



OFFICE OF THE INSPECTOR
OF CUSTODIAL SERVICES

Funeral attendances by incarcerated people in Western Australia

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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.

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.

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).

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.

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.

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.

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 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

³ Aboriginal Impact Statement and Guidelines

⁴ The Policy Framework for Substantive Equality 2010, <http://www.eoc.wa.gov.au/Substantiveequality/Substantiveequalityresources.aspx>

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'.

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.

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

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

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

Recommendations summary

	Page
1 Develop, implement and effectively communicate a revised policy governing funeral attendance for prisoners. The revised policy is to:	
• Enable prisoners to attend funerals where there is a kinship or extended familial relationship, as well as when there is a direct family relationship.	23
• Adhere to the Department’s Aboriginal Impact Statement and Guidelines for new policies.	24
• Outline the appeals process, how this activated, and how the process is to be communicated to prisoners denied access to a funeral.	25
• Outline the process for constructive discussion with the applicant to occur at the onset of the funeral application process with regard to alternative options if the prisoner is unable to physically attend.	41
2 Develop processes for accurately recording and monitoring the cost of funerals attendance by prisoners and detainees.	11
3 Use the Court Security and Custodial Services contract to develop an internal quoting method to determine whether a funeral application is within any established cost limits.	14
4 Develop guidance on what evidence is required to demonstrate a prisoner’s relationship with the deceased and ensure each applicant is aware of these requirements when they begin the application process.	23
5 Develop a committee, with Aboriginal representation, to assess appeals.	26
6 Notify all prisoners of the outcome of whether they can attend a funeral at least three days prior to the funeral, unless there are clearly documented exceptional circumstances.	27
7 Develop and implement more effective communication for staff, stakeholders and prisoners for changes to sensitive policies, such as the policy governing funeral attendance.	28
8 Formalise existing good practice by amending the rules governing funeral attendance for young people in detention (or develop supporting guidelines).	31
9 Ensure that adequate staffing resources are in place to enable young people in detention to attend funerals.	32
10 Work with transport service providers to implement communication protocols which allow the service provider to make fully informed risk assessments regarding the need for restraints at funerals.	34

1 Background

Importance of funerals

- 1.1 Attending a funeral allows the mourner to openly grieve, be supported by others with shared feelings and, in turn, to provide support to other mourners. Funerals are a means for expressing the thoughts and feelings for a loved one, often through the celebration of the deceased's life. Tradition and culture form the basis of funerals and other burial rites.⁸
- 1.2 The Department of Corrective Services (the Department) allows approved adult prisoners and juvenile detainees to attend funerals. Almost 80 per cent of attendees over the last ten years have been Aboriginal people. This figure reflects the very high rate of Aboriginal imprisonment, Aboriginal mortality rates and cultural/family obligations.
- 1.3 Aboriginal and Torres Strait Islander peoples' life expectancy at birth is shorter than that of non-Aboriginal Australians.⁹ The age standardised death rate for Aboriginal and Torres Strait Islander people in 2010 was approximately twice the rate of non-Aboriginal Australians¹⁰ and higher for suicide (males 2.5 times higher and females 2.4 times higher).¹¹ In addition, Australian Bureau of Statistics census data indicates that Indigenous households are more likely to be larger than other Australian households, with an average household size of 3.4 people compared with 2.6 in other households. As such, Aboriginal prisoners and detainees will more often seek to attend the funeral services of their kin.

⁸ G. Bosley and A. Skinner Cook Therapeutic (1994) Aspects of Funeral Ritual: A Thematic Analysis, *Journal of Family Psychotherapy*, 4(4) 76.

⁹ According to the Australian Bureau of Statistics (ABS) in 2005-2007 in Western Australia, the life expectancy of Aboriginal and Torres Strait Islander men was 14 years less than non-Aboriginal men. The life expectancy for Aboriginal and Torres Strait Islander women was 12.5 years shorter than their non-Aboriginal counterparts. *ABS Life Tables for Aboriginal and Torres Strait Islander Australians* <http://www.abs.gov.au/ausstats/abs@.nsf/Products/199E22E265BEB950CA257943000CF049?opendocument>.

¹⁰ The ABS advises that age standardised death rates enable comparisons of mortality rates over time. The rates are used to determine whether the mortality rate of the Aboriginal and Torres Strait Islander population is declining and whether the gap between Aboriginal and Torres Strait Islander people and non-Aboriginal people is narrowing.

<http://www.abs.gov.au/ausstats/abs@.nsf/Products/DF6C640E5443637FCA2579C6000F721C?opendocument>.

¹¹ <http://www.abs.gov.au/ausstats/abs@.nsf/Products/55178476009BA12DCA2579C6000F7315?opendocument>.

In 2011, the WA State Coroner conducted an Inquest into the suicides of 5 young men in the Balgo Aboriginal Community in remote Western Australia. The coroner found that the average rate of suicide within WA was approximately one per ten thousand population but far higher for Aboriginal people in the Kimberley with a rate approximately 6.25 times higher than the rate for the state. Office of the State Coroner, *Annual Report 2011-2012* (2012) 38.

- 1.4 The health of Aboriginal people is often tied to their cultural and social wellbeing.¹² For most Aboriginal people it is extremely important to attend funerals and take part in the mourning process with their community. It is essential to show respect to the family, say goodbye and participate in 'Sorry' business. If unable to grieve appropriately, Aboriginal people can become physically ill.¹³
- 1.5 In addition to allowing the opportunity to grieve, Aboriginal people have significant cultural obligations to attend funerals. If a person does not attend a funeral and spend time with the family, it may be seen as not valuing family.¹⁴
- 1.6 A Law Reform Commission discussion paper on Aboriginal customary laws noted that one of the most important issues for prisoners was funeral attendance.¹⁵ The Law Reform Commission found that if attendance was required because of the prisoner's relationship to the deceased, failure to attend would cause distress and shame. Furthermore, responsibility under Aboriginal law is often strict. The fact that a prisoner does not attend a funeral even though this is not within their power (because they are in prison and have not been granted permission to attend) does not necessarily relieve them from the obligation to attend and the consequences of non-attendance. The 2005 Mahoney inquiry into management of offenders also heard evidence that if an Aboriginal person fails to attend certain funerals they could be liable to 'community sanctions'.¹⁶
- 1.7 When Aboriginal people refer to their family, and the obligations to attend the funeral of a family member, this generally includes extended family including parents, children, aunts, uncles, nieces, nephews, cousins and grandparents. The family member includes genetic as well as kinship ties.
- 1.8 Aboriginal kinship is based on the principle that people who are the same sex and belong to the same sibling line are viewed as essentially the same. Therefore, two brothers are considered to be equivalent. If one has a child, that child views not only his biological father as 'father' but applies the same term to the father's brother. Children from either of the two brothers will be considered siblings. As a

¹² As outlined in principle one of *Working Together: Aboriginal and Torres Strait Islander Mental Health and Wellbeing Principles and Practice* Editors N. Purdie, P. Dudgeon and R. Walker (Commonwealth of Australia, 2010) xxvii.

¹³ Toxic grief occurs when a person suppresses their grief over a period of time. With enough time, suppressing this grief will 'dismantle healthy cells and ... cause disease'. *Working Together: Aboriginal and Torres Strait Islander Mental Health and Wellbeing Principles and Practice* Editors N. Purdie, P. Dudgeon and R. Walker (Commonwealth of Australia, 2010) 268.

¹⁴ Queensland Government, *Workplace protocol guide for industry and employers of indigenous Queenslanders*. <http://www.employment.qld.gov.au/pdf/eii/iep-protocol-guide-employers-of-indigenous.pdf>.

¹⁵ Law Reform Commission, *Aboriginal customary laws Discussion Paper (December 2005) - Part V: Prisons* <http://www.lrc.justice.wa.gov.au/094-DP.html>.

¹⁶ Mahoney, D. *Inquiry into the Management of Offenders in Custody and in the Community* (November 2005) 298.

result an Aboriginal person is likely to have several fathers, several mothers and many brothers and sisters.

- 1.9 The significance of Aboriginal prisoners attending funerals and the need to incorporate a broad definition of kinship was highlighted in the 1991 Royal Commission into Aboriginal Deaths in Custody. It culminated in Recommendation 171:

Corrective Services give recognition to the special kinship and family obligations of Aboriginal prisoners which extend beyond the immediate family and give favourable consideration to requests for permission to attend funeral services and burials and other occasions of very special family significance.

- 1.10 The Government of Western Australia's Implementation Report on the recommendations from the Royal Commission, released a decade after the Royal Commission took place, noted the Department (then the Ministry of Justice) was addressing this recommendation by providing a Rule to guide funeral attendance.¹⁷ The Rule provided that consideration was to be given to the significance of the relationship between the deceased and the prisoner. Recent changes involve a significant move away from recognising kinship ties beyond the immediate family and go against the recommendation of the Royal Commission.
- 1.11 While respecting the different cultural and social obligations that are often shared by Aboriginal people it is important to acknowledge not all Aboriginal people have an identical perspective and culture. Nor do all Aboriginal people have the same obligations required at the passing of a loved one. There are many distinct Aboriginal groups throughout Western Australia. The larger groups with some shared perspective are from:

- Perth metropolitan and South West native title region (Noongar people)
- Goldfields region (Wongai people)
- Eastern Pilbara region (Martu people)
- West Pilbara region (Ngardju people)
- Murchison Gascoyne regions (Yamajti people)
- East and West Kimberley regions (Gija people)
- Central Desert region (Ngaanyatjarra people)

¹⁷ Government of Western Australia, Aboriginal Affairs Department, *2000 Implementation Report Royal Commission in Aboriginal Deaths in Custody* (June 2001) 101.

- 1.12 Whilst there may be similarities in the requirements for individuals within these groups to attend a funeral and participate in ritual, consideration must also be given to the differences that can occur. Each funeral application must include information which enables the assessor to gain an understanding of the obligations of the individual which must be applied appropriately to the decision of whether a prisoner should attend a funeral. This information should be sought from the individual and the community.
- 1.13 Prisoner and detainee attendance at funerals poses inherent difficulties which must be managed by the Department including managing security concerns and victim issues. In addition, like any other government department, the Department is required to manage its resources in an efficient, economical and effective way. There are costs associated with allowing prisoners and detainees to attend funerals and these costs must be balanced with the costs of meeting other prisoner needs.
- 1.14 It would be plainly unreasonable to expect the Department to enable all prisoners who make a request to attend any funeral. Nor would it be appropriate to prevent all prisoners and detainees from attending funerals. What is needed is a system that allows access to funerals for those with the greatest compassionate need to attend.
- 1.15 To govern the system, a policy that is fair, equitable, transparent and flexible is required. Currently PD9 and Youth Custodial Service Rule (YCS Rule) 801 govern funeral attendances by prisoners and detainees respectively. The various rules address security and potential victim issues. They also outline the process for applying to attend, including the need to verify the significance of the prisoner's or detainee's relationship to the deceased. The cost of prisoners and detainees attending a funeral is borne by the Department.

Other Jurisdictions

- 1.16 In evidence to Estimates Hearings in Parliament, the Department justified the decision to restrict funeral attendance on the grounds that Western Australia is 'by far the most generous jurisdiction in the country' in providing for prisoners and detainees to attend funerals.¹⁸ In essence, this statement involves two claims. The first is that other jurisdictions do not allow funeral attendance or allow attendance only in very restricted circumstances. The second is that this state spends relatively more money than the other jurisdictions on funeral attendance. However, the material provided by the Department to this review does not support such generalisations. Nor does the evidence revealed by our own requests for information directly from other jurisdictions.

¹⁸ Standing Committee on Estimates and Financial Operations 2012-13, *Budget Estimates Hearings – Transcript of Evidence* (5 July 2012) 2.

