New developments in the legal status of rivers

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A half-day workshop in Melbourne hosted by the Centre for Resources, Energy and Environment Law as part of the Australian Earth Laws Alliance workshop series: *Exploring the Legal Status of Nature*

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I. INTRODUCTION

In 2017, four rivers have been given the status of legal persons: the Whanganui in NZ, the Ganges and Yamuna Rivers in India and the Rio Atrato in Colombia. In Victoria, the state government has committed to establishing the 'Birrarung Council' to be the voice of the Yarra River. These unprecedented developments have fundamentally altered the legal status of rivers in law. Will they also help us to protect them? This workshop brought together a group of 55 academics, practitioners, policy makers, and environmental advocates to explore these exciting developments. It was jointly hosted by the Australian Earth Laws Alliance (AELA) and the Centre for Resources, Energy and Environment Law (CREEL) at Melbourne Law School.

A. WORKSHOP PROGRAM

The workshop was held from 2-5:30pm on 11 August 2017.

2pm	Welcome to the workshop – Professor Lee Godden, CREEL Director
2:05pm	*Exploring the Legal Status of Nature* – Dr Michelle Maloney, Convenor, Australian Earth Laws Alliance
2.15pm	*First Nations' perspectives on legal rights for nature* – Dr Virginia Marshall, via skype *(Chair: Michelle Maloney)*
2:30pm	*New international developments in the legal status of rivers* *(Chair: Professor Christine Parker)* • Erin O'Donnell (Senior Fellow, CREEL) *Legal Rights for Rivers: the Ganges and Yamuna Rivers, India* • Julia Talbot-Jones (ANU, Crawford School) *Legal Rights for the Whanganui River, New Zealand* • Dr Liz Macpherson (University of Canterbury) and Lisa Caripis (Transparency International) *Legal Rights for the Rio Atrato, Colombia* *Followed by short Q&A for the panel of presenters*
3:15pm	Tea and coffee break
3:30pm	*Legal rights for rivers: an Australian perspective (Chair: Professor Christine Parker)* • Bruce Lindsay (Environmental Justice Australia) *Yarra River Protection Act: A New Statutory Process* • Trent Wallis (Victorian Environmental Water Holder) *Legal rights to water for the environment* *Followed by audience Q&A for the entire panel of presenters*
4:30	Facilitated discussion sessions: exploring the opportunities and challenges of granting rights to rivers
5:15	Facilitators report back from group discussions (Chair: Dr Michelle Maloney)
5:30	Workshop close – Dr Michelle Maloney and Professor Christine Parker *Followed by drinks at Animal Orchestra, Grattan Street*

Presentations and speaker recordings are available online at:

- https://www.earthlaws.org.au/what-we-do-australia/acrn/exploring-the-legal-status-of-nature/elsn-melbourne/
- http://law.unimelb.edu.au/centres/creel/research/workshops/legal-rights-of-rivers

B. FACILITATED DISCUSSION SESSION

The final part of the workshop developed the participant's ideas and responses to the growing momentum of legal rights for nature, and the opportunities and challenges this new legal status creates for the protection of the environment. This part of the workshop provided invaluable input to AELA's broader project on the legal status of nature (see key points raised below).

Leading researchers and practitioners facilitated discussion on how the new legal status of rivers is shedding light on the legal status of nature more broadly, by breaking into smaller groups that ensured that all participants had an opportunity to contribute. The facilitator led the discussion of each topic, recorded the key points of the discussion and briefly reported back.

