

The Impact of Environmental Law on Indigenous Women in Australia

2020 is a year to remember, and not just because of COVID. In Australia, important events occurred which frame my topic. Let me start with a quote:

“The sight of this old tree with her crown removed brought warm, stinging tears to my eyes. It was a deep hurt of losing someone far older and wiser than me. Losing someone who was respected and adored. Someone with knowledge I cannot fathom or comprehend. When I told my mum that evening she reacted similarly, a personal and family loss. To others she might just be a big tree.”

These words, published on 24 January 2020, were written during the Black Summer Fires by Vanessa Cavanaugh, a Bundjalung and Wonnarua scholar, about what it meant for her lose a Grandmother tree on her country.

The scale of the disaster was immense. 13.6 million acres were burned through. These photos show the Three Sisters before and during a fire. These rock formations, and the valley below shrouded in smoke, are culturally significant to 4 Indigenous nations. The deep hurt Vanessa described was being felt in many places.

Australians were shocked by the scale of this disaster and the ferocity of the fires. In the public discussion of causes and cures, traditional Aboriginal burning practices featured prominently, as a different, even a better, way to manage fuel load.

The media enthusiastically embraced cultural burning, but focussed on bushfire risk and hazard reduction, largely ignoring the biodiversity benefits of burning, or preventing burning, to protect flora and fauna, and the cultural dimensions of fire in ceremonies, to gain access to country, and to clean up important pathways to maintain cultural responsibilities.

Let's move forward a couple of months. It is 24 May 2020. The fires are out. We are in COVID lockdown. It is the start of National Reconciliation Week, a time for all Australians, Indigenous and non-Indigenous, to learn about our shared histories, cultures, and achievements, and to consider how we can contribute to achieving reconciliation. On the weekend just passed, Rio Tinto, with a permit issued by the WA Government, under a law intended to protect and manage Indigenous cultural heritage, destroyed the Juukun Gorge caves in the Pilbara.

This is what Professor Marcia Langton, Indigenous leader, anthropologist, and geographer, said about it:

“The destruction of the Juukan Gorge caves which were sacred places for the ...PKKP_people is a tragedy...these places constitute a part of their identity and a central place in their social fabric.

...also they had enormous significance for further understanding of deep human history...(they held)...potent objects of worldwide importance, including a 4,000 year old hair belt that made evident the physical connection between the current day PKKP traditional owners and their ancestors, and the oldest example of bone technology known in Australia.”

In the wake of the outrage, there were apologies, resignations, terminations, and the reverberations from that event will be felt for a very long time. Where was the respect for Indigenous knowledge and our shared history?

At the same time, Professor Graeme Samuel was finalising his review of the EPBC Act, the principal Commonwealth environmental protection law. He devoted a chapter of his report to Indigenous knowledge and participation, and observed:

“The EPBC Act heavily prioritises the views of western science, with Indigenous knowledge and views diminished in the formal provision of advice to decision-makers. This reflects an overall culture of tokenism and symbolism, rather than one of genuine inclusion of Indigenous Australians.”

He made strong recommendations to remedy this, including the immediate adoption of a National Environment Standard for Indigenous engagement and participation, and to incorporate Indigenous views and knowledge into regulatory processes. He published a draft standard, developed in detail during the Review through an Indigenous led process. He called for Indigenous knowledge to be on an equal footing with western science in the provision of formal advice to the Environment Minister. In May 2021, the Commonwealth government is yet to announce its position on these recommendations.

But while we wait, in Queensland, where I come from, something else happened in 2020 that could be used to promote meaningful indigenous engagement and participation in environmental regulation and management.

On 1 January 2020, the Human Rights Act 2019 commenced, providing protection for Indigenous cultural rights, including these rights -

“s 28(2)

- (a) to enjoy, maintain, control, protect and develop their identity and cultural heritage, including their traditional knowledge, distinctive spiritual practices, observances, beliefs and teachings;
- (e) to conserve and protect the environment and productive capacity of their land, territories, waters, coastal seas and other resources.”

These rights, which draw upon the UN Declaration on the Rights of Indigenous Peoples, could provide a platform to insist on incorporating Indigenous views and knowledge in regulatory processes and providing opportunities for Indigenous Peoples in culturally appropriate land and sea management.

How? Because public entities, such as government decision makers, have a duty to properly consider human rights and to act and decide compatibly with them.

If there is a complaint under the Act, the Human Rights Commissioner can call a conciliation conference and direct the public entity to attend with a view to promote an informal, quick, and efficient resolution of the complaint. That is, it is a means to require engagement and dialogue.

Let me give you an example. Now we are at Kaba Gada, or the Blue Hole, a sacred site in the Daintree Rainforest in the Wet Tropics World Heritage Area. This site has particularly cultural significance. Its custodians are women from 2 families from the Kuku Yalanji nation. It is a tourist drawcard and the custodians are concerned the management plan does not address the cultural degradation from unrestricted access and inappropriate activities. By their lore, other Kuku Yalanji women cannot go there without permission and men may only visit the place, with permission, but may not use it. These women may well employ the complaint and conciliation process if they are not able to make progress in the management of this place.

And indigenous women are now playing a key role in environmental management in Australia. For example, Queensland’s first all-women Aboriginal ranger crew is part of the Girringun Aboriginal Corporation based in Cardwell, North Queensland. They conduct burning according to seasonal need and cultural knowledge. As well as hazard reduction, the rangers are working

with environmental scientists to protect the endangered mahogany glider. This illustrates the biodiversity benefits of cultural burning because fire management is crucial in preserving the glider's habitat.

And there are many other examples. As well as the biodiversity and cultural benefits of such programs, there are economic benefits. There are now 29 Indigenous owned burning projects, who are earning carbon credits under the Commonwealth's Emissions Reduction Fund. By early season burning, thereby reducing late season wildfires, they are reducing the greenhouse gas emissions from bushfires, mostly in northern Australia. Since 2013, the \$80 million earned in Credit Units has been invested in local communities, supporting land management, protection of sacred sites and intergenerational exchange of traditional knowledge.

And women rangers like these, are an integral part of this movement.

And now to the caution, Indigenous land and sea management, and the associated cultural and economic benefits, are constrained by land tenure. They occur in areas where there is exclusive possession native title or some other form of exclusive or secure land tenure. These areas are concentrated in northern Australia.

But if Indigenous knowledge and participation is confined in this way, we will all be the poorer for that. Indigenous and non-Indigenous Australians, alike, will miss the benefits and opportunities that this shared knowledge could bring to us as a nation and to our environment.

I started with a quote and will end with a passage from the Uluru Statement from the Heart. For those not familiar with it, the Statement was made on 26 May 2017, after a gathering over 4 days, of more than 250 Indigenous delegates from all over Australia. It starts with these words: We, gathered at the 2017 National Constitutional Convention, coming from all points of the southern sky, make this statement from the heart. After addressing the past, it turns to the future:

“Makarrata is the culmination of our agenda: *the coming together after a struggle*. It captures our aspirations for a fair and truthful relationship with the people of Australia and a better future for our children based on justice and self-determination.

We seek a Makarrata Commission to supervise a process of agreement-making between governments and First Nations and truth-telling about our history.

In 1967 we were counted, in 2017 we seek to be heard. We leave base camp and start our trek across this vast country. We invite you to walk with us in a movement of the Australian people for a better future.”

Perhaps I am wrong, but the events of 2020 make me hope that environmental and human rights law might provide one of the paths we can walk along together.