

Respecting Spiritual and Cultural Beliefs about Death: An Australian Buddhist Case Study

BY ANN PICKERING

In 1994 I coordinated a submission by the Combined Buddhist Communities of Canberra into reform of the ACT Coroner's Act, following the sudden death in Canberra of the Tibetan Lama Gyalsey Tulku Rinpoche. His death dramatically illustrated that current Australian law and practice are such that members of minority spiritual and cultural traditions cannot be sure that we will be able to die and have our bodies handled after death in accordance with our spiritual beliefs.

When Sogyal Rinpoche, the author of the *Tibetan Book of Living and Dying*, was asked what he hoped for from his book, he replied: 'to inspire a quiet revolution in the whole way we look at death and care for the dying, and the whole way we look at life and care for the living'. All people, whatever their spiritual tradition or cultural background, should be able to die in peace and dignity in accordance with their spiritual beliefs and cultural traditions.

Buddhist understandings of death and the dying process

Buddhism has a variety of traditions. While there are differences between them, there is a common Buddhist understanding of death and the process of dying, based on the core Buddhist scriptures.

The following are the key points from a Mahayana Buddhist perspective.

The state of mind at the moment of death is seen as all-important. His Holiness the Dalai Lama has stated that 'our state of mind at the moment of death can influence the quality of our next rebirth'.¹ If a person is distressed at the moment of death it can affect their passage through death and their next rebirth. The moment of death is also an important spiritual opportunity:

The actual point of death is also when the more profound and beneficial inner experiences can come about ... an accomplished meditator can use his or her actual death to gain great spiritual realisation. This is why experienced practitioners engage in meditative practices as they pass away. An indicator of their attainment is that often their bodies do not begin to decay until long after they are clinically dead.²

Death is seen as a process: even after a person dies from a clinical point of view, the inner process of dying and final separation of body and consciousness is seen to continue for some time.

For these reasons, all Buddhist traditions emphasise the importance of maintaining a peaceful, calm and respectful atmosphere both during and just after the moment of death. Thus, once it is clear that a person is actually dying, it is desirable that they be able to die in a peaceful, meditative atmosphere. Any advance directives or statements of their wishes, eg. about not being resuscitated or being disconnected from life support and monitors, should be respected.

All Buddhist traditions emphasise the importance of spiritual care and support at the moment of death so the person dies in a good state of mind. In the Mahayana tradition it is seen as important to have someone in the same tradition - for example, a close fellow student of the same teacher - remind the person of their heart practice and to guide the person so that they die well, as well as to contact the person's main teacher so that they and other students can practise for them.

While this will often be organised by the immediate family, they may not always share the person's beliefs. In contemporary Australia, this is true not only for Buddhists but for many people in other traditions. It is therefore important to routinely check whether a person who is seriously ill, dying or has just died has expressed any wishes in relation to spiritual care and if there is anyone they want contacted to provide or arrange such care.

The person's consciousness is seen to continue after death. It can be affected by what happens after death, including the handling of the body. It can be up to three and a half days before a practitioner's consciousness finally leaves the body. An accomplished master may remain in a special state of meditation for some days following clinical death.

Thus, if at all possible it is important:

- to keep the body calm and undisturbed for up to 72 hours after the last breath, until the 'consciousness' has left the body, and not to touch the body at all;
- if the body must be moved, not to do so until certain prayers have been done;
- not to hold autopsies or post-mortems for three days or until there are clear indications that the consciousness has separated from the body;
- when the body is moved, that it is touched initially at the crown of the head. This is because touching can draw the consciousness to that part of the body, and where the consciousness leaves the body can determine the person's future rebirth;
- to allow access to do prayers in front of the body - including a body in the morgue awaiting autopsy. In the case of an ordinary person, this is because the dead person is believed to sense a strong feeling of connection with their body during the period immediately after death, so that practices in the presence of the body can be particularly powerful in helping the dead person. In the case of a master, their close students regard it as of tremendous importance to be able to carry out spiritual practices in the presence of the body.

The death of Gyalsey Rinpoche

The gulf between Buddhist understandings of death and dying and Australian law and practice was startlingly illustrated by the death of Gyalsey Tulku Rinpoche.³ Rinpoche died in Canberra early in the morning on Sunday 22 November 1993, after giving a Medicine Buddha empowerment the previous night. He had a headache before the empowerment which had seemed to leave him during the teaching, but it came back at the end and he retired to his room.