Discussion topics and facilitators:

- Do you think legal rights are an appropriate way to protect the health of the environment? Why/why not? – *Facilitator: Elizabeth Macpherson*
- In the Whanganui, the legal personality of the river reflects Maori cultural values. How are these cultural values different to legal rights for nature? If we were to create legal rights of nature in Australia, what would be the best way to start? As First Nations People in Australia have their own legal systems to care for country, are 'rights of nature' laws appropriate in Australia? – *Facilitator: Lee Godden and Kathleen Birrell*
- What can the animal advocacy movement learn from developments in the legal status of rivers? – *Facilitator: Joanna Kyriakakis*
- Each of the new legal developments for the rivers operates at different scales: river basin, regional, or statewide. How important are the local, place-based values for the success of these frameworks? How can we connect local values into national and international laws for environmental protection? – *Facilitator: Laura Ballantyne-Brodie*
- What happens when legal rights for rivers interact with other rights (such as water use rights)? – *Facilitator: Erin O'Donnell*

Lastly, a short 2-question survey was distributed to all participants, and survey outcomes are included below.

II. EXPLORING THE LEGAL STATUS OF NATURE: AELA'S BROADER PROJECT

Author: Dr Michelle Maloney

Climate change, biodiversity loss and the global ecological crisis are forcing many people to rethink the legal, economic and governance structures underpinning modern industrial societies. Lawyers around the world are exploring innovative ways to use the law to better support the health of the natural world.

One area receiving growing attention is the use of western legal constructs such as legal personhood and rights based approaches, to shift the legal status of nature from human property, to subjects of the law. These legal approaches are seen by many as a way for anthropocentric western laws to be transformed towards Earth centred law and governance. Examples include: the constitution of Ecuador, national legislation in Bolivia, local ordinances in the USA and recent court decisions in Columbia and India which recognise the legal rights of nature; developments in New Zealand under the Treaty of Waitangi, which have seen several ecosystems granted legal personhood and in Australia, the creation of 'environmental water managers' in domestic law has seen legal rights allocated to environmental water flows.

But are these 'rights of nature' and 'legal personhood' laws appropriate for Australia? In Australia, First Nations Peoples' have practiced ancient first laws for time immemorial; laws which have enabled First Nations Peoples to care for country and maintain ecological health on this continent for millennia. While British colonisation of Australia brought with it the common law system as the foundation for its new colonies – it did not extinguish First Nations Peoples laws. Today, a new generation of lawyers are searching for ways to transform the legal systems of industrialised nations, so they can nurture a harmonious relationship between people and the non-human world. In Australia, this search for pathways to transform the legal system is both challenging and exciting.

Exploring the Legal Status of Nature is a writing and symposium series that aims to bring First Nations Peoples and non-indigenous people together, to critique the impact of the Australian legal system on the natural world and explore how we might create systemic change, so that laws nurture, rather than destroy, the health of the living world.

The project will see a series of workshops held in cities around Australia to discuss issues relating to the legal status of nature. The workshops will facilitate discussion about the project and build a community of thinkers and writers interested in the topic. There will be a Call for Papers in January 2018, for an edited collection and International Symposium in late 2018.[1]

[1] For more on this exciting project, please visit the Australian Earth Laws Alliance website, https://www.earthlaws.org.au/?page_id=2340

III. FIRST NATIONS' PERSPECTIVE ON LEGAL RIGHTS FOR RIVERS

Author: Dr Virginia Marshall

At the time of the British Government's invasion of Aboriginal territory, Aboriginal communities existed within a system of laws which regulated the use, access, management and ownership of lands, waters, resources and relationships within an Aboriginal environment. The colony of New South Wales and Australia's future colonies were and remain, the structural framework for resource ownership and management and render the legal fiction of terra nullius and aqua nullius active, disempowering Australia's First Peoples of their inherent rights and interests and obligations to care for Country. The national dialogue on amending Australia's Constitution has yet to embrace First Peoples inherent water rights and Australian state constitutions only include recognition of Indigenous Australians, with no legal effect. Aboriginal and non-Aboriginal values in water are based upon differing value systems, law systems, beliefs and concepts, which explain the creation of both the tangible and intangible environments.

The concept of 'personhood' of river systems is foreign within Aboriginal ideology, where there is no separation between land, water and Aboriginal cultural / legal obligations that derive from the fundamental Aboriginal belonging to the land and waters.