- 1.17 In South Australia prisoners are allowed to attend funerals according to similar criteria to those used in Western Australia; i.e. significant relationships, security and victim issues and if the prisoner is wanted at the funeral by the family or community. The cost is paid for by the Department of Correctional Service in South Australia.
- 1.18 In New South Wales prisoners are eligible to attend funerals subject to intelligence checks, consideration of victim issues, offence and term details and history. The costs are considered within the assessment but are covered by Corrective Services NSW.
- 1.19 Corrections Victoria pays for all costs associated with prisoners attending a funeral in Victoria.
- 1.20 In Queensland prisoners are eligible to apply to attend funerals with a specific procedure written for Indigenous prisoners.¹⁹ There is an approval and consultation process involving the relevant community. It considers among other factors the closeness of relationship and approval from the family to attend. However, the costs must be met by the prisoners, the family, the community or other approved sources. Supplemental government funding may be available under the Family Support Program.
- 1.21 Prisoners held in Northern Territory, or their families and communities, are required to meet the full cost of approved funeral attendances. The relationship with the deceased is assessed and must be either immediate family or a person of significance. The prisoner must also have a security rating of medium or lower to attend although there is provision for exceptional circumstances. The community must also agree to the prisoner's attendance.
- 1.22 In terms of costs and potential savings, evidence as to actual expenditure on funeral attendance even within this state proved elusive.²⁰ Significantly, the Department was also unable to provide any evidence to substantiate the claim that Western Australia spends relatively more than other jurisdictions.

Profile of funeral attendees

- 1.23 In the decade from 2003 to 2012, 6,014 prisoners and detainees were escorted to funerals across Western Australia. Aboriginal prisoners and detainees make up around 42 per cent of the custodial population but accounted for around 79 per cent of funeral attendances.

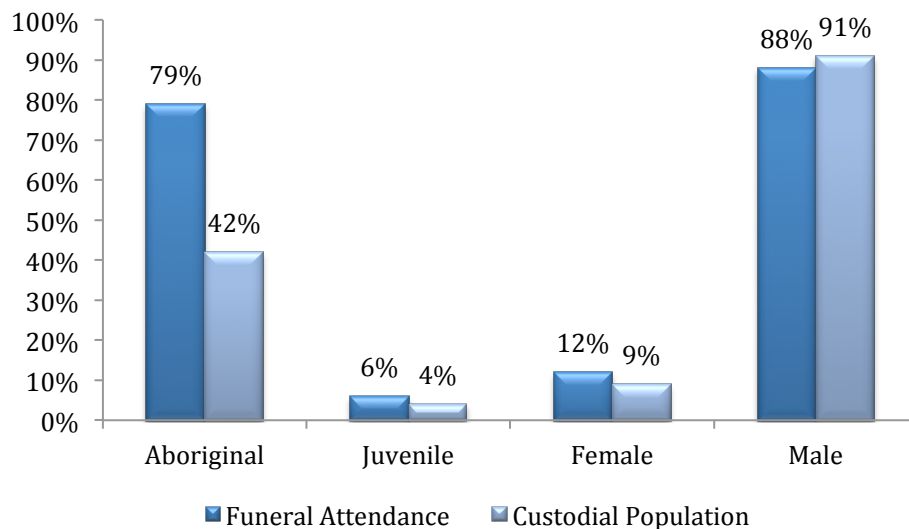
¹⁹ Queensland Government, Department of Community Safety, *Procedure – Funeral Attendance by Indigenous Prisoners – Version 02*.
http://www.correctiveservices.qld.gov.au/Resources/Procedures/Offender_Management/documents/ofmproindigfunattend.shtml.

²⁰ See [2.10] to [2.19].

1.24 Females were slightly over represented, attending 12 per cent of funerals while making up only nine per cent of the custodial population. Likewise, young people in detention were also slightly overrepresented.

Figure 1

Percentage of prisoners and detainees accessing funerals from January 2003 to December 2012, relative to the custodial population²¹



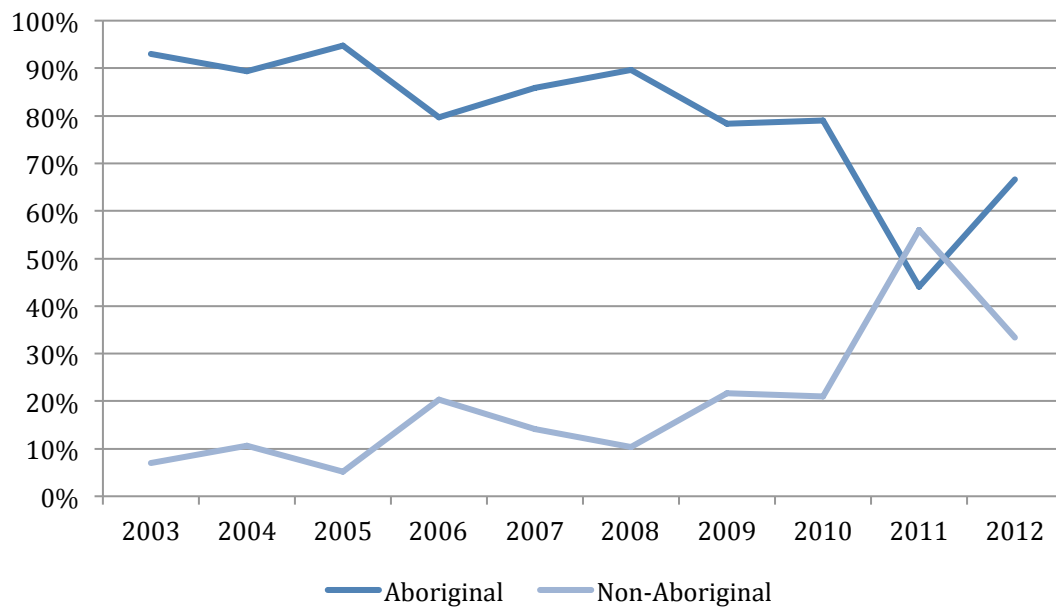
1.25 Since 2005, however, the proportion of Aboriginal people attending funerals has been slowly decreasing. In 2005, 87 per cent of funerals were attended by Aboriginal prisoners. In 2011 this had dropped to 71 per cent and by the end of 2012, the number had slumped further to 66 per cent.

1.26 The lower attendance by Aboriginal people in 2011 may be partially explained by an increase in the number of non-Aboriginal women being approved to attend funerals. Between 2003 and 2010, the percentage of funeral attendees that were women ranged between ten and 13 per cent. However, in 2011 the proportion of women attending funerals rose to 19 per cent. The increase was due to a sharp rise in the number of non-Aboriginal women attending funerals. In the past ten years non-Aboriginal women made up less than a quarter of all women attending funerals. In some years their representation was as low as five per cent. In 2011, however, more non-Aboriginal women than Aboriginal women were approved to attend funerals.

²¹ Due to data issues, the demographics of the custodial population was only measured in the five year period from 2007-2012

Figure 2

Percentage of female prisoners accessing funerals from January 2003 to December 2012, by Aboriginality.



- 1.27 In 2012 the traditional pattern of more Aboriginal women versus non-Aboriginal attending funeral attendees again emerged. However, the proportion of non-Aboriginal female attendees compared to Aboriginal women remained high (33%).
- 1.28 Attendance by young people fluctuated over the last ten years ranging from four per cent to eight per cent of the attendances in each year.

2 Service Provision and Costs

Service provision

- 2.1 Over the past decade the provision of transport for prisoners in Western Australia has in large part been contracted in from private companies under the *Court Security and Custodial Services Act 1999*. However the Department has always supplemented these contracts by maintaining service provision from some facilities and by providing additional services when demand is higher than expected.
- 2.2 In January 2000 transport services were provided by the Australian Integration Management Services Corporation (AIMS), initially trading as Corrections Corporation of Australia. Global Solutions Limited (GSL) took over the provision of this service in July 2007. GSL was acquired by Group4Securicor resulting in a change of operating name in January 2009 to G4S Custodial Services. The contract with G4S expired on 30 July 2011 and Serco Australia Pty Limited began providing transport services from 31 July 2011. This contract is currently in operation.

Table 1

Service provision for transports to funerals from August 2011 to December 2012

Service provider	No of people attending funerals	Percentage of funeral attendances
Serco	561	75
Department of Corrective Services		
From Karnet, Pardelup, Wooroloo and Boronia	101	14
Young people	33	4
High demand	51	7
Total	746	100.0

- 2.3 Table 1 shows that since the Court Security & Custodial Services contract (CS & CS contract) was awarded to Serco on 31 July 2011, 75 per cent of transports to funerals have been provided under this contract. Serco is not contracted to provide transport for funeral attendance for people located at Karnet, Pardelup and Wooroloo Prison Farms, or Boronia Pre-Release Centre for Women. Transport to funerals from these facilities is therefore conducted by the Department.
- 2.4 Transport for funeral attendance for young people is undertaken solely by the Department. The remaining funeral transports provided by the Department are undertaken when transport demand is higher than contract expectations.

Trends in funeral attendance

- 2.5 The Department's Annual Report for the 2011-12 financial year states that 1,342 funeral and dangerous illness leave applications were received with 41 per cent being approved. Although data on funeral leave and dangerous illness leave is generally linked for the Department's reporting purposes, this review found that attendances by prisoners visiting dangerously ill persons over the last decade have been a small minority (12%) of total attendances.

Table 2

Applications for Funeral and Dangerous Illness Leave

Financial Year	No. Applications	Approval	Actual Attendances	Adult Custodial DAP*	Youth Custodial DAP*	Total DAP*
2008-2009	1,504	40%	602	4,012	151	4,163
2009-2010	1,432	43%	616	4,759	168	4,927
2010-2011	1,385	44%	610	4,633	178	4,811
2011-2012	1,342	41%	550	4,795	185	4,980

* The daily average populations for adult and youth custodial were taken from the Department of Corrective Services Annual Reports for the respective financial years.

- 2.6 The daily average prison population (DAP) increased by 16.4 per cent from 2008-2009 to 2011-12. Surprisingly, though, there was a 10.8 per cent decrease in applications for funeral and dangerous illness attendances over the same time. Therefore, despite the daily average population increasing by almost 800 people, applications and approved attendances decreased by more than 50.
- 2.7 Another way of expressing these figures is that in 2008-2009, there were 14.4 attendances per 100 of the DAP of prisoners and detainees. By 2010-12 the figure had declined to 9.2.
- 2.8 Given these figures it seems plausible to suggest that the relative cost of funerals to the Department, measured per head of the prisoner population, was already declining irrespective of the measures adopted in 2012. However, as the following discussion shows, determining costs proved elusive.

Costing funerals

- 2.9 The cost of funerals includes staffing costs to escort the prisoner or detainee and the cost of the vehicle used for transport (either a secure vehicle, coach or plane). There may also be a cost associated with transporting an individual to the prison facility nearest to the funeral. For example, if a prisoner placed at Albany Regional Prison is approved to attend a funeral in Karratha, a temporary transfer to Roebourne Prison is necessary.

