



OFFICE OF THE INSPECTOR
OF CUSTODIAL SERVICES

Funeral attendances by incarcerated people in Western Australia

Inspector's Overview

Introduction

The issue of prisoners and detainees being able to attend the funeral of a family member has been an area of interest to this Office for many years.¹ It is a matter that has particular resonance for Aboriginal people, who comprise over 40 per cent of the state's prison population. They have a lower life expectancy and significant cultural obligations surround funeral attendance. For many Aboriginal people, failing to attend a funeral can be damaging to mental wellbeing. It may also be seen as a sign of disrespect for which there may be cultural consequences.

This review commenced in August 2012. It was initially designed mainly to examine policies and practices in the Department of Corrective Services (the Department) with respect to funeral attendance. However, as it evolved, financial accountability also emerged as a major issue.

The Department had been hinting at changes to funeral attendance policies from late 2011. In July 2012 it stated during Budget Estimates hearings that Western Australia was 'by far the most generous jurisdiction in the country' in providing for funeral attendance. It also announced that it would reduce attendances in 2012-13 to achieve savings of \$500,000 per annum, a 50 per cent cut in expenditure on funerals. The two justifications given for the changes were cost savings and comparisons with other jurisdictions.

This prompted us to ask a number of questions about the cost of funerals, how the savings had been calculated and the situation in other jurisdictions, as well as about the adequacy of funeral attendance policies.

¹ See for example Office of the Inspector of Custodial Services (OICS), *Report of an Announced Inspection of Acacia Prison*, Report No. 71 (May 2011); *Report of an Announced Inspection of Bunbury Regional Prison*, Report No. 75 (January 2012); *Report of an Announced Inspection of Broome Regional Prison*, Report No. 77 (June 2012); *Report of an Announced Inspection of Albany Regional Prison*, Report No. 78 (August 2012); *Report of an Announced Inspection of Pardelup Prison Farm*, Report No. 82 (January 2013).

Costs, Savings and Inter-state Practices

Like all government agencies, the Department is responsible for managing its budget efficiently and economically and in a climate of state-wide budget cuts it should be looking at multiple ways to reduce costs. Nobody could reasonably expect that funeral attendance would be exempt from this process and prisoners and families do understand such realities.

However, having announced that there would be such a sharp cut to one area of expenditure, the Department should have been able to explain the costs of funerals and how the anticipated savings had been quantified. Unfortunately, its efforts proved inconsistent, incoherent and unpersuasive. Despite the Department having announced a specific saving in Parliament, we needed to make several requests before any detailed figures were provided. In response to further questions, it then said the figures were unlikely to be correct. Some months later it provided yet more figures.

We also found that in a report tabled in Parliament relating to 2011-12, the Department had claimed that a \$500,000 saving had already been achieved. This was inexplicable: the proposed policy changes had not yet taken effect and if such savings had already been achieved, additional changes would not have been needed for 2012-13.²

In summary, despite having announced in Parliament that savings in the region of \$500,000 would be made, the Department had no means of determining how much funeral attendance was costing, how much could be saved, or how effective the changes had been in achieving any savings.

It was also reasonable to expect that the Department would have evidence to substantiate its assertion that Western Australia is 'by far the most generous jurisdiction in the country' in providing for funeral attendance. Again, despite numerous requests, it was unable to provide any persuasive evidence. Our own research has suggested such a range of different practices across the country that generalisations are not possible. Further analysis is required of practices inter-state and of options for this state.

² In the *Annual Report on Contract for the Provision of Court Security and Custodial Services 2011-12*, the Department noted that a number of changes had occurred in 2011-12 and stated: '*this has resulted in a \$500,000 savings associated with funerals*' (emphasis added). It subsequently claimed the words were 'open to misinterpretation'. This is disingenuous: the language was unambiguous and the only reasonable interpretation was that the Department was claiming a \$500,000 saving for 2011-12.

Policies

We have also concluded that the Department did not adequately analyse or understand the impact of changes to funeral attendance policies.

Policy Directive 9 (PD9) of the Department of Corrective Services governs funerals. Between July 2007 and September 2012, PD9 was amended via a number of notices and instructions which introduced eligibility criteria to applying for funerals. However, PD9 itself was not amended, with the confusing result that the policy no longer reflected actual practice. These 'indirect' changes to PD9 also resulted in a lack of transparency.

