

Indigenous religious traditions in Australia

Overview

- 9.1 Indigenous religious traditions have never been well understood by many people in Australia.
- 9.2 For example, Rev Helen Summers drew attention to the ignorance of most Australians about Indigenous religious traditions, adding that it was ‘a great barrier to genuine reconciliation.’¹
- 9.3 In its submission to this inquiry, HREOC suggested that the Committee should give some reflection to the implications for Indigenous religious traditions of amendments to the *Native Title Act 1993*. It noted that the core relationship of Aboriginal and Torres Strait Islander laws and culture to the land is spiritual in its basis. Extinguishment of native title may erode that spiritual connection.²
- 9.4 This connection between religious belief, broader cultural issues and the relationship with the land gives rise to very complex and difficult questions in law. HREOC’s submission concluded that recognising and respecting the relationship of Indigenous people to the land should be a central part of Australia’s efforts to protect freedom of religion and belief.³
- 9.5 In the 1990s, a great deal of attention was devoted to such matters as the dispute over construction of the Hindmarsh Island Bridge, and the debate over native title. As a consequence, it would not be surprising if Indigenous religious traditions are now associated in many minds with
-

1 Submissions, p. 868.

2 Submissions, p. 576.

3 Transcript, 6 March 2000, p. 276, Submissions, p. 576.

legal issues and disputes about land, rather than the essential characteristics of a spiritual relationship with the land.

Indigenous traditions

- 9.6 Early missionary and anthropological observers often dismissed Indigenous religion as superstition. Commentators proved remarkably reluctant to recognise the Australian Indigenous tradition as a ‘proper’ religion. As recently as 1976, the anthropologist Professor W E H Stanner felt obliged to open a public lecture on the subject by countering the long-standing belief that there was no such thing as an Indigenous religion.⁴
- 9.7 There have been problems with the ways Western law has dealt with Indigenous religious traditions, either generally or in this country specifically. Pairing of such terms as ‘spiritual’ and ‘sacred’ without definition can cause confusion. In conventional usage, they can imply sharp distinctions: ‘body’ opposed to ‘soul’, the material to the sacred, matter versus spirit, with the second term in each pair seen as superior.⁵
- 9.8 Indigenous traditions are likely to see much less in the way of distinctions between religious and other dimensions of existence. Thus, ritual practice and spiritual traditions help to define and produce economic and social relations. In terms of land ownership, therefore, religious traditions explain relationships between people and particular sites or regions.⁶
- 9.9 A secular legal and political system such as Australia’s may encounter difficulties in dealing with traditions where distinctions between civil interests and religious beliefs do not readily apply.
- 9.10 HREOC pointed out that Indigenous religious traditions are denied the same level of recognition, status and protection accorded to the majority of ‘mainstream’ religions. It noted that this matter was highlighted by the UN’s Special Rapporteur after his 1997 visit to this country.⁷

4 Unless specified otherwise, material in this Section was drawn from Exhibit No 50, pp. 5-6.

5 See paragraph 2.76.

6 Exhibit No 50, p. 7.

7 Submissions, p. 576.

The Special Rapporteur's report

- 9.11 During his 1997 visit to this country, the UN's Special Rapporteur on Religious Intolerance examined the situation for Indigenous Australians for religious and non-religious matters.⁸
- 9.12 The Special Rapporteur's report on this visit noted that the land and sacred sites hold a fundamental significance for these Australians. There is therefore, he stated, a basic issue concerning the recognition of Indigenous religious traditions intrinsically related to the land, within the framework of a secular, Australian society based on Judaeo-Christian and Western values.
- 9.13 The Special Rapporteur noted that Indigenous believers are not included in the table of religions in Australia. Part of this population may be included within the Christian religions but Indigenous beliefs are manifested by their sacred ties to the Earth. These 'have to be taken into account' as part of Australia's religious diversity.⁹
- 9.14 The Special Rapporteur drew attention to the Mabo and Wik Cases and subsequent legislation to define native title rights, and to the protection provided to land title by the procedures set out in the Commonwealth's Racial Discrimination Act. He commented that, in spite of these steps to recognise and protect their rights to their land and sacred sites, it had been argued that Indigenous Australians:
- had been dispossessed of their land and alienated from it;
 - were unable to benefit from any improvements conveyed, at least in theory, by legislation, and
 - had lost their traditional land-lore when ties to the land were broken.
- 9.15 Many different kinds of protections, both specific and general, direct and indirect, are given to Indigenous land and to sacred sites, including sacred objects, and therefore to their religious dimension. There are a number of difficulties, however, related to loopholes and shortcomings in the laws and to interference with their objectives, mainly because of conflicts of interest.
- 9.16 One criticism of the legal situation for Indigenous Australians noted by the Special Rapporteur was the inability of the law, a Western legal

8 Unless specified otherwise, material in this Section was drawn from Exhibit No 55, paragraphs 78-102 (*passim*).

9 Exhibit No 55, paragraph 33.

system, to take account of Indigenous values. A basic difficulty was that, under some laws, the religious significance of sites and their importance had to be proved. There are also differences between Indigenous groups, and the restriction of knowledge of sites to a few gender-specific individuals because of the importance of secrecy.