- 2.10 In July 2012 the Department told Budget Estimates Hearings that it intended saving approximately \$500,000 per annum by reducing the numbers of prisoners attending a funeral.²² The Department representative said that funeral attendances had been a matter under consideration for some time and ‘the need for the savings generated the final decision’.²³ In other words, the justification for the decision was purely financial.
- 2.11 However, despite making such claims, the Department has no discrete budget for funeral attendance. Nor does it have the capacity to readily identify the costs associated with attending funerals. Estimates are calculated on the costs associated with transport using the CS & CS contract.
- 2.12 Despite the matter being under consideration for some time,²⁴ and a specific saving being nominated, the Department told the review team that it was in fact unable to determine the costs of funerals over the last five years. Put simply the Department has no evidence based way to determine whether the costs are changing or the extent of any changes, either in dollar terms or in terms of percentage of budget.²⁵
- 2.13 An additional complexity is that the Department’s 2011-12 Annual Report for the Provision of Court Security and Custodial Services specifically credited a saving of \$500,000 in funerals costs to revisions in the CS & CS contract.²⁶ This is simply inexplicable. The change in the contract upon which these savings were calculated was not due to take effect until 2012-2013 and the policy changes of September 2012 were only in the pipeline.
- 2.14 The evidence provided to this review indicated that in January 2012, the previous Commissioner’s Executive Team was provided with an estimated cost for funeral attendance and visits to dangerously ill relatives for the 2010-11 financial year. The costs were estimated at \$1.157 million.²⁷ The estimated cost comprised only of the escort to the funeral and did not include the transfer costs of moving a prisoner to the closest custodial facility.²⁸

²² Standing Committee on Estimates and Financial Operations 2012-13, *Budget Estimates Hearings – Transcript of Evidence* (5 July 2012) 7.

²³ *Ibid*, 6.

²⁴ Restricting funeral attendance was clearly on the agenda 9-12 months earlier: Department’s comments following the Inspector’s Exit Debrief for the announced inspection of Broome Regional Prison (23 September 2011).

²⁵ In its feedback to the draft of this report, the Department noted that since December 2012 records are now being kept on the cost of each regional funeral over 50km.

²⁶ Department of Corrective Services *Annual Report 2011/12 Contract for the Provision of Court Security and Custodial Services* (30 September 2012) 20.

²⁷ Cover/Decision Sheet Discussion Paper on Funeral Attendance by Prisoners. Prepared by Sentence Management (23/01/2012) 2.

²⁸ Evidence provided by both the Sentence Management division and Contracted Services.

- 2.15 At the request of the Office, the Department approximated the cost for funeral attendances in 2011-2012 at \$567,655 for 421 people to be transported to funerals by Serco. The remaining 24 per cent of services provided by the Department last financial year were not included in these costs and did not appear to have been costed.
- 2.16 The costings for 2010-2011 and 2011-2012 are clearly neither accurate, nor comparable. They indicate the Department has made a 50 per cent saving (almost \$590,000) between 2010-11 and 2011-12, even though the number of people attending funerals fell by only 10 per cent.
- 2.17 The figures, if accurate, would also mean that in order to meet the Department's proposed \$500,000 savings in 2012-2013, the Department would need to further slash funeral costs from \$570,000 to \$70,000 (an 85 per cent cut).
- 2.18 In response to questions from the review team, the Department confirmed that the numbers provided to their Executive Team in January 2012 and subsequently to this Office are unlikely to be accurate. They were invited to, but unable to, provide accurate updated figures.
- 2.19 In summary, the situation is confusing. Deliberately or otherwise, it is also grossly misleading. First, the Department has claimed that it will achieve cost savings of around \$500,000 in 2012-2013 without having the ability to determine the actual costs of funeral attendance or to measure the effects of any cost savings measures. Secondly, it has claimed that it has already achieved a \$500,000 saving in the 2011-2012 prior to any of the measures designed to reduce costs actually being implemented.

Recommendation

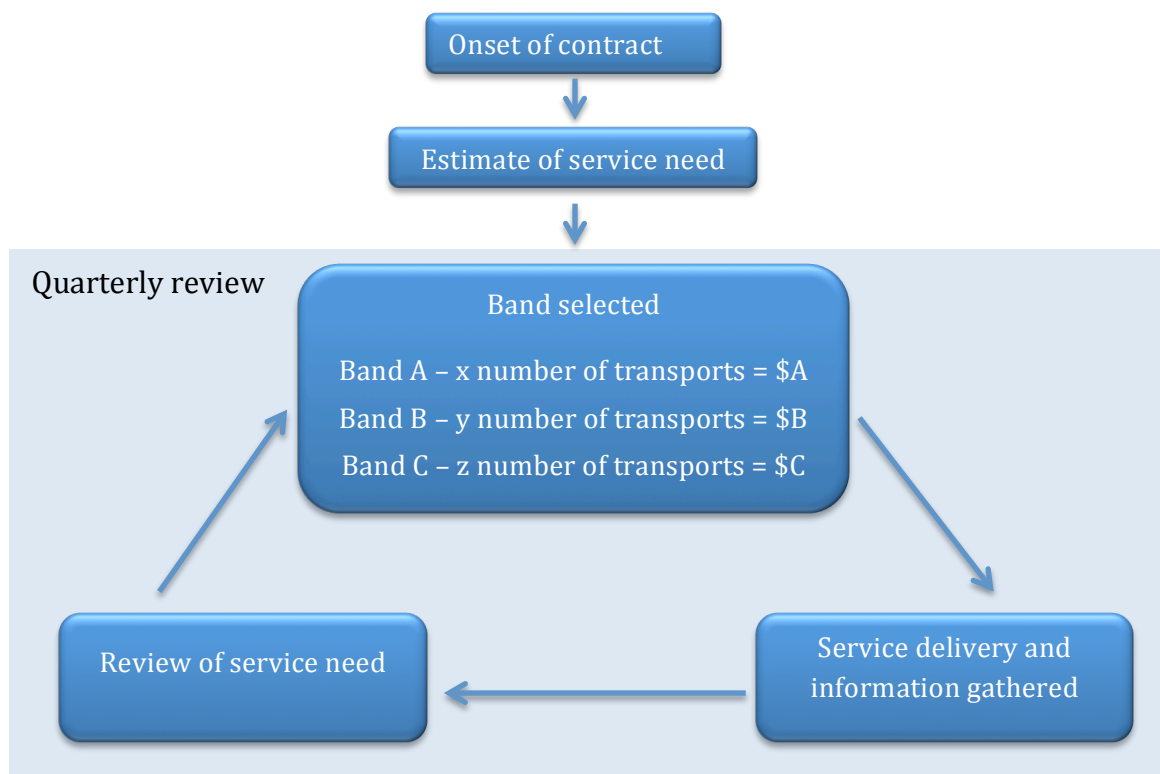
Develop processes for accurately recording, monitoring and reporting on the cost of funeral attendances by prisoners and detainees.

Court Security and Custodial Services contract

- 2.20 The Court Security and Custodial Services (CS & CS) contract seeks to provide a value for money service to Western Australia for the reliable delivery of court security and custodial services. An outline of the terms under which transport of prisoners to funerals is provided is included in the contract, along with the cost of providing this service.
- 2.21 Funerals are costed according to two pricing tables, one for metropolitan services and one for regional services. A schedule of rates for additional services is also provided. The pricing tables combine the delivery of prisoner transport services for medical, funeral and other escorts.

- 2.22 The Department has advised it is unable to accurately determine the percentage of transports that are undertaken in the different categories.
- 2.23 In the first year of Serco taking over the contract the pricing tables were based on the Department's estimates of how many escorts would be needed per month for escorts below 50 km, between 51-200 km and above 200 km. These estimates were used to determine a monthly fixed fee for the delivery of medical, funeral and other escorts.
- 2.24 The Department has been unable to provide this Office with the analysis that was undertaken to determine the estimated service the State would require from the contract.
- 2.25 At the onset of the contract, monthly cost bands were agreed by both parties. These established a set cost for a specific number of transports as well as establishing set costs for increased or decreased transport needs. The contract provides for a quarterly review of which band is most appropriate based on transport needs. Both parties are to reach an agreement on revised transport estimates based on actual service delivery information from the previous quarter and then select the most appropriate band to be applied.

Figure 3
Quarterly review of bands of fees for service



- 2.26 As per the contract, the fees (set out in the pricing tables) are not subject to a revision as a result of the quarterly review process, only the band which is to be applied is revised. Since Serco began providing services there have been no changes to the band that was first established.
- 2.27 At the commencement of the second year of the contract in August 2012 the pricing table for monthly medical, funeral and other escorts in regional areas was varied. The schedule of rates for additional services was also amended. The following table illustrates the current payment method for funeral services.

Table 3

CS&CS contract payment method for medical, funeral and other escorts

Metro	Payment method	0-50 km	51-20 km	200 km+
	Fixed monthly fee for service.	221-240 transports (reviewed qtly)	81-100 transports (reviewed qtly)	0-2 transports (reviewed qtly)

Regional	Payment method	0-50 km	51 km+
	Fixed monthly fee for service.	121-140 transports	Cost plus model Monthly fee for fixed and semi fixed costs Charges per funeral based on schedule of rates for labour, mode of transport and other costs

- 2.28 As outlined in Table 3, the current pricing table retains a monthly fixed fee for the delivery of a set number of transport services under 50 km in regional areas. Like the initial contract, the monthly fee is divided into bands which enable variations to be made at quarterly reviews based on the volume of transports provided.
- 2.29 For transport services over 51 km an agreed monthly fee is provided to the contractor to meet fixed and semi-fixed costs incurred in maintaining this service (ie adequate staff and vehicles). Each escort to a funeral during the monthly period is then quoted and charged in accordance with the schedule of rates for additional services. In each month when funerals over 50 km are provided, the fixed and semi fixed costs are deducted from the monthly payment until this fee is exhausted.
- 2.30 Whenever cost is a factor in assessing the eligibility for a prisoner to attend a funeral, an estimate of the cost of the funeral is required. However, it is unclear who is responsible for obtaining this estimate and when an estimate is needed.
- 2.31 Most Department staff agreed that for services under 50 km an estimate is not needed but that an estimate is needed for any regional escort over 50 km. For escorts above 51 km in the metropolitan area the need for a quote was unclear.

- 2.32 The estimate is used solely for assessing the application and is not relevant to the process for monthly billing from the contractor. Interestingly, the contract management area of the department does not retain the estimate and therefore cannot compare estimates with the amounts actually charged.
- 2.33 The schedule of rates outlines the fee for each of the components of a funeral escort, with the exception of commercial airline, air charter or coach hire costs. The contract management area of the Department is able to estimate the costs of any funeral using the contract and where necessary obtaining a quote for air or coach travel. This would eliminate the need for an external agency, in this case the contractor, to provide quotes solely for assessment purposes and would improve the ability for the Department to track the cost of funerals.

Recommendation

Use the Court Security and Custodial Services contract to develop an internal quoting method to determine whether a funeral application is within any established cost limits.

3 Applying to Attend

Adults

- 3.1 Adults in custody can apply to attend a funeral under section 83(1)(b) of the *Prisons Act 1981*. This permits prisoner absences based on the ‘compassionate or humane treatment of prisoners and their families’ and must be read in conjunction with the *Prison Regulations 1982* (the Regulations).
- 3.2 Section 54D of the Regulations outlines several situations in which absence permits may be provided. Those relevant to funerals are:
- facilitating the maintenance by a prisoner of cultural ties and enabling the prisoner to meet cultural obligations;
 - facilitating the observance by a prisoner of religious or spiritual beliefs or practices;
 - facilitating the maintenance of contact between a prisoner and his or her family, or any other approved person, and enabling the prisoner to meet responsibilities to that family or person, including parental or guardianship responsibilities;
 - enabling the prisoner to be absent from prison on compassionate grounds.
- 3.3 Although the first three circumstances are only available to prisoners with minimum security ratings,²⁹ an absence permit on compassionate grounds is available to all prisoners regardless of their security rating.³⁰
- 3.4 The Department governs the provision of access to funerals through Policy Directive 9 – Permit for Absence (PD9). The policy outlines the process for applying for a leave of absence including for attendance at a funeral. It provides guidance on criteria that must be met to be eligible to attend and limitations that may apply.

