



OFFICE OF THE INSPECTOR
OF CUSTODIAL SERVICES

**Access to funerals and other
compassionate leave for people in
custody in Western Australia**

Follow-up review

February 2017

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This report is available on the Office's website and will be made available, upon request, in alternate formats.

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Inspector's overview

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

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

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

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

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

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

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

In relation to attendance we found that:

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

In relation to costs and financial accountability, we found that the Department is still not aware of how much it is spending, despite fully supporting our recommendation that it: "Develop processes for accurately recording and monitoring the cost of funerals

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

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

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

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

Andrew Harvey
A/Inspector of Custodial Services

Executive summary

Compassionate leave is necessary for people in custody to meet cultural obligations and stay connected to their families.

The significance of people in custody having the ability to access to funerals or visit a dangerously ill relative resonates across the custodial estate. Attending a funeral allows a person to grieve in a supportive family environment. Attendance is important in maintaining links to the community, which can facilitate reintegration upon release (Baldry, 2007).

For Aboriginal and Torres Strait Islander people, attending funerals is especially important. Being at the funeral shows respect to the family and allows the person to grieve in a culturally appropriate way. Aboriginal people have significant cultural obligations with funerals. If they do not attend and spend time with the family, it may be seen as not valuing family (Purdie, Dudgeon & Walker, 2010).

When Aboriginal people refer to their family, and the obligations to attend the funeral of a family member, this generally includes extended family extending beyond parents and children, to include aunts, uncles, nieces, nephews, cousins and grandparents. Family includes genetic as well as cultural kinship ties.

The Royal Commission into Aboriginal Deaths in Custody in 1991 examined a death of a person in custody which occurred on the day of his brother's funeral. His request to attend the funeral had been denied. As a result, the Commission advised that prison administrators consider the humanitarian and rehabilitation benefits of allowing Aboriginal people in custody to attend funerals (Commission Johnson QC, E., 1991). The Commission also recognised the extension of obligations beyond immediate family. They recommended that all corrective services in Australia give favourable consideration to allowing Aboriginal people in custody to meet their kinship and family obligations by attending funerals. The Commission acknowledged that at the time, the policy in WA allowed funeral attendance for kinship relationships but noted this was often overridden by cost limitations (Commission O'Dea, D.J., 1991).

In 2012 the then Commissioner of Department of Corrective Services stated the Department intended to save \$500,000 a year by reducing funeral attendances of people in custody (Johnson, Hansard, July 2012). To obtain these cuts, the Department made a number of policy changes restricting access to funerals. A review by this office, tabled in Parliament in September 2013, found that the Department was unable to quantify the cost of funeral attendances and therefore, was unable to calculate savings from reduced access (OICS, 2013).

Our report also highlighted significant deficiencies in Departmental policies and practices, particularly the impact on Aboriginal people in custody. While the review was being conducted the policy governing adult access to funerals was amended multiple

times via notices and instructions, but the actual policy was not formally changed. This had the confusing result of policy no longer reflecting practice. The practice in place when the review was finalised reflected the Department's intention to save money by reducing access to funerals. Specifically the Department was ignoring the significance of kinship ties in Aboriginal culture by only recognising a significant relationship if the deceased was a blood relative of the funeral applicant which is in direct conflict to the recommendations of the 1991 Royal Commission.

Our 2013 review resulted in several recommendations around improving access to funerals, understanding the costs of funerals, and improving communication about funeral access. All recommendations were positively supported to varying degrees by the Department. This report is a follow-up to that review.

Conclusion

The number of people accessing compassionate leave has continued to fall since our 2013 review, particularly the number of Aboriginal people accessing such leave.

The Department has made almost no progress on the recommendations that it supported in 2013. Instead it has further tightened funeral access, especially for Aboriginal people. It uses criteria which go directly against the recommendations of the Royal Commission into Aboriginal Deaths in Custody and its commitments to cultural sensitivity outlined in its latest Reconciliation Action Plan.

The previous Commissioner limited access to funerals to save money, but the Department could not show how much was being saved, or how much funerals were costing. Three years on, there is still no clarity around cost. The Department remains unable to explain the cost of funerals, but continues to make decisions on whether people can attend based on ill-informed cost limitations. In doing so, it is denying people access to an important opportunity to stay connected with their community and their families which is vital in successfully reintegrating after release.

Recommendations

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1 Fewer adults in custody are accessing compassionate leave

The number of people in custody accessing compassionate leave to attend a funeral or visit a dangerously ill relative has decreased rapidly since our 2013 review. In 2012, compassionate leave was provided to 449 adults. In 2015 only 285 adults were given this leave.

Our 2013 review showed the rate of people accessing compassionate leave was declining. This trend has continued. In 2008 more than six people out of every 100 people who were in a custodial facility accessed compassionate leave. In 2012 the rate was less than four attendances per 100 people, and in 2015, it was just 2.5.

Table 1

Attendance rate of adults in custody accessing compassionate leave since 2008.

| Year | People accessing compassionate leave | Daily average prison population | Total number of individuals coming through custody each year | Attendance rate per 100 individuals |
|-------------|---|--|---|--|
| 2008 | 579 | 3,824 | 8,860 | 6.5 |
| 2009 | 564 | 4,402 | 9,355 | 6.0 |
| 2010 | 614 | 4,734 | 10,325 | 5.9 |
| 2011 | 548 | 4,663 | 9,889 | 5.5 |
| 2012 | 449 | 4,916 | 11,896 | 3.8 |
| 2013 | 289 | 4,956 | 10,885 | 2.7 |
| 2014 | 302 | 5,225 | 10,831 | 2.8 |
| 2015 | 285 | 5,570 | 11,468 | 2.5 |

Our 2013 review showed one of the reasons for the declining rate of compassionate leave was a decrease in the number of applications. Since this review the number of applications has continued to decline.

1.1 Aboriginal people have been most affected by the decline in compassionate leave

Aboriginal people have been particularly affected by the restricted access to compassionate leave. Aboriginal people make up around 40 per cent of the total adult custodial population, but due to their cultural obligations have consistently accounted for a disproportionate amount of compassionate leave. However, the proportion of people accessing leave who are Aboriginal is decreasing. In 2008, 83 per cent of people accessing compassionate leave were Aboriginal. By 2015, this had dropped to 58 per cent.

