

SUPREME COURT OF QUEENSLAND

CITATION: *Ruth Schaefer, Executor of the Estate of Gordon Charlie v The State Coroner of Queensland* [2026] QSC 231

PARTIES: **RUTH SCHAEFER, EXECUTOR OF THE ESTATE OF GORDON CHARLIE**
(applicant)
v
THE STATE CORONER OF QUEENSLAND
(first respondent)
DIRECTOR-GENERAL, DEPARTMENT OF JUSTICE
(second respondent)

FILE NO/S: BS No 1375/26

DIVISION: Trial Division

PROCEEDING: Originating Application

ORIGINATING COURT: Brisbane

DELIVERED ON: 29 September 2026

DELIVERED AT: Brisbane

HEARING DATE: 28 August 2026

JUDGE: Williams J

ORDER: **1. The originating application is dismissed.**
2. The respondents are to file and serve brief written submissions as to costs of no more than three pages by 4pm on 8 October 2026.
3. The applicant is to file and serve brief written submissions as to costs of no more than three pages by 4pm on 15 October 2026.
4. The issue of costs is to be dealt with on the papers.

CATCHWORDS: ABORIGINAL AND TORRES STRAIT ISLANDER PEOPLES – BURIALS – where the applicant claims that the Deceased’s body is Aboriginal human remains within the meaning of the *Aboriginal Cultural Heritage Act 2003* (Qld) – where the applicant contends that she owns the Deceased’s body but that the respondents should be required to continue to store the body – where the respondents contend that the Act does not prevent them from arranging burial of the body in the current circumstances – whether the respondents should be required to continue to store the Deceased’s body by operation of the *Aboriginal Cultural Heritage Act 2003* (Qld)

SUCCESSION – PERSONAL REPRESENTATIVES – RIGHTS, POWERS AND DUTIES – DISPOSAL OF BODY – where the applicant seeks a declaration that she has the right, as executor of the Deceased's will, to possession and control of the Deceased's body – where the respondents contend that the right of an executor to the Deceased's body is subject to the corresponding duty to arrange burial, and not for any and all purposes – where the first respondent had control of the Deceased's body for the purposes of a coronial investigation – where the first respondent cannot release the body unless it is for burial – where the second respondent has a duty to bury the body of a person where it appears that no suitable arrangements for the disposal of the body have been or are being made – whether the applicant is ready, willing and able to arrange for the burial of the Deceased's body – whether the applicant has a right to declaratory relief for possession and control of the Deceased's body

HUMAN RIGHTS – HUMAN RIGHTS LEGISLATION – where the applicant argues that the failure to release the Deceased's body to the applicant in the absence of evidence of burial arrangements is a breach of cultural rights – where the applicant argues that the second respondent failed to give proper consideration to the applicant's human rights in their decision pursuant to s 58(1) of the *Human Rights Act 2019* (Qld) – where the respondents contend they could not act differently due to the statutory obligations – where if section 58(1) does apply, proper consideration was given – whether section 58(1) of the *Human Rights Act 2019* (Qld) applies – whether proper consideration of the applicant's cultural rights

Aboriginal Cultural Heritage Act 2003 (Qld), s 15, s 16, Sch 2

Burials Assistance Act 1965 (Qld), s 3

Coroners Act 2003 (Qld), s 26

Human Rights Act 2019 (Qld), s 13, s 28, s 48, s 58

Accoom v Pickering (2020) QR 640, cited

Doodeward v Spence (1908) 6 CLR 406, cited

Johnson v George [2019] 1 Qd R 333, cited

R v Kelly [1999] QB 621, cited

Smith v Tamworth City Council (1997) 41 NSWLR 680, cited

Wanambi for himself on behalf of the Marran̄u People of East

Arnhem Land v Wanambi [2026] FCA 781, cited

Warner v Hungerford [2026] QSC 29, cited

Williams v Williams (1882) 20 Ch D 659, considered

COUNSEL: The applicant was self-represented

SOLICITORS: Crown Law for the respondent

- [1] This is an originating application by the applicant, Ruth Schaefer, as the Executor of the Estate of Gordon Charlie. The originating application was filed on 1 April 2026 and originally sought urgent injunctive relief, as well as final relief.
- [2] On 1 April 2026 the respondents gave an undertaking to the Court and consequently the urgent injunctive relief was not pressed. Directions were made for the delivery of affidavit material and submissions, and the matter was listed for final hearing in the Civil List on 28 August 2026.
- [3] The applicant is self-represented. Leave was granted for the applicant to have the assistance of her support person during the hearing on the condition that the support person did not have a speaking role.¹
- [4] Further, the applicant was given leave to rely on an affidavit and submissions that were filed just prior to the hearing and after the directions. The respondent was consequently given leave to file brief submissions in reply.
- [5] At the outset of the hearing a plan for the hearing was outlined and an allocation of time was given to each of the parties to make submissions in respect of the issues, and for submissions in reply. At the applicant's request the respondents made their oral submissions first, followed by the applicant's oral submissions.
- [6] As a consequence of the order of submissions, an opportunity was given to each party to traverse any outstanding issues at the conclusion of the submissions. Whilst the order of addresses was unusual it facilitated the applicant understanding the legal issues she needed to address, and also allowed for breaks to be scheduled to assist the applicant.² During the hearing there were a number of adjournments and an early lunchbreak, to assist the applicant.
- [7] Before considering the facts and issues, it is appropriate to deal with some general matters.
- [8] Firstly, whilst the Deceased has been named in the Court documents, including in the Court heading, I will not name the Deceased out of respect. Further, I acknowledge that the Deceased was a respected Aboriginal elder who maintained his traditional culture and was committed to his culture and his people.
- [9] The applicant was in a relationship with the Deceased at the time of his death and is the executor of the Deceased's estate. I acknowledge that the applicant is still grieving. The applicant also has a disability and is dealing with the proceeding as efficiently as she can in all of the circumstances. The applicant has had a lot to deal with in the last five years and has put a lot of effort into the materials for the application.
- [10] As observed by Chief Justice Bowskill in *Warner v Hungerford*³ matters involving a decision in relation to a deceased's body need to be dealt with promptly "recognising that both the dignity of the deceased and the conscience of the community require

¹ In the role of a McKenzie friend.

² Who appeared by videolink.

³ [2026] QSC 29.

that a dispute of this kind be decided without delay, and with all proper respect and decency.”⁴

- [11] I also note s 28 of the *Human Rights Act 2019* (Qld) (**Human Rights Act**), which includes the recognition and protection of the cultural rights of Aboriginal people, including their traditional knowledge, distinctive spiritual practices, observances, beliefs and teachings.
- [12] I also note the comments of Henry J in *Accoom v Pickering*,⁵ where his Honour recognised that it is uncontroversial in Queensland that even before the enactment of the Human Rights Act that Aboriginal custom, including culture and spiritual beliefs, were relevant considerations, particularly dealing with disputes regarding where a deceased should be buried.⁶
- [13] Often applications to the Court arise where there is a dispute between family members as to where a deceased should be buried. The current application is on a different basis. However, the starting point is of some assistance.
- [14] As the Chief Justice in *Warner v Hungerford*⁷ recognised:

“[12] At common law, the “usual rule” or “common starting point” is that the person entitled to administration of the estate of a deceased person is usually the person responsible for arranging the funeral and burial of the deceased.⁸ Where there is a will, and an executor has been named, that person has the “primary privilege of burying the deceased’s body”.⁹”

- [15] Those considerations are not determinative of the current application but are relevant to some of the submissions made and relief sought by the applicant.
- [16] Before turning to the issues raised by the originating application, there is a preliminary issue that needs to be considered that emerged at the hearing.

Application for leave to appeal decision of the Coroner

- [17] At the commencement of the hearing the applicant indicated that she intended to make an application to the District Court for leave to appeal out of time the decision of the Coroner refusing an inquest into the Deceased’s death. This intention was evidenced by an email, marked as Exhibit 2.
- [18] Subsequently, the applicant made an application for an adjournment of the hearing to enable that foreshadowed application to be pursued. The application for an adjournment was opposed. Ex tempore reasons were delivered and the application for an adjournment was refused.

