

QWEEKEND



MIKE BURGESS
MEET AUSTRALIA'S
TOP SPY

LIZ HAYES
'I'M RECOGNISING
THE JOY OF FREEDOM'

VANESSA MARGOLIS

*'You've got to believe
that the world can be
a better place'*

In her first in-depth interview since the defeat of the Voice, Megan Davis opens up about why she believes the vote was doomed from the start, her new role and her optimism for the future

Story VANESSA MARSH

CHANGE AGENT

One of the key architects of the 2017 Uluru Statement from the Heart, Megan Davis, talks about the devastation of the Voice referendum loss, her new role at Harvard Law School and what comes next for Indigenous Australians

It was late in the evening on October 15, 2023 when Megan Davis finally managed to drag herself out of bed for the first time that day, almost 24 hours after learning Australia had voted against enshrining an Indigenous Voice to parliament in the constitution.

As she walked through Brisbane's Queen St Mall to get dinner with a baseball cap pulled low to avoid eye contact, she looked at the faces of each person who passed by, silently thinking to herself "he probably voted no", "she probably voted no".

For many Australians, the 2023 Voice referendum was a brief point in time that dominated the headlines and dinner table debate before the news cycle inevitably moved on to the next big issue.

But as a prominent human rights lawyer, constitutional law expert and one of the key architects of the 2017 Uluru Statement from the Heart which called for voice, treaty and truth, for Davis, a proud Cobble Cobble Aboriginal woman, the referendum was the culmination of 13 years of work on behalf of her people.

Walking to dinner that warm spring night, Davis reminded herself that while 60 per cent of Australians voted no to changing the constitution, 6.2 million people said yes – "6.2 million friends we didn't know we had".

It's that statistic that still buoys her almost two years on as she sits in her office at Harvard Law School in the United States reflecting on the crushing defeat and what comes next for Indigenous policy reform and constitutional recognition in Australia.

She applied for the position as Harvard's Gough Whitlam and Malcolm Fraser Visiting Professor of Australian Studies before the referendum – never really expecting to land a job at the prestigious Ivy League school attended by the likes of Barack Obama and Ruth Bader Ginsburg.

Davis arrived in Boston last year during the steamy Massachusetts summer, months after the vote and still deep in what she described as a post-referendum depression.

"I was still a bit numb," she says.

"But I think it's been somewhat of a cathartic experience being here just getting away from



Uluru Dialogue co-chairs Pat Anderson and Professor Megan Davis in 2023, top; and Davis as a child with her siblings John, Willie and Alfie.

Australia ... the silence has been incredible." As we sit in her spacious office deep in the law school's labyrinth of halls, it's apparent that silence is only figurative.

She is a woman in constant demand, dipping in and out of a video conference as we speak, fielding messages, phone calls and knocks on the door as she juggles responsibilities across time zones in the US and back in Australia where she is the Pro Vice-Chancellor Society (PVCS) at the University of New South Wales in Sydney and an Australian Rugby League Commissioner.

One of the classes she has taught at Harvard is about the reform and retreat of Indigenous rights and recognition around the world exploring how different democracies acknowledge their First Nations people.

"Australia is kind of unique in that it lags behind when compared to the rest of the world on one particular issue – the right to self-determination and political participation," she says – it's a fact her students find surprising.

Australia's constitution is something that has fascinated Davis, 49, ever since she was a little girl – a somewhat unusual topic for a child to latch on to.

The middle of five children, she spent her early years growing up near Monto in the North Burnett where her dad worked for Queensland Rail. They later followed his work to Hervey Bay where she enjoyed school camps at K'gari (Fraser Island) and took orienteering lessons.

In 1986, her parents separated and Davis and her siblings moved with their mother Dawn to a housing commission property in South East Queensland's Eagleby, where her mother still lives today.

"My mum, she's a brilliant mind, thinker and reader and she definitely imparted or handed down that love of books and reading to us kids."

She recalls one Christmas holiday her brother spent reading the Bible, another year it was the entire dictionary.

"Mum used to spend all her discretionary income outside of the pension on second hand books. We used to roll our eyes growing up, 'not more books, Mum', but obviously I kind of understand now what she was doing."

It was one of those second hand books that sparked Davis's lifelong fascination with the



Australian constitution. She was aged about 12 and was home sick from school when her mum handed her *Matters for Judgment* – the autobiography of former Governor-General Sir John Kerr who dismissed the Whitlam Government in 1975.

"My mum was not very political as a person, but as someone on a single parent pension, she was really adamant that we had to be completely on top of Australian politics, because she was always saying to us as kids, the decisions made by parliament have such an acute impact upon us as a family," Davis says.

