



MEGAN DAVIS is Director of the Indigenous Law Centre at the Faculty of Law, University of New South Wales, and is an occasional columnist for *The Koori Mail*. Here, she argues that the Australian polity is moving further away from addressing unfinished business with Aboriginal and Torres Strait Islander Australians.

Are we back here again?

THE the Rudd Government is considering its response to the report of the National Human Rights Consultation written by a committee headed by Frank Brennan.

The consultation is the culmination of a decade-long national movement for a bill of rights to address Australia's lack of human rights protection.

The delay in the Federal Government's response is reportedly influenced by churches that have whipped themselves up into hysteria over the impact of a Charter of Human Rights upon their institutions.

There is no such hysteria about the recognition of indigenous-specific rights because unsurprisingly, they are not even in the mix.

The recognition of Indigenous-specific rights was dismissed by the report as effectively unsettled and controversial.

Insensitively, the indigenous chapter concludes that the 'limited response from the Indigenous community on this point' means that they were unable to seriously consider a recommendation for the specific rights of Indigenous Peoples.

This was an extraordinarily insensitive comment to a community that is underfunded, under-resourced and by our own admission, tired, worn and 'reported out'.

To not consider the recognition of an Indigenous-specific right means that the report was written in isolation of substantive legal advocacy and scholarship on Indigenous rights developed over decades, including the work of the statutory body the Council for Aboriginal Reconciliation, the Aboriginal and Torres Strait Islander Commission (ATSIC) and even the Social Justice Reports of the Aboriginal and Torres Strait Islander Social Justice Commissioner.

This body of work establishes why and how such recognition could be done.

So why, then, is it the work of the under-resourced Indigenous sector to establish the framework for how these rights can be protected?

These are enormous constitutional questions, and at any rate, isn't that reinventing the wheel? As Pat Dodson told the consultation: It is hard to be enthusiastic about the outcome of this inquiry... Do we keep amending and repealing Acts or do we need an overhaul of the entire Constitutional framework?

Chapter nine of the report is available on

its website and should be distributed widely in communities. It represents a massive step backwards in terms of Indigenous people's rights and our status in the Australian state and reminds us of the amount of work that lies ahead of us.

The position that Indigenous-specific rights are unsettled and controversial is inaccurate for a number of reasons, not the least the adoption in 2007 by General Assembly of the United Nations Declaration on the Rights of Indigenous Peoples.

According to the report, the adoption of an international legal instrument is not satisfactory enough to establish that Indigenous Peoples have distinct rights – only that it was an attempt to resolve the issue.

Inaccurately, it emphasises the position that Indigenous rights are far from settled by making reference to the opposition of Canada, Australia, New Zealand and the United States (CANZUS) at the time because they have 'sizeable Indigenous populations', ignoring the fact that CANZUS have minority Indigenous populations, especially when compared with the key supporting states of the 143 who voted in favour of the Declaration.

Too much weight

Worryingly, it seems that too much weight was given to those members of the Australian community who were 'consulted' who believe that Indigenous rights do not exist, should not be recognised and – if you do – you are giving something to others that ordinary Australians are not given.