⁴ At [8].

⁵ (2020) QR 640.

⁶ See also North J in *Johnson v George* [2019] 1 Qd R 333.

⁷ [2026] QSC 29.

⁸ *Accoom v Pickering* (2020) 6 QR 640 at 643, [5], and the cases there referred to.

⁹ *Smith v Tamworth City Council* (1997) 41 NSWLR 680 at 691 per Young J, adopted in *Jones v Dodd* (1999) 73 SASR 328 at [45] (Perry J, Millhouse and Nyland JJ agreeing).

- [19] At the end of the oral submissions in respect of the originating application, the issue was raised with the applicant about whether she would be pursuing the request for a further inquest through the application for leave to appeal out of time or whether she was pursuing relief that would enable her to arrange a cultural burial of the Deceased without an inquest.
- [20] The position maintained by the applicant at the conclusion of the hearing was that her intention was to seek relief to facilitate a cultural burial of the Deceased and sought time to enable that to occur.
- [21] In these circumstances, it is unclear whether the applicant has filed, or will file, an application to the District Court to seek to appeal the decision of the Coroner refusing an inquest.
- [22] Turning to consider the issues to be determined.

Issues to be determined

- [23] The applicant's primary submissions identify a number of issues which do not directly correlate to the relief sought in the originating application and the supporting affidavit material. Consequently, the oral and written¹⁰ submissions addressed these issues, as well as the relief sought in the originating application.
- [24] Accordingly, the issues to be determined are:
- (a) Should some form of preservation order be made that the respondents preserve the Deceased's body for a further nine-month period?
 - (b) Has the Deceased's Will been produced to the Court?
 - (c) Does the *Aboriginal Cultural Heritage Act 2003* (Qld) (**Aboriginal Cultural Heritage Act**) apply in respect of the Deceased's body?
 - (d) Is the applicant entitled to declarations that the applicant is lawfully entitled to custody, possession and control of the Deceased's body?
 - (e) Is the applicant entitled to consequential orders, including to the effect of restraining the respondents from burying the Deceased's body and requiring the respondents to preserve and store the Deceased's body?

- [25] Before turning to consider these issues, it is convenient to briefly outline some of the facts.

Facts

- [26] The Deceased passed away on 21 December 2020 at the Cairns Hospital. The applicant is the executor of the Deceased's estate and the long-term partner and carer of the deceased.
- [27] In 2021, the Coroner undertook an investigation to determine whether the Deceased's death was a "health care related death" under the *Coroners Act 2003* (Qld) (**Coroners Act**). This involved an autopsy of the Deceased.

¹⁰ Respondents' reply submissions filed by leave.

- [28] Following that investigation, on 5 October 2021 the Coroner notified the applicant that the investigation had concluded, and the Coroner found that the Deceased had died from natural causes.
- [29] As the Coroner took control of the Deceased's body for the purposes of the investigation, under s 26 of the Coroners Act the Coroner only stops having control of the body once the Coroner decides that it is not necessary for the investigation to keep the body and orders the release of the body for burial.
- [30] When the investigation concluded in 2021 it was not necessary for the investigation to keep the Deceased's body. Under s 26(2)(f) of the Coroners Act, since that time the Coroner has had the power to release the body of the Deceased for burial.
- [31] The affidavit evidence filed in respect of the application shows that since 2021 there has been significant correspondence and dealings between the applicant (and her representatives) and the respondents in respect of burial arrangements to enable the release of the Deceased's body.
- [32] Recently, the second respondent, has formed the opinion that no suitable burial arrangements have been or are being made for the disposal of the Deceased's body. This opinion of the second respondent has been notified in correspondence to the applicant.
- [33] Having formed this opinion, the respondents submit that the second respondent has a statutory duty pursuant to s 3(1) of the *Burials Assistance Act 1965* (Qld) (**Burials Assistance Act**) to cause the Deceased's body to be buried. It is submitted that the operation of the Coroners Act and the Burials Assistance Act results in the Coroner being empowered to order the release of the Deceased's body to the second respondent for burial.
- [34] The originating application was commenced seeking a range of orders and declarations to stop this occurring.
- [35] On 17 October 2021, after the applicant had been informed that the Coroner's investigation had concluded that the Deceased had died from natural causes, the applicant requested that an inquest be held into the Deceased's death.
- [36] On 24 June 2022 the Coroner informed the applicant of his decision to refuse the application for an inquest. The applicant at that stage could have applied to the District Court for an order that an inquest be held but the applicant did not do so. This is subject to the intention to make an application previously discussed.
- [37] Since the conclusion of the autopsy, the Deceased's body has remained in the mortuary at the Cairns Hospital.
- [38] The correspondence in evidence shows that the applicant has been requested on numerous occasions to make arrangements for the burial of the Deceased's body so that it can be released under s 26(2)(f) of the Coroners Act.
- [39] The respondents submit that there is no evidence that the applicant has made any arrangements for burial. The applicant contests this.

- [40] The applicant submits that:
- (a) She has made enquiries and is continuing to consult with various family members and members of the community, in order to arrange an appropriate funeral and burial.
 - (b) She has made enquiries with several funeral directors and is seeking to identify an appropriate funeral director.
 - (c) She is waiting on funds which are said to be payable by way of compensation to the estate, in order to be able to fund the funeral and burial. Those funds have not been available to date. Further it may take some time for those funds to be paid.
- [41] At this stage it is of assistance to briefly summarise the correspondence and some of the evidence.
- [42] In the period between 22 March and 5 May 2022 Caxton Legal acted for the applicant in relation to parts of the coronial investigation. Correspondence was sent to Caxton Legal on 22 March 2022 requesting an update on funeral arrangements. On 5 May 2022 Caxton legal indicated that they did not have instructions and they no longer acted on the coronial matter.
- [43] On 24 June 2022 the first respondent wrote to the applicant informing her of the decision not to hold an inquest into the Deceased's death and requested that the applicant "make arrangements for his burial as soon as possible".
- [44] On 4 November 2022 the Department of Justice wrote to the applicant seeking details of the funeral arrangements.
- [45] On 10 November 2022 the applicant replied to the Department of Justice in effect demanding an inquest into the Deceased's death and non-release of his body at that stage due to "public interest". An email in similar terms was sent on 16 November 2022.
- [46] Generations Law previously acted for the applicant in respect of a grant of probate in relation to the Deceased's estate. On 12 December 2022 the Department of Justice wrote to Generations Law seeking assistance for the applicant in arranging for the Deceased's burial. There was no response.
- [47] On 25 May 2023 Queensland Health wrote to the applicant seeking an update in relation to appointing a funeral director.
- [48] On 1 March 2024 the second respondent wrote to the applicant indicating that the second respondent was considering making arrangements for burial under s 3 of the Burials Assistance Act, and invited a response on the proposed decision within 28 days.
- [49] On 24 May 2024 Queensland Health wrote to the applicant declining her request to view the Deceased's body due to concerns with removing the Deceased's body from storage without embalming. That correspondence encouraged the applicant to discuss the matter with funeral homes as part of making funeral arrangements.