At 9 am the next morning, the students who were to drive him to Sydney discovered him dead. As the local lama, Lama Choedak, was overseas, they had to do the best they could.

They did two main things. One was to contact paramedics, to see if they could revive him. The other was to contact Sakya Trizin, the head of Rinpoche's lineage, in India. He instructed them to practise, and told them which practices to do. He also said that the local law must be complied with, but if at all possible, to avoid having the body moved or having an autopsy. They also contacted the Sakya centre in Sydney. Two lamas based in Sydney and some older students arranged to drive down to Canberra that afternoon.

I was at home when a visiting friend, Luiz Ribeiro, who had been at the empowerment, was rung by his wife to tell him the news. He left immediately for the centre to do what he could to make sure the teachings about death and dying were carried out.

I rang and left messages with two of my main masters. The main practical instruction from Sogyal Rinpoche, which was later passed back to me, was the importance of making sure that Rinpoche's own teachers and family were informed.

I then had a call from Luiz's wife Elisabeth to say there was trouble at the house, the police had been notified by the paramedics and some of the students were threatening to barricade the house to stop them taking the body away. This set off another stage of the drama, where Elizabeth and I tried to think what we could do to help. The police have no discretion but to carry out the law - but could we do anything to stop the situation?

I rang the police to see if I could speak to someone senior, at least to get a delay until the lama from Sydney arrived.

I also rang Senator Reid, who suggested I ring the ACT Attorney-General, Terry Connolly, at home. Terry's instant reaction was that the law had to be carried out - because of Rinpoche's age, an autopsy would be unavoidable - but that the law could be changed. He said that this was an issue also for the Koori (Aboriginal) community and for the Greek Orthodox and asked me whether the Ethnic Communities Council was the best mode of consultation. I asked if he could at least stall things until the lama from Sydney arrived and he undertook to ring the Commissioner of Police, which he did. But in the meantime I was told that the body had just been moved.

It was because the students contacted the paramedics that they lost control of the situation. When the paramedics could not revive him, they contacted the police, as required under Australian law in all cases of sudden death. The next thing they knew, the police were there wanting to take away the body.

The students attempted to negotiate with the police for some time, whom they later commented showed a commendable level of sympathy and patience. A police doctor came and certified life extinct. Eventually, on the orders of the coroner (a magistrate rostered for that day) the police decided to move the body.

Before they did so, Luiz touched Rinpoche on the head with a gold Buddha statue. This is in line with the teaching that, if a body must be moved, it should first be touched firmly on the crown of the head, so that the consciousness leaves from the top of the head. Four or five students recited mantras by the body while the negotiations with the police took place. Rinpoche's body was then put in a body bag and carried out. The policeman in charge, who rang me later in the day, said that the students had made sure Rinpoche's body was handled very respectfully. I was impressed both to be rung back and by his attitude, and felt that the police had tried to do their best in a difficult community policing situation.

Later in the morning one of Rinpoche's devoted students, who was a doctor, said that had he been contacted immediately he could have signed a death certificate, as Rinpoche had been complaining to him of headaches for some time. If accepted by the coroner, this might have avoided the need for the removal of the body and an autopsy.

The body was taken to the morgue where Lama Kechog and Lama Trijam did practice late that day. They settled the students by saying that in fact Rinpoche had died quickly of a 'wind stroke' and his consciousness had left straight away; it was all right for the autopsy to go ahead. I got to the morgue after they left. I was shown the body, on a stretcher covered in gold silk, and still with a strong sense of presence.

The head of Rinpoche's lineage was still keen to avoid an autopsy if at all possible. The next morning, I was rung asking for the number of a lawyer to get an injunction to stop the autopsy for three days. When I checked I was told that it was unlikely that legal action would work: the only thing that could was a political intervention.

Later that day a meeting was held with the ACT Attorney-General, the Coroner, the Professor who would do the autopsy, the Office of Tibet

and David Cheah, the doctor. The position of the ACT authorities was that the law had to be carried out, but as a compromise only a limited autopsy was carried out on Rinpoche's head with David Cheah present, which confirmed that he died of a stroke.