The application process

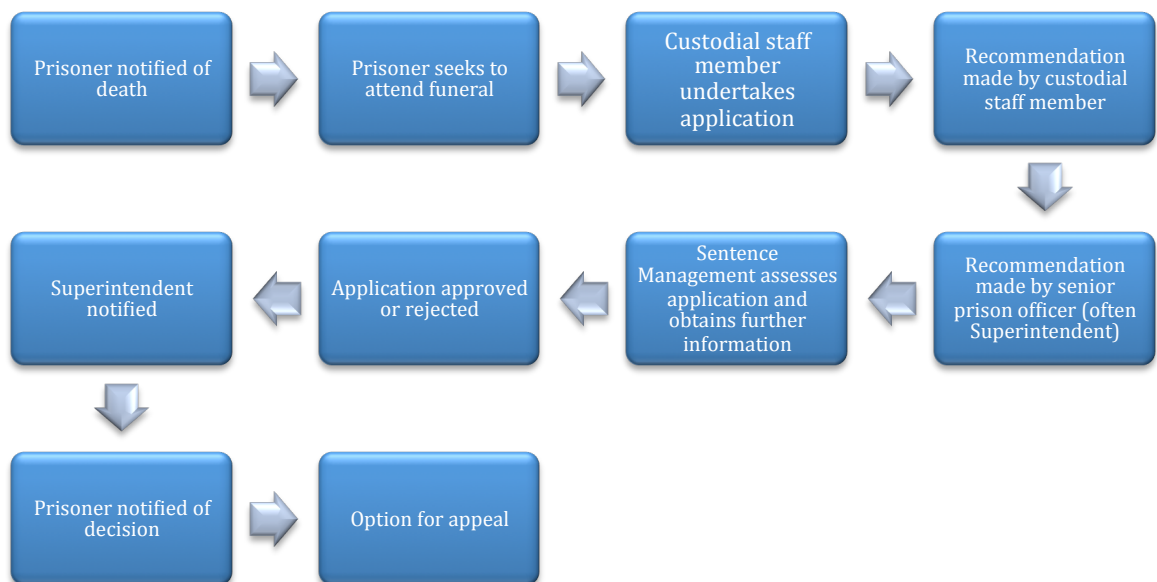
- 3.5 A prisoner can be notified of the death of a person through direct contact with the family or through the family notifying the prison. If a prisoner decides they would like to attend the funeral they notify a custodial staff member.
- 3.6 The staff member is responsible for initiating the application in the funeral register on the Total Offender Management Solution (TOMS) system. The policy in effect from September 2012 notes the staff member is to:

²⁹ *Prison Regulations 1982* s 54F(3)

³⁰ *Prison Regulations 1982* s 54F(2)

- establish the validity of the prisoner’s relationship to the deceased;
- establish the cultural norms and relevant responsibilities with respect to the prisoner’s or deceased’s culture;
- verify the applicability of kinship or cultural ties;
- identify whether attendance or non-attendance will have a profoundly negative impact on the prisoner or the family;
- identify any victim issues;
- identify any security issues; and
- confirm ongoing contact with the prisoner and deceased prior to and during the prisoner’s incarceration.³¹

Figure 4
The funeral application process



3.7 The staff member obtains information by engaging with the prisoner and liaising with members of the prisoner’s family and community. In some cases, prisons in regional Western Australia have established ongoing contact with communities as part of community engagement practices which helps with the collection of information. Once completed the staff member recommends whether the application should be approved. This is then forwarded to the Superintendent.

3.8 The Superintendent has responsibility for ensuring that all necessary information for the application is recorded and verified and for completing the collation of information needed for the application to proceed. The Superintendent makes a recommendation on whether the application should be

³¹ Department of Corrective Services, *Policy Directive 9 – Permit for Absence*, version 5 effective 4 September 2012.

approved. Superintendents sometimes delegate these responsibilities to a senior prison officer.

- 3.9 Sentence Management Division in head office in Perth then processes the application. They conduct further assessments on the relationship with the deceased, security and victim issues. They determine the distance to be travelled, mode of transport and assess the cost of the application. These assessments are conducted for all applications regardless of the recommendations provided by the prison. Sentence Management makes the final decision as to whether the application is approved or rejected.
- 3.10 When a decision has been finalised, the Superintendent is required to instruct a delegate to immediately, verbally advise the prisoner of the decision and the reasons for the decision. This notification is to be included on the prisoner's file in addition to their responses or reactions. Where an application is not approved, prisoners are entitled to appeal. PD9 also states that alternatives to attendance should be offered.

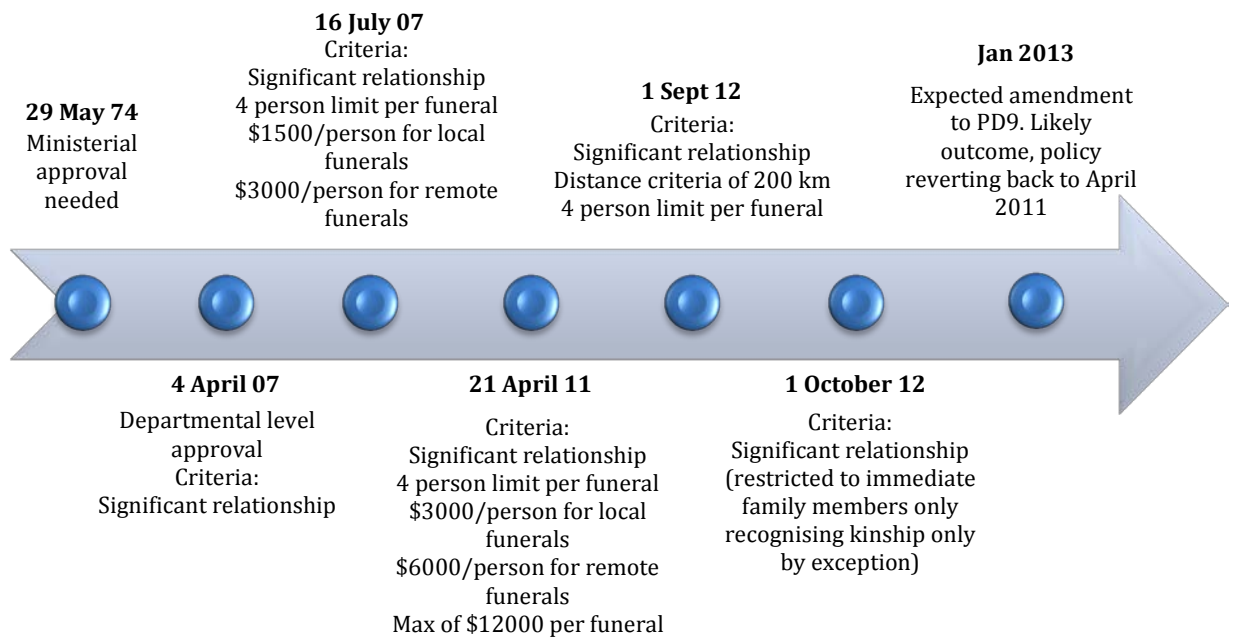
Limitations and criteria to attend

- 3.11 In April 2007, changes to the *Prisons Act 1981* removed the need for Ministerial approval for a leave of absence. The policy has undergone numerous revisions since then.
- 3.12 Along with meeting security requirements, prisoners have always had to prove they have a significant relationship with the deceased before they can attend a funeral however initially there were no other limits on the number of prisoners attending funerals. Reportedly due to cost pressures, the Department has progressively introduced limiting criteria restricting access to funerals. In July 2007 the Department introduced additional criteria and limitations for attending funerals.³² The criteria included a limit of four people attending any one funeral and a cost limit of \$1,500 per person at local funerals and \$3,000 for remote funerals. These criteria were embedded into notices from the Assistant Commissioner Custodial Operations (ACCO Notices) and Sentence Management Instructions. However, they were not included in a revision of Policy Directive 9 in September 2007.

³² Sentence Management Instruction 09/2007.

Figure 5

Timeline of policy changes outlining limitations and restriction criteria



- 3.13 In April 2011, following acknowledgment of the increasing costs of travel in Western Australia, cost limits were increased to \$2,000 per person at local funerals and \$6,000 for remote funerals. The limit of four people attending remained and a total cost limitation of up to \$12,000 for any single funeral was also introduced. Again, this information was embedded into ACCO Notices and Sentence Management Instructions rather than the Policy Directive.
- 3.14 With an intention of saving \$500,000³³ the Department amended the policy on 1 September 2012. The new policy pulled together the information that had been embedded in the multiple ACCO Notices and Sentence Management Instructions over the preceding five years. It also introduced a new distance criterion whereby funeral attendances would only be approved if the funeral was no further than a 200 km return journey from the nearest prison. The limit of four attendees per funeral was retained.
- 3.15 After just one month, in the aftermath of public pressure and adverse media the distance criteria was revoked on 1 October 2012 through an ACCO Notice. However, the criteria relating to the significance of relationship were tightened. In particular the provisions governing attendance at funerals based on broader kinship ties were amended, with such attendances only to be granted by exception.

³³ Standing Committee on Estimates and Financial Operations 2012-13, Budget Estimates Hearings – Transcript of Evidence (5 July 2012) 7.

200 Kilometre Distance Policy

- 3.16 The distance restriction that came into effect in September 2012 and was rescinded in October 2012 directed that generally:

Attendance will be restricted to those funerals/visits located no more than 200 kilometre return for the nearest prison facility (excluding Work Camps) with the distance calculated using Google Maps.

- 3.17 In metropolitan Perth, there are six major cemeteries; Fremantle, Guildford, Karrakatta, Midland, Pinnaroo and Rockingham. For prisoners wanting to attend funerals or services at these cemeteries, each of the metropolitan prisons lies within the distance restriction. Therefore, whether a prisoner was held at either a male or female custodial facility in the Perth area, funeral attendance at these locations was possible subject to further assessment.
- 3.18 The policy also allowed prisoners to transfer to the closest prison facility to accommodate funeral attendances.³⁴ Therefore, if a prisoner from a regional prison applied to attend a funeral or burial at one of the six major metropolitan cemeteries, this criterion was readily met.
- 3.19 However, given the geographical realities of Western Australia - 2.5 million square kilometres and a scattered population - it was obvious that a uniform distance criterion would have a disproportionate impact on regional areas and therefore on Aboriginal people.
- 3.20 If the 200 km distance criterion had been applied to those who were approved to attend funerals in 2011-12, over half the applicants for regional funerals would have been refused. Even if prisoners were transferred to the nearest local prison, many large regional towns such as Carnarvon, Esperance, Meekatharra and Port Hedland are well above the 200 km return road travel journey from the nearest prison. Aboriginal communities and towns such as Fitzroy Crossing, Halls Creek, Kununurra and Tjuntjuntjara are also outside the boundary.
- 3.21 The 200 km limit raised some very obvious substantive equality issues. Almost all (93%) of the applications for attending funerals over 200 km from the nearest prison in August 2012 were made by Aboriginal people.
- 3.22 In order to understand the Department's reasoning we requested details of the analysis and research which had preceded the changes. We were provided with a memo and a table listing the distances of some funerals from the nearest facility.

³⁴ Section 9.12 of Policy Directive 9 advises that irrespective of the recommendations the Authorised Assistant Superintendent should give consideration to the prisoner's temporary transfer to the custodial facility closest to the funeral.

This was the only analysis that was conducted.³⁵ Despite the obvious implications of the policy change, there was no detailed analysis on the percentage of funerals that would be denied under the new criterion or whether this would have a disproportionate effect on Aboriginal people.³⁶

3.23 This is contrary to the Department's Aboriginal Impact Statement and Guidelines which were developed to make sure that the needs and interests of Aboriginal offenders are incorporated in the development of new corrective services' policies, programs and strategies. The Guidelines contain a checklist with 12 key questions that must be considered in the development, implementation and evaluation of any new program, policy or strategy. This checklist includes the following questions:

- Does the policy, program or strategy clearly identify the impacts it will have on the number of Aboriginal people incarcerated?
- Have these effects been adequately addressed in the policy, program or strategy?