- [50] On 27 March 2025 the second respondent wrote to the applicant. This letter referred to the previous letter of 1 March 2024 and indicated that the second respondent would consider making arrangements for burial under s 3 of the Burials Assistance Act if arrangements had not been made by 30 June 2025.
- [51] On 30 March 2025 the applicant wrote to the second respondent stating that the Deceased's body cannot be buried. On 31 March 2025 the applicant left a phone message with the second respondent about the email of 30 March 2025.
- [52] Both the email and message indicated that the burial could not occur as the applicant was still grieving, there was "new evidence" suggesting a second autopsy and an inquest was in the "public interest", the applicant was waiting for monies from the State and Commonwealth to be paid, the importance of burial on tribal country, and the applicant needed to consult family.
- [53] On 6 June 2025 the second respondent again wrote to the applicant reiterating that the second respondent proposed to consider making arrangements for burial under s 3 of the Burials Assistance Act if arrangements had not been made by 30 June 2025.
- [54] On 19 June 2025 the applicant, with the assistance of her support worker, wrote to the second respondent requesting a six-month extension. The extension of time would allow the applicant time for meetings with "stakeholders" and to resolve the monies to be paid.
- [55] Subsequent calls and emails included an assurance that no decision would be made until the extension request was considered.
- [56] On 25 July 2025 the second respondent wrote to the applicant providing until 31 January 2026 to make burial arrangements, at which time the second respondent would consider whether to make arrangements under the Burials Assistance Act.
- [57] On 9 September 2025 the Department of Justice called the applicant, and her support worker, to discuss the progress of the burial arrangements.
- [58] On 24 September 2025 the applicant, through her support worker, wrote to the second respondent requesting a further six-month extension to make burial arrangements. The reasons that were identified included that:
- (a) the applicant believed a second autopsy was required;
 - (b) the applicant suffers various conditions including nervous shock, depression and Post Traumatic Stress Disorder;
 - (c) the applicant had been unable to obtain legal advice; and
 - (d) the applicant's support worker had resigned and she was transitioning to a new support worker.
- [59] On 20 October 2025 the second respondent wrote to the applicant, through her support worker, indicating that an extension would be considered if the second autopsy was granted before 31 January 2026, but otherwise the second respondent would consider whether to make burial arrangements if no such arrangements were made by 31 January 2026.

- [60] On 9 November 2025 the applicant wrote to the Department of Justice requesting a further 12-month extension to make burial arrangements. This was repeated on 13 and 16 November 2025. This request referenced the Human Rights Act and the Coroners Act, and the applicant's duties to "accommodate complex kinship systems to organise a funeral appropriate to the wishes of [the Deceased]."
- [61] On 18 December 2025 the Department of Justice wrote to the applicant confirming burial arrangements would be considered on 31 January 2026. This email attached a form to request a release of the Deceased's body and other information about applying for funeral assistance.
- [62] On 19 January 2026 Murrenda Memorial Services wrote to the Department of Justice indicating that they were entering into an arrangement with the applicant about the Deceased's body and seeking that the Deceased's body be transferred to their care.
- [63] On 22 January 2026 the applicant wrote to the Department of Justice to state that Murrenda Memorial Services did not act on her behalf and that the Deceased's body must remain in the mortuary.
- [64] On 30 January 2026 the applicant wrote to the Department of Justice seeking release of the Deceased's body. That correspondence:
- (a) identified that the applicant was seeking release of the Deceased's body to the executor for safe keeping and not for burial, pending determination of legal proceedings;
 - (b) requested a second autopsy be undertaken; and
 - (c) sought that the Deceased's body remain at the mortuary.
- [65] On 4 February 2026 the first respondent wrote to the applicant refusing to release the body on the basis that the correspondence (including the form) did not demonstrate that arrangements had been made for a burial.
- [66] Again on 6, 10, 13 and 19 February 2026 the applicant wrote to the Department of Justice urgently foreshadowing court proceedings and demanding that the Deceased's body remain in the mortuary and that no steps be taken to arrange a burial.
- [67] On 27 February 2026 the second respondent wrote to the applicant indicating that as no burial arrangements were made by 31 January 2026, the second respondent would consider whether to make arrangements for the deceased's burial under s 3 of the Burials Assistance Act. A further opportunity was given for the applicant to provide reasons why the second respondent should not make burial arrangements by 31 March 2026.
- [68] On 27 February 2026, and then 30 and 31 March 2026, the applicant wrote to the Department of Justice urgently foreshadowing the court proceedings and further indicating that she did not consent to the Deceased's burial.
- [69] On 31 March 2026 the applicant emailed the originating application to the Department of Justice.

[70] On 1 April 2026 these proceedings were commenced. On 1 April 2026 the respondents undertook to the Court:

“To not take steps to bury or cremate the body of [the Deceased], except upon 30 days’ written notice to the applicant.”

[71] Subsequently to the undertaking being given, on 15 May 2026, the second respondent wrote to the applicant as follows:

- (a) Having considered all relevant information, the second respondent does not consider that any suitable arrangements for disposal of the body of the Deceased have been or are being made.
- (b) Having formed that view, the second respondent has a statutory duty in s 3 of the Burials Assistance Act to arrange for the Deceased’s burial.
- (c) Consistent with the undertaking, on 15 June 2026 the second respondent intended to direct the Coroners Court Registry to arrange for the Deceased’s burial, and then to request that the first respondent release the Deceased’s body for burial under s 26(2)(f) of the Coroners Act.
- (d) A preliminary view on the appropriate burial arrangements was that the Deceased should be buried at Woorabinda Cemetery in accordance with the Deceased’s wishes expressed in his Will.
- (e) The applicant was requested to provide her preference for a burial place, and any such request would be considered.

[72] Pending the outcome of the hearing, the second respondent has not taken the steps indicated in the letter of 15 May 2026.

[73] Before considering the identified issues, it is also of assistance to identify the relevant statutory provisions raised in the submissions.

Relevant legislation

[74] Section 26 of the Coroners Act provides as follows:

“26 Control of body

- (1) Unless a person’s death is reported to the coroner after burial, the coroner starts having control of the deceased person’s body when the coroner starts investigating the deceased person’s death.
- (2) The coroner stops having control of the body when the coroner—
 - (a) if the coroner stops investigating the death under section 12(2)(a)—orders the release of the body to the Minister responsible for administering the *Aboriginal Cultural Heritage Act 2003* and the *Torres Strait Islander Cultural Heritage Act 2003*; or

- (b) if the coroner stops investigating the death under section 12(2)(b)—authorises a doctor to issue a cause of death certificate for the deceased person; or
 - (c) if the coroner stops investigating the death under section 12(2)(c) or (d) or (4)—orders the release of the body for burial; or
 - (d) if the coroner stops investigating the death under section 12(2)(e)—orders the release of the body to the other jurisdiction; or
 - (e) transfers control of the body to another coroner; or
 - (f) decides that it is not necessary for the coroner’s investigation to keep the body after an autopsy and the coroner orders the release of the body for burial.
- (3) For subsection (2)(f), the coroner must order the release of the body for burial as soon as reasonably practicable after the autopsy.
- (4) However, the coroner must not order the release of a body for burial if it is not known whose body it is, unless the coroner believes it is necessary to bury the body in the particular circumstances.
- (5) A doctor must not issue a cause of death certificate for a person if—
- (a) the death appears to the doctor to be a reportable death, unless a coroner advises the doctor that the death is not a reportable death; or
 - (b) a coroner is investigating the death, unless the coroner authorises the issue of the certificate.

Maximum penalty—100 penalty units.

- (6) For subsection (2)(a), (c), (d) and (f), a reference to the coroner, in relation to an order for the release of a body, includes, if the coroner investigating the death is not available, another coroner.”

[75] Section 3 of the Burials Assistance Act states as follows:

“3 Burial or cremation of the dead

- (1) It shall be the duty of the chief executive to cause to be buried or cremated the body of any person who has died or has been found dead in Queensland, in any case where it appears to the chief executive that no suitable arrangements for the disposal of the body have been or are being made otherwise than by the chief executive.

- (2) Nothing in subsection (1) of this section shall affect any enactment regulating or authorising the burial, cremation, or anatomical examination of the body of a deceased person.
- (3) The chief executive shall not cause a body to be cremated under this section where the chief executive has reason to believe that cremation would be contrary to the wishes of the deceased.”

[76] Other legislation will be considered in respect of the issue it relates to.

[77] Turning to consider the issues.

Should some form of preservation order be made that the respondents preserve the Deceased’s body for a further nine-month period?

[78] The applicant’s written submissions appear to seek to pursue further interlocutory relief, to preserve the current position for a further nine-month period. This appears to be in addition to the relief sought in the originating application.

[79] The applicant seeks orders that the respondents be prevented from taking any steps to bury the Deceased and also that they be required to retain the Deceased’s body in the mortuary at the Cairns Hospital.

[80] This is opposed by the respondents on a number of bases, including that the hearing listed on 28 August 2026 was a final hearing.

[81] The respondents submit that the originating application needs to be finally determined. At various times the applicant indicated that she did wish for the originating application to be finally determined, despite the submissions in respect of a “preservation order”.