For more on this issue, see Dr Marshall's book, *Overturning aqua nullius: Securing Aboriginal Rights*,[2] which originates from her doctoral thesis, which won the 2015 WEH Stanner Prize. It sets out a compelling case for law reform to "overturn the myth of aqua nullius that exists in Australia's constitutional and legal framework in water rights and interests". In his foreword to the book, the Hon. Michael Kirby stated that "[m]any of Dr Marshall's recommendations call on Australian governments to introduce statutory regimes, to review current laws and to implement informed public policies. Given the state of the present Australian statutes, laws and policies impinging on water rights, these are inevitable proposals".

IV. NEW INTERNATIONAL DEVELOPMENTS IN LEGAL RIGHTS FOR RIVERS

In 2017, four rivers have been given the status of legal persons: the Whanganui River in New Zealand,[3] the Ganges and Yamuna Rivers in India,[4] and most recently, the Rio Atrato, in Colombia.[5] This extension of legal rights to rivers is groundbreaking and largely unprecedented, and there is a

[2] Virginia Marshall, *Overturning aqua nullius: Securing Aboriginal Rights* (Aboriginal Studies Press, 2017).

[3] *Te Awa Tupua (Whanganui River Claims Settlement) Act 2017*, NZ.

[4] *Mohd. Salim v State of Uttarakhand & others,* WPPIL 126/2014 (High Court of Uttarakhand) [19]. This judgment is accessible at http://lobis.nic.in/ddir/uhc/RS/orders/22-03-2017/RS20032017WPPIL1262014.pdf accessed 31 May 2017.

[5] *Centro de Estudios para la Justicia Social "Tierra Digna" and others v the President of the Republic and others*, No T-5.016.242, Corte Constitucional [Constitutional Court], Sala Sexta de Revision [Sixth Chamber] (Colombia) (10 November 2016)

great deal of uncertainty about what this novel legal development will mean in practice.[6] For instance, the rivers have received their legal rights in different ways (via legislation or judicial decision), for different purposes (environmental protection, religious beliefs, and indigenous values) and by using different legal forms as the basis for legal rights and personhood. How will these different mechanisms translate into new legal frameworks for managing the health of the rivers into the future?

A. WHAT ARE LEGAL RIGHTS FOR NATURE?

Around the world, the rights of nature discourse and socio-legal movement includes two slightly different approaches. The first stems from deep ecology and Earth jurisprudence, and builds on Thomas Berry's proposition that in an Earth-centred legal system, nature must have its own right to exist, thrive and evolve.[7] This approach informs the rights of nature provisions in the Ecuadorian Constitution, Bolivian legislation, and the local government ordinances developed by CDELF (Community Environmental Legal Defense Fund) in the USA. Within this framework, nature can only have 'nature rights', which are specific to the organism or ecosystem, for example, a bee has bee rights, a river has river rights, and so on. This approach argues that these 'nature rights' need to be the bedrock of constitutional, legislative and cultural change to create a new Earth-centred legal system.

The second approach can be broadly described as 'legal personhood' or legal rights for nature. Legal rights are not the same as human rights, and so a "legal person" does not necessarily have to be a human being. Corporations, for example, are also treated in law as "legal persons", as a way to endow companies with particular legal rights, and to treat the company as legally distinct from its managers and shareholders. Giving nature legal rights means the law can see "nature" as a legal person, thus creating rights that can then be enforced. Legal rights focus on the idea of legal standing (often described as the ability to sue and be sued), which enables "nature" to go to court to protect its rights. Legal personhood also includes the right to enter and enforce contracts, and the ability to hold property.

Extending legal personality in this way has the capacity to substantially increase the legal rights and powers of nature. As Christopher Stone argued, enabling the natural objects to become legal subjects means that nature 'can institute legal actions at its behest... the court must take injury to the natural objects into account...and relief must run to the benefit of nature'. [8]

[6] Erin O'Donnell and Julia Talbot-Jones, 'Legal rights for rivers: what does this actually mean?' (2017) forthcoming *Australian Environment Review*.
[7] Thomas Berry, *The Great Work: Our Way Into the Future* (Harmony/Bell Tower, 1999)
[8] Christopher D Stone, 'Should Trees Have Standing? Towards Legal Rights for Natural Objects' (1972) 45 *Southern California Law Review* 450, 458.