3.24 A technical argument might be constructed to the effect that these guidelines apply only to new policies, and not to changes to policy. However, this is not sustainable. As in this case, changes to policy can, in effect, amount to new policy and substantial changes of this sort should be subject to the same process if the Department is to comply with whole of government requirements.

3.25 The Policy Framework for Substantive Equality (the Framework), applies to all Western Australian government departments. It recognises that policies and practices which appear neutral can unintentionally disadvantage minority groups by not catering for their needs. The objective of the Framework, originally issued in 2004, is to achieve substantive equality in the Western Australian public sector through several measures including assessing how policies, programs and practices affect Indigenous people and ethnic minorities.³⁷ The Department of Corrective Services, along with other departments, is required to annually negotiate the scope of implementation for

³⁵ In response to the draft of this report, the Department provided further documentation. This was predominately multiple versions of the same table, appearing to estimate the number of funeral attendances in 2011-2012. The Department also provided another table consisting of incomplete data listing details of funerals over 200km and their costs. The information contained in these did not align with information previously supplied. The overall conclusion remains: Departmental analysis was inadequate for understanding the implications of the policy or quantifying potential cost savings.

³⁶ In response to the draft of this report, the Department claimed that the Commissioner's Executive Team (CET) had been informed that there were likely to be substantive equality issues. However, the CET documents seen by this Office indicate that the policy was not checked for such issues.

³⁷ The Policy Framework for Substantive Equality 2010, <http://www.eoc.wa.gov.au/Substantiveequality/Substantiveequalityresources.aspx>

the Framework and Chief Executive Officers are responsible for ensuring that the Policy Framework is considered in shaping new policy and initiatives.³⁸

- 3.26 In addition, the Department's own Substantive Equality Policy commits it to continuously develop and maintain substantive equality in three distinct but interrelated areas; policy and planning, service delivery and employment. In other words, substantive equality needs to be maintained in policy and planning throughout the Department and is not restricted to only new policies.
- 3.27 It is difficult to comprehend how the impact on Aboriginal people was not considered in making the September 2012 changes to the policy affecting funerals attendance.
- 3.28 Not surprisingly, the distance criterion was very poorly received by families and the community. On 18 September 2012 a protest was held outside the Department's head office by the family of a prisoner denied approval to attend his mother's funeral based on distance. The denial was overturned. Advocacy groups also responded forcefully to the funding cuts by holding public action meetings.³⁹ The public pressure resulted in the policy directive being rescinded in October 2012 through an ACCO notice, one month after its introduction.
- 3.29 This may be portrayed as Departmental 'responsiveness' but the real point is that the 200 km criterion was always fundamentally flawed. As noted earlier, the problems are compounded by the fact that although the distance criterion was said to reflect cost, the Department was unable to properly identify costs or quantify cost savings.⁴⁰

Significance of Relationship

- 3.30 Throughout the many policy iterations and amendments governing funeral attendance, the relationship between the prisoner or detainee and the deceased has remained a key criterion in determining funeral attendance.
- 3.31 Section 9.10.2 of the policy updated in September 2012, includes recognition of kinship and cultural relationships, in line with the recommendations from the Royal Commission into Aboriginal Deaths in Custody in 1991.⁴¹ This provided some clarity around kinship and cultural ties that had been lacking in the

³⁸ Public Sector Commissioner's Circular (Number 2009-23), Issue date 2005, Implementation of the *policy framework for substantive equality*.

³⁹ Newhouse, M. Deaths in Custody Watch Committee, *Public Meeting: Stop the Cuts to Funeral Attendance by Prisoners* (19 October 2012).

⁴⁰ See above.

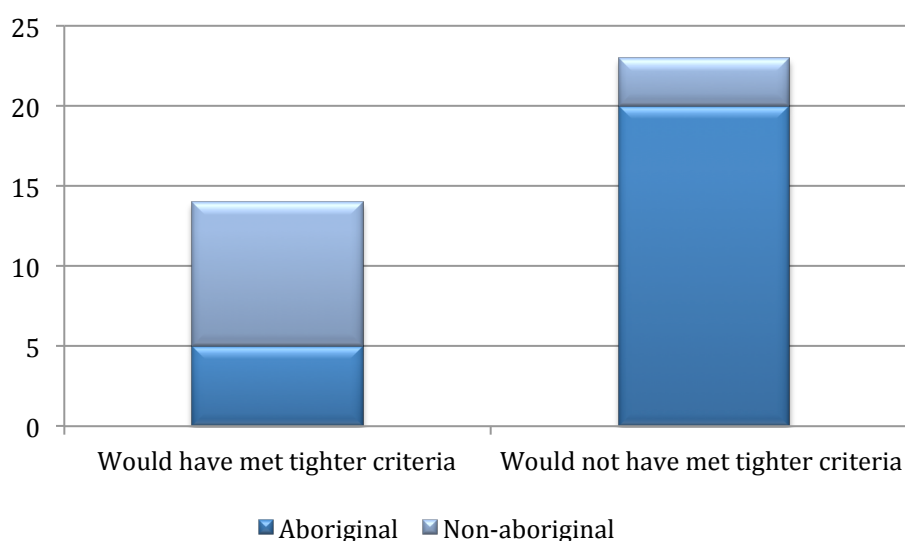
⁴¹ As noted previously, the Royal Commission into Aboriginal Deaths in Custody recommended that corrective service departments should 'give recognition to the special kinship and family obligations of Aboriginal prisoners which extend beyond the immediate family and give favourable consideration to requests for permission to attend funeral services and burials and other occasions of very special family significance' (Recommendation 171).

previous policy, particularly with reference to Aboriginality. An appendix offering further information had been developed by the Aboriginal Visitors Scheme (AVS) and was attached to the policy.

- 3.32 However, although the wording of the Policy Directive has not changed, the ACCO notice of October 2012 which rescinded the distance criterion also tightened the criterion around significance of relationship. In another shift of major importance, it removed the recognition of kinship and cultural relationships in considering funeral applications. Recognition of kinship and cultural relationships can now only be approved by exception, with the decision falling to the Assistant Commissioner Custodial Services.
- 3.33 Generally, then, only direct immediate family members to the deceased will now be approved to attend. This includes a prisoner's biological/legal mother, father, sister, brother, son, daughter, grandparents or current husband, wife or de facto partner. It does not include grandchildren, nephews, nieces, cousins, uncles, aunts, great grandparents, in-laws or other extended family.
- 3.34 Consequently, the rules that have been applied since October 2012 again disproportionately affect Aboriginal people. In August 2012, 37 people were approved to attend funerals, 25 of whom were Aboriginal. Using the tighter criteria, 62 per cent of those who attended would have been denied, most of whom were Aboriginal (87%). Almost two thirds (64%) of those that did meet the tighter criteria were non Aboriginal.

Figure 6

Number of people who were approved to attend a funeral in August 2012 measured against the tighter selection criteria



- 3.35 Notably, of the 25 Aboriginal people who were approved to attend funerals in August 2012, only 5 would still have been able to attend based on the tightened criteria.
- 3.36 The Department could not provide any analysis of the implications of tightening this criterion and it appears that none was undertaken. Again, this failure to carry out impact assessments breaches the Department's obligations with respect to substantive equality.

Recommendation

Develop a revised funeral policy that enables prisoners to attend funerals where there is a kinship or extended familial relationship, as well as when there is a direct family relationship.

- 3.37 The policy is not clear on what evidence is required to identify the significance of the relationship to support a prisoner's application. However, stories, photographs and having established ongoing contact during the prisoner's incarceration have been suggested as the types of evidence that can be used to identify significance of people's relationships.⁴² In many instances proving the requisite relationship is difficult. It was noted in the Office's *Report of an Announced Inspection of Broome Regional Prison* that prisoners are not always capable of expressing the nature of their relationship with a deceased person to an official.⁴³ The policy would benefit from having guidance around what is required as evidence so this can be explained early and clearly to the prisoner.

Recommendation

Develop guidance on what evidence is required to demonstrate a prisoner's relationship with the deceased and ensure each applicant is aware of these requirements when they begin the application process.

Cost of attendance

- 3.38 In several iterations of PD9 and supplementary notices the Department has introduced cost quotas as a criterion for selection. The Department has indicated the current policy is being reviewed following the retraction of the distance criterion. The Department informed the Office the new policy is likely to revert back to the limiting factors and criteria that were in place in April 2011. This includes a cost limitation of \$2,000 per person at local funerals and \$6,000 for remote funerals with a total limit for any one funeral of \$12,000. The Department

⁴² Advice provided by the Department's internal complaints, compliments and suggestions division (ACCESS) indicated they have requested stories and photos from families to support their application and appeals to attend funerals.

⁴³ OICS, *Report of an Announced Inspection of Broome Regional Prison*, Report No. 77 (March 2012) 43.

has also indicated their intention to review the amounts as part of the policy revision.

- 3.39 The only analysis the Department was able to provide on the development of the various cost limitations that have appeared since July 2007, comes from a memo in March 2011.⁴⁴ The memo provides average costs and the range of costs for funerals attended in December 2010 to January 2011. This was prior to the Serco contract coming into effect and therefore does not allow for the significant changes in the way the transport of prisoners to funerals is costed under the new contract.⁴⁵ More detailed analysis including the mode and median costs should be included in the development of any future cost limitations.

Recommendation

Develop a revised funeral policy that adheres to the Department's Aboriginal Impact Statement and Guidelines for new policies.

Security

- 3.40 The safety and security of prisoners, staff and the community are, and must remain, priorities when assessing a prisoner's leave of absence as the prisoner will not be confined to a secure environment.
- 3.41 Security risk assessments are thorough. Consideration is given to the individual's behaviour and incidents during incarceration, behaviour during previous leaves of absence and information obtained from community stakeholders about potential risks during attendance. These risks may include knowledge about trafficking contraband, family feuding or escape plans. The security risk assessment may also include determining the capacity for police assistance in the event of an issue arising and the availability of secure accommodation where the funeral occurs in a remote region.
- 3.42 Applications are denied when the assessed risks are deemed too high for effective management. Where attendance is approved, the Department actively seeks to mitigate any security risks. Risk management strategies include allocating appropriate staffing resources and conducting searches on re-entry to the prison. In the past obtaining support from the Emergency Support Group to

⁴⁴ The averages reported in this memo were extrapolated. However, the results do not equate to the cost of the estimates the Department provided to their senior management team. The results also do not equal the estimates that the Department provided to this Office. This suggests that the figures provided in this memo are also not based on good data from the Department.

⁴⁵ Whereas previous contracts have provided for only some aspects of service delivery, such as staff time for attending a funeral, the new contract has been developed to provide full service delivery such as maintenance of vehicles, staff time and management of services. Costs that were previously absorbed by the Department are now moved to the contractor causing the cost per funeral to appear higher.

conduct high security escorts was also used as a strategy however the last time this occurred was in December 2009.

- 3.43 Additionally, the Department's responsibility to the community extends to considering victim concerns when allowing prisoners to attend funerals. Victim issues are assessed at several points throughout the process for applying for a funeral application, and may involve input from family and community members.
- 3.44 When security or victim issues are a factor in decision making, the outcome is clearly recorded in central files so that decisions can be reviewed.

Appeals

- 3.45 When a decision is made on an application the outcome is forwarded to the Superintendent who is required to notify the prisoner of the decision and the reasons for that decision. The policy provides prisoners the opportunity to appeal decisions, but does not direct officers to inform prisoners of the appeal option or how to activate the process.
- 3.46 The ability to appeal and review a decision ensures that public authorities are accountable, transparent and engaged in continuous improvement. The Western Australia Integrity Coordinating Group notes that decision makers in public office should inform affected parties about appeal or review processes, and reflect on the outcome of any such appeal or review to consider any potential improvement to the process for the future.⁴⁶
- 3.47 Given prison officers are not required to inform prisoners of the option to appeal, the proper process as outlined by the Integrity Coordinating Group is not being achieved.