- 9.17 The protection of land and sacred sites also raises the issue of returning to Indigenous Australians objects of religious significance, including sacred objects, non-sacred but valuable objects and human remains.
- 9.18 There are further difficult areas including, for example, employment. Employers were cited as reluctant to employ Indigenous Australians who might have to fulfil religious duties, sometimes for long periods, after a death, or for religious ceremonies generally. As with other religious communities, Indigenous Australians also claim recognition of their religious days in the workplace. Some Indigenous Australians have also expressed the wish to be more closely consulted in the preparation of school curriculums.¹⁰
- 9.19 In his Conclusions, the Special Rapporteur believed that it would be useful to reaffirm recognition of indigenous beliefs as religious beliefs, and to reflect that recognition in particular in surveys of religious membership in Australia. He noted with satisfaction the legislative arrangements developed and implemented for the protection of land and sacred sites, including religious objects.¹¹
- 9.20 He recommended ensuring uniformity of such legislation at Commonwealth and State level, as well as identifying and remedying shortcomings and loopholes. Indigenous values should be fully taken into account in legislation, particularly the notion of secrecy of some information, its circulation and publication, according to the gender and function of limited groups of people.¹²
- 9.21 With reference to conflicts of economic, political and religious interests, the Special Rapporteur recalled that freedom of belief, in the case of Indigenous Australians, was a 'basic issue and deserves even stronger protection.' The freedom to manifest belief, he pointed out, is also recognised but may be subject to such limitations as are required and

10 See also paragraphs 5.5, 5.21 and 7.34.

11 Exhibit No 55, paragraphs 120, 122, 123. The Special Rapporteur visited Australia from 17 February to 1 March 1997, and his Report on the visit was dated 4 September 1997: see Exhibit No 55, paragraph 1.

12 Exhibit No 55, paragraph 122.

stipulated in Article 1.3 of the UN Religion Declaration and Article 18 of the ICCPR.¹³

- 9.22 Manifestations of belief, therefore, need to be reconciled with political, economic and other rights and concerns that are just as legitimate through dialogue and respect for all parties, including Indigenous Australians. Generally speaking, he concluded, Indigenous issues needed to be considered with more understanding in Australian society, with a view to eliminating any surviving racism related to historic, social and economic factors that also affect religion.¹⁴

HREOC's report

- 9.23 In its submission to this inquiry, HREOC drew attention to the fact that, in many areas of Australia, Indigenous spiritual beliefs are denied the same level of recognition, status and protection accorded to the majority of mainstream religions. The Australian Human Rights Commissioner noted that the connection between religious belief, broader cultural issues and the relationship to the land gave rise to 'very complex and difficult' legal questions.¹⁵
- 9.24 The major focus on Indigenous issues in HREOC's 1998 report, **Article 18: Freedom of religion and belief**, was on the protection of Indigenous sites and objects of religious significance and later to burial reliefs.¹⁶
- 9.25 Within this context, it also addressed more general religious issues, pointing out that Indigenous beliefs and spirituality are 'intrinsically linked to the land generally.' It saw the preservation of these beliefs as fundamental to the spiritual and religious life of Indigenous people in Australia.
- 9.26 This Report quoted Professor Stanner on the linguistic and conceptual difficulties of conveying the fundamental importance of the links between Indigenous spirituality and place:

No English words are good enough to give a sense of the links between an Aboriginal group and its homeland. Our word 'home', warm and suggestive though it might be, does not match

13 Exhibit No 55, paragraph 124.

14 Exhibit No 55, paragraphs 125, 127.

15 HREOC: Submissions, p. 576, Transcript, 6 March 2000, p. 276.

16 Unless specified otherwise, material in this Section was drawn from Exhibit No 17, pp. 33-40 (*passim*).

the Aboriginal word that may mean 'camp', 'hearth', 'country', 'everlasting home', 'totem place', 'life source', 'spirit centre' and much else all in one. Our word 'land' is too spare and meagre. We can scarcely use it except with economic overtones unless we happen to be poets.

