

THE United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) was adopted on 13 September 2007. Capping more than 20 years of international debate, the Declaration set out the rights of the world's estimated 370 million Indigenous people. But while its adoption was hailed by many as an 'historic moment', the occasion was marred for Aboriginal and Torres Strait Islander people because Australia, under the then-Coalition Government, was one of just four countries not to support the Declaration, claiming that it would elevate customary law above national law.

While in Opposition, the Labor Party promised to support the Declaration. But, since coming to power, the Rudd Government has frustrated Indigenous rights advocates by dragging the chain.

Now, as the Government reportedly readies itself to fulfil its promise by formally endorsing the Declaration, international law specialist **MEGAN DAVIS*** (pictured) says Indigenous Australians should be realistic about how far down the road to justice it alone can take us...

THE Australian Government will endorse the United Nations Declaration on the Rights of Indigenous Peoples. And this will be a momentous occasion for Aboriginal and Torres Strait Islander peoples in Australia because it is the second international instrument recognising the distinct cultural rights of Indigenous peoples. The UNDRIP augments Indigenous peoples' collective rights within the international human rights framework, which is highly individualised.

Yet, as a consequence of the Federal Government's endorsement of the UNDRIP, it is inevitable that there will be divergent expectations about the relevance and status of the UNDRIP.

It is important for those expectations to be managed, because the UNDRIP is no panacea to the challenges we face domestically in dealing with the federal system in service delivery and in advocacy for law reform.

It does provide us with an important guiding framework for engaging the State, but it cannot replace the need for ongoing commitment to constitutional change.

The Federal Government's endorsement is a significant decision because together with its commitment to closing the gap, it signals a step forward towards addressing the unfinished business that exists between the State and its First Peoples.

Indeed this will be the most significant first-term initiative since the Apology and the Closing the Gap commitment that reveals Indigenous issues as a very clear priority of the Government. It also signals the gradual re-commitment of the Australian State to international human rights law and multilateralism, which is important to Aboriginal and Torres Strait Islander communities.

The UNDRIP was passed on 13 September 2007 by the General Assembly. The Declaration was a major objective of the UN International Decade of the World's

We must manage our hopes



Indigenous Peoples (1995-2004). It took over 20 years to adopt the UNDRIP, and many Aboriginal and Torres Strait Islander people were involved in the drafting of the text especially former ATSIC leaders. The idea of the UNDRIP was about

recognising the distinct cultural rights of Indigenous peoples and providing a framework toward redressing the injustices of dispossession within the state system. Any declaration of the UN General Assembly is non-binding, or what is known

as 'soft' international law. The text creates no new rights in international law, nor does it create any binding legal obligations in domestic legal systems.

The text has been referred to as 'aspirational', which means that states should work towards the realisation of the UNDRIP together with indigenous peoples but within the parameters of the settled state.

Indigenous peoples agreed in the drafting groups prior to the adoption that the Declaration should be subject to democracy, the rule of law, principle of state sovereignty and territorial integrity.

It is a framework that states can adopt in their relationship with Indigenous peoples and may guide them in the development of domestic law and policy. It is accepted that it will be used daily in relation to our dealings with government departments at all levels.

It will no doubt be referred to in legal proceedings and in fact has already been referred to in cases. It should be used among ourselves at community meetings to frame our own discussions.

And the new National Representative Body should use the UNDRIP as the underlying framework for its engagement with the State and certainly in any advocacy work around future structural reform such as constitutional change or a treaty.

The concern expressed by conservatives has been that the UNDRIP will elevate Aboriginal law above Australian domestic law. This is simply not possible.

The UNDRIP is non-binding and is subject to the Australian legal system. Any recognition of Aboriginal law must be done consistent with Australian domestic law and its international human rights law obligations.

Until Indigenous peoples are provided a space within Australia's public law system, removed from the political arena that is truly worthy of our status as first peoples, international law will be one of the most effective instruments.

The UNDRIP is non-binding and it is morally persuasive, but it doesn't replace the need for entrenched legal rules that governments are compelled to follow and that we can litigate if they violate.

Thus we must manage the great expectations people have of international law and especially the UNDRIP.

The best approach for change is to convince ordinary Australians that universal rights such as non-discrimination and equality between men and women should be entrenched in the Australian Constitution.

That protection – which isn't Indigenous-specific – is the most realistic and effective way of removing our rights from the political arena, and should be a central part of our advocacy moving forward.

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There's wild, and then there's wild!

SO there I was having a yarn and a gossip with some friends. The main topic of conversation that day was my friend's suddenly broken down dead relationship. This is what happened.

After a long night out with work colleagues (work-related, of course), my friend decided to drop in at their partner's house on their way home. Once they got there the house was all dark and quiet.

It was pretty early in the morning, so quietly my friend unlocked the door with the hidden key (of course they knew where the hidden key was!), and padded through the house to find their partner.

Into the bedroom my friend went. Nope. Partner wasn't there. In the kitchen? No midnight snacking here.

In the lounge room my friend found their partner. And it appeared they weren't alone.

Lights flicked on, hands grabbed sofa pillows and my friend describes their partner's face as 'priceless'.

Let's just say my friend introduced themselves to their partner's new friend in a Lionel Rose kinda way. A kinda Choc Mundine kinda way.

Me and my friends were crackin' up with disbelief at this yarn. We couldn't believe our sweet mate would be so wild –

and get so angry with a total stranger.

It's true, some people don't have the best judgment at times. And their behaviour is just plain wrong. Unfortunately we are just flawed humans, eh? I admit to a few lapses in good judgment myself.

But how can you get wild with a person who doesn't have a love relationship to you?

Love relationships are packaged in a box of commitment and a bow of devotion. Their ingredients are sharing, trust, care and support. Cheatin' around is not in the ingredients list. Cheatin' isn't even in the same supermarket as love relationships.

Actually, cheatin' isn't even related to love even in a distant third cousin twice removed kinda way.

When I'm in a love relationship, I expect my partner – the one who makes a commitment, tells me they love me, who should remember their obligation and devotion to me – to not cheat around.

It is them that should be sorry, not the stranger.

Of course, I'd be lying to myself if I said I wouldn't be wild with the person my partner cheated on me with – I would be wilder than a turtle on its back on hot sand – but I would be more wild with my partner.



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