The disproportionate impact is also seen in the rate at which Aboriginal people are accessing compassionate leave compared to non-Aboriginal people. In 2008, 13 per cent of Aboriginal people in custody accessed compassionate leave. By 2015 this had fallen to below four per cent. By contrast, the rate at which non-Aboriginal people have accessed compassionate leave has remained low but stable.

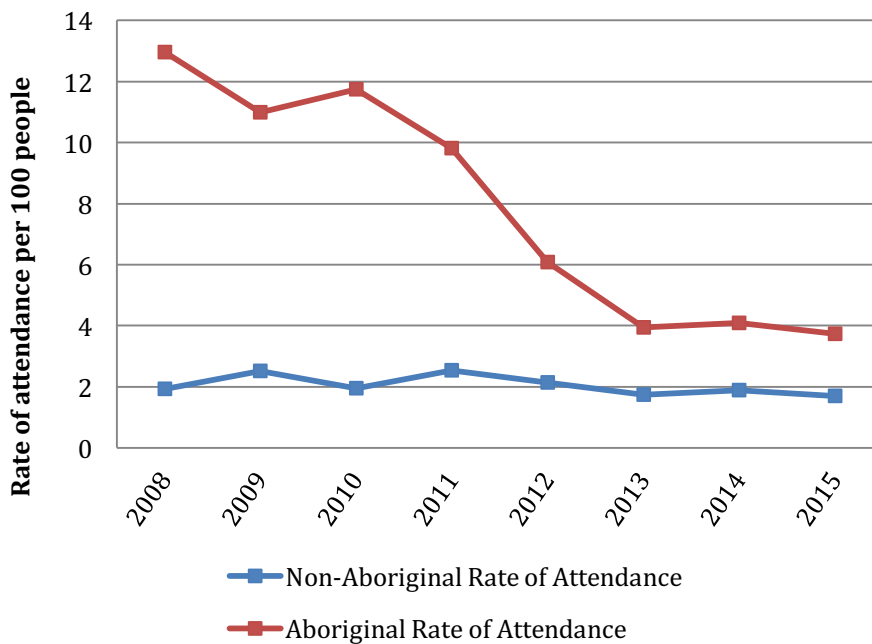


Figure 1.

Rate of compassionate leave for Aboriginal and non-Aboriginal people in custody

2 Minimal improvements to accessing compassionate leave have been made

2.1 Policy changes have addressed only part of a recommendation made in our previous report

In the 2013 review we recommended the Department revise its policy governing access to funerals and visits to dangerously ill relatives to:

- outline the appeals process, how this is activated, and how the process is to be communicated to people denied access to compassionate leave
- enable people in custody to access compassionate leave where there is a kinship or extended familial relationship, as well as when there is a direct family relationship
- adhere to the Department's Aboriginal Impact Statement and Guidelines for new policies
- outline the process for constructive discussion with the applicant to occur at the onset of the application process, with regard to alternative options if the person is unable to physically attend a funeral or visit.

The Department supported this recommendation in principle, stating that the policy was under review and that the issues raised would be taken into consideration during the review process. The policy has now been varied twice. Changes to the appeals process have been made, but there has been no progress on the other three aspects of the recommendation.

2.1.1 The process for activating an appeal is clearer but communication and cultural input into decision-making is still lacking

In the 2013 review we noted that prison officers were not required to inform people in custody of the option to appeal a decision when they have been denied access to compassionate leave, nor how to activate the process. The policy now directs the officer to advise the person in custody of the appeals process when they are informed that an application has not been approved. The process for appeal is fully outlined in the policy and a specific form for initiating an appeal is provided.

Amending the policy was a commendable first step but it needs to be followed by a change in practice. Notification of the availability of an appeal does not always happen. In December 2015, of the 37 funeral applications that were denied:

- 18 were notified of the availability of an appeal
- 11 were not notified of the availability of an appeal
- 8 had insufficient information recorded to determine if they were or were not notified.

Our 2013 review also raised concerns about the length of time allowed for an appeal before the funeral was held. We recommended that people in custody be notified of the outcome of their funeral application at least three days prior to the funeral unless there were exceptional circumstances. The Department supported this in principle but has not implemented any changes to ensure this occurs.

We also raised concerns about the lack of transparency in deciding the outcome of an appeal. We found that only a limited number of people were involved in assessing appeals. In particular we were concerned about the lack of Aboriginal representation in the appeals process. We recommended the Department develop a committee, with Aboriginal representation, to assess appeals. Like our other recommendations this was supported but not actioned.

2.1.2 Aboriginal kinship ties are not acknowledged

Significant changes were made to the policy and operational orders governing compassionate leave during our 2013 review. Each revision resulted in a tightening of the criteria on whether the applicant had a significant relationship with the deceased. A change in October 2012 completely removed the recognition of kinship and cultural relationships.

This substantially impacted on Aboriginal people and went against the core values of the Royal Commission into Aboriginal Deaths in Custody. We found no reason for the change other than an unsubstantiated belief that cost savings would be achieved. We therefore recommended the policy be revised to reinstate the importance of kinship and extended familial relationships when assessing the significance of relationships.

This recommendation was supported in principle by the Department. However, despite further revisions to the policy since then, Aboriginal kinship ties are still not acknowledged. In fact Appendix 1 of the policy, which previously provided detailed information on Aboriginal kinship developed by the Aboriginal Visitors Scheme, has now been completely overwritten, and the title changed to Security and Financial limitations. All the previous quality information has been deleted.

The current policy states that only immediate family relationships will be considered favourably. Immediate family includes mothers, fathers, sisters, brothers, daughters, sons or grandparents, as well as current husbands, wives or de-facto partners. It excludes grandchildren or great grandparents, as well as in-laws and other extended family. Exceptional relationships may be considered if there is a primary carer relationship but these must be approved by the Assistant Commissioner of either Re-Entry and Services or Custodial Operations.

