

Inspector's overview

In October 2013 we released a report entitled *Funeral attendances by incarcerated people in Western Australia*. This was one of the first reviews we undertook after our review powers were extended in 2012. The review was a priority because funerals are one of the most frequent causes of concern raised during inspections. Complaints about restrictions for attending funerals are also raised by prisoners with independent visitors during their monthly visits. Prisoners' families and community members also often raise concerns direct with our Office.

While access to funerals is important for any person in custody, it is especially important for Aboriginal people. It is well documented that there is an obligation for Aboriginal people to show respect to the family, say goodbye, and participate in 'Sorry' business. This obligation may continue even though the person is in custody.

While our first review was underway the Department made multiple and substantial changes to its rules governing access to compassionate leave. Distance limitations were introduced but then abolished, the recognition of Aboriginal kinship was dropped, and the approvals and appeals process was amended. Confusingly, these changes occurred through a series of notices and instructions without any change to the overarching policy. The result was that the governing policy no longer reflected practice. We found that the changes particularly impacted Aboriginal people, and caused anger and confusion in the prison population and the broader community.

As the Inspector, Neil Morgan, said on the release of the 2013 review:

Attending a funeral is an important aspect of enabling a prisoner to maintain a connection with their family and community. For Aboriginal people who have a lower life expectancy and significant cultural obligations to attend funerals, failing to attend can be damaging to the person's well-being.

The 2013 review made ten recommendations, all of which the Department supported. They included the need to improve access to compassionate leave, to improve communication around this leave, and to understand the associated costs.

Given the Department's level of support in 2013, we had hoped to see improvements in both funeral attendance and financial accountability. They have not occurred.

In relation to attendance we found that:

- restricted access had been bedded down in policy despite the lack of justification and the known disproportionate impact on Aboriginal people
- fewer people in custody are accessing compassionate leave than ever before.

In relation to costs and financial accountability, we found that the Department is still not aware of how much it is spending, despite fully supporting our recommendation

that it: “Develop processes for accurately recording and monitoring the cost of funerals by prisoners and detainees”. This finding negates the Department’s 2013 claim that it had already “implemented a process to accurately track the Serco (CS & CS) costs incurred when the contractor facilitates the funeral attendance by prisoners” and that it would “develop systems for Adult Custodial and Youth Custodial.”

We recognise that cost considerations are a factor that must be taken into account when approving attendance at a funeral. But the Department needs to be able to identify what those costs are, and to apply them in a manner which does not systemically discriminate against Aboriginal people. It is not doing this.

More concerning from my perspective is that the Department does not seem to recognise the impact of current practices or the fact that they contravene its own Reconciliation Action Plan (‘RAP’). The RAP expressed a ‘new’ commitment to make the Department more culturally sensitive, inclusive, and responsive to Aboriginal people. Access to funerals is very important to Aboriginal people in custody, and to their families. It is one of the single most important ways to demonstrate cultural sensitivity. The Department cannot claim to be culturally sensitive and responsive when it fails to address, or even to recognise the effect on Aboriginal people of lack of access to funerals.

Because of the importance of these matters it is likely we will have to undertake a further follow up review in the hope that positive change will be made. However, given the Department has made so little progress on actions agreed three years ago, and has only agreed to take action on one of the recommendations in this report, we are not optimistic. We hope to be proved wrong.

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