There is still a big question about whether these types of legal rights are relevant or appropriate for nature at all. But the application of legal rights to rivers demonstrates that courts and legislators are increasingly willing to use this new tool to improve environmental protection.

B. GANGES AND YAMUNA RIVERS, INDIA

Author: Dr Erin O'Donnell[9]

The state of Uttarakhand is located on the northern border of India, and includes the headwaters of the Ganges River, as well as part of the Himalayas. On the 20th of March 2017, the High Court of the State of Uttarakhand in India declared that:

> … the Rivers Ganga and Yamuna, all their tributaries, streams, every natural water flowing with flow continuously or intermittently of these rivers, are declared as juristic/legal persons/living entities having the status of a legal person with all corresponding rights, duties and liabilities of a living person in order to preserve and conserve river Ganga and Yamuna.[10]

The court reached this decision for two reasons. First, the judges identified the significant risks posed to the Ganges and Yamuna Rivers by pollution, and climate change, and argued that a new and more powerful approach was required in order to adequately protect them. Second, the judges argued that this step was necessary because of the status of the rivers as 'sacred and revered… central to the existence of half the Indian population'.[11]

Only ten days later, on the 30th of March 2017, the High Court of Uttarakhand extended legal rights to the 'Glaciers including Gangotri and Yamunotri, rivers, streams, rivulets, lakes, air, meadows, dales, jungles, forests wetlands, grasslands, springs and waterfalls' of the Himalayas, in order to preserve and conserve these natural features.[12]

In both cases, the court recognised the rivers and other natural objects as legal minors (which relies on a human construction of legal personhood, rather than a more legalistic construction such as the corporation), and nominated particular individuals to speak on their behalf:

> Director NAMAMI Gange, the Chief Secretary of the State of Uttarakhand and the Advocate General of the State of Uttarakhand are declared persons in loco parentis as the human face to protect, conserve and preserve Rivers Ganga and Yamuna and their tributaries.[13]

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[9] The following text is adapted from O'Donnell and Talbot-Jones, above n 5.
[10] *Ganges and Yamuna case*, 11.
[11] *Ganges and Yamuna case*, 4.
[12] *Lalit Miglani v State of Uttarakhand & others*, WPPIL 140/2015 (High Court of Uttarakhand) at 64. This judgment is accessible at http://lobis.nic.in/ddir/uhc/RS/judgement/31-03-2017/RS30032017WPPIL1402015.pdf (accessed 31 May 2017).
[13] *Ganges and Yamuna case*, [19-20].

In doing so, the court has blurred the distinction between a 'living person' and a legal person. This has the potential to significantly broaden the rights associated with the Ganges and Yamuna Rivers well beyond the legal rights. For example, an environmental activist has reported the 'murder' of the Ganges and Yamuna Rivers to the police, on the basis that the rivers were too polluted to be considered 'alive'.[14]

Further, the court only has jurisdiction within the borders of the State of Uttarakhand, so its capacity to influence outcomes downstream is likely to be limited. In addition, although the court can direct particular individuals to be the human face of the rivers, it has no power to provide funding to support this new role, which creates real enforcement challenges.

On 7 July 2017, the Supreme Court of India agreed to hear an appeal against the *Ganges and Yamuna* case, and in the interim, stayed the effect of the original ruling, thus removing the legal rights of the rivers once more. The state government appealed the case for two reasons. Firstly, they argued that as the Ganges and Yamuna rivers extend beyond the borders of the state of Uttarakhand, this would make it difficult for the state government to be responsible for the entire river. Secondly, and perhaps most tellingly for the future application of the legal rights concept, the state government argued that, as the guardians of the river, they may be liable for the actions of the river, including floods. As a result, the current legal status of the Ganges and Yamuna rivers is in limbo, pending the outcome of this appeal.[15]

