboriginal and Torres Strait Islander people.

### Alcohol-induced deaths

The ABS recorded that Aboriginal and Torres Strait Islander males died from alcohol-induced conditions at five times the rate of non-Indigenous men at a rate of 36.5 deaths per 100,000 persons. Aboriginal and Torres Strait Islander women died at a rate six times higher than that of non-Indigenous women and 1.7 times higher than that of non-Indigenous men.<sup>xiii</sup>

In Queensland, the Protection Act prohibited the sale and supply of liquor to 'Aboriginal or half-cast' people. Prior to the 1967 Referendum, which amended the Australian Constitution to include Aboriginal people in the census, Aboriginal people were 'wards of the state'.<sup>xiv</sup> The Protection Act was repealed in 1984.

The Queensland Government created canteens in government-controlled outlets in partnership with Aboriginal Shire Councils. This placed restrictions on the sale, consumption and possession of alcohol in those communities. The canteens were a source of revenue for local infrastructure, projects and services and created the economic sustainability for communities. This resulted in high levels of alcohol consumption, excessive violence and hospitalisations.<sup>xv</sup>

In 2000, The Aboriginal and Torres Strait Islander Women's Taskforce on Violence found that alcohol was a self-medicating response to trauma and the cause and contributor of violence in community. Further, the 2001 Cape York Justice Study by Justice Tony Fitzgerald found that strict adherence to the *Liquor Act 1992* in order to end the illegal serving of alcohol to intoxicated people. Further that official inspection and compliance take place for all canteens in Cape York communities. Justice Fitzgerald recommended suspension or cancellation of licences for failure to comply with regulations and licence conditions.<sup>xvi</sup>

The Queensland Government introduced measures to transfer canteens to community-based boards. Community Justice Groups (CJG) took on the responsibility for the canteens. CJGs are made up of Elders and respected community members. Alcohol Management Plans (AMP) are developed by CJGs and include designating dry areas, restricted areas, operating hours of licensed premises and any relevant decisions made by the CJGs.

AMPs in Queensland include the following communities:

- Pormpuraaw;
- Aurukun;
- Woorabinda;
- Lockhart River;
- Mornington Island;
- Napranum;
- Wujal Wujal;
- Palm Island;
- Cherbourg;
- Hope Vale;
- Yarrabah;
- Doomadgee;
- Northern Peninsula Area; and
- Mapoon.

## Deaths in custody

It has been over 25 years since the Royal Commission into Aboriginal Deaths in Custody (RCIADIC) in 1991-92. One of the findings of the RCIADIC included that Aboriginal and Torres Strait Islander people were no more likely than non-Indigenous people to die in custody, however that they represented a greater number of arrests and prison population.

In 2019, the Australian Institute of Criminology (AIC) reviewed 2,044 deaths in custody from data gathered across each State and Territory between 1991-1992 and 2015-2016 financial years.<sup>xvii</sup>

The AIC study showed that 247 of the 2,044 deaths reviewed were Aboriginal and Torres Strait Islander deaths in custody and accounted for 19% of all prison deaths in the study. It showed that whilst the number and proportion of Aboriginal and Torres Strait Islander people in prison had increased, the proportion of deaths in custody had been smaller than the proportion of prisoners.

The data indicated that men outnumbered women in all Aboriginal and Torres Strait Islander deaths and all non-Indigenous deaths amounting to 96% of the deaths reviewed. A review of the ages of deceased prisoners shows the average age of 37.8 years compared with 45.3 years for non-Indigenous prisoners. The study showed that 89% of deaths occurred before the age of 55 compared with 69% among non-Indigenous prisoners. Almost one in five Aboriginal and Torres Strait Islander deaths involved a prisoner less than 25 years of age.

The most common causes of death included:

- natural causes;
- hanging;
- drugs and/or alcohol; and
- external trauma.

The data also indicated that 73% of Aboriginal and Torres Strait Islander deaths between 1991-1992 and 2015-2016 involved sentenced prisoners and 27% involved unsentenced prisoners.

The study could not accurately report the rates of deaths in police custody due to the absence of reliable data on the number of Aboriginal and Torres Strait Islander people in custody and the number of those who came into contact with police in custody-related operations. However, on the available data there were 146 Aboriginal and Torres Strait Islander deaths in police custody which accounted for 20% of the total police custody deaths. Again, male deaths outnumbered female deaths in police custody and comprised of 86% of all Aboriginal and Torres Strait Islander deaths and 95% of all non-indigenous deaths.

The most common causes of death for those in police custody included:

- external/multiple trauma;
- motor vehicle pursuits;
- natural causes; and
- hanging.

## Traumatic or sudden death

Slow deteriorating health related deaths are more likely to be accepted by Aboriginal and Torres Strait Islander people. However Aboriginal and Torres Strait Islander people may associate traumatic and sudden death with sorcery, such as payback.<sup>xviii</sup>

### Why does traumatic or sudden death raise questions for Aboriginal and Torres Strait Islander people?

Coronial staff should anticipate strong reactions from next of kin and family members and allow time for the concerns to be ventilated. This may also trigger a response by families to perform a ceremony, such as a smoking ceremony, to cleanse what has believed to have been done or an autopsy performed under traditional lore.

The family may also request an autopsy be performed in circumstances where it is not necessary. Families should be encouraged to provide further information about the particular cultural issue that would require an autopsy be performed.

## COMMUNITY RELATIONSHIPS

In order to build effective relationships between CCQ and the Aboriginal and Torres Strait Islander community, it is important to be visible and accessible.

Another mechanism for improving relationships with the Aboriginal and Torres Strait Islander community is to increase the capacity of Coroners and CCQ staff to develop their understanding and capacity to work with Aboriginal and Torres Strait Islander people. Cultural learning is a lifelong lesson for Aboriginal and Torres Strait Islander people and should be an ongoing commitment for non-Indigenous people to develop their understanding and abilities throughout their lives.