[82] In any event, the respondents submit that the applicant has raised no reasonable argument in support of her originating application,¹¹ this is the precise situation that the Burials Assistance Act applies to, there have been no burial arrangements made despite numerous requests and there remains no evidence of burial arrangements being made.

[83] As discussed by the respondents in their primary submissions, the Burials Assistance Act was introduced to regularise a practice that the Department of Justice would make funeral arrangements for the disposal of “unclaimed” bodies. The statutory provision addressed the circumstance where there was “inordinately long delays in the disposal of dead bodies”.

[84] In the first reading speech for the Bill, the Minister for Justice identified the intention of the Burials Assistance Act as being as follows:

“Under the present system there are, on occasions, inordinately long delays in the disposal of dead bodies, and this Bill should assist in the prevention of those delays. Recently lack of sanction to bury a body

¹¹ Addressed separately in respect of the substantive relief sought.

that had been kept for about eight months was brought to my notice, and I was asked how much longer it was necessary to keep it.”

- [85] The Burials Assistance Act is not limited to where a body is unclaimed. Equally the statutory provision is applicable where there is an inordinately long delay for whatever reason.
- [86] It is not contended that the Deceased’s body has been abandoned. The extensive correspondence and communication with the applicant is consistent with that.
- [87] However, the Deceased’s body has been in the mortuary for over five and a half years and a further nine months is proposed. Both the original delay and the proposed further nine-month period are in excess of the delay that gave rise to need for the Burials Assistance Act in the first place.
- [88] The policy and intent of the Burials Assistance Act tends against any further delay such as the further nine-month period proposed.
- [89] The respondents also point to the chronology of correspondence requesting that action be taken by the applicant, which is summarised above.
- [90] In the period since March 2025, four requests for an extension of time have been sought, in addition to the current request for a further extension of time. On 19 June 2025 a six-month extension was sought and granted to January 2026. On 24 September 2025 a further six-month extension was sought and the extension to 31 January 2026 was confirmed. On 9 November 2025 a further 12-month extension was sought and the extension to 31 January 2026 was confirmed. On 30 January 2026 an extension was sought until October 2026, which was refused.
- [91] The current extension sought is until May 2027. At that time it would be six and a half years since the Deceased’s death.
- [92] Whilst the applicant has indicated that she has and is consulting with various members from her family and community, and funeral directors, there is no evidence of “any material steps to arrange burial”. It is in these circumstances, that the respondents contend that there is no evidence that suitable arrangements have been, or are being, made for burial for the purposes of s 3 of the Burials Assistance Act.
- [93] Given the five-and-a-half-year delay in burial of the Deceased as at the time of the hearing, the balance of convenience does not favour a further lengthy delay. The parties attended before the Court for a final hearing. I am also mindful of the comments of the Chief Justice set out at [10] above. In all of the circumstances, it is appropriate that application for final relief is heard and determined.
- [94] Accordingly, to the extent that the applicant seeks a form of “preservation order” as discussed in her written submissions and affidavit material, that application is dismissed.

Has the Deceased's Will been produced to the Court?

- [95] The applicant's written submissions make a request that the respondents produce the Deceased's Will to the Court.
- [96] A copy of the Deceased's Will is in evidence, being exhibited to the Affidavit of Michelle Emeleus filed 17 July 2026.¹²
- [97] Further consideration will be given to the Deceased's Will in respect of the substantive issues. However, at this stage it is relevant to note the following:

(a) Clause 6

"Funeral Directions"

I Direct that on my death if at all practicable my body be buried at Woorabinda Cemetery and I direct that I have an open casket funeral."

(b) Clause 8

"Expression of Wishes"

I EXPRESS a wish without creating any binding trust or legal obligation that RUTH ANN SCHAEFFER as my authorised representative exercise my traditional rightss (sic) over Lizard Island and Cape Flattery and help my Clan the "Dingaal" with governance, training and community development in conjunction with my daughter PATRICIA ANN PATTERSON. I express a wish that PATRICIA CHARLIE PATTERSON with her daughter TENILLE PATTERSON and RUTH ANN SCHAEFER preserve THE "DINGAAL" Father Line descent tribal family customary law and rights to enjoyment of their Native Title at Cape Flattery and Lizard Island as per Part E of the Native Title determination QC96/15, December 1997. I express a wish that all entitlements retrospectively owed to me are to be distributed 85% to my daughter PATRICIA ANN PATTERSON and 15% to my friend RUTH ANN SCHAEFER."

- [98] Accordingly, to the extent that the applicant seeks in her written submissions and affidavit material that the Deceased's Will be produced to the Court, that application is dismissed.

Does the Aboriginal Cultural Heritage Act apply in respect of the Deceased's body?

- [99] The applicant's written submissions raise an issue as to whether the Deceased's body is "Aboriginal human remains" for the purposes of s 16 of the Aboriginal Cultural Heritage Act. The applicant appears to be relying on s 16(2) in support of her proposition that she owns the Deceased's body but that the respondents, as entities that represent the State, should be required to continue to hold and store the Deceased's body.
- [100] The respondents submit that the Aboriginal Cultural Heritage Act does not operate as contended for by the applicant.

¹² At pages 92 – 94 of Exhibit ME-23.

[101] Sections 15 and 16 of the Aboriginal Cultural Heritage Act provide as follows:

“15 Ownership of Aboriginal human remains

- (1) On the commencement of this section, Aboriginal people who have a traditional or familial link with Aboriginal human remains in existence immediately before the commencement become the owners of the human remains if they are not already the owners.
- (2) Subsection (1) applies regardless of who may have owned the Aboriginal human remains before the commencement of this section.

16 Aboriginal human remains in custody of State

- (1) This section applies to Aboriginal human remains if the human remains are in the custody of an entity that represents or is the State.
- (2) The persons who own the human remains may at any time ask the entity—
 - (a) to continue to be the custodian of the human remains; or
 - (b) to return the human remains to them.
- (3) If the entity is satisfied the persons making the request under subsection (2) are the owners of the human remains, the entity must comply with the request to the greatest practicable extent.
- (4) The persons who own the human remains are not limited to making only 1 request under subsection (2).

Example—

The owners could ask for the Queensland Museum to continue its custody of the human remains while they make suitable arrangements for dealing with the human remains, at which time they could ask for the human remains to be returned to them.”

[102] The Aboriginal Cultural Heritage Act received assent and commenced on 6 November 2003. Section 15 operates in respect of Aboriginal human remains in existence at the time immediately before the commencement of the Act. Ownership of the Aboriginal human remains is conferred on the specified Aboriginal people.

[103] Here, the Deceased died in December 2020. The Aboriginal Cultural Heritage Act commenced in 2003, prior to the Deceased’s death. Accordingly, s 15 does not operate to confer ownership of the Deceased’s body as it was not in existence (in a relevant sense) immediately before commencement of the Act (leaving aside whether it is Aboriginal human remains for the purposes of the Aboriginal Cultural Heritage Act).

- [104] As a consequence of s 15 not operating to confer ownership, s 16(2) does not operate in respect of the Deceased's body to enable the applicant to ask that the respondents continue as custodians of the Deceased's body.
- [105] The respondents also submit:
- (a) There is nothing in the Aboriginal Cultural Heritage Act which prevents the respondents from arranging burial of the Deceased's body pursuant to s 3 of the Burials Assistance Act.
 - (b) Upon the burial under s 3 of the Burials Assistance Act the Deceased's body is expressly not "Aboriginal human remains" as defined in Schedule 2 of the Aboriginal Cultural Heritage Act.
 - (c) The term "Aboriginal human remains" is intended to refer to remains in existence at the commencement of the Aboriginal Cultural Heritage Act. However, in the circumstances of this case it is unnecessary for the Court to determine this issue.
- [106] Schedule 2 contains relevant definitions and relevantly defines "Aboriginal human remains" as follows:
- “(a) includes burial objects and associated material; but
 - (b) does not include human remains –
 - (i) buried under the authority of the law of Queensland or another State; or
 - (ii) in or from a place recognised as a burial ground for interment of human remains buried under the authority of the law of Queensland or another State.”
- [107] The express exclusion of Aboriginal human remains buried under the authority of the law of Queensland from the definition of "Aboriginal human remains", tends to support the respondents' submission that there is nothing in the Aboriginal Cultural Heritage Act that prevents the respondents from arranging burial of the Deceased's body under s 3 of the Burials Assistance Act. Burials under the laws of Queensland, and other states, are not made subject to the Aboriginal Cultural Heritage Act.
- [108] Further, a review of the provisions of the Aboriginal Cultural Heritage Act does not identify any provisions that otherwise impact, are inconsistent with or prevent the operation of s 3 of the Burials Assistance Act.
- [109] The submission of the respondents is that it is not necessary to determine whether "Aboriginal human remains" only refers to remains in existence at the commencement of the Aboriginal Cultural Heritage Act, and I do not do so.
- [110] However, to the extent that the applicant relies upon s 16 of the Aboriginal Cultural Heritage Act the applicant has not established that she is a "person who owns the human remains" within s 16(2) by reason of s 15. Section 15 cannot assist as it confers ownership on human remains as at November 2003.