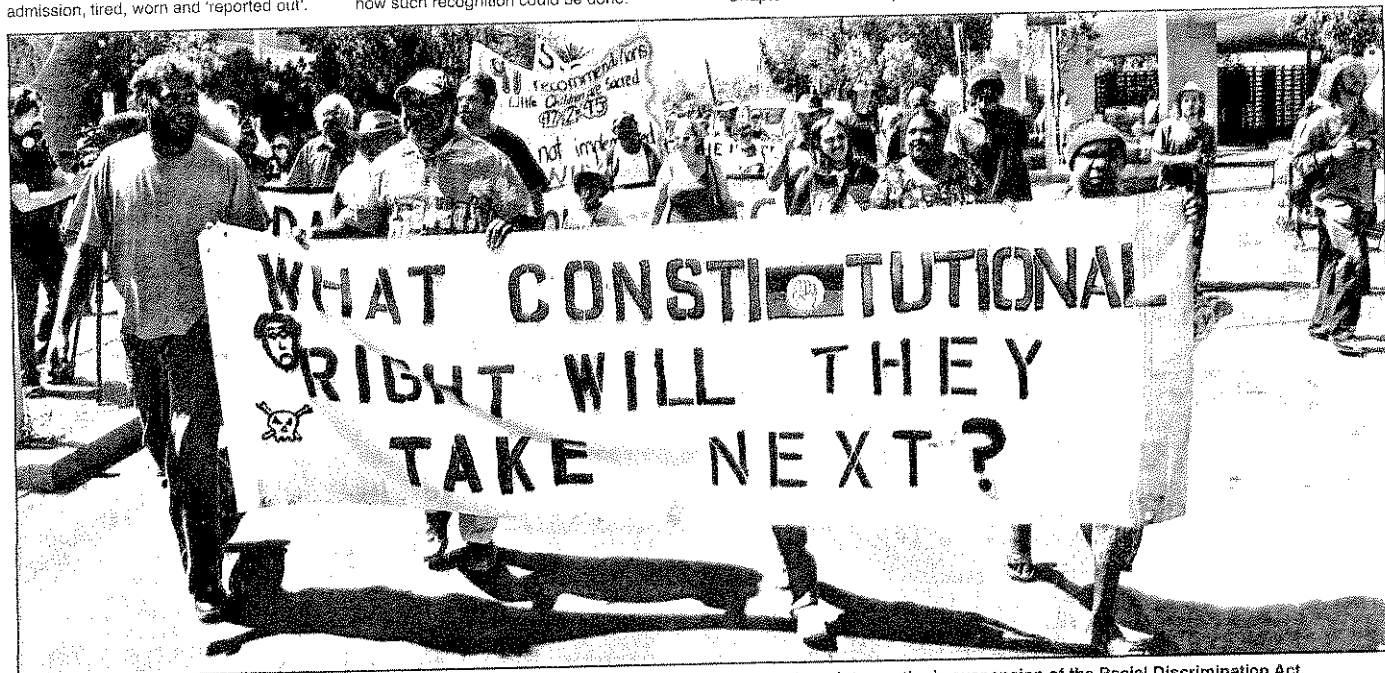
Here, the committee noted the sentiments of the majority of survey and focus group participants that 'differences should be in the mode of enjoyment of same rights rather than the enjoyment of differing rights'.

The interesting contradiction here is that the strength of this report is the importance of human rights education in Australia because of the overwhelming evidence of poor knowledge and understanding in the community about human rights and civics.

Yet, at the same time, the chapter gives excessive weight to admittedly uneducated views in the community as being persuasive.

Indigenous distinct rights are inherent and are not only recognised as fundamentally important for states to protect in the UN Declaration, but also binding conventions, including Convention on the Rights of the Child and the 1965 Convention on the Elimination of All Forms of Racial Discrimination.

● Continued next page



A file photo of a rally held in Alice Springs earlier this year to protest the Northern Territory Intervention's suspension of the Racial Discrimination Act.

LEARN GESTALT THERAPY

GRAD DIP PROGRAM FEE-HELP AVAIL.
66 213 911 / www.gestalt.org.au

Wirringa Baiya Aboriginal Women's Legal Centre
Incorporated

Annual General Meeting

When: Friday 18th December 2009 Time: 10.30am
Where: Wirringa Baiya Office

Cor Marrickville and Livingstone Roads, Marrickville NSW

If you require any further information please contact:
Leonie on

(02) 9569 3847 or 1800 686 587

NOTIFICATION AND REGISTRATION OF ABORIGINAL INTEREST

FOR AN APPROVAL UNDER PART 6 OF THE
NATIONAL PARKS & WILDLIFE ACT 1974

Landcom propose to undertake beach / shell midden stabilisation works at Little Bay as part of ongoing development at the Prince Henry Hospital site (Lot 33 DP 270427 and Lot 69 DP 270427). Accordingly, Landcom will be applying to the Department of Environment, Climate Change and Water for approval under Part 6 (Section 30) of the National Parks and Wildlife Act 1974 to commence stabilisation works that will disturb Aboriginal objects.