- 9.27 The significance of sacred sites and land to Indigenous Australians 'is often overlooked and undervalued by the general community and governments.'¹⁷
- 9.28 The HREOC Report also quoted the words of the Chair of the Aboriginal Language Centre, Ms Lorraine Inje:
- There can be no reconciliation without justice. Justice for Indigenous people can only be brought about by the acceptance, recognition and appreciation of the spiritual connections that Indigenous people have to traditional lands.¹⁸
- 9.29 HREOC also drew attention to the fact that, in addition to Article 18, the ICCPR specifically addresses minority religious and other rights in Article 27:
- In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.¹⁹
- 9.30 It also pointed out that, while Indigenous Australians are a minority, 'they have distinct rights as First Peoples.' The history of colonisation has led to them becoming a minority in their own country, and they are 'at least' entitled to the legal protection afforded to minorities by Article 27 of the ICCPR.
- 9.31 In 1994, the UNHRC established by the ICCPR adopted a General Comment to the effect that States Parties are obliged to take positive measures where necessary to ensure that minorities can enjoy their human rights.
- 9.32 HREOC pointed out that there is no international instrument that protects specifically Indigenous rights. The draft UN *Declaration on the Rights of Indigenous Peoples* has been under consideration for the last decade. It recognises the fundamental importance of protecting the cultural and
-

17 Exhibit No 17, p. 33.

18 Exhibit No 17, p. 32.

19 Exhibit No 17, p. 39.

religious rights of indigenous peoples. HREOC saw this draft Declaration as 'extremely important' in ensuring the creation of an appropriate international legal framework to protect Indigenous religious rights.²⁰

Other views

- 9.33 A number of other submissions to this inquiry dealt with the issue of Indigenous religious traditions.
- 9.34 The Human Rights Commission of the Baptist World Alliance, recommended that, for Australia to make a significant contribution to the freedom of religion in the region and around the world, it should implement steps to protect the freedom of Australia's Indigenous people 'to live out their Spirituality.' Two points were put forward in support of this recommendation:
- the need for Indigenous spirituality to be recognised as a religion and belief, so that freedom of religion and belief for Indigenous Australians can be effectively promoted, protected and implemented, and
 - concerns about the impact of changes to the *Aboriginal and Torres Strait Islander Heritage Protection Act 1984* (the Heritage Act) on the freedom of Indigenous people to live out their Spirituality.²¹
- 9.35 Acknowledging that the Baptist Church had not historically recognised Indigenous spirituality, its Human Rights Commission noted that Government bodies and the community at large have also failed to recognise this spirituality. It drew attention to examples of this failure it said could be found in HREOC's Article 18 Report.²²
- 9.36 The Commissions's submission also noted HREOC's concerns about the changes to the Heritage Act, and requested the Government to redraft the 1998 Heritage Protection Bill, amending the Heritage Act, so that it clearly promoted the freedom of religion and belief for Indigenous Australians. It referred to the Government's obligations to protect and promote freedom of religion and belief through its ratification of the ICCPR, and noted that these obligations appeared to be ignored in the amending legislation.²³

20 Exhibit No 17, p. 40. See also Ms Pat Hillcoat, Submissions, pp. 700-701.

21 Submissions, pp. 322-323. This submission was dated 29 June 1999.

22 Submissions, p. 323.

23 Submissions, pp. 325-326.

- 9.37 In the view of the Commission, recognition and promotion of Indigenous spirituality as a religion would be achieved by the passage of a Religious Freedom Act in Australia. Enacting such legislation, which among other features would specifically recognise, promote and protect Indigenous spirituality, would also give effect to rights of freedom of religion and belief in Article 2 of the ICCPR.²⁴
- 9.38 In her submission, Ms Pat Hillcoat argued that violations of freedom of religion and belief of the Indigenous people of this country ‘would seriously hinder’ the promotion of freedom of religion and belief by the Australian Government.²⁵
- 9.39 Ms Hillcoat’s submission argued that there is ‘an essential connection’ to traditional land in the religion or system of Indigenous Australians. By international standards, this country fell short of ensuring and protecting the religion and system of belief of Indigenous Australians, and of other religions.²⁶
- 9.40 This failure to protect Indigenous peoples’ religions and systems of belief has occurred in the areas of:
- land rights;
 - heritage protection, and
 - the Stolen Generations, deaths in custody and Reconciliation.²⁷
- 9.41 This submission from Ms Hillcoat did not simply recount what it saw as the ‘sad story’ of the failure by non-Indigenous Australians to grant fair and just title and access to Indigenous people. It referred to recent legislation which, it alleged, had further restricted the right of Indigenous Australians to negotiate over title to their ancestral lands, because:
- leaseholders can now bring tourists to sacred sites without consulting traditional custodians;
 - access to leased land was more difficult for those whose beliefs required them to visit these lands and carry out ceremonies to preserve their traditions, and for the nourishment of the land itself;

24 Submissions, p. 324. A number of other submissions recommended a Religious Freedom Act in Australia. This matter is addressed in Chapter 8. The Committee does not support passage of a Religious Freedom Act.