- [111] At common law it is the accepted position that there is no property in a dead body.¹³ It is however, recognised that the personal representatives have a right of possession for the purposes of disposal of a deceased's body where the personal representatives have the primary liability and responsibility for disposal.¹⁴ This will be discussed further in respect of the next issue.
- [112] The common law does not assist the applicant to establish that she is a "person who owns the human remains" within s 16(2).
- [113] Accordingly, to the extent that the applicant in her written submissions and affidavit material relies upon s 16 of the Aboriginal Cultural Heritage Act as the basis for relief, that application is dismissed.

Is the applicant entitled to declarations that the applicant is lawfully entitled to custody, possession and control of the Deceased's body?

- [114] Turning to consider the originating application. Paragraphs 1, 2 and 5 concern interlocutory relief and in the circumstances do not require further consideration.
- [115] Paragraphs 3 and 7 concern the applicant seeking declarations that the applicant is lawfully entitled to custody, possession and control of the Deceased's body. These paragraphs will be considered in respect of this issue.
- [116] Paragraphs 4, 6, 8, 9, 10 and 11 deal with consequential orders sought by the applicant. These are considered in respect of the next issue, dealt with under the next heading.
- [117] The applicant's application and affidavit material raise a number of different grounds that are relied upon for the various forms of orders and relief claimed. These grounds include:
- (a) Ground 1: The applicant has standing being the executor of the Deceased's estate as she has a common law right to possession and control of the Deceased's estate.
 - (b) Ground 2: The Coroner's continued possession of the Deceased's body is subject to the applicant's common law right to possession of the Deceased's body, as after the end of the coronial investigation the continued possession is no longer authorised by the Coroners Act.
 - (c) Ground 3: A fiduciary relationship was created between the Coroner and the applicant when the Coroner took possession of the Deceased's body. The continued possession of the Deceased's body after the coronial investigation is a breach of the fiduciary obligation.
 - (d) Ground 4: The Coroner's continued possession of the Deceased's body amounts to an unlawful interference with the applicant's protected cultural rights.
 - (e) Ground 5: The applicant has exclusive rights to determine appropriate arrangements for preservation of the Deceased's body.

¹³ *Williams v Williams* (1882) 20 Ch D 659.

¹⁴ See [7.110] of *Lee's Manual of Queensland Succession Law*, 8th Ed.

- (f) Ground 6: Sections 51 (xxxi) and 71 of the Commonwealth Constitution impose a limit on executive interference with an executor's common law rights regarding possession of the Deceased's body.
 - (g) Ground 7: The respondents owe the applicant a duty to avoid causing her harm "from misuse of statutory power or unlawful retention" of the Deceased's body.
- [118] Grounds 1, 2 and 5 to 7 can be considered together as they arise out of the same underlying issue: does the executor have a common law right to the possession and control of a deceased's body. Ground 3 requires consideration of whether the Coroner taking possession of a body for a coronial investigation creates a fiduciary relationship between the coroner and the executor. Ground 4 requires consideration of whether the conduct of the respondents is an unlawful interference with the applicant's protected cultural rights.
- [119] The applicant contends that these grounds are established and the declarations should be made. The respondents contend that the grounds are misconceived.
- [120] Dealing with each of these in turn.

Possession and control of the Deceased's body

- [121] The applicant's originating application appears to have been prepared using generative artificial intelligence. Some of the authorities referred to in respect of Grounds 1, 2 and 5 to 7 are irrelevant to the propositions identified and, in respect of a limited number of authorities, are non-existent.
- [122] The Grounds relating to the possession and control of the Deceased's body are further described as including:
- (a) Ground 1: "The Executor has the primary and immediate right to possession, custody, and control of the deceased's body at common law. At common law and under Queensland succession law, the Executor acquires immediate authority and responsibility for the deceased's body upon death, including custody, control, preservation, and decision-making concerning the body, subject only to temporary statutory intervention.

...

Taken together, these authorities establish that:

- The Executor's right is immediate upon death;
- It is exclusive unless displaced by statute;
- It is actionable and enforceable in superior courts.

Accordingly, the Applicant's entitlement is not contingent, deferred, or discretionary – it is present, superior, and legally protected. Any continued State retention beyond lawful justification constitutes a direct interference with a recognised common law right, enlivening this Court's jurisdiction to grant declaratory and injunctive relief."

- (b) Ground 2: “Statutory coronial powers are strictly limited to investigative purposes and cannot be exercised beyond that scope. Coronial powers are exceptional and purpose-limited. Once the coronial investigation concludes, ordinary common-law rights revive.

...

These authorities compel the conclusion that:

- The Respondents’ authority is purpose-limited;
- Once the investigative purpose is satisfied, they are *functus officio*. The Respondents are *functus officio*; continued retention of the body is unlawful,;
- No residual or discretionary power exists to retain custody.

Accordingly, continued retention of the body after completion (or effective completion) of the coronial process is:

- Ultra vires,
- Without statutory foundation, and
- Legally incapable of displacing the Executor’s revived common law rights.”

- (c) Ground 5: “Control over preservation and handling follows from the Executor’s custodial right. Executorial authority includes the right to determine lawful preservation, storage, or use, subject only to public health compliance.

...

These authorities confirm that:

- Preservation and storage are incidents of lawful custody;
- That custody lies with the Executor;
- The State cannot continue control absent necessity.

Thus, the Applicant is entitled not only to possession but to determine preservation conditions, including continued mortuary storage where appropriate. The applicant is entitled to government-funded mortuary storage pending lawful transfer, including for cultural, ceremonial, scientific, or evidentiary purposes.”

- (d) Ground 6: “Executive action must be authorised by law and cannot interfere with vested rights arbitrarily. The Constitution protects vested rights; executive or judicial action cannot override executorial rights absent statutory authority.

...

In application of these authorities:

- The Respondents’ continued control lacks statutory basis;

- Their actions exceed the limits of coronial authority,
- This constitutes jurisdictional error and invalid executive action.

Accordingly, the Court must intervene to restore legality and protect vested rights. Continued State control absent statute breaches constitutional protections.”

- (e) Ground 7: “The Respondents owed a duty to avoid foreseeable harm arising from misuse of their powers. Respondents owed a duty to avoid foreseeable harm to the Applicant from misuse of statutory power or unlawful retention by the Respondents.

...

It is plainly foreseeable that:

- Retention of a deceased body contrary to law;
- Interference with burial and cultural obligations;
- Delay in returning custody

Would cause serious psychological, cultural, and legal harm to an Executor.

There is no inconsistency between recognising this duty and the Respondents’ statutory role – indeed, the duty reinforces proper and lawful exercise of that role.”

[123] Relevant to a number of these grounds, the applicant relies on three cases in support of her contention for a right of the executor to possession and control of a deceased’s body: *Williams v Williams* (1882) 20 Ch D 659; *Doodeward v Spence* (1908) 6 CLR 406; and *R v Kelly* [1999] QB 621.

[124] *Williams v Williams* is the authority for the principle that there is no property in a dead body. That case concerned a dispute as to the disposal of the deceased’s body between the executors and a person holding instructions about the deceased’s remains.