Landcom invites Aboriginal groups and individuals to register their interest in the project. Registrations must be received by Wednesday 16th December 2009.

Please register in writing to:

Landcom

c/- Godden Mackay Logan

Attn: Ms. Laura Farquharson

78 George St., REDFERN NSW 2016

Fax: (02) 9319 4383

Proposed Commercial/Retail Development
89 George Street, Parramatta, NSW

Public Notice and Registration of Interest

NSW National Parks & Wildlife Act 1974

Environmental Planning & Assessment Act 1979 -
Development Application (09_0128)

A development proposal has been lodged with the NSW Department of Planning for the future redevelopment of a parcel of land at 89 George Street Parramatta (Lot 1 in DP 505486) under Part 3A of the Environmental Planning & Assessment Act 1979.

In accordance with the NSW Department of Environment & Climate Change Draft Community Consultation Requirements for Proponents (May 2009) that are now administered by the NSW Department of Environment and Climate Change & Water, individuals or groups are invited to register their interest in writing to participate in the Aboriginal cultural heritage assessment and consultation process for the proposal.

Contact details are as follows:

Mr Dominic Steele

c/- Webb Property Investments Pty Limited

33 England Avenue, Marrickville, NSW, 2204

Phone Contact: (M) 0411 88 4232 (Office) 02 9569 5801

The registration period closes on: December 12, 2009.

The consultation period closes on: January 5, 2010.



Premier
& Cabinet
Office for Women's Policy

International Women's Day 2010

Call for Nominations for NSW Woman of the Year

International Women's Day is celebrated on March 8 each year.

The Office for Women's Policy, NSW Department of Premier and Cabinet, organises various activities to celebrate International Women's Day including the NSW Woman of the Year Award.

The NSW Woman of the Year Award is a state-wide recognition of the outstanding achievements of talented women who have made significant contributions to NSW and to their communities.

The Office for Women's Policy is seeking nominations that recognise the countless contributions that women in NSW have made.

If you know of any well-deserving woman and would like to nominate her for the 2010 NSW Woman of the Year Award, please visit www.women.nsw.gov.au for details, including electronic nomination forms.

The closing date for nominations is 5pm on Friday, 15 January 2010. Please contact the Office for Women's Policy on (02) 9228 3141 if you require further information.

Watch out for Freshies and Salties!



Ms KOORI LOVE

mskoorilove@koorimail.com

EVER heard the term 'cougar'? It's the name given to much older women who like to date young men. They are called

cougars because they stalk and hunt their prey.

It's not as well-known, but older men who date much younger women are called 'panthers'. And here I was calling them sleazy old men. Shame on me.

My names

As a loud and proud Aussie Aborigine, I think it's my duty to come up with a more suitable term for this mob. I mean, we have the most amazing wildlife in Australian - surely we could come up with our own terms?

Well guess what? I did! After much researching (thanks outback-australia-travel-secrets.com) and pondering I have come up

with the two perfect Aussie themed names

I reckon we should call our older women who date younger men 'Freshies', after the freshwater crocodile. Freshwater crocs have a distinctive look (just like our beautiful Aboriginal women), they eat fish and any other small thing in that way (don't mess with a black woman or she will eat you up too!), and although freshwater crocs aren't aggressive, they will attack when disturbed (I did say eat you!).

Now for the older black man who dates younger women. I could have chosen the dingo or even them wild red boxing kangaroos. But no. Only

one animal is perfect for our lovely men - 'Salties' - after the saltwater crocodile.

Saltwater crocs are man-eaters (hello, a reptile taking on an animal that stands so much taller than them is beyond brave), they can travel over 100kms by sea (talk about getting around) and they live in rivers, swamps or the ocean (they can adapt to any environment). Perfect descriptions, don't you think? Very Australian indeed!