C. WHANGANUI RIVER, NEW ZEALAND

Author: Dr Julia Talbot-Jones[16]

The Whanganui River runs for 290kms from the centre of New Zealand's North Island, to the Tasman Sea on the North Island's lower west coast. On March 11 2017, the Whanganui River, New Zealand, was the first river in the world to be granted legal standing. The *Te Awa Tupua (Whanganui River Claims Settlement) Act 2017* granted the Whanganui River 'from the mountains to the sea, including all its tributaries, and physical and metaphysical elements', the same duties rights and responsibilities as a legal person. The legislation states that a guardian, *Te Pou Tupua*, will be appointed to act as the human face of the river and represent the river to the benefit of its health and wellbeing. Te Pou Tupua will be a singular role to be made up of two persons, one appointed by the New Zealand government (the Crown) and the other by Whanganui Iwi (local Māori tribe).

[14] Michael Safi, 'Murder most foul: polluted Indian river reported dead despite 'living entity' status' (8 July 2017) *The Guardian* https://www.theguardian.com/world/2017/jul/07/indian-yamuna-river-living-entity-ganges (accessed 7 July 2017).
[15] Erin O'Donnell, 'At the Intersection of the Sacred and the Legal: Rights for Nature in Uttarakhand, India' (2017) *Journal of Environmental Law* (forthcoming), doi: 10.1093/jel/eqx026.
[16] Text adapted from O'Donnell and Talbot-Jones, above n 5; and Julia Talbot-Jones, *The Institutional Economics of Granting a River Legal Standing* (PhD Thesis, Australian National University, forthcoming, 2017).

The Act was the result of eight years of negotiation by Iwi and the Crown over ownership and control of the river – a dispute that had been ongoing since 1873. Under the new legislation, ownership of the riverbed has been transferred from the Crown to the new legal entity, *Te Awa Tupua*, which effectively enables the river to own itself. This was a means of avoiding the political complexity of vesting the riverbed in Iwi, whilst simultaneously ensuring that the Crown did not retain ownership of the bed.

Granting the Whanganui River and its catchment legal rights was also seen as a suitable way to approximate the Māori worldview in law. By recognising the river as an interconnected living whole and appointing guardians to speak on its behalf, the new legislation acknowledges Whanganui Iwi's relationship with the river being one of *kaitiakitanga* (guardianship or stewardship), rather than ownership in the western sense. By collapsing the dichotomy between humans and nature, the Māori worldview is placed at the heart of the legislation and formalised using a mechanism well-tested in other legal contexts.

To support the implementation of the new rights, the legislation also establishes a broad institutional framework made up of several new actors and rules. Under legislation, support is to be offered to Te Pou Tupua through an advisory group, *Te Karewao,* while a new strategy group*, Te Kopuka na Te Awa Tupua*, will develop and approve, review, and monitor the implementation of a catchment management strategy, *Te Heke Ngahuru*. The strategy group will consist of up to 17 key stakeholder representatives, including Iwi with interests in the Whanganui River, local and central government representatives, tourism, conservation, recreation, and wild game interests, and Genesis Energy Limited, the operator of the Tongariro Power Scheme, which currently diverts 82% of the headwaters of the Whanganui River for hydropower. In addition, financial capacity for implementing and operationalising the new arrangement is provided through a series of payments made by the Crown to Te Awa Tupua, its guardians, and local authorities over the next 20 years. This includes the establishment of a NZ$30 million contestable fund, *Te Korotete o Te Awa Tupua,* which can be used for the purposes of upholding Te Awa Tupua's legal rights**.**

By taking these steps, the legislation succeeds in nesting community governance principles into the new property rights arrangement. It guarantees financial support for implementing and operationalizing the new framework, and, by introducing the legislation at the national level, ensures the new governance arrangement is given legitimacy. Together, these institutional features potentially strengthen the use of legal rights as an alternative governance approach and increase the likelihood the rights will be given force and effect.[17]

[17] Talbot-Jones, above n 16.

