Significance of Funeral Attendance and Sorry Business for Aboriginal and Torres Strait Islander Peoples

Executive Summary

It is widely recognised that 'attendance at funerals is an important aspect of Aboriginal culture. Failure to attend the funeral of a relative may cause great distress and possibly lead to consequences for the [incarcerated person] and/or [their] family'.[1] Recognition has also been given to the special kinship and family obligations of Aboriginal and Torres Strait Islander peoples, 'which extend beyond the immediate family'.[2] Kinship and cultural obligations 'may require Aboriginal people to attend funerals even where it is necessary to travel long distances and the deceased person would be considered a distant relative in a Western context'.[3]

Sorry Business[4] is 'a very important part of Aboriginal culture' and funerals can involve entire communities.[5] It is 'an important time of mourning, and it involves responsibilities and obligations to participate in cultural practices, protocols, ceremonies and rituals associated with bereavement and funerals for a deceased person'.[6] The '"sorry time" of the funeral and mourning takes precedence over all other matters'.[7] There is no set time period for Sorry Business,[8] and periods of mourning can last for weeks or months beyond the funeral.[9]

Inability to participate in Sorry Business and attend burial ceremonies 'can cause great stress' for Aboriginal and Torres Strait Islander people experiencing incarceration.[10] Failure 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'.[11]

Research concerning the impacts of bereavement, grief and loss within Aboriginal and Torres Strait Islander communities has found that 'the experience of bereavement itself means a higher risk for a range of negative physical, mental and social outcomes'.[12] Inability to participate in Sorry Business is one aspect of disconnection from culture for Aboriginal and Torres Strait Islander women who are incarcerated, and may have a negative impact on reintegration following release.[13] Research has also found that '[g]rief associated with suicide adds to the complexity of Aboriginal grief and loss because of the traumatic nature of suicide and its relative frequency as a cause of death in Aboriginal communities … Suicide "clusters" in communities sometimes develop as a result of this experience'.[14]

In the context of bail, '[c]urfews, exclusion zones and non-association orders can "restrict contact with family networks and prevent Aboriginal people from maintaining relationships, performing responsibilities such as taking care of elderly relatives or attending funerals".'[15] The Australian Law Reform Commission has acknowledged that such conditions 'rarely address a risk and can be "especially problematic" for Aboriginal people'.[16] The NSW Judicial Commission's *Equality before the Law Bench Book* (2022) observes: 'Reporting and residential conditions need to be realistic and not unduly oppressive — for example, a condition banning residence in a particular town, or requiring court permission to change, may be ruled as unduly oppressive if there is a death in the defendant's family requiring their immediate attendance in that town.'[17]

The desirability of in-person attendance at funerals, where appropriate, has been recognised by both custodial authorities and the courts, with a recent bail decision of the NSW Supreme Court finding that the 'alternative of attending by way of an audio visual link is a very poor substitute'.[18]

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[1] Royal Commission into Aboriginal Deaths in Custody, *Regional Report of Inquiry into Individual Deaths in Custody in Western Australia* (1991) vol 2, 214. See also Corrective Services NSW, *Custodial Operations Policy and Procedures*, '9.3 Application for Compassionate Leave' (ver 1.0) 5 [1.2]; Queensland Corrective Services, *Custodial Operations Practice Directive*, '5.3 Escorts – Leave of Absence' (ver 5.4) 8 [8.2]–[8.3].

[2] Royal Commission into Aboriginal Deaths in Custody, *National Report* (1991) vol 3, 313 (Recommendation 171).

[3] Western Australian Law Reform Commission, *Aboriginal Customary Laws* (Discussion Paper, December 2005) 197–8.

[4] 'Sorry Business' is a term commonly used within Aboriginal and Torres Strait Islander communities to refer to the grieving process and cultural protocols associated with the death of a community member. Some Aboriginal communities use the term 'Sorry Time', or simply 'Sorry', and some Torres Strait Islander communities use the term 'Sad News': see Queensland Government, *Sad News, Sorry Business: Guideline for Caring for Aboriginal and Torres Strait Islander People through Death and Dying* (Practice Guide, December 2015) 15. This document uses the term 'Sorry Business' to refer to these practices collectively.

[5] Pat Dudgeon, Helen Milroy and Roz Walker (eds), *Working Together: Aboriginal and Torres Strait Islander Mental Health and Wellbeing Principles and Practice* (2nd ed, Commonwealth of Australia, 2014) 549.

[6] Queensland Government, 'Respect for Cultural Protocols and Practices' (Web Page, 7 October 2022).

[7] Australian Institute of Judicial Administration, *Aboriginal Bench Book for Western Australian Courts* (2nd ed, 2017) 2:24.

[8] See, eg, Government of South Australia, *Working with Aboriginal Families: A Practice Resource* (Report, Women's and Children's Health Network, 2019) 32.

[9] Queensland Government, 'Respect for Cultural Protocols and Practices' (Web Page, 7 October 2022).

[10] Corrective Services Administrators Council Indigenous Issues Working Group, *Indigenous Strategic Framework* (2016) 27.

[11] Inspector of Custodial Services (WA), *Funeral Attendances by Incarcerated People in Western Australia* (Report, September 2013) i–ii. See also Western Australian Law Reform Commission, Inquiry into Aboriginal Customary Laws, *Aboriginal Customary Laws* (Discussion Paper, December 2005) 256; Western Australian Law Reform Commission, Inquiry into Aboriginal Customary Laws, *Aboriginal Customary Laws: The Interaction of Western Australian Law with Aboriginal Law and Culture* (Final Report, September 2006) 215.

[12] Megan Wynne-Jones et al, 'Aboriginal Grief and Loss: A Review of the Literature' (2016) *Australian Indigenous Health Bulletin* 16(3) 2.

[13] Australian Human Rights Commission, *Wiyi Yani U Thangani (Women's Voices) – Securing Our Rights, Securing Our Future Report* (September 2020) 188–9.

[14] Ibid 3. See also Sven Silburn et al, 'Preventing Suicide Among Aboriginal Australians' in Pat Dudgeon, Helen Milroy and Roz Walker (eds), *Working Together: Aboriginal and Torres Strait Islander Mental Health and Wellbeing Principles and Practice* (2nd ed, Commonwealth of Australia, 2014) 147–64..

[15] Australian Law Reform Commission, *Pathways to Justice: Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples* (ALRC Report No 133, December 2017) 157 [5.41]. See also NSW Law Reform Commission, *Bail* (Report No 133, 2012) 182 [11.54].

[16] Australian Law Reform Commission, *Pathways to Justice: Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples* (ALRC Report No 133, December 2017) 159 [5.49].

[17] Judicial Commission of NSW, *Equality before the Law Bench Book* (May 2022) 2131 [2.3.2].

[18] See, eg, Inspector of Custodial Services (WA), *Funeral Attendances by Incarcerated People in Western Australia* (Report, September 2013) 39 [4.31]; *Director of Public Prosecutions (NSW) v PH* [2022] NSWSC 1245, [48] (Button J). **For further examples of judicial consideration of the significance of funeral attendance, see the Case Summary on this chapter webpage.**