The current version of the policy is disproportionately impacting Aboriginal people. Between 2013 and 2015, 84 per cent of all funeral applications were rejected with the primary reason being cited as the person in custody not being an immediate family

member of the deceased. Of these applications, 91 per cent were submitted by Aboriginal people. The majority of these non-approved applications were for funerals of cousins (29%), uncles (23%), and aunts (16%).

In the earlier version of the policy, when detailed information on Aboriginal kinship was provided, the Department described Aboriginal kinship as a principle where people who are the same sex and who 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 his father's brother. Children from either of the two brothers will be considered siblings. According to this definition the Aboriginal people who were denied access to the funerals of cousins, uncles and aunts were denied access to funerals of siblings and parents.

In 2013 we also recommended that further guidance be developed on what evidence is required to demonstrate a person's relationship with the deceased. The Department supported this recommendation however it has not developed any further guidance.

Recommendation:

Acknowledge Aboriginal kinship and extended familial relationships as significant relationships when considering access to compassionate leave and provide guidance as to what is needed as evidence of a relationship.

2.1.3 Aboriginal impacts from policy changes are not being considered

In the 2013 review we found that the Department was not considering Aboriginal impacts from policy changes. This is contrary to the Department's Aboriginal Impact Statement and Guidelines. Three years on this work has still to be done.

While the Aboriginal Impact Statement and Guidelines still exist, the Department has also established a new Operating Procedures and Standard Directorate. This is responsible for completing a Diversity and Substantive Equality Impact Statement each time a policy, prison rule or standing order is developed or amended (Department of Corrective Services, 2016). The policy governing compassionate leave has not been reviewed by this Directorate.

Policy changes to compassionate leave during and since the 2013 review have disproportionately adversely affected Aboriginal people. The 65 per cent decrease in Aboriginal compassionate leave since 2008 is evidence of this impact. Any review of the impact of these changes would have shown this clearly.

Ignoring the disproportionate impact on Aboriginal people in such a sensitive area is contrary to the Department's intention to improve the management and delivery of services to Aboriginal people as outlined in its 2015 Reconciliation Action Plan (Department of Corrective Services, 2015a). The Plan outlines a commitment to the

development and implementation of actions that make the Department more culturally sensitive, inclusive and responsive to Aboriginal people. Disregarding Aboriginal kinship in Departmental policy, and reducing Aboriginal people's access to funerals despite the cultural imperative to attend, is contradictory to the Department's stated commitment.

Recommendation:

Incorporate management and delivery of compassionate leave in the Reconciliation Action Plan

2.1.4 The policy does not address early discussion about alternatives to funeral attendance

Not everyone in custody can attend every funeral. Security concerns and victim issues must be considered. There are also costs associated with allowing people in custody to attend funerals and these costs must be balanced with the costs of meeting other prison needs. However, when people are denied access to a funeral other alternatives are needed so that people can grieve.

Our 2013 review noted that the policy governing compassionate leave outlined a list of alternatives to attending a funeral. However, we found that people needed time to digest the possibility of non-attendance early in order to constructively engage with alternatives. Discussing alternatives prior to having the outcome of the application decided allows the person more control over their method of grieving. We argued this could reduce the emotional impact of being denied access to attend the funeral. We outlined the need for early discussion to be comprehensive, including discussing the person's preference and having a frank conversation about the limitations of the prison and corrections system.

We recommended the policy be amended to ensure a constructive discussion occurred at the onset of the funeral application process. Despite supporting a change to the policy, the Department has made no changes.

2.2 Approval decisions continue to be inconsistent

There are four main reasons people in custody were denied access to funerals:

- They do not meet the policy criteria of a significant relationship because they are not an immediate family member of the deceased.
- Safety and security issues for the staff, person in custody, or the other people attending the funeral. This includes where there are victim issues
- Logistics issues such as when the Department or the external contractor were unable to facilitate an escort because of resourcing limitations or other operational commitments
- Cost – this is discussed further in section 2.2.1.

Of the 1,759 applications that were denied between January 2013 and December 2015, 87.3 per cent recorded only one of these reasons for the approval being denied. By far the most common reason was because the applicant was not an immediate family member of the deceased.

Table 2.

Frequency of reasons cited for denying access to funerals between January 2013 and December 2015.

| Reasons for denying funeral application | % of denied applications citing this reason | % of denied applications citing only this reason |
|--|--|---|
| Not an immediate family member | 84.1 | 74.2 |
| Security and safety issues | 13.3 | 5.1 |
| Logistics | 8.3 | 5.4 |
| Cost | 5.1 | 2.7 |

If only one reason was recorded, it suggests that the other factors were not relevant. However, we found decisions were inconsistent.

Between January 2013 and December 2015, 280 applications were denied where the person was seeking to attend the funeral of an immediate family member. Safety or security reasons were cited in 111 of these applications. Our 2013 review found security risk assessments were thorough and reasonable, so we have not further examined these applications.

However, 150 applications were denied on the basis of cost or logistics, even though the deceased was an immediate family member. In a further 19 applications there is not enough information recorded to determine why the funeral application was denied.

During the same period 54 escorts (or 8% of approvals) were approved for people in custody attending funerals for non-immediate family members. Escorts were provided

to both metropolitan and regional areas, with 11 regional funerals involving well over a 200 kilometre roundtrip from the nearest facility.

The case study below shows a clear example of a lack of consistency in decision-making.

| CASE STUDY¹ | |
|---|---|
| APPROVAL | DENIAL – due to “cost of escort” |
| An Aboriginal male applied and was approved to attend the funeral of his Aunt which was to be held in Derby in April 2013. | An Aboriginal male applied and was denied access to attend the funeral of his biological brother which was to be held in Derby in September 2013. |
| This relationship did not meet the ‘immediate family’ requirement stated in the policy, however it was determined that this relationship was an extraordinary circumstance as evidence suggested the Aunt acted as a primary caregiver to the man for much of his childhood. | The relationship met the ‘significance of relationship’ criteria within the policy; evidence from the family demonstrated that the man was biologically related to the deceased, and kept regular contact with him while in prison. |
| He was at West Kimberley Regional Prison at the time of this application, and was escorted by West Kimberley Regional Prison officers on a 15 kilometre round trip to attend the funeral. | The application stated that if the escort was approved, he would be transferred from Greenough (where he resided at the time of application) to Broome Regional Prison and facilitated by contract staff.* |
| | He had no recorded security or behaviour issues, and his attendance was recommended for approval by both the Initial Officer and Greenough Prison management. |
| | This funeral was not approved. The decision was appealed, but the application was denied by the Assistant Commissioner – Custodial Services, stating the “cost of the escort precludes attendance”. |
| <i>* Department policy states where a prison has recommended a person in custody attend a funeral, arrangements are made for the temporary transfer to the prison closest to the planned activity. At this stage the application is still being considered. Therefore the ‘cost’ of the funeral should be calculated from the nearest prison to where the funeral should be held.</i> | |

Figure 2.