Recommendation

Develop a revised funeral policy that outlines the appeals process, how this is activated, and how the process is to be communicated to prisoners denied access to a funeral.

- 3.48 Where additional information in support of an appeal needs to be provided by the prisoner's family, the information must be provided in writing to the prison. The prison forwards the additional information through to the decision makers in Sentence Management.
- 3.49 Prior to the change in funeral policy in September 2012 appeals were predominately related to providing further evidence to prove the significance of the prisoners relationship to the deceased. These appeals were assessed and

⁴⁶ The Integrity Coordinating Group, *Integrity in decision making – Proper process* (June 2011).

outcomes were determined by Sentence Management.⁴⁷ Where issues of cost became a limiting factor, appeals were assessed by the Deputy Commissioner Offender Management Professional Development.

- 3.50 When the distance criterion was introduced all appeals relating to this criterion were assessed by the Deputy Commissioner Offender Management and Professional Development. With the rescinding of the September 2012 policy, the Department's functional restructure⁴⁸ and the introduction of stricter parameters for the significance of relationship, appeals were assessed by the Assistant Commissioner Custodial Services.
- 3.51 With the recent changes to the funeral policy, transparency of decision making has been eroded. What is needed is a group of people with appropriate expertise who can assess the merit of an appeal. This group needs to be established so that they are quickly assembled, either physically or by phone. Given the cultural sensitivities with attending a funeral, the group should include appropriate Aboriginal representation. Members to the group may change depending on the location of the funeral.

Recommendation

Develop a committee, with Aboriginal representation, to assess appeals.

- 3.52 Table 4 shows some variation in how much notice prisoners are given over whether they can attend a funeral and therefore how much time is given to lodge an appeal. In May 2012 most prisoners were informed of the decision on whether they could attend three or more days before the funeral. However, at least two applicants would not have had adequate time to access the appeals process.

Table 4

Time period for notifying prisoners of the decision to attend a funeral in May 2012

Notification period	No. of prisoners
Three or more days prior to the funeral	15
Two days prior to the funeral	2
Day before the funeral	4
On the day of the funeral	1
Two days after the funeral	1
Total	23

⁴⁷ The person deciding the outcome of the appeal is the next tier of management from whoever decided the outcome of the application, usually the Director, Sentence Management. Where the application was decided by the Director, Sentence Management the appeal is decided by the Assistant Commissioner Custodial Operations.

⁴⁸ In April 2012, the Department approved a functional restructure which abolished the position of Deputy Commissioner Offender Management and Professional Development.

- 3.53 Advising the prisoners at a date close to the funeral occurs in order to allow all prisoners across the state to submit an application. For example, if there is an occasion where four prisoners have been recommended for approval but a late application is received from a prisoner who has a closer relationship with the deceased, reassessment can occur. However, this delay leaves only a very limited amount of time for prisoners to appeal and can also hinder the arrangement of funeral transportation.
- 3.54 Time taken for an appeal to be completed is dependent on the evidence supplied by the prisoner appealing. The process usually takes up to two working days although delays can occur if the authorising person is unavailable. Appeals are given priority enabling some decisions to be examined and, where appropriate, overturned in less than 24 hours.
- 3.55 Security factors were also cited by the Department as a reason prisoners are informed as close to the funeral date as is feasible. On occasion, contraband has been obtained by prisoners at funerals. It is a risk management strategy to delay the advice to a prisoner about funeral attendance in order to reduce any risk of trafficking of contraband. However late notice of whether a prisoner can attend a funeral can exacerbate grief for the prisoner, family and the community. Reducing the risk of trafficking contraband can be mitigated through alternate strategies.

Recommendation

Notify all prisoners of the outcome of whether they can attend a funeral at least three days prior to the funeral, unless there are clearly documented exceptional circumstances.

Policy transparency and communication

- 3.56 Significant policy changes, such as the amendments to PD9 and the numerous changes effected by ACCO notices, should be communicated fully to affected parties including prisoners, families, communities and external stakeholders. Communication and filtering down of information regarding the recent changes from the Department's head office through to these various groups has been mixed.
- 3.57 Superintendents were provided with advance notice of the potential changes to PD9 at the Superintendent's Conference on 3 July 2012. The updated policy came into effect 4 September 2012 and was then the subject of a broadcast email titled 'Changes to Adult Custodial Rules' sent to all Department staff on 12 September 2012.

- 3.58 Flyers⁴⁹ highlighting the changes had been previously distributed to the prisons on 3 August 2012. These flyers were attached to an ACCO notice⁵⁰ outlining the changes to PD9 and directing Superintendents to communicate the policy changes to the prisoners. However, during review team visits to various prisons⁵¹ the flyers were not clearly visible. Only one flyer was observed at Broome Regional Prison with none noticed at other locations. Despite this lack of visibility some of the prisoners at Acacia Prison advised the review team they had seen the flyers in their unit.
- 3.59 Discussions with prisoners revealed that, overall, communication of the changes was poor. Many were unaware of the distance criterion and those who were aware misunderstood the detail of the changes. Other prisoners reported only becoming aware of the policy changes when the review team visited the prison and called meetings to speak with them.
- 3.60 Some prisoners, particularly those involved in Peer Support activities, advised that although the flyers were available many prisoners were unable to read so communicating the changes had been left to Peer Support Officers. In discussions with various external stakeholders it was also apparent that limited input and consultation occurred with communities, community groups and peak bodies.
- 3.61 When the distance criterion of PD9 was revoked but the relationship criteria were tightened in October 2012, communication was similarly poor.
- 3.62 At the Budget Estimates Hearing in July 2012, the Department expressed the importance of communicating the limitations of accessing funerals to prisoners and the community.⁵² In particular that these limitations may be beyond the prisoner's control. There can be no such understanding unless there is effective communication of the policy governing funeral attendance.

Recommendation

Develop and implement more effective communication for staff, stakeholders and prisoners for changes to sensitive policies, such as the funeral policy.

⁴⁹ Department of Corrective Service, *Changes to Approval Criteria Funeral Attendance and Visits to Dangerously Ill Persons*.

⁵⁰ Assistant Commissioner Custodial Operations Notice No. 6/2012.

⁵¹ Acacia Prison, Bandyup Women's Prison, and Broome Regional Prison.

⁵² Standing Committee on Estimates and Financial Operations 2012-13, *Budget Estimates Hearings – Transcript of Evidence* (5 July 2012) 5.

Oversight of approval decisions

- 3.63 The decision to approve a funeral application is made by the Department's Sentence Management branch. The branch is made up of three to six people.⁵³ This provides for consistency with the same decision makers responsible for all applications. However, there is no Aboriginal representation in this branch and no oversight to decision making. There is scope for oversight mechanisms to be improved in the interests of consistency, transparency and accountability.
- 3.64 Although PD9 provides some guidance on determining the significance of a person's relationship to the deceased, there is always going to be an element of subjectivity in the decision making and new types of cases. For example, a prisoner at a regional prison applied to attend the funeral of her stillborn grandson. She was denied on the basis that there was a lack of evidence regarding the significance of the relationship with the deceased. The decision was appealed but dismissed as no further evidence had been submitted to warrant a reconsideration of the original decision. In essence, in this case, the child had never lived and therefore no 'relationship' could be established. This was a controversial decision open to interpretation on the nature of family relationships with unborn children. It also did not acknowledge the supporting role the mother would have provided to her daughter, who had just lost her child.
- 3.65 The Department advised the decision was fully consistent with other cases where the deceased was stillborn. However the Office is aware of a similar case in a metropolitan prison where a prisoner was approved to attend the funeral of her stillborn granddaughter. The prisoner's sister, who was the great aunt of the deceased, was also approved to attend. Culturally, as the great aunt was the sister of the deceased's grandmother she was also considered the grandmother of the deceased.
- 3.66 There was no oversight to the decision to deny access to the funeral of the stillborn grandson in the regional prison. Although several staff members have since stated they were aware of the case and did not agree with the outcome, no intervention was provided to enable the prisoner's attendance at the funeral and there was limited knowledge of the outcome of this application.
- 3.67 The new policy exacerbates this situation as every application that is not for a direct immediate family member is rejected or considered exceptional and is decided by a single senior member in the Department. This means that

⁵³ Initially the audit team were informed the team was made up of three individuals. In response to the draft of this report, the Department has stated that six people have the delegation to approve a funeral application. It is unclear whether the team has expanded to six people or whether three people outside the branch have delegation authority. Regardless the number of people involved in decision making is small.

approximately 80 per cent of applications (based on the applications processed in August 2012) will be decided by a single person within the Department with no further oversight.

- 3.68 In summary, whilst this review found Sentence Management makes considerable effort to provide fair and impartial decisions on who is to attend a funeral, there will always be controversial decisions and more structured oversight is needed to ensure appropriate and consistent decisions are made.

Young people

- 3.69 At the time of writing young people in detention, whether sentenced or on remand, were eligible to attend funerals subject to assessment under Juvenile Custodial Rules 801 and 802 (JCS Rules).⁵⁴ Approval under these rules is granted by the Director of Youth Custodial Services.
- 3.70 Unlike adults there has been no directive to cut funding to funeral attendances for young people and therefore no recent changes have been made to the rules governing attendance.
- 3.71 Where a detainee makes an application to attend a funeral the rules state that consideration is given to the degree of contact between the detainee and the deceased prior to and during the detention period. The cultural significance of the relationship, including any obligations for the detainee to attend, is also taken into account. The rules note that attendance is restricted to blood relatives or relationships of cultural significance except under special circumstances.
- 3.72 The risk of the detainee absconding, the nature of the detainee's current and past offences and their behaviour whilst in custody are all taken into consideration when making a decision about attendance. In addition, the location of the funeral as well as travel, escort arrangements and costs are also considered.
- 3.73 An Aboriginal Welfare Officer (AWO) is responsible for obtaining information needed to assess the application for all detainees regardless of Aboriginality. This is done by examining information from other applicants including adults, discussions with the community, and discussion with the family. The developmental needs of a young person in learning their cultural obligations and how to cope among grieving relatives, may also be taken into consideration.
- 3.74 Recommendations are provided by an AWO, the Manager Case Planning and the Manager Security. The Director assesses the application approving or denying the attendance and the detainee is informed of the decision by the AWO.

⁵⁴ The JCS rules were updated and renamed Youth Custodial Rules on 27 August 2012. However, the rules were not published on the Department's intranet site until 5 March 2013 and staff were only advised of the revisions on 22 February 2013. *YCS Rule 801 – Authorised Absence from Detention* currently governs funeral application assessments and funeral escorts.

- 3.75 One of the positive aspects of the rules is an acknowledgement of the specific needs of Aboriginal young people attending funerals. The rules state every effort should be made for an Aboriginal detainee to be restrained to an escorting officer who is also of Aboriginal descent. This is similarly the case for detainees and officers with regards to gender.
- 3.76 The rules are not comprehensive, yet the current application of the rules at the time of this review was appropriate and effective. Those making recommendations about the suitability of a young person to attend a funeral were open to challenge and debate about their recommendations and decisions. This process achieved consistent, robust decision making on who should attend funerals which is commendable. However this process relied on the good judgement and ability of staff to advocate on behalf of detainees and is therefore vulnerable to staff changes. To mitigate this risk the formal rules or guidelines should be amended to reflect the good practice that is currently in place. In particular the rules should ensure:
- An Aboriginal Welfare Officer is involved in decision making;
 - There is proactive engagement with Aboriginal communities to assist in determining the significance of the young person's relationship with the deceased;
 - The impact on the detainees development, in attending or not attending the funeral, is considered when supporting the application;
 - Decisions are open to challenge and debate by staff members, before a final recommendation is made to Head Office.