If you are an older person who likes to date much younger people, do you like to be called a freshie or a saltie? Get online at www.mskoorilove.com.au and tell us.

Are we back here again?

● From Page 20

Indigenous rights have also been recognised in varying ways in the Australian legal system, whether through the common law or extensive legislative framework, including the Native Title Act, the Aboriginal Land Rights Act Northern Territory, the Family Law Act and not to mention many State-based statutory schemes covering land, heritage, intestacy etc.

In fact, today we now have bipartisan support for the acknowledgement of the distinct nature of Indigenous rights in the preamble to the Constitution.

So why does this report give a layman the impression that Indigenous rights are controversial and not settled?

Maybe it is because Aboriginal and Torres Strait Islander people have been the victim of the politics of pragmatism which has replaced leadership and courage in Australian democracy; eliciting a screeching over-emphasis on 'consultation' with focus groups (ordinary Australians) despite their admittedly low knowledge of human rights or of Indigenous peoples.

It does appear that the motto of the hard-working human rights industry has been minimalism and pragmatism. This is because the process operated essentially on two assumptions: First, our political class is not courageous and the current leadership is not going out on a limb for human rights let alone Indigenous rights - thus the statistical analysis and pie charts floating around as proof of consultation with ordinary Australians.

Not to mention the cost benefit analysis - because we would not want fundamental human rights to cost the taxpayer too much (although I do not

doubt for one minute that this emphasis was because it is critical to convincing the Australian political system).

The second assumption appears to be that the view that Australians are racist and therefore are not going to come to the party on Indigenous rights, so let's just resign ourselves to the fact.

One notable observation about the consultation is that in the human rights sector's submissions - those of church groups, legal and political university centres, human rights organisations - very few made any substantial argument on the importance of Indigenous rights.

This is significant given the current Northern Territory Intervention suspends what is probably the most important human rights treaty in the Australian legal system.

In fact, extraordinarily for a 'human rights' report, the committee very nonchalantly predicts future suspension of human rights.

Recommendation

Incredibly, there is a recommendation for a statement of impact to be provided by the Federal Parliament for future acts that suspend human rights - effectively embedding in Australia's human rights culture a commitment to racial discrimination (although our Constitution already tells us that).

As a human rights lawyer, I would welcome a Human Rights Act, primarily because of the important educative role it will play in influencing the Australia polity.

The report's commitment to human rights education is absolutely critical to the future development of Indigenous rights in the Australian legal system. A national human rights program is something Aboriginal and Torres Strait

Islander communities can celebrate.

Still, reading the Indigenous chapter about the ostensibly unsettled nature of Indigenous rights only a few years before the 20th anniversary of the High Court's Mabo decision makes me ask the question: Are we back here again?

The report ultimately reflects political reality.

I know that when Kevin Rudd was elected, many people thought the country would pick up where Paul Keating left off on Indigenous issues. Keating was an intellectual Prime Minister who thought seriously and deeply about Indigenous people's issues as well as delivering the Redfern Speech - the greatest speech ever given by an Australian Prime Minister on Indigenous issues.

Yet, earlier this week I was reading an exceptional piece by Robert Manne in the November edition of *The Monthly* about Rudd's 'regression and evasion' on the History Wars juxtaposed against Keating's 'flinching' Redfern speech and leadership on Aboriginal issues.

It just confirms the accepted wisdom in Aboriginal and Torres Strait Islander communities that Rudd did not pick up from where Keating left off, but is a straight line from John Howard (of course most felt that way early on with the refusal to provide compensation for the Stolen Generations).

And our democracy is diminished and our country is the poorer for those pragmatists who adjust their expectations and imagination to demand only the lowest common denominator from our political class.

In a nod to Robert Manne's astute summation of Rudd's Pollyannaish declaration about the end of the History Wars as 'regression and evasion', so too is the report on Indigenous rights.