25 Submissions, p. 699.

26 Submissions, p. 701.

27 Submissions, p. 702.

- powers over land title was handed back to the States and Territories, contrary to the spirit of the 1967 Referendum which gave power to the Commonwealth to pass laws for the benefit of Indigenous Australians.²⁸
- 9.42 Limited and indirect heritage protection had been provided by the Heritage Act, and dissatisfaction with its operations led to a review by the Hon Elizabeth Evatt AC. She recommended significant changes which, Ms Hillcoat asserted, were disregarded when the amending 1998 Bill was introduced. Justice Evatt was reported as saying the Bill abdicated the Commonwealth's responsibilities to preserve Indigenous heritage by handing its powers back to the States/Territories, without adequate minimum standards. She was also reported as saying that this was contrary to her findings, that most of these regimes did not adequately protect cultural heritage.²⁹
- 9.43 Ms Hillcoat's submission concluded that:
- freedom of religion and belief for Indigenous Australians cannot occur without access to and use of traditional lands and sacred sites;
 - access and use has not been provided by the Government because of its failures in land rights, heritage protection and Reconciliation;
 - these failures are well recognised by the international community, which has 'expressed its serious concern',
 - Australia therefore lacks credibility in international forums when it attempts to promote freedom of religion and belief in the region and around the world, but
 - its credibility could be regained by implementing HREOC's recommendations relating to the religion and beliefs of its Indigenous people.³⁰
- 9.44 The submission from Australians for Native Title and Reconciliation (ANTaR) Queensland Association Inc was based on the assumption that freedom of religion and belief was
- not limited to the larger religions, but extended to any commonly held and practised spiritual activities/beliefs/knowledge such as those held by indigenous peoples in all countries.³¹

28 Submissions, p. 703.

29 Submissions, pp. 704-705. See also Submissions, pp. 324-325 and Exhibit No 17, pp. 38-39. The work of the Hon Elizabeth Evatt AC was also mentioned in the Report by the UN's Special Rapporteur on his 1997 visit to Australia: see Exhibit No 55, paragraph 122.

30 Submissions, pp. 707-708, 701.

31 Submissions, pp. 283-284.

- 9.45 This submission noted that freedom of religion and belief is promoted and protected for most Australians. It stated that, for an important segment of this society, these freedoms were being actively undermined by legislation passed in 1998. The Association argued that discrimination against Australia's Indigenous peoples was enshrined in legislation referred to as 'the ten point plan'.
- 9.46 Recognition and protection of sacred sites has not been accorded high priority within State/Territory or Commonwealth legislation. Lack of understanding about the significance and implications of these sites has led to a lack of protection. A climate of disrespect/irreverence has been allowed to develop in the broader community for which, the Association stated, 'legislators and political spokespersons' must bear a heavy responsibility.
- 9.47 Under 'the original Native Title legislation', Indigenous people were able to demonstrate their claim and connection to land by showing a continuing spiritual link, despite any difficulty in obtaining regular access. Although Indigenous people may have been forcibly denied access for years and have had to 'hold' it in other ways, such as by story, the Association asserted that amendments to the legislation specifically excluded the 'spiritual connection'. It stated that this was discrimination on the basis of religious/spiritual belief.
- 9.48 Under their laws, Indigenous people have certain responsibilities to carry out in looking after the land. These responsibilities have a spiritual as well as a legal dimension, because religious practice is intimately related to land and sea. Denial of access to the necessary areas is tantamount to forcing people to disobey their laws, to be negligent in their duties. For too long, Indigenous Australians have been blamed for 'problems' brought about as a direct result of government policies, including removal from land.
- 9.49 The ANTaR submission concluded that the UN's CERD Committee 'had recognised the discriminatory nature of the amended Native Title legislation.' It concluded by suggesting that, to have any credibility and influence on freedom of religion and belief in its region, let alone the world, Australia had first to remedy its own situation.

Conclusions

- 9.50 It was unfortunate that the range of material presented to this inquiry on Indigenous religious traditions was limited, particularly in quantity.

Nevertheless, it indicated that a great deal remains to be done to reverse the current situation where historically, Indigenous religious traditions have generally been seen as mysterious, ignored and treated with contempt. Amid all the concerns about Indigenous issues, those of religion and belief have tended to be under-emphasised.

- 9.51 The Committee notes the words of the UN's Special Rapporteur after his visit in 1997, calling for more understanding of all Indigenous issues. As he pointed out, there is a need for greater understanding and tolerance of Indigenous religious traditions: they are central to the spirituality of an important group in Australian society.

