

DEATHS IN CARE

A 'death in care' is defined in section 9 of the Coroners Act 2003 (the Act) and refers to certain vulnerable people in the community (namely, people with disabilities or mental illness and children) who are in certain types of care facilities or under certain types of care arrangements.

The death is reportable because the person died while they are 'in care'. It doesn't matter what caused the death or if the person died somewhere other than at the care facility where they ordinarily lived.

For example, even if the person died of natural causes, the death must still be reported to the coroner. Also, for instance, if a child, who is in the care of an approved foster carer, becomes ill and is taken to hospital and subsequently dies - the child's death would be a reportable death as a death in care even though the child died in hospital and not at the foster home.

The Act requires that an inquest be held for a death in care, if the circumstances of the death raise issues about the care that was provided to the deceased person.

When is the death of a person with a disability a death in care?

The person must have a disability as defined in section 11 of the *Disability Services Act 2006* and have been living in certain types of supported accommodation and/or be receiving high level support as a participant under the National Disability Insurance Scheme (NDIS) in a supported living arrangement. Under section 11 of the *Disability Services Act 2006* 'disability' is defined to mean an intellectual, psychiatric, cognitive, neurological, sensory or physical impairment (or a combination of those) and results in, a substantial reduction of the person's capacity for communication, social interaction, learning, mobility or self-care or management and, the person needs support.

These disabilities may result from an acquired brain injury, must be permanent or likely to be permanent and may be, but need not be, of a chronic episodic nature.

Under section 9(1)(a) of the Coroners Act the death of a person with a disability under section 11 is a death in care, if the person:

- a) lived in a level 3 accredited residential service. These are hostels accredited under the *Residential Services (Accreditation) Act 2002* to provide level 3 personal services to residents.

Level 1 and 2 services provide only accommodation and/or a food service. Level 3 services provide a personal care service, which involves the facility regularly assisting residents with tasks such as bathing or personal hygiene, dressing, taking medication or financial affairs. These facilities are usually owned or managed by private companies or individuals on a 'for profit' basis and funded by fees charged to residents.

A list of Residential Services registered with the Department of Communities, Housing and Digital Economy is available on their website at:

<https://www.data.qld.gov.au/dataset/residential-services-registered-with-the-department-of-communities-housing-and-digital-economy>

- b) received accommodation services operated or funded by the Queensland Government. These include Accommodation Support & Respite Services operated by the Department of Communities for people with a primary diagnosis of intellectual disability and long-time stay wards or facilities operated by the Department of Health where people with disabilities are expected to reside on a permanent basis, for example, Brighton Brain Injury Service or Baille Henderson Hospital.
- c) lived in a supported living environment (other than a private dwelling or residential aged care service) where the person was entitled to or receiving high level supports funded under their NDIS participant plan and provided by a registered NDIS service provider.

This category of death in care is explained in more detail in the 'Deaths of people with a disability – factsheet' available on the Coroners Court of Queensland website at:

https://www.courts.qld.gov.au/data/assets/pdf_file/0020/623450/m-ccq-fs-deaths-of-people-with-a-disability.pdf

When is the death of a person who is a forensic disability client a death in care?

A forensic disability client is defined in the *Forensic Disability Act 2011* as a person who has a cognitive or intellectual disability as defined in the *Disability Services Act* and who is subject to a forensic order made by the Mental Health Court under the *Mental Health Act 2016*.

Under section 9(1)(a) of the Coroners Act the death of a forensic disability client, will be a death in care if the person was being taken to, or detained in, the forensic disability service, being taken to, or awaiting admission to an authorised mental health service, undertaking limited community treatment or absent from the forensic disability service under a temporary absence approval while accompanied by a practitioner under the Forensic Disability Act.

When is the death of a person with a mental illness a death in care?

The *Mental Health Act 2016* provides that certain persons may be taken to an authorised mental health service for involuntary assessment and/or treatment.

Under section 9(1)(b) of the Coroners Act a death will be a death in care if the person was subject to involuntary assessment or treatment under the Mental Health Act and, was either being taken to or detained in an authorised mental health service, detained because of a court order or undertaking limited community treatment while accompanied by a health service employee.

In practice, a person or patient may be taken to, detained in, or undertaking limited community treatment at one of the following:

- o inpatient mental health facilities including acute, medium security, high security, long term stay and rehabilitation wards
- o private hospital inpatient mental health wards where a patient can be placed on a treatment authority, for example, the Toowong Private Hospital
- o community care units (where residents may live when on limited community treatment or subject to the community category of a treatment authority)
- o community mental health clinics.

When is the death of a child known to the Department of Communities a death in care?

The death of a child known to the Department of Communities will be a death in care if the child was:

- a) placed under guardianship of the chief executive because they are awaiting adoption under the *Adoption Act 2009*;
- b) living away from their parents as a result of action under the *Child Protection Act 1999*, namely if the child was:
 - o in the custody or guardianship of the chief executive. When a child is placed in the custody or guardianship of the chief executive the Department must find an appropriate placement for the child such as home-based care (foster, kinship and provisionally approved carers) and residential care services;
 - o placed in care under an assessment care agreement. An assessment care agreement is an agreement between the chief executive and the child's parents for the short-term placement of the child in the care of someone other than the parents;
 - o subject to a child protection order granting custody of the child to a member of the child's family other than a parent;
 - o subject to a child protection order granting long-term guardianship of the child to a suitable person who is a member of the child's family other than a parent or another suitable person nominated by the chief executive.

Is the death of a person in an aged care facility a death in care?

Deaths of aged care residents are not reportable as deaths in care but may be reportable under other categories of reportable death. For example, the death may be the result of mechanical fall related injury.

Where do I get more information?

You can seek advice from the Coroner Registrar during business hours on telephone (07) 3738 7050; or refer to the State Coroner's Guidelines – *Chapter 3: Reportable Deaths – Deaths in care* www.courts.qld.gov.au/courts/coroners-court/about-coroners-court/resources-and-legislation#state

Contact details

This information sheet has been prepared by the Coroners Court of Queensland. If you have any enquiries or feedback about the information sheet, please email: state.coroner@justice.qld.gov.au.