Case study of two similar funeral applications and their disparate outcomes

Both funerals were in the same place a few months apart. There were no recorded security or safety issues in either application. The approved application was deemed by the Department to be an exceptional relationship, while the denied application was for an immediate family member.

¹ The Department objected to the use of this case study in its response to this review, despite the details of these two cases being taken from Departmental records. In its response to OICS the Department stated “there are multiple issues which are considered as part of the funeral application which may have been outlined during the application process but not recorded in the actual decision”. The response suggests an acceptance that records about decisions for compassionate leave are not accurate. This raises further concerns for our Office which are beyond the scope of this review but may be followed up through other work.

The funerals were held close to West Kimberley Prison. There was no recorded reason why the person who was denied access was scheduled to be transferred to Broome Regional Prison (which is 220 kilometres from Derby) instead of West Kimberley Regional Prison. The policy states that funeral applicants should be temporarily transferred to the prison closest to the where the funeral is to be held, subject to security considerations. There were no recorded security considerations preventing the applicant from being transferred to the closer facility. It follows that costs should have been calculated from the nearest facility in order to assess the application.

While flexibility is needed in assessing applications, it is important that people in custody believe the system to be fair and equitable. Having such disparate outcomes for similar applications does not provide this sense of fairness. This is exacerbated when cultural obligations are not met by the person being denied access to a funeral, especially if the family is aware of similar situations where a person was able to attend. It may be perceived that the person in custody did not try to meet their obligations which can impact their ability to integrate back into the community on release.

2.2.1 Applications are being denied based only on cost while the method for determining cost is inequitable

Since the 2013 review the Department has reintroduced cost limitations to the policy. An application is denied if the cost of compassionate leave exceeds \$2,000 per person for local funerals or visits, \$6,000 for regional, or a total of \$12,000 for any one funeral or visit due to multiple people attending.

Cost limitations first appeared in operational notices in 2007 but were not included in the policy governing compassionate leave. In April 2011 the costs were revised but still not embedded into policy. With an intention of saving an unsubstantiated sum of money in September 2012 the policy was amended to introduce a distance criterion and the cost limitations were removed from operational notices. The distance criterion was almost immediately rescinded through operational orders, due to the obvious substantive equality issues and the resulting public criticism. A revised policy removing the distance criterion and formalising the cost limitation came into effect from 25 October 2013. The further revision in February 2015 did not affect this part of the policy.

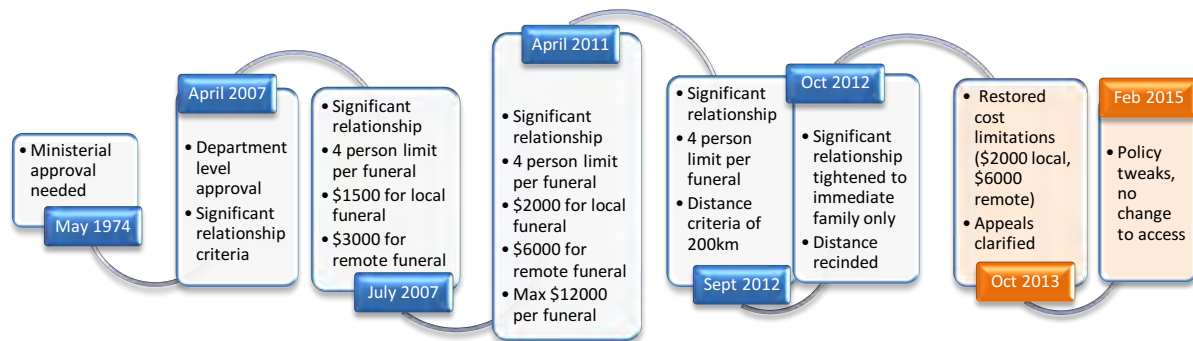


Figure 3.

Substantial changes to policy and rules governing access to compassionate leave for adults in custody.

In the 2013 review we found that the only analysis the Department was able to provide on the development of the cost limitations was based on a memo providing average costs and the range of costs for funerals in December 2010 and January 2011. This was prior to a private contractor being appointed to undertake most funeral transports.

At the time of the last review the Department stated an intention to evaluate the amounts as part of its policy revision. This has not been done and the policy remains with cost limitations based on inadequate, out of date information.

Recommendation:

Conduct a robust analysis of the average, median and mode costs of compassionate leave to inform the development of appropriate cost limitations

It also remains unclear when, and how costs were estimated. Our 2013 review found that whenever cost was a factor in assessing the eligibility for a person in custody to access compassionate leave, an estimate of the cost of transport was required. However, it was not clear who was responsible for obtaining this estimate, how it was to be obtained and when the estimate was needed.

Our 2013 review also found that the cost estimates sought independently from the contractor as part of assessing the application did not equal what was actually charged for conducting the escort. Actual charges were established through the contract rates. Quotes were general provided as special services even though most often the service was provided within the contract. Given this, we argued that the contract management area of the Department would be able to estimate the costs of any compassionate leave using the contract, and that this would eliminate the need for the contractor to provide an independent quote. We recommended that the contract be used to develop an

internal quoting method for assessing compassionate leave applications. Once again this recommendation was supported by the Department but has not been actioned.