However the law could be changed - the Attorney-General announced the same day that an inquiry would be carried out into the ACT Coroner's Act.

After the autopsy the body was embalmed. The undertaker broke with precedent and allowed some senior students to be present at the embalming. Canberra's Buddhist community from all traditions practised in front of the body over several nights at the funeral parlour. Later in the week Lama Choedak flew back from India to accompany the corpse back to Rinpoche's monastery in India where the appropriate practices were done.

Reform of the ACT law

The death of Gyalsey Tulku Rinpoche acted as a catalyst. In response to the distress caused by the death, the ACT Attorney General announced an inquiry the next day into the ACT Coroner's Act 'to ensure that the legal procedures that flow from a death in the Canberra community will more appropriately reflect the multicultural nature of Canberra'.

A discussion paper was issued by the ACT Government in July 1994. On behalf of Rigpa, the students of Sogyal Rinpoche, I coordinated a submission by the combined Buddhist Communities of Canberra, which was signed by leaders of all major Buddhist traditions. A number of other Buddhist groups also made submissions.

Sogyal Rinpoche also wrote personally to the ACT Attorney General, welcoming the Discussion Paper and indicating that he was disturbed to learn that it was simply not possible, under current Australian law and practice, to ensure that Gyalsey Tulku Rinpoche's body was given the respect traditionally due to a Buddhist teacher.

It goes without saying that the moment of death, and what happens after, is the greatest issue that faces any human being, and this is reflected in the tremendous importance placed on it in all the great world religions ... I believe that Australian law should now take steps to recognise the right of all people, including Buddhists, to die in peace and dignity in accordance with their spiritual beliefs; for this must surely be the most fundamental human right of all.

Respecting Spiritual and Cultural Beliefs about Death

I hope and pray that Gyalsey Tulku Rinpoche's death will in a way act as a catalyst for a change in the law and practice, not only in Canberra but throughout Australia, to enable greater caring and respect for the dying and the dead, so that they can die well in accordance with their own religious beliefs...There is no way to exaggerate the importance of such a change. It would send a message to the rest of the world about the urgent need to pay attention to the questions surrounding dying and death, especially in a multi-cultural context...It would also act as a model for other Western countries.⁴

The need for reform was again drawn to attention in 1995 when a senior visiting Pakistani civil servant died suddenly and his body was not handled in accordance with Islamic law.

Following a change in Government, in late 1995 the new Attorney General tabled an exposure draft of amendments to the Coroner's Act for community comment. Further detailed comments were made by Tibetan Buddhist and other groups and some minor changes were made as a result. Amendments to the Coroner's Act finally came into effect in October 1997, almost four years after Gyalsey Rinpoche's death.

The crucial section of the amended legislation is section 28, which requires the Coroner, in deciding whether to order a postmortem or removal of the body, to 'have regard to the desirability of minimising the causing of distress or offence to persons who, because of their cultural attitudes or spiritual beliefs, could reasonably be expected to be distressed or offended.' There are also provisions giving rights to the members of the immediate family, or a representative of such a person, for example, to request a viewing of the body or that the Coroner dispense with a post-mortem examination if the manner and cause of death are sufficiently clear.

This legislation is a major step forward.

From a Buddhist perspective, however, it is not perfect. For example, the concern is with minimising distress to the survivors. The legislation is based on the Western assumption that once a person is clinically dead, they cease to be a legal person and so to have rights. Buddhism sees death as a gradual process of dissolution that continues after clinical death and in which the fate of the consciousness can be profoundly affected by what happens after death.

Moreover, rights are primarily vested in the immediate family. However in many traditions the primary responsibility for ensuring that the appropriate rituals are done and that the body is handled appropriately

is vested in other people with special expertise. For example, in the case of Gyalsey Tulku Rinpoche, even though his family was informed, it was his teacher and religious superior in India, Sakya Trizin, who so actively sought through the Australian students who were on the ground to ensure that his body was handled with the appropriate respect.

The ACT Act contains some useful extensions of the concept of immediate family, for example to give rights to de facto spouses, including in same sex situations. However, the only situation where it is recognised that there may be customs or traditions giving responsibility to a person outside the immediate family is where the deceased was an Aboriginal person or Torres Strait Islander.