[125] Justice Kay went on to consider the rights of executors with respect to burial and stated:

“the law in this country is clear, that after the death of a man, his executors have a right to the custody and possession of his body (although they have no property in it) until it is properly buried.”¹⁵

[126] *Williams v Williams* recognises that the executors are entitled to possession but are responsible for the burial of a dead body.

[127] The respondents contend that:

¹⁵ At p 665.

- (a) The right of executors to possession of a deceased's body is "subject to" the corresponding duty to arrange burial. Further, it is submitted that there is no broad right of the executor to possession of a body for "any and all purposes".
- (b) Any right of the executor does not overcome the plain language in s 26(2)(f) of the Coroners Act.

[128] *Doodeward v Spence* is a "novel" case considered by the High Court. It involved an action for conversion and detinue in respect of a corpse of a still-born two-headed child. The Court, in possibly dated language and reasoning, concluded that the remains were a "curiosity" and no longer held the qualities of a body waiting on burial. Ultimately, in that case the plaintiff was able to recover possession of the remains. Here, there is nothing to suggest that similar reasoning would apply and the case can be distinguished on its facts.

[129] *R v Kelly* is an appeal against conviction in relation to theft of body parts. The question arose as to whether the body parts were capable of being property. While a corpse or parts of a corpse are not protected by property rights, where the corpse or parts of a corpse have been prepared for anatomical purposes (including teaching), then they are capable of being property under the *Theft Act 1968* (UK) as they have acquired different attributes. Similarly, there is nothing to suggest that similar reasoning would apply here and the case can be distinguished on its facts.

[130] Dal Pont in *Law of Succession*¹⁶ considers the duty to arrange disposal of deceased's remains where an executor is nominated and states as follows:

"The common law has consistently sided against acknowledging property in a dead body, and thus the notion that a deceased's body is capable of ownership by another person.¹⁷ At the same time, the law cannot ignore the necessity for someone to make decisions regarding the disposal of a corpse. The law, to this end, decrees that person to be the executor of the deceased's will, where there is one, or otherwise the person who is (to be) appointed as administrator of the deceased's estate.¹⁸ A New Zealand judge explained the reasons underscoring this in the following terms:¹⁹

This clear rule concerning the duty of the executor to arrange for disposal of a body serves the need for a prompt decision on the manner

¹⁶ 3rd edition.

¹⁷ *R v Fox* (1841) 2 QB 246; 114 ER 95; *Williams v Williams* (1882) 20 Ch D 659. See generally R Atherton, 'Claims on the Deceased: The Corpse as Property' (2000) 7 JLM 361.

¹⁸ *Williams v Williams* (1882) 20 Ch D 659 at 665 per Kay J; *Hunter v Hunter* [1930] 4 DLR 255 at 263-5 per McEvoy J (SC(Ont)); *Waldman v Melville (City)* (1990) 65 DLR (4th) 154 at 155-6 per MacLeod J (QB(Sask)); *Smith v Tamworth City Council* (1997) 41 NSWLR 680 at 693; BC9701914 per Young J ('If a person has named an executor in his or her will and that person is ready, willing and able to arrange for the burial of the deceased's body, the person named as executor has the right to do so'); *Dobson v North Tyneside Health Authority* [1996] 4 All ER 474 at 478-9 per Peter Gibson LJ, with whom Thorpe and Butler-Sloss LJ concurred; *Buchanan v Milton* [1999] 2 FLR 844 at 845 per Hale J; *Manktelow v Public Trustee* (2001) 25 WAR 126; [2001] WASC 290; BC200106536 at [22]-[30] per Hasluck J; *University Hospital Lewinsham NHS Trust v Hamuth* [2007] WTLR 309; [2006] EWHC 1609 (Ch) at [13]-[17] per Hart J; *Ibuna v Arroyo* [2012] WTLR 827; [2012] EWHC 428 (Ch) at [44]-[50] per Peter Smith J.

¹⁹ *Takamore v Clarke* [2013] 2 NZLR 733; [2012] NZSC 116, BC201266178 at [144] per Blanchard JJ, joined by Tipping and McGrath JJ.

of disposal when differences arise among those who were close to the deceased. The common law imposes the duty on the person to whom the deceased entrusted responsibility for the administration of property in his or her estate. The executor, being chosen for that purpose, is seen as appropriate to decide the question of disposal. That person is also in a good position to decide on the manner of disposal, having regard to the extent of the estate which bears the cost. The common law approach also has the advantage of clarity and certainty over who has the responsibility if there is disagreement.

This approach, his Honour added, is ‘practical and convenient’, as it ‘will often avoid anyone going to court over their differences because the parties accept or acquiesce in what the personal representative decides’, and thereby ‘will often serve the desirability of expedition in a matter which is the occasion of feelings of great grief and loss, while also allowing relevant matters to be addressed’.^{20,21}

- [131] The principle in *Williams v Williams* and this commentary is consistent with the executor having a right of possession for the purposes of burial, consistent with the duty to arrange burial. There is no recognised principle that an executor has some form of unconstrained right to possession of the deceased’s body.
- [132] This conditional right, is consistent with the limited power of the Coroner to release a body pursuant to s 26(2)(f) of the Coroners Act: for the purpose of burial.
- [133] If an executor is “ready, willing and able” to arrange for the burial of a deceased’s body, it is recognised that the executor has the right to do so.²² Again that is consistent with the power of the Coroner to be able to release a body for burial under s 26(2)(f) of the Coroner’s Act.
- [134] But that is not the situation here. The applicant has been given an extended period of time to be able to make arrangements for the burial of the Deceased. Despite her intention to do so and the opportunity to do so, there is no evidence that actual suitable arrangements for burial have been made.
- [135] In any event, s 26 of the Coroners Act applies and needs to be considered. The Coroner had control of the Deceased’s body from when the coronial investigation started. From the time that the Coroner decided that it was not necessary for the Coroner’s investigation to keep the body after the autopsy, the Coroner could order the “release of the body for burial”. At that time the Coroner would stop having control of the Deceased’s body. Until that occurs, the Deceased’s body is still subject to s 26 of the Coroner’s Act.

²⁰ *Takamore v Clarke* [2013] 2 NZLR 733; [2012] NZSC 116; BC201266178 at [153] per Blanchard JJ, joined by Tipping and McGrath JJ. In the event of disagreement between the personal representative and the deceased’s family (or close friends), the minority, Elias CJ and William Young J in separate judgments, favoured the matter being addressed by the court rather than determined by the personal representative’s fiat: at [90] per Elias CJ, at [207]-[209] per William Young J. While their Honours may well have had justification for remaining unconvinced of the rationale proffered for the somewhat blunt rule in this context (see at [50] per Elias CJ, at [202]-[205] per William Young J), their preferred approach ultimately encourages the litigation of disputes rather than quells them.

²¹ At 12.5.

²² *Smith v Tamworth City Council* (1997) 41 NSWLR 680 at 693 per Young J.

- [136] The power in s 26(2)(f) of the Coroners Act is limited to being released “for burial”. The respondents submit that this was a deliberate legislative choice considered in light of the Explanatory Notes which state:

“In this case clause 26(3) provides that the coroner must order the release of the body as soon as reasonably practicable after the autopsy.

However under clause 26(4) the coroner cannot order the release of a body for burial that has not been identified unless the coroner believes it is necessary to bury the body in particular circumstances. This is based on section 23(4) of the *Coroners Act 1958*.

