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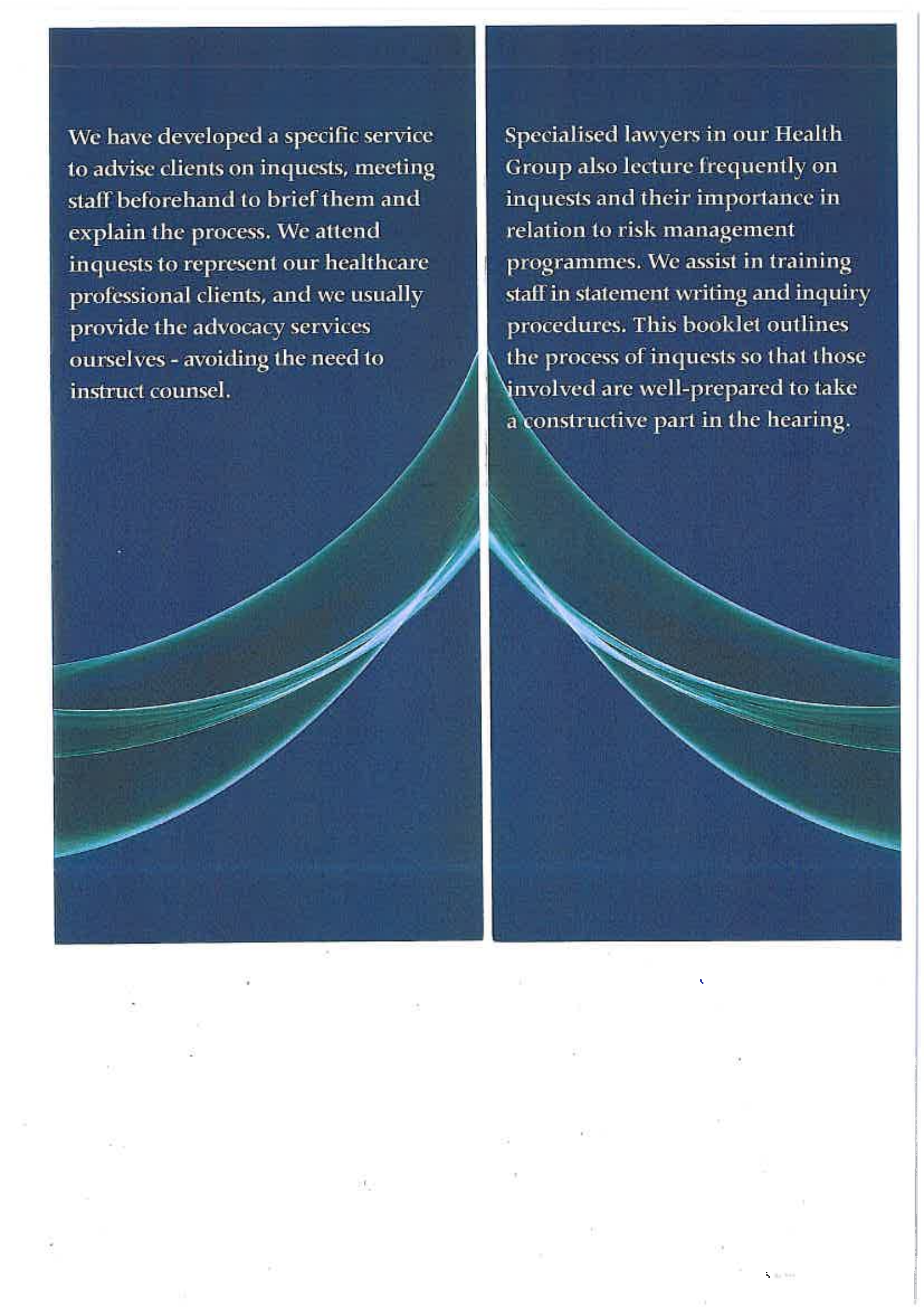
Inquests

A practical guide for healthcare professionals



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We have developed a specific service to advise clients on inquests, meeting staff beforehand to brief them and explain the process. We attend inquests to represent our healthcare professional clients, and we usually provide the advocacy services ourselves - avoiding the need to instruct counsel.

Specialised lawyers in our Health Group also lecture frequently on inquests and their importance in relation to risk management programmes. We assist in training staff in statement writing and inquiry procedures. This booklet outlines the process of inquests so that those involved are well-prepared to take a constructive part in the hearing.

PURPOSE OF THE INQUEST

Coroners must investigate a sudden death for which the cause is unknown, violent or unnatural, or which has occurred in detention. The inquest is not a trial but a limited inquiry, with or without a jury, to establish the facts surrounding the death.

It is *not* the Coroner's function to determine any question of civil or criminal liability, or to attribute blame for the death. Nor is it his function to explore issues of potential medical negligence per se.

In some cases the inquest may be the forum by which the State complies with its obligation in cases covered by Article 2 of the Human Rights Act to investigate a death.

The ambit of the inquest is limited to establishing the identity of the deceased, when, where, and how he died. In considering "how" a death arose, the Coroner will often need to investigate "by what means and in what circumstances" the death occurred.

POST-MORTEM

If the Coroner decides a post-mortem examination is necessary it is carried out prior to the inquest.

WITNESSES

Witnesses will usually be asked to submit a written statement before the inquest. The statement should contain a factual account in chronological order of the personal involvement of the healthcare professional in the care of the deceased. Witnesses should retain a copy to bring to the inquest if they are called upon to attend.