As part of this review, we asked for an update on the implementation of the recommendations made in the 2013 review. In response to the recommendation about developing an internal quoting method, the Department simply stated the contract 'remains an appropriate reference point for indicative costs prior to requesting detailed and specific quotes for each funeral movement'. Thus, as previously, there is no indication of who is responsible for obtaining an estimate, how it is to be obtained, and when an estimate is needed.

The only change is that, following the October 2013 amendments, the policy now prioritises cost as a limiting factor. The policy states that where an application is found to be within cost limitations, only immediate family relationships will be considered favourably. In other words, an application must meet the cost restrictions before other factors are even considered.

Even though there should be no requirement to gain external quotes for compassionate leave, on at least 13 occasions between 2013 and 2015 the Department sought quotes from the contractor for individual escorts, all of which were eventually denied. One particular quote was for almost \$30,000 to facilitate an escort to Esperance. This indicates that quotes are being sought outside the contract without the benefit of the prearranged costs. The different quoting methods, through obtaining an external quote or estimating the cost using the contract, has resulted in disparate outcomes for applicants.

Recommendation:

Develop an internal quoting method to estimate the cost of providing compassionate leave to determine whether each application exceeds cost limitations

3 The Department still does not know how much it is spending on compassionate leave

Our 2013 review found the Department has no discrete budget for compassionate leave, and no capacity to easily identify costs despite changes to policy being made for the sole reason of cutting costs. In July 2012 the Department announced it would save approximately \$500,000 from the policy changes (Johnson, 2012), but it had no means of determining how much compassionate leave was costing, how much could be saved, or how effective the changes had been in achieving any savings.

Consequently, we recommended the Department develop processes for accurately recording and monitoring the cost of compassionate leave. This has not been done.

As part of the current review we asked the Department for the cost of funeral attendances from 2013 to 2015. We received a response stating this information was not available. This was qualified by a statement about the way in which the contract with a private provider is structured so that itemised data about transport costs was not available.

Since 1999 private companies have provided transport to move people in custody. The Department has always supplemented these contracts by providing transport from minimum-security facilities and providing additional services when demand was higher than expected. This is reasonable, given a contract designed without supplementation would mean that during non-peak periods the State would be paying for services it did not require. The current contractor provides 75 per cent of funeral transports (Public Administration Committee, 2016).

The response from the Department about its inability to cost funerals is not only inadequate, but also fails to acknowledge the 25 per cent of funerals carried out by the Department.

Recommendation:

Accurately record and monitor the cost of compassionate leave

Although the Department told us that the cost of funerals cannot be identified from the costs in the broader transport contract, it produces an annual report on the contract from which the cost of funerals can be estimated. This report includes the total cost of providing transport as well as a graph showing the proportion of types of services provided.

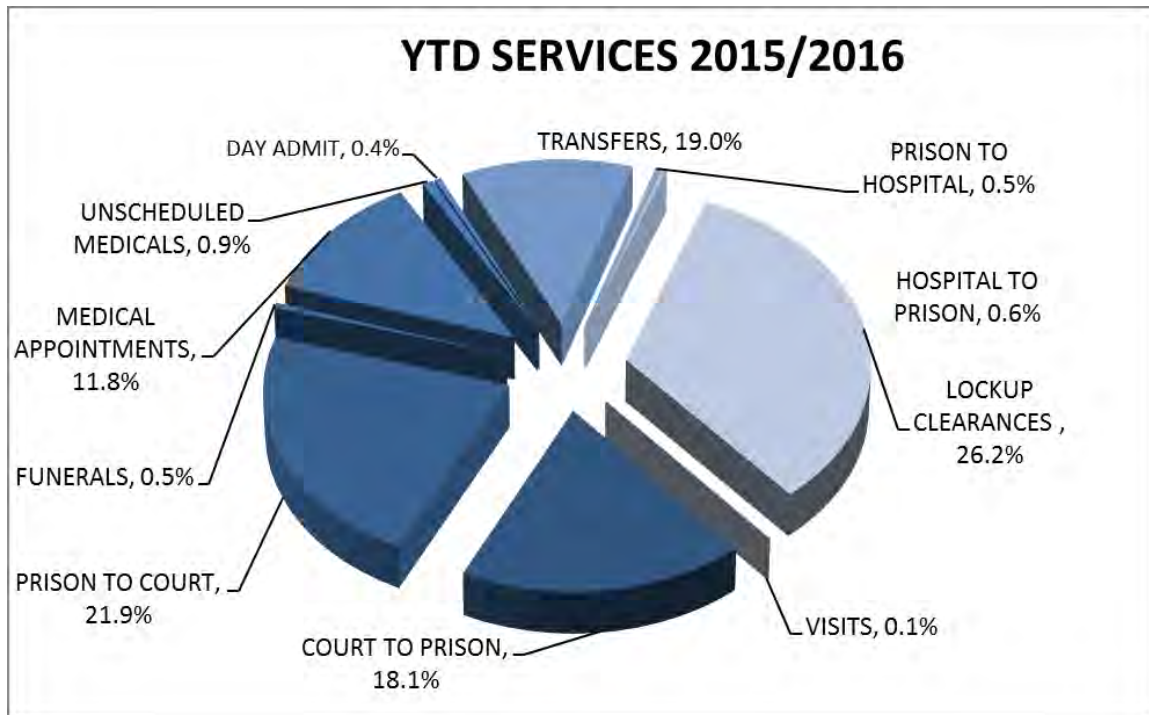


Figure 4.

Annual service delivery of adult contracted transport service (DCS, 2016)²

According to the 2015-16 Court Security and Custodial Services (CS and CS) annual report (DCS, 2015b), funeral escorts made up half a per cent of the services provided through the transport contract. The total cost of all transports was \$36,524,102 therefore an approximate cost of what the Department spent on funerals through the contract last financial year is \$182,620.

² In responding to this report, the Department stated that this figure “is a misrepresentation of the percentage of escorts provided by the contracted transport service for funerals”. As cited, this figure was taken directly from the Department’s own 2015-16 Court Security and Custodial Services (CS and CS) annual report.