Another layer of complexity is that in contemporary Australia, it cannot be assumed that a person's immediate family will share their spiritual and cultural beliefs, or even be comfortable with them. If there is to be true freedom for people to die in accordance with their beliefs, in the end it should be the beliefs of the dead person that are decisive. Thus if a person has indicated while they are alive that they want certain people to act on their behalf to ensure the appropriate rituals are performed during and after death, this should be respected, for example by a coroner.

However, the legislation gives the coroner a degree of discretion. Provided that coroners are sympathetic and cross-culturally aware, and that those acting on behalf of the dead person can know what their rights are and who they need to contact and can get hold of them quickly enough, it should be possible for those in the know to navigate their way round the new Act and achieve a result that is consistent with the dead or dying person's beliefs.

Another important issue is the ability to ensure a peaceful, calm death. This includes the ability for people to indicate their wishes about issues such as resuscitation and withdrawal of medical treatment and to have these respected, as well as to give someone else a medical power of attorney to act on their behalf should they no longer be able to do so.

This area is well provided for in ACT law, by the *ACT Medical Treatment Act 1994* and associated changes to the *Powers of Attorney Act*.

I understand that there have also been amendments to coronial legislation in NSW, Victoria and the Northern Territory to take into account spiritual and cultural issues, as well as pressures for change by the Buddhist hospice in Queensland, and that legislation relating to medical powers of attorney exists in some States, but I have not researched the details.

Where to next?

What needs to happen next? And what can Governments and individuals do to help bring about a situation in which all Australians, including members of minority religions, can die in accordance with their beliefs?

There are three levels at which change needs to occur. First, law and standard operating procedures need to be changed. Secondly, we need to change attitudes to recognise how important it is to offer people access to spiritual care in accordance with their beliefs at the time of and after death. And finally, at the deepest level, we need to come to terms with death and express our wishes while we are alive to those close to us, so that we create a climate in which others - whether they have a strong spiritual tradition or not - will feel comfortable in expressing their wishes for the moment of death.

Changing law and practice

The Human Rights and Equal Employment Opportunity Commission (HREOC) Report *Article 18, Freedom of Religion and Belief* was tabled in Parliament on 11 November 1998.⁵ It discusses issues relating to burials and autopsies, including a discussion of Buddhist concerns which draws on the 1995 letter from the Canberra Buddhist Communities about the issues raised by the death of Gyalsey Tulku Rinpoche. The report makes a number of findings and recommendations on autopsies which I generally support, subject to the proviso that freedom to die in accordance with one's beliefs requires that first priority be given to respecting of the spiritual beliefs of the dead person, whilst of course also seeking to minimise distress for the family.

The appearance of this report provides a favourable moment to push for changes to the law throughout Australia. I believe that if we are clear about what is needed, persistent, and can persuade Governments that this is an important issue, we will succeed in bringing about change.

One of our strongest arguments for changing the law is the increasing spiritual diversity of the Australian population. While 70% of the population are Christian, the 1996 Census shows a significant growth in the proportion of the population that belong to non-Christian religions. For example there has been a 43% growth in the Buddhist population and similar growth in the Islamic population, a small increase in the Jewish

population, and Hinduism was separately noted as a religion for the first time. One quarter declared themselves as having no religion.⁶

The areas of the law where change is important are coronial legislation, consent to medical treatment (a particular issue for Jehovah's Witness), introducing medical powers of attorney where they do not exist, and laws relating to the disposal of the body.

Even where the law has been changed to respond to the needs of some religious and cultural minorities who have raised concerns, this does not guarantee that it meets the needs of all traditions. There may be issues of vital concern to other minority traditions that did not even occur to the law makers as potential issues. So all traditions need to look critically at the law and identify whether it needs to be further amended to take account of their concerns.

It is not enough to change the law. People, especially members of minority traditions, need to know their rights and how to exercise them.

Because of the history, most of my Tibetan Buddhist friends are aware that there have been changes to the Coroner's Act, but not of the details of what rights it provides. Most are not aware of the Medical Treatment Act or position in relation to medical powers of attorney, unless their lawyer has drawn it to their attention.