"She ran the house with kind of military position precision when it came to homework and study and sport and play."

It was in the same home surrounded by all

those books where she received the news last year that she was being awarded Australia's highest civilian honour – a Companion of the Order of Australia for her service to the law and social justice.

"I burst into tears, which I never do, and then I went and told Mum and we both hugged each other and cried," she says.

"It really lifted me getting that Australian acknowledgment by the nation of my work."

Looking back, Davis can't remember the moment she decided to become a lawyer, but quips that shows like *Law and Order* and *Lorraine Bayly's* character in Australian 1980s legal drama *Carson's Law* made the profession look "very cool".

In her final year of law at the University of

Professor Megan Davis is a proud Cobble Cobble Aboriginal woman, human rights lawyer, constitutional law expert, a key architect of the Uluru Statement from the Heart, and Harvard Law School's Gough Whitlam and Malcolm Fraser Visiting Professor of Australian Studies.

“ *I burst into tears, which I never do, and then I went and told Mum*

Queensland, she was accepted to a United Nations Fellowship in Geneva.

"I didn't have any luggage, because no one travelled in our family, we were poor," she says.

"My brother went to a Beenleigh disposal store and bought me a backpack and then Mum had this rectangle suitcase from like the 70s. My brother lent me \$40 and off I went."

Davis recalls earnestly listening to the safety instructions from the British Airways hostess, jotting down notes in pen on her hand of what to do in case of emergency, reminding herself to take off the shoes she borrowed from her sister if she needed to use the emergency slide.

On reflection, she admires the bravery of her younger self as she embarked on a career that has taken her around the globe since. From Geneva to New York where she served on the United Nations Permanent Forum on Indigenous Issues and at home in Australia where she has led inquiries into youth detention centres in Queensland and into Aboriginal children in out of home care in NSW.

As a child, Davis loved netball and swimming but there was one sport that did and still does reign supreme – NRL. She and her siblings would catch the train to Brisbane Broncos games at Lang Park and later in life while working for the United Nations in New York she'd discreetly have the games playing on her phone. Her passion for the game led to her role as an Australian Rugby League Commissioner.

"It's been one of the highlights of my life," she says of the position in which she has helped navigate the sport through covid, grown the NRLW and overseen the implementation of the stand-down rule which she says has "been really important" in bringing about behavioural change.

"And the Las Vegas expansion is pretty spectacular – it's incredible to see rugby league take over Las Vegas," she says.

But she is most known for her work leading efforts toward constitutional recognition of First Nations people in Australia that led to the Uluru Statement from the Heart in 2017 – she was the first person to publicly read the statement aloud.

It called for the establishment of a First Nations voice to be enshrined in the constitution, and a Makarrata commission to oversee truth-telling and agreements between government and Indigenous peoples. Anthony Albanese committed to implementing the statement in his election victory speech in 2022.

Davis says Albanese's decision to hold a referendum on the Voice in 2023 came as a surprise to her and others involved in the Uluru Statement. "Albanese was, when you look at the history of Australia, one of the first leaders prepared to do what he did," she says.

"He didn't tell us he was going to do a referendum. He didn't consult us, but he announced it. And that's unusual for a prime minister to go out on a limb for us."

But she's hesitant to support a narrative that the Prime Minister altruistically granted the wishes of Indigenous people with the

COVER STORY

Megan Davis's passion for NRL led to her role as an Australian Rugby League Commissioner; Davis in 2015 with fellow Indigenous leaders Pat Dodson and Kirstie Parker in Canberra to discuss Indigenous recognition in the Constitution with then-PM Tony Abbott; and, far right, at Harvard Law School last month. Pictures: Joseph Prezioso, Christian Gilles, Ray Strange



referendum. "It wasn't a benevolent act," she says.

"This was 13 years of transparent legal and political policy and law reform. I counted it the other day, it's like 10 reports, two statutes, seven public processes, all transparent, all on parliamentary websites.

"I think he made it a black thing. I think he made it a separatist thing. But this was a nation building thing. It wasn't just about Aboriginal people – 6.2 million Australians voted yes and hundreds and thousands of Australians made submissions over that 13 years." Asked whether she agreed with criticism from fellow lawyer and Uluru Statement signatory Noel Pearson who has accused the government of running away from Indigenous policy in the wake of the referendum, Davis says she believed Australia had "reverted to the status quo".

"They haven't done anything new. The referendum was a blip, and the agency just continued what it was doing. So I mean my issue as a constitutional lawyer and a public lawyer is they still don't consult with people who are grounded in community. That's why nothing changes, and that's why community gets so frustrated."

More broadly, she fears the voice loss has been used as an excuse to question wider Indigenous law and policy reform.