4 Fewer young people are accessing compassionate leave but policy and practice has improved

4.1 Only eight young people accessed compassionate leave in 2015

Since the 2013 review, the number of young people in custody and the number of young people accessing compassionate leave have both declined. However, the decline in compassionate leave has been more pronounced. From 2013 to 2015 the number of young people going through Banksia Hill Detention Centre decreased by 15 per cent, while the number of young people accessing compassionate leave dropped by 67 per cent. Only eight young people accessed compassionate leave while in custody in 2015³.

Table 3.

Trend in youth compassionate leave relative to total youth in custody

| Year | Young people accessing compassionate leave | Total number of young people coming through youth detention each year |
|------|--|---|
| 2008 | 42 | 1,076 |
| 2009 | 32 | 1,062 |
| 2010 | 36 | 1,091 |
| 2011 | 39 | 1,042 |
| 2012 | 20 | 1,022 |
| 2013 | 24 | 983 |
| 2014 | 6 | 867 |
| 2015 | 8 | 835 |

4.2 Good practices in accessing compassionate leave have been formalised

During the 2013 review we found the process for young people applying to attend compassionate leave depended on good practice rather than good policy. The rules were not comprehensive but the application was appropriate and effective (OICS, 2013). As a result we recommended that these good practices be formalised by amending the rules governing compassionate leave for youth in detention. This has been done.

Access to compassionate leave for young people held in detention is governed through Youth Custodial Rules, supported by Standing Orders. In February 2014 a new standing order was created which is comprehensive and draws heavily on good established practices.

³ The Department responded to this report by stating it “does not believe the figures for 2014 and 2015 are accurate and are currently investigating reasons for this apparent data integrity issue”. In lieu of having information about the suspected data issue, we have chosen to report the figures based on Department records.

The policy provides a useful definition of kinship and specifically outlines the role of the Aboriginal Welfare Officer in obtaining necessary information to support the application. From 2013 to 2015 over a third of funeral attendances for young people were approved under exceptional circumstances where the young person was granted an escort to the funeral of a non-blood-related primary caregiver. Aboriginal Welfare Officers significantly contribute to this process by engaging with Aboriginal communities and the young person's extended family.

The 2013 review also recommended the Department notify all applicants of the outcome of their request to attend a funeral at least three days prior to the event. While this recommendation was not adopted in the adult policy governing funeral attendances, this has been included in the Standing Orders for young people. This allows sufficient time for evidence gathering in the event that the young person wishes to appeal a decision.

4.3 Pending changes to escorts are likely to reduce access to compassionate leave

In October 2013, due to staffing difficulties resulting from a riot earlier in the year at Banksia Hill, the Department outsourced transport of young people outside the facility to a contractor. This was predominately used to transport people to and from court but also included transport for compassionate leave.

Similar to the adult system the contract was designed to pick up the majority of transports but was supplemented by escorts provided by Banksia Hill staff. The contractor has focused on court transports leaving most compassionate leave transports to be undertaken by Banksia Hill staff. Since the contract has been in place 25 young people have been escorted for the purpose of compassionate leave with only five of these carried out by the contractor.

During the 2013 review, prior to the contracting arrangement being made, we found that a lack of staff prevented approved compassionate leave from proceeding. We recommended the Department ensure that adequate staffing resources be put in place to enable young people in detention to attend funerals and visit dangerously ill relatives. The inadequate staffing levels were also impacting other areas of the centre.

The Department's use of a contractor relieved some of the staffing pressures on the centre, however this arrangement is due to expire in March 2017. Banksia Hill staff will once again be required to provide transport services for young people. As of November 2016 the centre is again experiencing staffing difficulties with two staff members a month resigning and rising workers compensation claims leaving gaps in shift rosters. This will be exacerbated in March 2017 when staff are diverted to transport duties. It is more than likely these pressures will once again impact the availability of staff to conduct escorts for compassionate leave.

Appendix A: Department of Corrective Services response to recommendations



Government of Western Australia
Department of Corrective Services

Protect, Rehabilitate & Serve

Response to the follow-up review “Access to funerals and other compassionate leave”

Department of Corrective Services

14 February 2017

To protect, to rehabilitate and to serve

The Department of Corrective Services acknowledges the follow-up review of access to funerals and other compassionate leave.

The Department has reviewed the report and noted a level of acceptance against the 5 recommendations.

The recommendations will be considered as part of the Department's strategic reforms, as outlined in the 2015-2018 Strategic Plan, *Creating Value through Performance*. Recommendations will be assessed against this plan to ensure priorities are considered against departmental priorities that are focused on security, safety and rehabilitation.

Appendix A contains a number of notes for your attention.

Response to Recommendations

1 Acknowledge Aboriginal kinship and extended familial relationships as significant relationships when considering access to compassionate leave and provide guidance as to what is needed as evidence of a relationship.

Response:

The Department is reviewing all operational policies (ie Rules, Policy Directives, Operational Instructions, etc) to:

- reduce the complexity and number of instruments that govern operations;
- remove inconsistencies; and
- ensure instruments comply with the Prisons Act 1981, Prisons Regulations 1982 and the Sentencing Administration Act 1983 required.

The guidance for leave requests, including compassionate leave, will be included in this review. The Department acknowledges the importance of kinship and cultural ties and as such will consult with the Aboriginal Advice Team on the most culturally appropriate approach.

Level of Acceptance: Supported in Principle

2 Incorporate management and delivery of compassionate leave in the Reconciliation Action Plan.

Response:

The Department's first Reconciliation Action Plan (RAP) 2016 –2018 commits it to delivering a range of initiatives targeted at improving outcomes for Aboriginal people in the care of the Department. It is a three year document, registered with Reconciliation Australia. During the implementation of the RAP the Department is identifying areas for improvement and new initiatives for the next RAP. Whilst it will guide the review and development of operational policy it will not be responsible for the management and delivery of compassionate leave.

Level of Acceptance: Not Supported

3 Conduct a robust analysis of the average, median and mode costs of compassionate leave to inform the development of appropriate cost limitations.

Response:

A robust analysis of costs of compassionate leave would need to include all costs incurred to facilitate the prisoner's placement at a funeral. Manual records are now maintained for Department escorts. Modeling costs and the development of cost limitations will be considered,

Level of Acceptance: Supported in Principle

4 Develop an internal quoting method to estimate the cost of providing compassionate leave to determine whether each application exceeds cost limitations.