D. RIO ATRATO, COLOMBIA

Author: Dr Elizabeth Macpherson

The Rio Atrato case (November 2016) was an 'acción de tutela' (action for protection of constitutional rights) brought in the Colombian Constitutional Court by the human rights NGO Tierra Digna on behalf of a number of Indigenous, Afrodescendent and peasant communities in the department of Chocó. The claimants argued that the activities of illegal miners in Chocó violated the fundamental human rights of the communities living alongside the river, causing extreme degradation of the river; destroying the natural course of the river, flooding the rainforest, and contaminating the river with chemicals.

In its decision the Court found that the Government had violated the communities' fundamental constitutional rights by its omission to control illegal mining in Chocó (the rights to life, health, water, food security, clean environment, and the right to culture and territory of the ethnic communities). Then, significantly, the Court recognised that the Atrato River (together with its basin and tributaries) is an 'entity sujeto de derechos' (legal entity). The river's rights (distinct from the communities' rights), are to protection, conservation, maintenance and restoration by the state and ethnic communities. The Court made a number of orders to implement its decision, including that the rights of the river will be represented by a guardian – with one representative from Government and one from the claimant communities, referencing the Te Awa Tupua (Whanganui River) model from New Zealand.

This is a watershed moment for indigenous and environmental rights in Latin America. The Court explicitly recognised that it is taking an ecocentric approach, referring to the interconnectedness of nature and humans with nature and the superior interest of the environment and obligations to protect nature's rights. Yet the decision is 'anthropocentric' in that the river's rights are a consequence of its recognition of the communities' human rights and this case is inherently tied up with the ancestral, territorial, communal and 'biocultural' rights of the ethnic communities. This approach may have limitations, including the risk of essentialising indigenous culture in a pristine, pre-contact light and leaves open the question whether rights of nature can exist outside of indigenous areas.

Significantly, the case engages directly with the difficulty of enforcing the rights of nature, by making prescriptive orders about how the rights of nature must be protected and implemented. It is truly incredible in this case how far the courts have gone in designing institutions to represent the river - lifting the Te Pou Tupua model, principle of guardianship and collaborative governance approach from the Whanganui River Settlement. The court has also given itself an ongoing role, requiring regular reports on implementation from the government.

1. UPDATES FROM TIERRA DIGNA

Author: Lisa Caripis

The following notes are from interview conducted by Lisa Caripis, with a lawyer from Tierra Digna, on 9 August 2017. They have been translated from the Spanish and are not direct quotes, but give a useful perspective from the NGO most directly concerned with the Rio Atrato case.

What was Tierra Digna's role in the case?

- TD has been working for seven years in Chocó with local communities (particularly Afro-descendent groups) to strengthen the capacity of leaders of community councils (consejos comunitarios) to defend their rights.
- At a workshop they held with local leaders in 2013, they identified that the health of the river was being damaged by illegal, mechanised mining especially due to the use of mercury.
- They wanted to bring a legal action, so they invited all the community councils with rights or interest in the rio Atrato to join the action. In the end, all major community councils and the Chocó Inter-ethnic platform joined the action.
- They brought an action in *tutela* (guardianship), to protect fundamental constitutional rights.
- The action was based on the special, historical connection of these Afro descendent groups with the river. When these groups escaped slavery, they settled along the river and in the jungle, where they wouldn't be reached by colonial powers. Their identity is tightly bound to the river: their daily life revolves around the river - domestic chores such as cleaning clothes, recreation, it's where women meet to engage in special cultural practices. Therefore, any impact on the river would not just affect the health of these groups, but also their physical and cultural survival as "comunidades afro" as it would affect their ability to engage in activities that make them who they are.

What do you, Tierra Digna, consider to be novel or exciting about the sentence?