Recommendation

Formalise existing good practice by amending the rules governing funeral attendance for young people in detention (or develop supporting guidelines).

Impact of staff shortages

- 3.77 At the time of this review, the amalgamation of Rangeview Remand Centre and Banksia Hill Detention Centre had only recently occurred. Significant changes occurred to the centre management team and there had been considerable staffing issues with insufficient staff numbers at both centres for some time. These staff shortages impacted multiple areas of the centre, including the ability for young people to attend a funeral.
- 3.78 In October 2012 almost every funeral escort being undertaken was resulting in the lockdown of other detainees in order to provide the additional staff needed

to escort the detainee. However, on many occasions even the lockdown of other detainees still did not provide an appropriate staffing level to allow the funeral escort to proceed. The lack of staff was often only known on the day of the funeral, resulting in a young person starting the day believing they would be attending a funeral, only to be denied attendance at the last minute.

Recommendation

Ensure that adequate staffing resources are in place to enable young people in detention to attend funerals.

- 3.79 The difficult situation of being denied access to a funeral is exacerbated for the young person given there are no facilities within the detention centre where they can change their routine for the day and which enable them to effectively grieve. They either remain in the daily program, such as education, or are removed to a multi-purpose cell, often used for punitive confinement. These cells are intentionally sparse and have a toilet, a sink and a concrete plinth. The cells are wholly inappropriate as a place for grieving.

CASE STUDY

A detainee at Banksia Hill completed an application to attend the funeral of his cousin. The detainee was recommended by the AWO, the Manager Case Planning and the Manager Security. Approval was granted by the Director Youth Custodial Services.

According to the detainee he was advised some weeks in advance that he would be attending. On the day of the funeral he asked detention centre staff about the escort but no information could be provided to him. The detainee attended the education program waiting to go to the funeral. Whilst in school the AWO met with him and explained that he was unable to attend due to the lack of staff. The young person reported 'getting wild' and crying in class, however due to a lack of options as to where else he could go to grieve he remained in the classroom.

- 3.80 Detainees were generally positive about the funeral application assessment process. They indicated some staff were supportive providing additional phone calls and facilitating family visits and video-link ups. Detainees were moved within the centre to be closer to other family members and on occasions flowers were sent to the family on behalf of the detainee.

4 Managing grief

Restraint use at the funeral

- 4.1 Adult prisoners noted that although they were granted approval to attend a funeral, the support they needed from staff went beyond being allowed to attend. There are many aspects to grieving and support at the funeral such as crying together, embracing one another and throwing dirt on the grave. These tasks were difficult or impossible to engage in when handcuffed to an escort officer or in leg irons.
- 4.2 According to the CS & CS contract, all prisoners with medium or maximum security ratings will be mechanically restrained during a funeral escort unless specifically directed otherwise. A prisoner with a minimum security classification without any special conditions is to be escorted without restraints being applied unless otherwise determined by a risk assessment.⁵⁵
- 4.3 The contract does not clearly identify who is responsible for making risk assessments for determining the use of restraints on minimum security prisoners. However, it was generally understood this responsibility falls to the service provider.⁵⁶ This raises questions about the adequacy of information sharing. The Department certainly collects information on security issues for assessing whether a prisoner should be granted approval to attend a funeral but the review team heard conflicting accounts of how much of this information was given to the service provider to make an informed risk assessment. As such, it appears that restraints are frequently used even for prisoners with minimum security classifications.
- 4.4 Due to the issues with risk assessments, some prisoners rated section 95,⁵⁷ meaning they are eligible to work in the community with a minimum degree of supervision, have been required to be restrained when attending a funeral. This causes confusion and frustration for prisoners who, on occasion, may not proceed with their application or the escort because of the requirement to be restrained. In May 2012 a minimum security prisoner, although approved, refused to attend the funeral of his sister because he was to be restrained.
- 4.5 Good risk management necessitates good information sharing and failing to adequately share information can have two consequences. First, as at present,

⁵⁵ Department of Corrective Services, *Contract for the Provision of Court Security and Custodial Services*, Schedule 6 Movement Requirements, 7. Movement Service Tasks.

⁵⁶ Discussions with departmental staff and Serco.

⁵⁷ Prisoners with a minimum security rating are assessed as requiring a low degree of supervision and control within the prison. They can also be reasonably trusted in open conditions. Some of these prisoners are eligible for external program activity as outlined in section 95 of the *Prisons Act 1981*.

the process may become one of risk 'aversion' rather than risk 'management'. Alternatively, as evidenced by the 2004 Supreme Court escapes, there may be unacceptable risks to the public.⁵⁸

Recommendation

Work with transport service providers to implement communication protocols which allow the service provider to make fully informed risk assessments regarding the need for restraints at funerals.

Ongoing grieving

- 4.6 Prisoners reported needing support from prison staff beyond attending the funeral. Some prisoners report that much of the grieving for a loved one occurs after the funeral.
- 4.7 Regardless of attendance or non-attendance, affected prisoners need to be given the opportunity to mourn after the funeral. Some prisoners suggested that after they had attended the funeral they felt that staff expected the mourning to cease.
- 4.8 There is no formal policy or guideline on how to provide this support or what factors need to be considered, however prisoners can access the prison counselling service, peer support and the Aboriginal Visitors Scheme for support.
- 4.9 No grief stage theory can account for how individual people cope with loss, why they experience varying degrees and types of distress at different times, and how or when they adjust to life without their loved one over time. It is also important to acknowledge that grief experiences differ considerably in intensity and length among cultural groups and from person to person.⁵⁹ Effective support can only be achieved by promoting sensitive engagement with prisoners before, during and after a funeral by staff who are adequately trained in managing grief, dealing with mental health and where necessary undertaking crisis intervention.

⁵⁸ R Hooker, *Inquiry into the Escape of Persons Held in Custody at the Supreme Court of Western Australia on 10th June 2004*; OICS, *Report of an Inspection of the Interim Arrangements at the Supreme Court Following the Escape of Nine Prisoners from the Custody Area on 10th June 2004*, Report No. 25 (December 2004).

⁵⁹ Zisook, S. & Shear, K., 'Grief and bereavement: what psychiatrists need to know', *World Psychiatry* (2009) Vol. 8 (2) 67.

CASE STUDY

A medium security prisoner at Acacia submitted an application to attend his father's funeral. His minimum security brother, who was at Bunbury Regional Prison, was in the process of applying to visit his dangerously ill father when his father died. As part of the application process for this visit he was transferred to Acacia Prison. This transfer took place on the day of his father's death.

Both brothers were approved to attend the funeral and they resided together in the same unit whilst together at Acacia. Fifteen days after his transfer to Acacia, and seven days after his father's funeral, the minimum security brother was transferred back to Bunbury.

The brother at Acacia was appreciative of the Department's action in moving his brother to the same facility which helped him deal with the loss of his father. However, he questioned how the officers expected him and his brother to get over losing their father in two weeks.

Staff training and responding to adverse prisoner/detainee reactions

- 4.10 Staff are responsible for the welfare of people in their custody including providing support to those that are grieving. This includes managing the ongoing grieving process but also managing adverse emotional reactions if a prisoner is not approved to attend.
- 4.11 In the decade from 2003-2012, 52 incidents were recorded on the TOMS system which related to funeral applications that had been denied. The majority were for incidents of aggressive behaviour (21) and individuals in a distressed state (12). There were also eight actual self-harm events and seven threats of self-harm. The remaining records were for persons demonstrating a belligerent attitude and making threats of aggression (two occasions each).
- 4.12 Policy Directive 9 directs staff to be vigilant and to make the necessary referrals where there are concerns of self-harm or suicide.⁶⁰ Additionally, officers are expected to liaise with the Aboriginal Visitors Scheme, Peer Support and/or the Prison Counselling Services where applicable.
- 4.13 Custodial staff undertake a number of courses as part of their probationary training and as additional professional development. These courses are intended to equip them with the skills to manage the emotional and behavioural changes of persons in custody. Training courses include Suicide Prevention – Gatekeeper,

⁶⁰ Section 3.1.2.9 of the At Risk Management System (ARMS) Manual version 3.1 outlines some of the identifying factors for at risk prisoners and section 3.2 requires officers who know or suspect a prisoner to be at risk must make a referral to the ARMS via the Total Offender Management Solution database.

Mental Health First Aid, Aboriginal and Torres Strait Islander Mental Health First Aid and Dealing with Aggressive People (Clients).

- 4.14 There is no mandated refresher training for these courses but the Department's Training Academy reported little difficulty filling places and noted there is sometimes a surplus of nominations. In addition to these, there are more general courses where the contents overlap. These courses include Communication, Prisoner Grievances, Working with Female Offenders and when undertaking training in the At Risk Management System, and the Support and Monitoring System.
- 4.15 In recent years there has been a shift towards more staff requesting courses based on communication, rather than more traditional courses like restraint use. According to the Training Academy the Suicide Prevention – Gatekeeper and Mental Health First Aid are within the top ten requested courses.
- 4.16 Statistics supplied by the Academy show that as of June 2012 each prison has between 32 and 97 per cent of custodial staff trained in the Suicide Prevention – Gatekeeper Course, with most facilities having well over half their staff trained. This course is aimed at crisis intervention.

Table 5

Percentage of staff trained in the Gatekeeper course by prison as at 30 June 2012

Prison/Detention Centre	% of staff trained
Albany Regional Prison	74
Bandyup Women's Prison	82
Banksia Hill Youth Detention Centre	65
Boronia Pre-release Centre for Women	97
Broome Regional Prison	70
Bunbury Regional Prison	64
Casuarina Prison	62
Eastern Goldfields Regional Prison	49
Greenough Regional Prison	32
Hakea Prison	84
Karnet Prison Farm	84
Pardelup Prison Farm	81
Rangeview Remand Centre*	53
Roebourne Regional Prison	89
Woorloo Prison Farm	82

** Amalgamated with Banksia Hill Youth Detention Centre in October 2012*

- 4.17 Additionally, in the June quarter 2012, 92 officers undertook prison based training in Mental Health Awareness and six others participated in the Aboriginal and Torres Strait Islander Mental Health First Aid course.
- 4.18 The training figures suggest that officers with the appropriate emotional skills training should be accessible to any prisoner to assist and support them in

managing their grief. However, the lower numbers of trained staff at the Greenough and Eastern Goldfields regional prisons are of concern.⁶¹

Youth services staff

- 4.19 As part of entry level training, all probationary officers in youth custodial undertake a number of courses in the management of emotional and behavioural reactions that can present in young people. Similarly to adult custodial officers, courses in suicide prevention, mental health and cross-cultural awareness are undertaken.
- 4.20 For the June quarter 2012, a total of 17 youth custodial staff undertook a range of courses relevant to managing grief. This included Gatekeeper, Youth Mental Health First Aid, Working with Female Offenders, Working with Diversity and Understanding Aboriginal Culture. Academy staff reported that the cross over in curriculum included in these courses allows for coverage on the issues covered in other courses.
- 4.21 Of these courses Gatekeeper is the only course requiring mandatory annual refresher training. Approximately 42 per cent of operational staff received Gatekeeper training during 2012.⁶²

Alternatives to attending the funeral

Skype and video conferencing

- 4.22 In the latest PD9 the Department has included a list of seven alternatives for adult prisoners who are not approved to attend a funeral. These are:
- Having the prisoner transferred to the nearest prison for visits with family and community members;
 - Memorial services to be conducted within the prison;
 - Flexibility of visiting arrangements with family during this time;
 - Assisting the prisoner to write something to be read out at the funeral;
 - Video-link with family members before, during and/or after a funeral;
 - Playback of a recording of a funeral; and
 - Any other culturally appropriate activity that the Authorised Assistant Superintendent deems suitable.