In September 2012 PD9 was updated and guidance for funeral attendance came back into a single document. The updated policy introduced 'distance' as a specific eligibility criterion for the first time. However, no suitable analysis was undertaken by the Department on the impact of this change. It had not determined how many people would be denied access to funerals or whether these policy changes would have a disproportionate impact on any one group. This report reveals, not surprisingly, that the changes impacted disproportionately on Aboriginal people. In addition, the new policy was poorly communicated, leaving a wake of confusion and anger over the changes.

In response to criticism, the controversial distance criterion was rescinded just one month after it was enacted. It was replaced by a tightened criterion around the significance of the prisoner's relationship to the deceased, meaning that it will be exceptional for a prisoner to gain approval to attend the funeral of any family member other than a direct blood relative. This ignores the well documented importance of acknowledging kinship ties in Aboriginal culture and therefore, again, impacts disproportionately on Aboriginal people. Again the review team was provided with no evidence to suggest this tightened criterion had been appropriately analysed.

In undertaking these policy changes the Department failed to follow its own guidance on assessing the impacts of new policy on Aboriginal people.³ Furthermore, PD9 does not appear to comply with whole of government substantive equality requirements.⁴

Young people in detention were not subject to the changes made in the adult policy. However their attendance at funerals has recently been impeded by operational constraints. Well before the 'riot' at Banksia Hill Detention Centre of 20 January 2013, insufficient numbers of youth custodial staff on duty were

³ Aboriginal Impact Statement and Guidelines

⁴ The Policy Framework for Substantive Equality 2010,

<http://www.eoc.wa.gov.au/Substantiveequality/Substantiveequalityresources.aspx>

leading to high levels of lockdowns and a lack of staff to escort young people to funerals⁵.

Although lack of access to funerals is only one of many difficulties that result from these staff shortages, it is a highly sensitive area which can have significant impacts on the health and wellbeing of young people and their relationships with their families. Given that young people were kept immune from the cost cutting exercise, the Department appears to recognise the particular importance of allowing them to attend funerals. However this is negated by staff shortages.

Access to Information and Report Timing

This review was intended to be complete by February 2013 but was delayed by two matters. First, at short notice we needed to redirect some resources to undertake the Directed Review into the riot at Banksia Hill Detention Centre on 20 January 2013.⁶ Secondly, the Department was not forthcoming with crucial information. Between August and November 2012, multiple written and verbal requests were made for information on funeral costs and any analysis of the impact of policy changes. The information was limited and confusing. In November 2012 we briefed the Department on our provisional findings and stated:

The intention ... is to provide ... a sense of the key findings and issues that the Office has uncovered ... [and to] provide the Department with the opportunity to notify the Office of any errors of fact. In addition, if the Department disagrees with our findings on a particular issue, this will be an opportunity ... to provide ... additional information for consideration.

Despite this briefing, the Department failed to provide additional relevant information in a timely manner. Eventually, but only after the draft report had been provided for comment, it did provide further documentation but this added confusion not clarity. The data was incomplete, conflicted with information previously supplied, and did nothing to alter the conclusion that issues of costs, savings and impacts of policy change had not been properly analysed.

⁵ In response to the draft of this report, the Department stated that 'there have been no young people declined to attend a funeral due to staff shortages.' This contradicts information provided by staff at Banksia Hill and detainees, as well as a formal response from the Department dated 31/10/2012 which stated 'staff shortages can sometimes override the ability of YCS [Youth Custodial Services] to send a young person to a funeral'.

⁶ OICS, *Report of a Directed Review into an Incident at Banksia Hill Detention Centre on 20 January 2013*, Report No. 85 (July 2013).

Under the *Inspector of Custodial Services Act 2003*, this Office is entitled to free and unfettered access to all documents in the possession of the Department in relation to a prison or custodial service and it is an offence to hinder access to documents or to hinder the Inspector or staff in performing their functions.⁷ I did not seek to formally invoke these provisions but the Department's failure to provide consistent and timely documentation hindered the conduct of this review and also the preparation and finalisation of the report.

Neil Morgan
2 September 2013

⁷ *Inspector of Custodial Services Act 2003*, sections 28, 32 and 49.