While researching this paper I discovered that there is in fact an excellent pamphlet on the Medical Treatment Act available in a number of languages at the Civic Shopfront.⁷ There is also a pamphlet on the NSW Coroner's Act available at funeral parlours.⁸ However, while the ACT Coroner's Act was amended in 1997 and a first draft of an information booklet was made available for comment late that year, work on it has come to a halt for the time being.

This highlights that not only is there a need for easy-to-understand information on the law, but there are issues as to how best to alert key people in minority spiritual and cultural traditions to the changes.

Another issue is that often it is important to act quickly, so people need to be able to find out easily who to ring in an emergency to be able to exercise their rights. This problem came up not only in relation to the death of Gyalsey Tulku Rinpoche but again in 1995, when, if only I had known who to ring, I could have arranged for a qualified lama who was visiting Canberra to do the practice for the transference of consciousness in front of the body of a friend who had just committed suicide. While this practice can be done in the absence of the body, it is much more powerful

if it can be done in its presence. However neither I nor Telstra inquiries could find the right number and yet again I only worked out who I should have contacted after it was too late.

Another area that is important is to review checklists, operating procedures, manuals and so on to ensure that they contain prompts so that caregivers are aware of the person's wishes as to who they want contacted and any special requirements.

One important area is hospital admission procedures and patient charts. These can be used to routinely capture and alert nurses to key information such as whether, in an emergency, the person wants someone from their spiritual tradition, and any special requirements that caregivers need to be aware of.

People can also die or have medical emergencies at work. Emergency contact lists need to be redesigned to ask whether people want someone from their spiritual tradition contacted in an emergency. A recent experience highlights the need to ask for an alternative if the main contact is not available. I am the emergency contact for a friend. Her ten year old daughter rang a few weeks ago to say her mother was very ill and needed help. But I was away on retreat. Luckily other friends stepped in and got help in time, and she is recovering.

Another area to be addressed is checklists on what to do when someone dies and bereavement kits. These can contain subtle embedded assumptions. For example, the pamphlet put out by the Australian Funeral Director's Association called 'What do I do if someone dies?' states that the first person who should be called is generally a doctor. 'If appropriate, you may also call your Priest or Minister.'⁹

Notice the primacy given to the medico-legal perspective, the Christian language and subtle assumption that it is the priest of the person who survives who should be called. Later the discussion of funerals focuses on their role in helping the survivors cope with their grief.

The attention given to the needs of the grieving in the pamphlet is excellent - our society has come a long way in this area in the last twenty years. However, if you believe that the consciousness of the dead person can be affected by what happens after death, and that your prayers can help them, then your perspective changes radically. In some traditions, the focus just after death is on helping the consciousness of the dead person. The primary concern is to carry out the appropriate prayers for the moment of death and ensure the body is handled, or not handled, in ac-

cordance with that tradition. However, knowing they have done the best they can to help the dead person can help the survivors greatly in their grieving.

Thus I would like to see added to such checklists a simple prompt to ask whether the person belonged to a spiritual tradition and whether it has any special prayers or rituals that need to be carried out upon death before the body is removed.

Changing attitudes

This has two dimensions. One is to change attitudes towards death by training doctors and nurses in issues relating to death and dying and end of life care, so that patients and family are comfortable in talking about and planning the end of their lives and what they want to happen after death. My impression is that current practice in Australia varies, with places like hospices and oncology wards, which deal with the dying all the time, and Catholic institutions, where there are long traditions of administering last rites to the dying, probably the most comfortable with these issues.

There are signs of a welcome shift for the better. In 1995 an American Medical Association study found that doctors were routinely misunderstanding or ignoring the wishes of patients even where they had expressed these clearly in advance directives and living wills.¹⁰ In October 1998 it announced a training program for doctors in end of life care.¹¹

There is also a need to increase the cross-cultural awareness of all of those likely to be involved with deaths, especially sudden deaths, as these are the most likely to involve coronial issues and are the ones where it is least likely that there will be a chance to ask the dying person their wishes. This might involve professional development seminars and the provision of written information to doctors, nurses, other health workers, coroners, forensic pathologists, ambulance and other emergency service staff.¹²

The aim is not to get them to know all the fine detail of every tradition. It is simply to make them aware of the importance that many traditions place on spiritual care during and after death - and so the importance of asking who the dead person wants contacted. Also they need to be sensitised to the range of issues they may not otherwise have thought of where followers of particular traditions may have concerns, eg. the Tibetan Buddhist concern about not touching the body until the prayers for the transference of consciousness are completed, but if it must be touched, doing so first firmly at the fontanelle.

