

MULTICULTURALISM

The death of a Lama

SABINA LAUBER reports on the inadequacy of Australian laws to deal with cultural and spiritual rituals other than those of mainstream Christianity.

The death of Gyalsay Tulku Rinpoche in Canberra in 1993 tragically exposed the inadequacies of Australian law in dealing with cultural and spiritual beliefs about dying that differ from mainstream Christianity. The circumstances surrounding Rinpoche's death caused international uproar and led the ACT to review its laws on post-mortem examinations. However, other Australian jurisdictions still maintain laws that deny the fundamental right to die in accordance with one's cultural or spiritual beliefs.

The death of an esteemed Lama

Gyalsay Tulku Rinpoche was a Tibetan Buddhist Lama¹ born in East Tibet in 1952. At the age of five he was recognised as the 14th incarnation of a high Lama of the Sakya lineage of Tibetan Buddhism. He was also recognised as the head of the Sakya lineage and second in protocol to His Holiness, the Dalai Lama. In 1988, Rinpoche came to Australia. In 1990 he founded the Sakya Tharpa Ling Buddhist Centre in Balmain, Sydney. The Centre grew rapidly and many devoted students gathered around him.

On the evening of 21 November 1993, while giving a teaching at a student's house, Rinpoche developed a headache and retired to his room earlier than usual. He died unexpectedly the next morning.

Tibetan Buddhist beliefs about death and dying

Tibetan Buddhists believe that the actions and state of mind around the time of death and immediately after death, will have a significant impact on the quality of the next rebirth. Specific rituals and practices exist for guiding a Tibetan Buddhist through this time. The dying or dead person, his or her Master and fellow students or family are involved in these rituals. The rituals are particularly important for the first two to three days after death, during which Buddhists believe that an ordinary person's consciousness remains with them. For high Lamas, this can be seven or more days. For example, the Senior Tutor of His Holiness the Dalai Lama remained in consciousness for 13 days after death.

During the time that the consciousness remains with the body, it is crucial that the dead person is not touched or moved. Where a Lama has died, the body is traditionally embalmed after the rituals have ended, and preserved for 49 days as an object of spiritual devotion before it is cremated.

The ACT Coroner's Act

Under the *ACT Coroners Act 1956* (the Act), the Coroner must hold an inquest into the manner and cause of death of a person who has had an apparently unnatural death (s.12(1)). To complete this task, the Coroner has the power to issue a warrant to authorise the police to take the body, and may then conduct a post-mortem examination (ss.28(1), 30). Under Australian common law, there is an obligation on every person to report a death to the Coroner. It is then the common law right and duty of the Coroner to take possession of the body.

Coronial powers are important to the proper functioning of criminal law and to protect the safety and lives of individuals. The actual focus of the Coroner's role is not to determine the rights of particular parties or individuals, but for the benefit of the community as a whole. However, this focus has resulted in Australian laws that give no scope for the Coroner to take into consideration any spiritual or other beliefs of the person who has died.

Rinpoche's body

Rinpoche died early on the morning of Sunday, 22 November. He was staying at the house of a student, who found his body. The student contacted paramedics to try to revive the body. He also contacted other students and messages were sent to other Lamas in Canberra and Sydney who left immediately to come to the body to begin the necessary rituals.

Shortly after the paramedics had declared Rinpoche to be officially dead, they contacted the police to collect the body, as they are required to do by law. The police came immediately. Some of Rinpoche's students tried to barricade the house to stop them removing the body. One student contacted a senior police officer in an attempt to delay the removal of the body, at least until the Lama arrived from Sydney. She also contacted the ACT Attorney-General, Terry Connolly, at home. His instant reaction was that the law had to be carried out, but he offered to contact the Commissioner of Police to delay removal of the body until the Lama arrived from Sydney. However, by this time the body had been removed by the police.

By all accounts the police handled the situation well, with sympathy and patience. However, on the orders of the Coroner (a magistrate rostered for that day), the police were bound to move the body. Later, two Lamas performed rituals at the morgue.

The next morning a meeting was held with the ACT Attorney-General, the Coroner, the Professor who would do the autopsy, the Office of Tibet and Dr David Cheah who was Rinpoche's doctor and had signed a death certificate for him. The aim of the meeting was to try to delay the autopsy for two to three days, to allow the appropriate rituals to be performed. The position put by the ACT authorities was that the law had to be carried out. However, as a compromise, a limited autopsy was carried out on Rinpoche's head. It was confirmed that he died of a stroke.