Response:

The development of an internal quoting method to provide the cost of providing compassionate leave is a complex task, which would require changes to systems to allow for the recording of all data sufficiently. This will be considered in conjunction with recommendation 3.

Level of Acceptance: Supported in Principle

5 Accurately record and monitor the cost of compassionate leave.

Response:

The Department supports the recommendation and now manually records the cost of compassionate leave conducted by the Department and will give consideration to the most appropriate recording method that encompasses all compassionate leave provision.

Level of Acceptance: Supported

Appendix B: Process for adults in custody to access compassionate leave

The application process

In essence, the policy remains the same. The *Prisons Act (WA) 1981* allows for all people in custody, regardless of their security rating, to be permitted an absence permit based on compassionate grounds and the current policy continues to align with this legislation.

The policy removes all procedural information into a separate document and this clearly outlines the application process and provides a useful diagram for assistance (see Figure 6). The procedures have not changed although some nominal changes to titles and approval authorities have occurred.

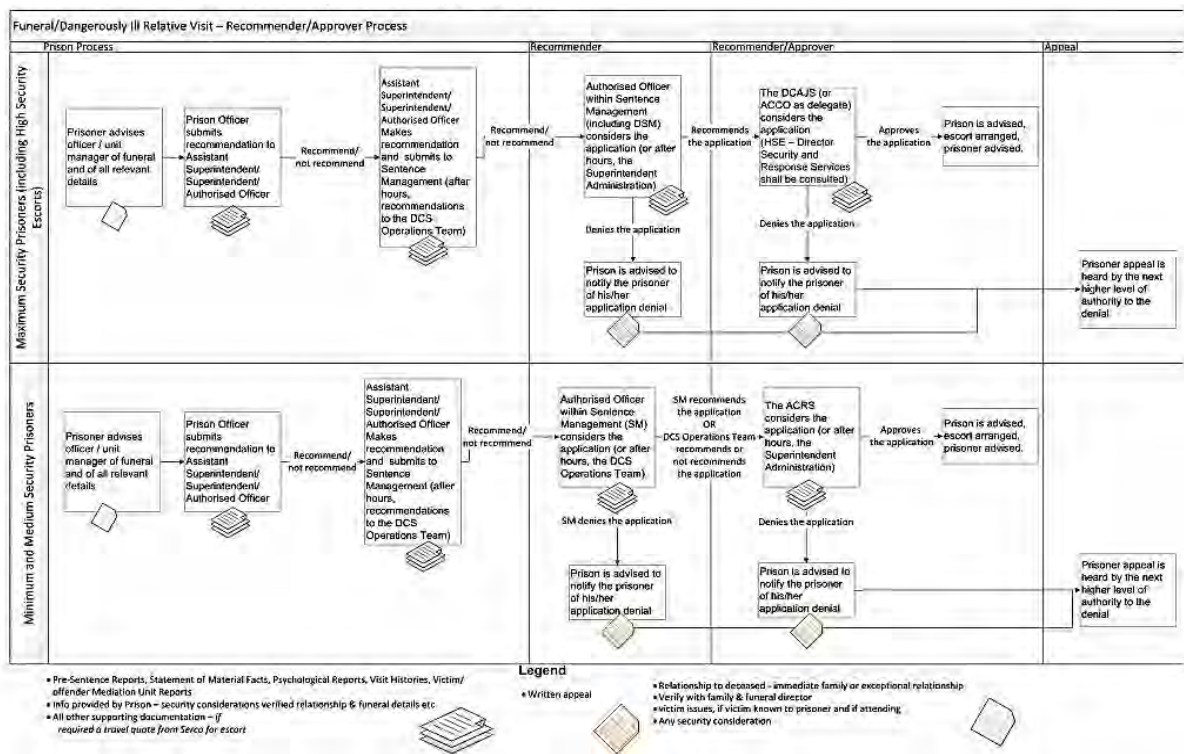


Figure 5
Process for the recommendation and approval of funeral applications (image taken from Policy Directive 9 - Permits for Absence - Procedures)

Once a person in custody becomes aware of the death, they advise the prison of their intention to submit an application to attend the funeral. A delegated officer then creates a checklist to assess the application for a variety of considerations, including:

- risk issues related to the person (e.g. victim issues, escape history)
- security and financial limitations
- transportation and supervision requirements
- the validity of the relationship with the deceased.

The officer is required to obtain and document all details available from external parties. They submit a recommendation in light of the risk to public safety, the likelihood of successfully completing the escort, the person's behaviour and other security and intelligence information. Recommending attendance should only occur if the deceased is an immediate family member or the relationship is exceptional. A second recommendation by the Superintendent, Assistant Superintendent or an Authorised Officer is then forwarded to the Department's Sentence Management division for assessment.

Meanwhile, if the prison has recommended attendance, it should make arrangements for the person's temporary transfer to the prison closest to the funeral, subject to security considerations. This does not include moving people within the metropolitan area. The applicant should be advised that transfer does not equate to approval and the application is still being considered.

The decision to approve or deny attendance is made by the relevant approval authority. For high-security escorts, that authority is the Superintendent Administration in consultation with the Director, Security and Response Services. For all other people in custody the decision lies with the Assistant Commissioner Re-Entry Services and Deputy Commissioner Adult Justice Services.

Sentence Management informs the prison, and immediately upon notification an officer is instructed to advise the person verbally of the outcome. The officer records the notification and the person's reaction and response on his or her electronic database file. If the application is rejected, the officer must also advise the person of the appeals process. The current policy continues to demonstrate important awareness around managing grief and adverse emotional reactions stipulating that staff should be vigilant for the impact of a denial to attend a funeral or visit a dangerously ill person.

Appeals and alternatives

People in custody have the right to one appeal which is considered by the next higher level of delegated authority from the decision maker in the initial application. However, people are ineligible to appeal decisions made by the Commissioner of Corrective Services. To appeal, people in custody must provide further information in writing addressing the reason for non-approval to prison staff which is then forwarded to Sentence Management for re-assessment.