“Burial” is defined in the dictionary to include cremation or other lawful disposal, either in Queensland or elsewhere.”²³

- [137] The correspondence summarised earlier in these reasons shows that since 2022 requests have been made for the applicant to provide information about the burial arrangements for the Deceased to enable the Coroner to release the Deceased’s body for burial pursuant to s 26(2)(f) of the Coroners Act.
- [138] In the absence of that information, the Deceased’s body could be released to the Director-General of the Department of Justice who has arranged burial pursuant to s 3 of the Burials Assistance Act.
- [139] The second respondent is under a duty imposed by the Burials Assistance Act to bury the body of any person who has died in Queensland where it appears to the chief executive that “no suitable arrangements for the disposal of the body have been or are being made”.
- [140] The Deceased’s body has been in the Cairns Hospital mortuary for over five-and-a-half years and numerous requests have been made for the applicant to make suitable arrangements for the burial of the Deceased.
- [141] As previously indicated, on 15 May 2026 the second respondent gave notice to the applicant that the second respondent had formed the view that suitable arrangements were not being made such that the second respondent had a duty to make those arrangements. Further, directions would be given to the Coroners Court Registry to arrange for the Deceased’s burial and to request that the first respondent release the Deceased’s body for burial pursuant to s 26(2)(f) of the Coroners Act. Further, the letter indicated that human rights had been considered in making the decision.
- [142] In the circumstances of this case, the conditional right of the applicant for possession of the Deceased’s body for burial is subject to the relevant provisions of the Coroners Act and the Burials Assistance Act.
- [143] The applicant has not established some wider right that is “actionable and enforceable in the superior courts”.
- [144] The applicant has not established the matters in Grounds 1, 2, 5 to 7 described at [117] above and those grounds must fail. Accordingly, the applicant has not established a

²³ Explanatory Notes to the Coroners Bill 2002 (Qld) at p 24.

right to the declaratory relief sought in the originating application on the basis of the matters raised in those grounds.

Fiduciary relationship

[145] The applicant contends that fiduciary obligations arise from the Coroner’s “exclusive control”. That is:

“The Respondents’ assumption of exclusive custody gives rise to fiduciary-like obligations. Exclusive custody of the deceased created a fiduciary relationship with the Applicant, imposing duties of loyalty, good faith, and adherence to statutory purpose”.²⁴

[146] The applicant goes on to refer to the Coroners Act, the *Public Service Act 2008* (Qld) and the authorities of *Guerin v The Queen* (1984) 2 SCR 335, *Hospital Products Ltd v United States Surgical Corporation* (1984) 156 CLR 41 and *Breen v Williams* (1996) 186 CLR 71.

[147] In respect of the alleged fiduciary obligation, the applicant contends:

“In these authorities:

- The Respondents exercised exclusive physical control over the deceased;
- The Applicant was legally dependent on their proper exercise of power;
- The subject matter (a deceased body) is uniquely sensitive and non-substitutable.

This combination establishes a relationship of heightened responsibility, requiring:

- Exercise of power only for statutory purpose,
- Prompt restoration of rights once that purpose ends,
- Avoidance of self-directed or convenience-based decision-making.

Continued retention beyond purpose is therefore not merely unlawful – it is a misuse of entrusted power, consistent with breach of fiduciary obligation.”

[148] The content of the applicant’s originating application suggests that it has been prepared with the assistance of generative artificial intelligence. The authorities referred to are not relevant to support the proposition advanced. They are likely to be hallucinations, as often occurs in the use of generative artificial intelligence.

[149] Further, the cases referred to do not deal with the exercise of physical control over the body of a deceased.

[150] The respondents submit that in these circumstances Ground 3 must fail.

²⁴ Ground 3, page 8 of the originating application.

- [151] It is impossible to identify a proper basis giving rise to a fiduciary obligation of the nature proposed.
- [152] Accordingly, the applicant has not established a basis for a finding that a fiduciary relationship arose. Further, the applicant has not established a proper basis for the relief sought in the originating application in respect of this ground.
- [153] Accordingly, the applicant has not established a right to the declaratory relief sought in the originating application on the basis of the matters raised in Ground 3.

Cultural rights

- [154] Ground 4 is “cultural, spiritual and human rights recognition”. The applicant contends that:

“The deceased was an Elder. The Applicant has legally cognisable cultural, spiritual, and custodial obligations. The Applicant’s custodial rights are reinforced by legally recognised cultural and human rights.”

- [155] The applicant relies upon *Mabo v Queensland (No 2)* (1992) 175 CLR 1, the *Wik Peoples v Queensland* (1996) 187 CLR 1 and *Koowarta v Bjelke-Petersen* (1982) 153 CLR 168. Further the applicant relies upon sections 15 and 25 of the Human Rights Act and sections 223 and 225 of the *Native Title Act 1993* (Cth).

- [156] The applicant relies on these sources for the following proposition:

“The applicant’s responsibilities are not merely personal – they arise within a recognised system of cultural obligation.

Accordingly:

- Interference with custody is not neutral – it impacts protected cultural practices;
- The Court must prefer an interpretation of statutory power that is compatible with human rights (Human Rights Act 2019 (Qld));
- Any continued retention must be strictly justified, not administratively convenient.

The Respondents’ conduct, lacking ongoing statutory necessity, constitutes an unjustified limitation on protected cultural rights. Continued State control inconsistent with these obligations is unlawful interference.”

- [157] Again, the structure and content of the material in respect of this ground also suggests it has been prepared using generative artificial intelligence. The cases referred to are legitimate cases but not for the principle that they appear to be relied upon by the applicant.
- [158] The respondents submit that the applicant appears to be arguing that the Coroner’s failure to order a release of the Deceased’s body to the applicant in the absence of evidence of any burial arrangements is a breach of the applicant’s cultural rights.

[159] To the extent that this is the contention raised by the applicant, the respondents submit that the Court should reject the contention.

[160] The respondents rely upon the Deceased's burial wishes expressed in his Will. That is, to be buried at Woorabinda Cemetery. The applicant refutes this as being the Deceased's wish. However, the respondents contend that given the Deceased's express statement in respect of his burial, it may be that it is the applicant's wishes and not the Deceased's that are being impacted, if any.

[161] Further, on the evidence there is some inconsistency in respect of the purpose of the release of the Deceased's body sought by the applicant. At some points in the material it appears that the applicant is seeking a second autopsy. At other points the applicant expresses an intention to seek an inquest into the Deceased's death. Further, at other points the applicant seeks the release of the Deceased's body to arrange a funeral and burial.

[162] In the applicant's affidavit filed with the originating application the applicant noted various matters including that the continued retention of the Deceased's body caused her significant distress. Further, the applicant deposes as follows:

“29. I am concerned that, without urgent intervention by this Honourable Court, the Deceased's body may be buried, disposed of, or otherwise dealt with in a manner inconsistent with my lawful rights and the cultural, ceremonial, and dignified requirements of the Deceased and my responsibility to him as his Executor as his individual cultural right as the senior male elder and custodian of knowledge for his tribal group.”

[163] The applicant's affidavit was sworn on 31 March 2026. Despite the effluxion of nearly six months, there remains no evidence of suitable arrangements for the burial of the Deceased.

[164] In addition, a second autopsy or an inquest would further delay the burial of the Deceased's body. It is difficult to see how a second autopsy or an inquest would be for a cultural purpose, if a second autopsy or an inquest is the intended purpose of release of the Deceased body.

[165] The applicant raised an alleged failure to comply with provisions of the Human Rights Act. Several sections of the Human Rights Act need to be considered.

[166] Section 58 of the Human Rights Act provides as follows:

“58 Conduct of public entities

(1) It is unlawful for a public entity—

- (a) to act or make a decision in a way that is not compatible with human rights; or
- (b) in making a decision, to fail to give proper consideration to a human right relevant to the decision.

- (2) Subsection (1) does not apply to a public entity if the entity could not reasonably have acted differently or made a different decision because of a statutory provision, a law of the Commonwealth or another State or otherwise under law.

Example—

A public entity is acting to give effect to a statutory provision that is not compatible with human rights.

- (3) Also, subsection (1) does not apply to a body established for a religious purpose if the act or decision is done or made in accordance with the doctrine of the religion concerned and is necessary to avoid offending the religious sensitivities of the people of the religion.
- (4) This section does not apply to an act or decision of a private nature.
- (5) For subsection (1)(b), giving proper consideration to a human right in making a decision includes, but is not limited to—
- (a) identifying the human rights that may be affected by the decision; and
 - (b) considering whether the decision would be compatible with human rights.
- (6) To remove any doubt, it is declared that—
- (a) an act or decision of a public entity is not invalid merely because, by doing the act or making the decision, the entity contravenes subsection (1); and
 - (b) a person does not commit an offence against this Act or another Act merely because the person acts or makes a decision in contravention of subsection (1)."