After the autopsy, the body was embalmed and Canberra's Buddhist community from all traditions performed mediation practice and rituals in front of the body for several nights

at the funeral parlour. At the end of the week, the body was flown back to Rinpoche's monastery in India where the appropriate rituals and cremation were performed. There was considerable distress at the monastery at the incisions on the body and the manner in which it had been handled before the necessary rituals had been performed.

The right to religious freedom

Article 18 of the Universal Declaration of Human Rights provides that:

Everyone has a right to the freedom of thought, conscience and religion; this right includes freedom to change his [sic] religion or belief and freedom either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship or observance.

However, the Australian Constitution and Australian law do not provide a right to freedom of religion or cultural practices. Buddhism is the fastest growing religion in Australia, partly due to the high level of Asian immigration to Australia and partly because of the high number of Australian converts to Buddhism. In particular, many seriously ill patients, for example living with cancer or HIV/AIDS, practise Buddhism in anticipation of imminent death.

Buddhists are not the only cultural or spiritual group to have been critical of coronial laws. Jewish and Muslim communities have also been vocal about the inability of these laws to respect their beliefs and practices at the time of death.

The events surrounding Rinpoche's death in Canberra led to an immediate review of the *Coroner's Act* in the ACT. An Issues Paper was released in 1994 and an Exposure Draft of the proposed amendment Bill was issued in late 1995. The Exposure Draft recommends the introduction of a requirement that the Coroner consider

the desirability of minimising distress or offence to persons who, by reason of their cultural attitudes or spiritual beliefs, could reasonably be expected to be distressed or offended.

Under the draft proposal, the Coroner would be required to consider requests from the immediate family or other relevant information before making a decision. In addition, the immediate family would receive special rights, such as the right to view the body.

These proposed recommendations are problematic because they seek to expand the Coroner's discretion without guaranteeing a right to die according to one's cultural or spiritual beliefs. Ideally, the Coroner, coronial staff and the police should be made aware of the different cultural and spiritual practices around dying and be obliged to support such practices whenever possible. In addition, special rights to view the body and make requests to the Coroner should not merely rest with the immediate family'. These should be extended to partners, including *de facto* and same sex partners, and spiritual teachers and members of a spiritual community.

It seems strange that a diversely multicultural nation such as Australia has so far failed to address this area of cultural and spiritual rights. The unfortunate circumstances surrounding Rinpoche's death in November 1993 could have happened in any State or Territory — all have similar provisions to the ACT. The new Federal Human Rights Commissioner, Chris Sidoti, has indicated that the Human Rights and Equal Opportunity Commission will investigate this issue.² However, any such review must have the co-operation of the

States and Territories and their will to amend their coronial laws to respect a right to freedom of religion.

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References

1. A Lama is a teacher or Master of Tibetan Buddhism.
2. 'Righting human wrongs', *The Bulletin*, 12 December 1995, p.52.

DISCRIMINATION

Should people's rights die with them?

JULIA CABASSI describes a Federal Court decision as a blow to the effectiveness of federal discrimination remedies.

The Federal Court handed down a decision on 15 December 1995 which significantly undermines the effectiveness of federal anti-discrimination laws. The Court decided that a discrimination case, lodged with the Human Rights and Equal Opportunity Commission (HREOC), cannot proceed because the complainant died before the case was heard.

Alyschia Dibble lodged a discrimination complaint in November 1994 because she was denied the right to participate in an HIV drug trial and alleged that the decision constituted sex discrimination. Ms Dibble died before her complaint, under the *Sex Discrimination Act 1984* (Cth) was finalised by HREOC. The complaint was continued by the executor of Ms Dibble's estate. In April 1995, HREOC terminated the complaint because of the death of the complainant. The executor of Ms Dibble's estate appealed the decision to the Federal Court, but the Federal Court dismissed the appeal.

The Executor of Ms Dibble's estate has lodged an appeal to the Full Court of the Federal Court. The appeal is to be heard in May 1996.

The Federal Court's decision has far reaching implications because all federal anti-discrimination laws, the *Racial Discrimination Act 1975* (Cth), *Sex Discrimination Act* and *Disability Discrimination Act 1992* (Cth) are silent on whether an estate can continue a discrimination complaint.

While the decision is a blow to the effectiveness of federal discrimination remedies generally, it has particular significance for the rights of HIV positive people. It is common for HIV discrimination complaints to arise at a time when the complainant is ill, for example getting access to superannuation entitlements. If the complainant dies, then this decision means that the complaint cannot be continued by the complainant's estate. Given the delays so often a feature of discrimination complaints, what will stop superannuation companies from sitting on their hands and waiting for HIV-positive people to die? It is not hard to imagine numerous other scenarios under federal anti-discrimination legislation which will result in injustices where complaints terminate on