It is important that CCQ builds its capability and engagement with the Aboriginal and Torres Strait Islander community by increasing awareness of the coronial process in circumstances when engagement is not triggered by a death in community. This engagement with community can be through relationship building with the local Community Justice Groups or Murri Court elders that exist in Queensland.

In circumstances where a death has occurred, it will not be appropriate to involve Aboriginal or Torres Strait Islander people who are outside the family of the deceased, unless informed otherwise by the next of kin. Confidentiality of family sorry business is important to maintain and can be jeopardised by the involvement of Aboriginal or Torres Strait Islander people who have no authority within the familial relationship to the deceased person. Consent must be obtained from the next of kin before involvement of Murri Court elders or Community Justice Groups. Most Departments create community 'Liaison' positions to assist Departments to increase their relationship building with the Aboriginal and Torres Strait Islander community. However, no such position exists within CCQ.

## PARTNERSHIPS WITHIN THE DEPARTMENT OF JUSTICE AND ATTORNEY-GENERAL

The Department of Justice and Attorney-General (DJAG) is committed to implementing the Magistrates Court Reconciliation Action Plan (RAP). The RAP can be actively implemented by working with other parts of the Department.

An avenue for engagement would include attending community events throughout Queensland. Important events in the Aboriginal and Torres Strait Islander communities include Reconciliation Week and NAIDOC Week celebrations. By providing access and information to communities, they will be more willing to engage in the coronial process. There are opportunities for Departments to access funding to host Reconciliation Week and NAIDOC Week events.

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- <sup>i</sup> Section 3 of the *Coroners Act 2003* (the Act).
- <sup>ii</sup> Part 4.2 of the State Coroner's Guidelines at page 5.
- <sup>iii</sup> Part 4.6 of the State Coroner's Guidelines at page 12.
- <sup>iv</sup> Queensland Health (2015), *Sad News, Sorry Business: Guidelines for caring for Aboriginal and Torres Strait Islander people through death and dying (version 2)*, Queensland Government. Available at [https://www.health.qld.gov.au/\\_data/assets/pdf\\_file/0023/151736/sorry\\_business.pdf](https://www.health.qld.gov.au/_data/assets/pdf_file/0023/151736/sorry_business.pdf), [Accessed 16 June 2019].
- <sup>v</sup> Cordell, John; Fitzpatrick Judith (1987) *Torres Strait: Cultural Identity and the Sea*, Cultural Survival Quarterly (11.2).
- <sup>vi</sup> Ibid
- <sup>vii</sup> Department of Aboriginal and Torres Strait Islander Partnerships, Queensland Government, *Traditional Torres Strait Islander Child Rearing Practises (Public Consultation Paper)*, October 2018.
- <sup>viii</sup> Queensland Health (2015), *Sad News, Sorry Business: Guidelines for caring for Aboriginal and Torres Strait Islander people through death and dying (version 2)*, [online], Queensland Government. Available at [https://www.health.qld.gov.au/\\_data/assets/pdf\\_file/0023/151736/sorry\\_business.pdf](https://www.health.qld.gov.au/_data/assets/pdf_file/0023/151736/sorry_business.pdf), [Accessed 16 June 2019].
- <sup>ix</sup> Miki Perkins, 'Coroner agrees to consider role of racism in Tanya Day's Custody Death' *The Age* (online) 27 June 2019 < <https://www.theage.com.au/national/victoria/coroner-agrees-to-consider-role-of-racism-in-tanya-day-s-custody-death-20190627-p521vm.html>>.
- <sup>x</sup> Australian Government Department of Prime Minister and Cabinet (2019). *Closing the gap: Prime Minister's Report 2019*. Commonwealth of Australia. Available at: <http://ctgreport.pmc.gov.au> [Accessed 11 June 2019].
- <sup>xi</sup> Australian Bureau of Statistics (ABS) Causes of Death, Australia, 2017. Cat no. 3303.0. [Accessed 14 June 2019]. Available at: <https://www.abs.gov.au/ausstats/abs@.nsf/Lookup/by%20Subject/3303.0-2017-Main%20Features-Leading%20causes%20of%20death%20in%20Aboriginal%20and%20Torres%20Strait%20Islander%20people-9>.
- <sup>xii</sup> Ibid.
- <sup>xiii</sup> Ibid.
- <sup>xiv</sup> University of Melbourne (2019), *The Alcohol Management Plan at Pormpuraaw, Queensland, Australia - An Ethnographic Community-Based Study*, [online] <http://fare.org.au/wp-content/uploads/The-Alcohol-Management-Plan-at-Pormpuraaw.pdf>, [Accessed 28 June 2019].
- <sup>xv</sup> Ibid.
- <sup>xvi</sup> Ibid.
- <sup>xvii</sup> Gannoni, Alexandra; Bricknell, Samantha, *Indigenous deaths in custody: 25 years since the Royal Commission into Aboriginal Deaths in Custody*, 21 February 2019, [www.aic.gov.au](http://www.aic.gov.au), <https://aic.gov.au/publications/sb/sb17>, [Accessed 22 June 2019].
- <sup>xviii</sup> Queensland Health (2015), *Sad News, Sorry Business: Guidelines for caring for Aboriginal and Torres Strait Islander people through death and dying (version 2)*, [online], Queensland Government. Available at [https://www.health.qld.gov.au/\\_data/assets/pdf\\_file/0023/151736/sorry\\_business.pdf](https://www.health.qld.gov.au/_data/assets/pdf_file/0023/151736/sorry_business.pdf), [Accessed 16 June 2019].