[167] Section 48 of the Human Rights Act provides as follows:

“48 Interpretation

- (1) All statutory provisions must, to the extent possible that is consistent with their purpose, be interpreted in a way that is compatible with human rights.
- (2) If a statutory provision can not be interpreted in a way that is compatible with human rights, the provision must, to the extent possible that is consistent with its purpose, be interpreted in a way that is most compatible with human rights.”

[168] Section 13 of the Human Rights Act also provides as follows:

“13 Human rights may be limited

- (1) A human right may be subject under law only to reasonable limits that can be demonstrably justified in a free and democratic society based on human dignity, equality and freedom.
- (2) In deciding whether a limit on a human right is reasonable and justifiable as mentioned in subsection (1), the following factors may be relevant—
 - (a) the nature of the human right;
 - (b) the nature of the purpose of the limitation, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom;
 - (c) the relationship between the limitation and its purpose, including whether the limitation helps to achieve the purpose;
 - (d) whether there are any less restrictive and reasonably available ways to achieve the purpose;
 - (e) the importance of the purpose of the limitation;
 - (f) the importance of preserving the human right, taking into account the nature and extent of the limitation on the human right;
 - (g) the balance between the matters mentioned in paragraphs (e) and (f).”

[169] The respondents contend:

- (a) Section 58(1) of the Human Rights Act does not apply because of the operation of s 58(2). Particularly:
 - (i) The first respondent could not reasonably order the release of the Deceased’s body to the applicant due to the terms of s 26(2)(f) of the Coroners Act.
 - (ii) The second respondent could not reasonably take any action other than to make burial arrangements for the Deceased by the operation of s 3 of the Burials Assistance Act.
- (b) If s 58(1) of the Human Rights Act does apply, proper consideration has been given by the second respondent to the human rights that may be affected and whether the decision would be compatible to human rights, and to the extent that there is a limit on human rights it is reasonable and justifiable within s 13 of the Human Rights Act.
- (c) Section 48 of the Human Rights Act has no operation as there is no ambiguity in the relevant legislative provisions.

- [170] There is a strong argument that s 58(2) operates so that s 58(1) does not apply in respect of the conduct and/or decisions of the respondents about the Deceased's body. Section 26 of the Coroners Act and s 3 of the Burials Assistance Act are narrow and focussed in their meaning and operation. It is difficult to hypothesise about what could reasonably be done other than what has been done or what is proposed to be done.
- [171] In any event, the second respondent has considered human rights in making her decision for the purposes of s 3 of the Burials Assistance Act. To the extent that there is an impact on human rights this is to the extent that is "reasonable and justifiable". This is so, given the extensive opportunity that has been afforded to the applicant to make suitable burial arrangements, and also that the second respondent has been open to hearing from the applicant in respect of the location of the Deceased's burial. This included identifying options that were within what was available for an assisted burial.²⁵
- [172] The evidence includes information provided to the applicant about burial assistance.²⁶ While the completion of the form is required where a person requests the assistance, rather than by a decision of the second respondent, it is of some assistance in understanding the statutory framework. The information and form expressly recognise that Aboriginal and Torres Strait islander persons who have passed may be returned to their homelands or Country for burial. Certain costs may be covered under the assistance, but some costs may need to be paid, including the cost of the transfer.
- [173] In the circumstances, the applicant has not established that s 58(1) of the Human Rights Act applies given the operation of s 58(2). Neither the first respondent, nor the second respondent, could reasonably act differently given the statutory provisions.
- [174] Further, or alternatively, the applicant has not established that there has been a non-compliance with s 58 of the Human Rights Act, if s 58(1) does apply in the current circumstances. Further, no other failure to comply with the Human Rights Act has been established.
- [175] Arguably, the applicant raises an alleged breach of her cultural practices. The respondents contend that this is not a claim recognised by law.
- [176] The respondents rely upon the decision of O'Bryan J in *Wanambi for himself on behalf of the Marran̕u People of East Arnhem Land v Wanambi* [2026] FCA 781. In that case, O'Bryan J was considering a dispute about appropriate burial arrangements for a deceased member of the Marran̕u people and relevantly stated:

"[22] This case does raise, however, novel legal arguments. At the heart of the dispute is a conflict between two systems of law concerning rights and obligations with respect to burial and inheritance. Mrs Wanambi is proceeding in accordance with the law of Australia (and specifically the Northern Territory) having its origins in the assertion of British sovereignty over the Northern Territory – from 1825 in part

²⁵ Identification of the closest cemeteries to Cape Flattery being Cooktown and Hope Vale. Alternatively, Cairns Cemetery. See page 196 of Exhibit ME-53 to the affidavit of Michelle Emeleus filed 17 July 2026.

²⁶ Pages 54 to 70 of Exhibit ME-13 to the affidavit of Michelle Emeleus filed 17 July 2026.

of the Northern Territory, including Gapuwiyak, and 1863 for the balance of the Northern Territory: see *Margarula v Northern Territory of Australia* (2016) 257 FCR 226 (*Margarula*) at [3]; *Mabo v Queensland (No 2)* (1992) 175 CLR 1 (*Mabo No 2*) at 38 (Brennan J, Mason CJ and McHugh J agreeing). The applicant is proceeding in accordance with an older law, being the traditional law of the Marranu people, which has applied to the Marranu people and in the lands of the Marranu people within the Northern Territory from time immemorial.

[23] For the reasons that follow, the dispute must be resolved by this Court in favour of Mrs Wanambi. On the authorities binding upon me as a single judge of this Court, the proceeding does not disclose an arguable cause of action. The provisions of the Administration Act and the Burial Act that are impugned by the applicant do not offend s 10(1) of the RDA, and do not constitute an acquisition of property for the purposes of s 50(1) of the NTSGA. The applicant's claim that the Crown has an obligation of protection owed to Aboriginal people which has been breached by the impugned provisions of the Burial Act and the Administration Act is not a claim recognised at law...".

[177] If the applicant is alleging a claim for breach of her own cultural practices, it has not been clearly articulated in the originating application, nor does the applicant's evidence clearly address it.

[178] In these circumstances, it is not necessary for me to conclusively determine that there is no claim recognised by law. On the evidence, the applicant has not established an entitlement to declaratory relief by reason of a breach of the Human Rights Act or other alleged breach of cultural practices.

[179] Accordingly, the applicant has not established a right to the declaratory relief sought in the originating application on the basis of the matters raised in Ground 4.

Is the applicant entitled to consequential orders?

[180] The applicant also seeks a number of consequential orders, including:

- (a) An order restraining the respondent from burying the Deceased's body;
- (b) Orders requiring the respondents to release the Deceased's body and transfer custody to the applicant or a facility nominated by the applicant;
- (c) Orders requiring the Deceased's body to be preserved and stored in a government mortuary "pending transfer or further lawful direction"; and
- (d) Orders requiring the respondents to "comply with statutory and common law duties" regarding the Deceased's body.

[181] The applicant's grounds for these consequential orders are the same as Grounds 1 to 7 outlined at [117] above.

- [182] For the same reasons as outlined above in respect of the declaratory relief sought, the applicant has not established a proper basis for the making of the consequential orders.
- [183] Accordingly, the applicant has not established a right to the consequential orders sought in the originating application on the basis of the matters raised in Grounds 1 to 7.

Other matters

- [184] In submissions the applicant raised various other arguments, including an alleged inconsistency between State and Commonwealth statutes.
- [185] To the extent that the oral submissions raised claims, contentions or arguments that went beyond the originating application they were not matters properly before the Court. Accordingly, they have not been addressed in these reasons.
- [186] In any event, it is not apparent that any of those matters are determinative of the applicant's application. To the extent that any additional claims, contentions or arguments are raised by the applicant, they have not been established in all of the circumstances.

Orders

- [187] The applicant has not established an entitlement to the relief sought.
- [188] Accordingly, the appropriate order is:

THE ORDER OF THE COURT IS THAT:

1. The originating application is dismissed.
2. The respondents are to file and serve brief written submissions as to costs of no more than three pages by 4pm on 8 October 2026.
3. The applicant is to file and serve brief written submissions as to costs of no more than three pages by 4pm on 15 October 2026.
4. The issue of costs is to be dealt with on the papers.