⁶¹ This issue was raised in the OICS inspection report of Eastern Goldfields Regional Prison (Report No. 72, June 2011). Recommendation 14 stated that the Academy should facilitate delivery of First Aid Mental Health Training for Aboriginals and Torres Strait Islanders for all staff working with Aboriginal prisoners. Recommendation 15 seeks to ensure the adequate delivery of Academy training courses to Eastern Goldfields prison staff. Both recommendations were supported by the Department noting existing department initiatives.

⁶² Banksia Hill Detention Centre Training Records 2012.

- 4.23 It is obviously important to examine all possible opportunities for people who are unable to attend funerals. However evidence to this review showed that there had been limited stakeholder consultation. Remarkably, no consultation was undertaken with regional Aboriginal elders or communities as to culturally appropriate options or practical viability.
- 4.24 One of the alternative suggestions is a video-link set up between the prisoner and family members before, during or after the funeral. Video-link facilities are available in all custodial facilities and have been used socially to connect family members between prisons. Skype visits or electronic social link ups are also used as a means to maintain social contact between prisoners and their families. However, Skype technology is only available in Acacia, Albany and Hakea prisons, Pardelup Prison Farm and Banksia Hill Detention Centre. Suggesting an electronic link with family as an alternative to attending a funeral without this service being available in all facilities is premature.
- 4.25 In addition, these connections are only as good as the phone line and internet connections in which they are established. Given the extensive number of remote towns and communities in Western Australia and the technological black spots in these areas, electronic link ups are not feasible in many locations.
- 4.26 Even more fundamentally, there are cultural constraints and conditions on any such use of technology.
- 4.27 Another area of concern regarding the validity of virtual participation as a viable option is that Aboriginal prisoners are infrequent users of the existing electronic visiting systems installed in custodial facilities. In May 2012 there were 185 electronic visits booked by prisoners at Albany, Casuarina, Hakea and Greenough prisons. Only 112 were recorded as successful. There were 38 distinct individuals, four of whom were Aboriginal prisoners. These four Aboriginal prisoners had 14 successful electronic visits between them representing only 12.5 per cent of the technology's usage.
- 4.28 Nevertheless this option has been successfully used in the past. On four occasions funerals have been "Skyped" into Acacia Prison; on two occasions these funerals were virtually attended by a large number of prisoners who otherwise would not have been able to attend.

CASE STUDY

On 14 August 2011 an Aboriginal elder passed away while in custody at Acacia Prison. Ten applicants sought to attend this funeral but in accordance with policy only four were approved. The Deputy Director of Acacia noted that this “clash between prison policy and cultural law left more than 80 indigenous prisoners in an impossible situation” wanting to grieve but physically being incapable of fulfilling their cultural obligations.⁶³

Staff wanting a solution to this sensitive problem approached the deceased’s family about the possibility of transmitting the funeral to the prison via Skype. Whilst initially having mixed feelings about the suggestion, the family agreed. A number of prisoners from Wooroloo Prison Farm were also temporarily transferred to Acacia to take part in the ceremony.

More than 80 prisoners attended the prison chapel, a connection was established and the ceremony commenced. After the service, the connection was shortly broken whilst the deceased was transferred to Guildford cemetery. When the connection was re-established, the prisoners watched on as the deceased was interred.

- 4.29 Although, prisoners who had been involved in the Skype funerals at Acacia Prison had positive response to the approach, they emphasised that Skype was only useful in augmenting the physical attendance of other prisoners. Skype allowed more prisoners to manage their grief by including them in the ceremony. They did not consider ‘virtually’ attending a funeral as a replacement to physical attendance. Given a staff member is required to attend the funeral to stream back footage, it makes sense that this approach is only used when the quota of four attendees is reached.
- 4.30 During discussions with prisoners and staff at Acacia, Broome and Bandyup, the idea of ‘virtually’ attending a funeral was generally not well received. Many Aboriginal prisoners were critical of the idea and said they would not consider this as an option if they were presented with it.
- 4.31 In summary, while there is merit in providing an additional form of engagement with the funeral process when physical attendance cannot be accommodated, there is still a large amount of work to be undertaken before this can be a viable option for all prisoners. Virtual attendance should be a supplement to, not a replacement for personal attendance.

⁶³ Serco has a set of governing principles that staff practice, and the organisation rewards staff for exceeding expectations when applying these principles. Staff at Acacia Prison were nominated for one of the awards based on their efforts to enable Aboriginal prisoners to grieve, fulfil their cultural obligations and prevent cultural and psychological damage by Skyping the funeral of an Aboriginal elder who had died in custody. Serco Pulse Nomination Form, 2.

Inter-facility transfers

- 4.32 Another alternative included in PD9 suggests having a prisoner transferred to the nearest prison to facilitate visits with family and community members. Increasing social contact and allowing the prisoner to potentially be 'in country' can help assist the prisoner with their grief.
- 4.33 The policy states that where a funeral application is submitted, irrespective of the recommendations made by the prison, the Superintendent should give consideration to transferring the prisoner to the prison closest to the funeral. For example, a prisoner from a regional prison submitting an application for a funeral attendance in Perth may be temporarily transferred to a metropolitan prison.
- 4.34 This transfer, which occurs whilst a decision is pending, often causes confusion for the prisoner and their families who believe that the transfer itself means approval has been given to attend. Both prisoners and staff agreed that it is often harder being refused to attend after being transferred than if they have stayed in their originating prison. This is predominantly due to having access to established support networks in their originating prison. The difficulties are compounded if the transfer does not result in additional family and social contact.
- 4.35 These transfers, particularly to regional prisons, are subject to weekly transfers that are arranged through the CS & CS contract. As such, prisoners may be placed temporarily at a facility where they do not have support networks for a week or more whilst they await transfer back to their original location. Whilst this week may be favoured by prisoners who are approved to attend, prisoners who were transferred and then denied spoke negatively of this experience.

Early engagement

- 4.36 The inclusion of the alternatives for prisoners who are refused attendance provides them with the opportunity to grieve in other ways. However, discussion about these alternatives should be considered before a decision has been reached and the prison should enter into discussions with prisoners on commencement of the application process. This would allow time for prisoners to digest the possibility of non-attendance, maintain a dialogue with staff throughout the application process which may reduce adverse emotional reactions and allow the prisoner to manage their own feelings by choosing the method in which they wish to manage their grief.
- 4.37 These discussions need to be comprehensive and include the preferences of the prisoner as well as the limitations of the prison and corrections system. For example, if transferring a prisoner to another prison is considered an option to

allow for social visits, the prison must also disclose the potential for this not to be an option if overcrowding prevents the transfer.

Recommendation

Develop a revised funeral policy that outlines the process for constructive discussion with the applicant to occur at the onset of the funeral application process, with regard to alternative options if the prisoner be unable to physically attend.

Appendix A: Methodology

The data sets were obtained using standard query language data extraction from the Total Offender Management Solution (TOMS) database for all funeral attendances during the period 1 January 2003 to 31 December 2012. Analysis was also conducted for funeral attendees in August 2012.

Data extractions were performed for incident reports containing the word 'funeral' to ascertain the frequency of incidents related to denied funeral attendance. This extraction was performed for the timeframe 1 January 2003 and 31 December 2012. An inspection of this data set revealed a large number of records requiring deletion as they related to early unlocks to attend funerals, awaiting a decision and incidents occurring during and after the funeral escort. Only 52 records were retained from 468.

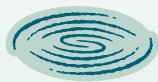
A brief review of the e-visiting system was also conducted for the period 1 May 2012 – 31 May 2012 to observe any trend in e-visit usage. A total of 185 records with explicit notations of 'e-visit' or the use of 'Skype' technology were found. However; only 112 of these records were noted with successful outcomes.

Finally, a series of interviews were also conducted with various stakeholders and Departmental staff. Those interviewed included the Department's Head Office staff from Sentence Management and Contracted Services, prison superintendents and staff at Acacia Prison, Bandyup Women's Prison and Broome Regional Prison. Discussions were also held with prisoners at these facilities. A number of peak bodies from metropolitan and regional Western Australia were also approached, some supplying written submissions whilst others were interviewed. Document requests were made to the Department as a result of these meetings, which were analysed and incorporated into the findings of this review.

Appendix B: Department of Corrective Services Response to Recommendations

Recommendation	Response
1a. Develop a revised funeral policy that enables prisoners to attend funerals where there is a kinship or extended familial relationship, as well as when there is a direct family relationship.	<p>Supported in Principle The Department is currently in the process of reviewing its Permit for Absence Policy (PD9) and will take all issues raised, including resource implications, into consideration.</p>
1b. Develop a revised funeral policy that adheres to the Department’s Aboriginal Impact Statement and Guidelines for new policies.	<p>Supported in Principle The Department is currently in the process of reviewing its Permit for Absence Policy (PD9) and will take all issues raised, including resource implications, into consideration.</p>
1c. Develop a revised funeral policy that outlines the appeals process, how this is activated, and how the process is to be communicated to prisoners denied access to a funeral.	<p>Supported in Principle The Department is currently in the process of reviewing its Permit for Absence Policy (PD9) and will take all issues raised, including resource implications, into consideration.</p>
1d. Develop a revised funeral policy that outlines the process for constructive discussion with the applicant to occur at the onset of the funeral application process, with regard to alternative options if the prisoner be unable to physically attend.	<p>Supported in Principle The Department is currently in the process of reviewing its Permit for Absence Policy (PD9) and will take all issues raised, including resource implications, into consideration.</p>
2. Develop processes for accurately recording and monitoring the cost of funerals by prisoners and detainees.	<p>Supported The Department (Contracted Services) has implemented a process to accurately track the Serco (CS & CS) costs incurred when the contractor facilitates the funeral attendance by prisoners. The Department will develop systems for Adult Custodial and Youth Custodial.</p>
3. Use the Court Security and Custodial Services contract to develop an internal quoting method to determine whether a funeral application is within any established cost limits.	<p>Supported The Department (Contracted Services and Adult Custodial) will develop a process in parallel with amendments to PD9.</p>
4. Develop guidance on what evidence is required to demonstrate a prisoner’s relationship with the deceased to ensure each applicant is aware of these requirements when they begin the application process.	<p>Supported Refer to response for Recommendation 1.</p>
5. Develop a committee, with Aboriginal representation, to assess appeals.	<p>Supported in part The Department will give this further consideration and particularly in light of the review of PD9.</p>
6. Notify all prisoners of the outcome of whether they can attend a funeral at least three days prior to the funeral, unless there are clearly documented exceptional circumstances.	<p>Supported in Principle The Department provides a decision at the soonest possible opportunity and where practical, within three days.</p>

<p>7. Develop and implement more effective communication for staff, stakeholders and prisoners for changes to sensitive policies, such as the policy governing funeral attendance.</p>	<p>Supported It is the Department’s practice to broadly communicate any changes to policy.</p>
<p>8. Formalise existing good practice by amending the rules governing funeral attendance for young people in detention (or develop supporting guidelines).</p>	<p>Supported A best practice model will be developed and supported by way of new policies and or guidelines.</p>
<p>9. Ensure that adequate staffing resources are in place to enable young people in detention to attend funerals.</p>	<p>Supported in Principle The Department is reviewing all Youth Custodial resources.</p>
<p>10. Work with transport service providers to implement communication protocols which allow the service provider to make fully informed risk assessments regarding the need for restraints at funerals.</p>	<p>Supported The Contractor’s Operating Instructions (OI) 2.148 “Use of Force and Restraints” is currently under review to ensure compliance with Policy Directive 5 and other legislation/policies.</p>



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