Once the Coroner has decided on which witnesses to call, they will be notified of the time, date and place of the hearing. Just before the hearing it is advisable for witnesses to refresh their memories of the event by re-reading their witness statements and the healthcare records.

During the inquest the Coroner will restrict the questioning of witnesses to matters relevant to the central purpose of the inquest. A witness may avoid answering questions which could incriminate him. However, a witness cannot refuse to answer questions which might produce evidence sustaining a civil claim.

If the Coroner is aware that a witness will not attend the inquest unless compelled to, the Coroner may issue a summons ordering attendance. A fine may be imposed for non-attendance.

If an individual has information about the death but has not been requested to attend the inquest, it may be appropriate for that individual to come to court and tell the Coroner or the Coroner's Officer about the evidence. It can then be assessed for its significance to the inquiry.

AT THE INQUEST

Witnesses should arrive at the court building, in appropriate dress, at least fifteen minutes before the time set for the inquest and inform the receptionist or the Coroner's Officer of their arrival.

Whilst waiting outside the court door, witnesses may be asked by representatives of the parties involved for any further information about their evidence. (It is generally permissible for witnesses to be asked questions outside the inquest court although they are not obliged to answer).

When giving evidence, the Coroner is usually the first person to question a witness and often bases their questions on the statement provided by that witness. Other interested parties can then question a witness.

If a question is unclear, clarification may be sought.

Although the inquest is an inquiry and not a trial, evidence is given on oath or affirmation. The Coroner should be addressed as 'Sir' or 'Madam'.

If a witness has *not* brought a copy of their witness statement to the inquest, the court can allow the witness to see a copy in order to refresh his memory before giving evidence.

LEGAL REPRESENTATION

If a witness has legal representation, extra time to meet the solicitor or barrister should be allowed before the commencement of the hearing unless the witness and lawyer have already met for the purpose of reviewing the evidence.

Lawyers are not permitted to put forward an argued case and cannot make a speech about the facts at the inquest. Their role is to ensure that: complex medical issues are properly understood; all points in mitigation are brought into the inquiry; and the Coroner applies the law correctly in the inquest.

WHO MAY QUESTION A WITNESS?

Questions may be put by an individual, or through a lawyer. Any of the following categories of people may question a witness:

- a parent, spouse, child and anyone acting for the deceased
- anyone who gains from a life insurance policy of the deceased
- any insurer having issued such a policy
- anyone whose actions the Coroner believes may have contributed to the death, accidentally or otherwise
- the chief officer of police (who may only ask witnesses questions through a lawyer)
- any person appointed by a government department to attend the inquest
- anyone else who the Coroner may decide also has a proper interest

EVIDENCE

The rules of evidence are generally applied less strictly at an inquest than in other court proceedings. The evidence to be admitted is entirely at the Coroner's discretion. All documentary evidence is usually read aloud unless the Coroner directs otherwise.

THE CONCLUSION

The Coroner will summarise his findings in a conclusion as to the nature of the death. This should contain a factual statement and must not express any judgement or opinion. It may be in the form of a narrative of the events leading to the death.

The Coroner or jury must be satisfied that the required standard of proof has been met. For a conclusion of suicide or unlawful killing the standard of proof is at the same level as set in a criminal court, i.e. 'beyond all reasonable doubt'. For all other conclusions the civil standard of proof applies, i.e. 'on the balance of probabilities'.

REPORTS TO OTHERS

If, having heard the evidence, the Coroner has concerns that there are circumstances which create a risk of other similar deaths occurring in the future, the Coroner has a duty to make a report, requiring action to be taken to prevent the risk of death occurring in similar circumstances in the future.

If the Coroner considers that such a report is necessary, ordinarily this will be raised at the conclusion of the inquest. The recipient of the report has 56 days in which to respond giving details of any necessary actions taken.

RECORD OF THE INQUEST

Persons with a legitimate interest in the inquiry may apply for a copy of the Coroner's notes. There will be a recording made of the hearing.

PRESS INTEREST

As inquests are held in public, members of the press may attend. It is generally advisable not to talk to the press after a hearing.

OTHER COURT PROCEEDINGS

If someone has been charged with causing a person's death, the inquest will be adjourned until the criminal proceedings are over. Any other court proceedings will normally follow the inquest.

Reports prepared for the Coroner must be disclosed for the purposes of other court proceedings if requested. Also, a witness who has provided evidence at an inquest may be called upon again in later court hearings.

CORONER

A Coroner is usually a lawyer but some Coroners are also qualified as doctors. He conducts the inquest and pronounces the conclusion of the court.

CORONER'S OFFICER

The Coroner's Officer is the assistant to the Coroner. He receives the reports of deaths and makes inquiries on behalf of the Coroner, and assists at the inquest.

JURY

The Coroner can summon a jury of between 7 and 11 people chosen at random from the electoral list. A jury will be called by the Coroner when he suspects that:

- (a) the deceased died whilst in custody or state detention and either:
 - (i) the death was violent or unnatural, or;
 - (ii) the cause of death is unknown
- (b) the death resulted from an act or omission of:
 - (i) a police officer, or
 - (ii) a member of a service police forcein the purported execution of the officer's or member's duty as such
- (c) the death was caused by a notifiable accident, poisoning or disease.

An inquest will also be held with a jury if the senior Coroner thinks there is sufficient reason for doing so.

Note, inquests into the deaths of patients detained under the Mental Health Act will always be heard before a jury.

If you require further information or advice please contact:
info@rlb-law.com

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