"I think there's people that have tried to take advantage of it, of the No vote to kind of push back on all sorts of things," she says.

In this year's federal election, then Opposition Leader Peter Dutton described Welcome to Country rituals as "overdone", arguing they divided the nation, while also vowing not to stand in front of Aboriginal

and Torres Strait Islander flags because he wanted to unite Australia under one flag.

"I don't buy the assessment that it signals the end of the culture wars," Davis says of the election result. "To me, I thought perhaps the LNP had reverted to that because they thought racism was a winner. But as they learned, which we knew in early 2022, their core liberal voting base supported the Voice and found the approach that they took repugnant."

As for her own opinions on Welcome to Country – Davis appears exhausted by the debate. "I think it's low hanging fruit – if people want to do them, they should do them, if they don't, they don't have to," she says. "I've always thought people should do what they feel like they want to do."

Davis points to the pandemic and lockdown as a key moment in the explosion of Acknowledgments of Country. "I felt like it was a visceral reaction to being locked down and not feeling the grass under their feet, and you saw a kind of proliferation of acknowledgments," she says. "But I'm not particularly fussed about whether they're done or not, or the entire discussion."

"I was really anti them, the way in which corporate Australia and other public departments utilised it before the referendum. Because Australia does this kind of stuff, the symbolic gesture stuff, and they're really not great at providing space for First Nations within the public infrastructure, the substantive stuff that makes a difference, that can change people's lives. I don't think we will ever be a nanny state that says you can't do welcomes, or you can't do acknowledgments. I just think

“We all agree that closing the gap is failing miserably ... so what are we going to do?”

people should work it out for themselves. It's really a personal thing."

As her time at Harvard comes to an end, she's preparing to take up another chair at the University of Pennsylvania Law School for three months before heading back to Australia. Among the work that lies ahead is a series of dialogues with Indigenous Australians about what comes next for policy and law reform after the referendum defeat.

"We all agree that closing the gap is failing miserably, even though governments pretend it's not, and most Australians can see it's not working," she says. "So what are we going to do? How do we go back to the Australian people and say we can still use the law to develop mechanisms that improve – given that even the people who voted no said they want improvement, they just don't want this improvement."

She'll return armed with the difficult

lessons of the 2023 referendum that in hindsight, was a fight the Yes vote was wholly unprepared for. "We were told by professional lobbyists and experts that they expected the misinformation, disinformation that had happened in the election in the US to arrive in Australia in 2022 but it didn't ... but then it was like an avalanche for us (in the 2023 referendum)," she says. "I went into it as an Australian, thinking that it was just going to be like arguments on the facts and we never even got to that point – we were on the back foot from day one with all of these exaggerations and lies about what it stood for." In the dying days of the campaign she told a reporter that while she was "emotional and tired", she remained "optimistic and hopeful".

Asked now if she still believed right up until the vote that the referendum could succeed, she takes a deep breath and pauses. "I didn't know what to think," she says. "We'd run at 70 per cent (success in polls), 60 per cent from 2017 to 2023. I don't know what I thought. It's a kind of a blur when I look back on it."

She says post-referendum learnings showed many people didn't understand the Uluru Statement was intended as an olive branch to Australians "to feel a part of our culture and our lands". "Pollsters and researchers by and large say it was the cost of living issue that overwhelmed everything and that they'd never seen before a situation where a referendum which had so much attention didn't even feature in the top 10 issues that Australians were raising as important in focus groups," Davis says.

"So people were just so tunnel vision on that. And I get that. Aboriginal people suffered through the cost of living crisis as well, the ridiculous price of milk, bread, rent everything just went up and it was really stressful. So I understand that when you're just trying to get by, maybe it wasn't the biggest issue."

Despite the struggle, Davis remained hopeful. Her young niece Mimi stayed with her at the Brisbane hotel where the Yes leadership gathered for the referendum.

Days earlier, Davis had asked what the sound was as Mimi played the popular children's game Roblox – the little girl had been furiously painting over graffiti other kids had scrawled in the fictional children's world that read "Vote No". When she woke on the morning of the referendum, Mimi peeked out from under her pile of unruly curls and whispered, "Aunty, I'm scared."

"We just were never in the game," Davis says. "By the time I got back to the hotel, it was all over, red rover, it was like a funeral, people were just wailing, howling, it was really awful."

Asked if she still has hope for Indigenous constitutional recognition, she quotes her PhD professor Hilary Charlesworth.

"When I would get cynical about Australian politics and the future she would tell me: 'But Megan, all law reform, all change, is about imagination and you have to suspend your belief that the world can't change, and you've got to believe, just for a moment, that the world can be a better place.'"