The prison is notified of the appeal outcome and again an officer is instructed to advise the person in custody verbally, recording the notification and, if the appeal is dismissed, the officer must also include the person's response or reaction.

People who have not been granted approval to go to a funeral should be offered an alternative to attendance regardless of the reason for the non-approval. These include transferring to the nearest prison for visits with family and community members, having a memorial service within the prison, additional phone calls, flexible visit arrangements and electronic visits, writing something to be read out at the funeral, video link the funeral proceedings or arranging for the playback of the funeral, or other culturally appropriate activities the prison deems suitable.

Appendix C: Process for young people in custody to access compassionate leave

The application process

Where a detainee seeks to attend a funeral they submit a formal request and an Aboriginal Welfare Officer subsequently prepares an authorised absence funeral submission. The Aboriginal Welfare Officer drafts the submission giving consideration to community safety as the highest priority. The submission includes the nature of the detainee's request, their escape record, their current and past offences and behaviour while in custody. It should also include any alerts, possible victim or community issues and the location of the funeral.

Information is collated from various parties including the Aboriginal Visitors Scheme, the detainee's parent or caregiver and other relatives, the psychologist, and local police and youth justice services if the funeral is to be held at a regional location.

When preparing the submission the Aboriginal Welfare Officer ensures that several important factors are addressed (DCS, 2014). They primarily focus on evaluating significance of the relationship between the detainee and the deceased, considering family history and cultural kinship ties if necessary. The psychological impact of attending versus not attending on the detainee and the family is taken into consideration. Evidence such as phone calls and visits from the deceased is used in determining appropriateness of the escort, as well as communicating with family members in the community.

In addition to relationship significance, other factors are considered such as any potential conflict between the detainee and other known funeral attendees, or other behavioural issues of the detainee that may compromise the escort.

Finally, the Aboriginal Welfare Officer will also factor in the potential costs for the detainee to attend the funeral, however this issue is considered by others more closely throughout the application process as well.

The submission is due with the Manager Case Planning and Programs Unit at least five working days prior to the day of the funeral, where possible. The manager reviews the submission within 24 hours of receiving it and may request further information or interview the detainee. The manager makes the first level recommendation and then passes the submission on to Assistant Superintendent Security for review and contribution, also within 24 hours. The submission is then progressed to the Superintendent to review.

The application is then submitted to the delegated authority for a decision. This is the Deputy Commissioner Youth Justice Services. Formerly, the policy stated that the Superintendent or their delegate had the authority to approve a funeral attendance.

When a decision has been reached, the Superintendent is advised of the outcome. He in turn notifies the case planning manager, the Assistant Superintendent Security and the Assistant Superintendent Operations who actions approved funeral escorts. The Aboriginal Welfare Officer is responsible for informing the family of the decision and together with the Unit Manager, the Aboriginal Welfare Officer notifies detainee.

YCS SO 30 states that the detainee shall be advised of the decision at least three days prior to the funeral unless there are clearly documented exceptional circumstances not to do so. Furthermore, officers are instructed to be vigilant and assess the impact of denied requests and where necessary, they are to implement at-risk procedures.

Appeals and alternatives

Like adults applying to attend, young people are also allowed one appeal against the decision not to attend a funeral. These appeals are assessed by the next higher level of delegated authority from the decision maker in the initial application. Detainees are ineligible to appeal decisions by the Commissioner.

If a detainee wishes to appeal he or she completes an appeal form with the assistance of the Unit Manager. The detainee must provide further information in writing which addresses the reason for non-approval. A decision is reached by the Commissioner of Corrective Services (as the next highest level approval authority) and the Superintendent or their delegate is advised. The Unit Manager then notifies the detainee keeping record of the advice and the detainee's response.

Alternatives to non-attendance continue to be included in the current policy. They should be offered for consideration where an application has been denied regardless of the reason for not approving the detainee's attendance. Alternatives include conducting memorial services within the centre, the flexibility of visiting arrangements, assisting the detainee to write something to be read out at the funeral, video links and the use of technology to facilitate contact with family members before, during and after the funeral. Extra phone calls can be arranged and it may also be possible to organise a playback recording of the funeral or another culturally appropriate activity deemed appropriate.

Appendix D: Methodology

Two data sets were obtained using standard query language data extraction from the Total Offender Management Solution database.

The first dataset included all funeral attendances and visits to dangerously ill relatives during the period 1 January 2013 to 31 December 2015. Forty four cases were excluded in instances where placement type was labelled 'other' and remarks clearly stated that the reason for absence was neither a funeral nor to visit an ill relative.

The second dataset included all adult funeral applications during the period 1 January 2013 to 31 December 2015. Within this dataset, the true numbers of application appeals are not known; only dismissed appeals were accounted for by searching for "appeal" in the reasons for denial. Our extracted data of funeral denials based on cost reasons was compared to data provided by the Department on denied applications to check for any discrepancies. Our data had 89 cases mention cost as a denial reason, whereas Departmental data had 86 cases. The three extra cases can be accounted for, as they describe a cost issue without using the word "cost".

To obtain the total number of people who had come through custody each year, Structured Querying Language (SQL) software was used to extract all people who had a change of status in a 12 month time period. This picked up all people as they entered custody. It also picked up each time a person's status changed while in custody, for example, if a person's status went from 'remand' to 'sentenced', they would appear in the data set twice. As all people were identified with TOMS IDs, duplicates were isolated and deleted, leaving individual distinct people in custody over the 12 month time period. People whose status was marked as 'at large' or 'non-custodial' were excluded.

Relevant policy documents for both adult and young people were reviewed and analysed, with the results incorporated into the findings of this report.

Finally, interviews were conducted with several Departmental staff, including the Director of Performance, Assurance and Risk, the Assistant Commissioner for Rehabilitation and Reintegration, and the Director of Sentence Management. A probity adviser externally contracted by the Department was also interviewed regarding content of the Court Security and Custodial Services contract which was in tender during the review process. Discussions were also held with staff at Banksia Hill regarding funeral applications of young people.

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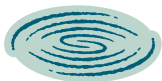
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