Preparing for our own death

None of us knows how and when we will die. Many traditions emphasise the importance of preparing for death - not only to make it easier for those who survive us, but also so that we are able to let go and die peacefully.

As well as making a will governing issues such as the disposal of our money, personal possessions and body and the guardianship of any children under 18, we should think about issues such as organ donation and whether we want to be resuscitated once we are dying, and consider whether we want to exercise our rights under legislation such as the ACT Medical Treatment Act, where such legislation exists, or give someone power of medical attorney.

However, for those of us who see the spiritual as central, most important of all is both to talk to and give written instructions to those close to us, especially those likely to be contacted first if we die or in an emergency. We need to talk through with them, especially if they do not share our beliefs, about what spiritual care we want while we are dying and after death. We need to make sure they know who we want contacted from our spiritual tradition and how to contact them in an emergency - also, if we have left any money to pay for special prayers, as these may need to be arranged well before anyone looks at our will. It is good to give back-up contacts. We may, if our tradition has strong concerns about autopsies, like to think of giving someone written authority to act on our behalf, particularly if we want someone other than our immediate family or senior next of kin to act on our behalf or we anticipate differences of opinion within the family.

Talking about what you want can both allow you to be more confident that you can die in accordance with your beliefs, and help those who survive you - by channelling their natural desire to do the best they can to help you. Also, if those of us who are clear about our wishes talk about them, it can help create an environment where others, even those who do not formally belong to a spiritual tradition but wish to die in a spiritual atmosphere, can also start to feel more comfortable in expressing their wishes. Finally, thinking about death highlights for us what is most important in life; it helps us sort out our priorities and live life more fully.

Conclusion

I only heard Gyalsey Tulku Rinpoche teach once while he was alive - about death, including how it can come suddenly, just to someone in the street. His death has been extraordinarily powerful. I would like to dedicate this paper in honour of him, and also for the fulfilment of the extraordinary vision of Sogyal Rinpoche of bringing about a transformation of Western attitudes towards living and dying. May this talk be a cause for a change in law, practices and attitudes so that all people may be able both to live and to die in accordance with their religious and cultural beliefs.

Notes

- 1 HH Dalai Lama, Foreword to Sogyal Rinpoche, *The Tibetan Book of Living and Dying*, p. ix
- 2 Ibid, p. x.
- 3 See also Lauber, S., "The Death of a Lama - autopsy laws in Australia and freedom of religion", *Alternative Law Journal*, vol. 21, no. 2, 1996, p. 84.
- 4 See also Pickering, A., "Reforming Coronial Legislation", *View*, no. 6, 1996, p. 48. Publication details of *View* magazine are on the Rigpa Fellowship web site.
- 5 This report, titled Article 18, Freedom of Religion and Belief, was tabled in the Senate on 11 November 1998.
- 6 "Christians lose faith but eastern religions prosper", *The Australian*, 16 July 1997, reporting the results of the 1996 Census.
- 7 "Making decisions about your medical treatment", published by the ACT Department of Health and Community Care. This pamphlet also contains forms for exercising the rights provided under the Medical Treatment Act (1994).
- 8 Attorney-General's Department (New South Wales), "The Coroner's Court".
- 9 Australian Funeral Directors Association, "What do I do when someone dies?"
- 10 "Study Finds Doctors Refuse Patients' Requests on Death", *New York Times*, 22 November 1995. This reports a study reported in *The Journal of the American Medical Association* of the same date.
- 11 "AMA launches end-of-life care program", *Reuters Health Information*, October 1998, obtained through Yahoo!News. This reports a statement released by the American Medical Association by Dr Reed Tuckson, senior vice president for professional standards.
- 12 I was told by a friend whose mother is a nurse educator that information on the beliefs about death of different religious traditions is provided in training manuals for nurses. She said that it is possible for the relatives of a person who dies in hospital to request that the body remain undisturbed for up to four hours, eg. so they can see the body and have last rites performed. I am not aware how generally this applies. See also R3.10, HREOC report.