- It's historic.
- The recognition by the court of the rights of the river was not something that the applicants had sought directly in the *tutela* action. Indeed, the case was rejected by two lower courts for not complying with procedural requirements (a *tutela* action should be brought by an individual or defined group, not such a broad group).
- It creates a new category of rights: "biocultural rights".
- It's based in communities' cosmology and relationship with nature; the union between culture and nature: the ways of life of these communities and nature exist in a relationship of positive symbiosis, they depend and nourish each other.
- To that end, the court says there is no point in saving or protecting the environment if communities are destined to disappear physically or culturally. Similarly, communities may

have no special protection if they destroy the environment.

What steps have been taken to implement the court orders?

- We were worried that the government might appeal the decision, but it has shown a lot of good will and said it will support the decision.

(1) Establishing the guardian of the river

- The court ordered that a guardian of the river be established, composed of a government and community representative.
- The government has nominated the Ministry for the Environment as an institution.
- The community is in the process of organising elections to decide who their representative will be. The elections will be held on 31 August.
- Not only are the original applicants involved, but groups dependent on the tributaries of the river have been invited to join the process.

(2) Community response

- Community members are highly motivated. The decision has given them cause for hope in a bleak context of poverty, decades of conflict by armed groups (paramilitaries and guerrilla) and state absence. The decision is a "new driver" for local leaders to promote engagement between communities and the state.

(3) Government response

- The human rights Ombudsman has really taken the lead in monitoring implementation of the decision by other government bodies and agencies named in the court order. It's keeping a close eye on Chocó.
- So far, other government ministries and departments have been proactive in taking steps to fulfil the court order. For example, the Ministry of Health.
- One thing that has been concerning is how the military has responded to the decision. The court had said that one of the main causes of harm to the river was the military's failure to combat the involvement of armed groups in illegal mining. The military has now come out and said that it is taking action against illegal mining because of the legal action brought by the local communities - even though it's actually their duty to do so. This language is careless and irresponsible and exposes the communities to danger (even though the FARC have demobilised, there are other armed groups still active in the region eg ELN guerrilla and paramilitaries).

What is Tierra Digna involved in now?

- We are working with the local communities to raise awareness of the significance of the

sentence so that the local communities can lead implementation of the sentence and lead the protection of the river

- Important groups in Chocó have been invited to a big event and to join the Advisory Commission to guide the guardians (which the court had also ordered)
- We are involved in advocacy efforts to make sure government continues to play its part in protecting the river and fulfilling the orders of the court.
- We are also working with local groups to run a "I am the guardian" campaign, to get all local groups empowered and on board in protecting the river, and their rights.

V. LEGAL RIGHTS AND RIVERS: AN AUSTRALIAN PERSPECTIVE

Is there scope for legal rights for rivers in Australia? Historically, Australia has focused on legal rights to water, rather than legal rights for rivers. At both the national and state level, there are now legal persons with the right to hold and manage water rights for the environment.[18]

In addition, the *Yarra River Protection (Wilip-gin Birrarung murron) Bill 2017* in Victoria proposes to create a new organisation, the Birrarung Council, to 'advocate for protection and preservation of the Yarra River'. The members of this Council will include two Wurundjeri representatives, reflecting the enduring relationship between indigenous Australians and the Yarra River.

The New Zealand example shows how the legal person model can be used to centre an indigenous perspective by using a Western legal mechanism – but this approach is not without controversy. Although the Yarra River Bill has been supported by the Wurundjeri, there is also a concern amongst other Indigenous Autralians that legal personhood for the river may break connection between indigenous people and country (see above section III), so the application of this concept in Australia remains unclear.

A. YARRA RIVER PROTECTION ACT

Author: Dr Bruce Lindsay[19]

Following two-and-a-half years of work by EJA and the Yarra Riverkeeper Association – and lots of community consultation – the landmark Yarra River Protection (Wilip-gin Birrarung murron) Act has now been passed by the Victorian Parliament.

One of the many notable features of this Act is how it marries an innovative 'legal rights for nature' approach with a conventional land use planning approach. The distinction between the two is a topic

[18] Erin O'Donnell, 'Australia's Environmental Water Holders: Who is Managing Our Environmental Water?' (2013) 28(3) *Australian Environment Review* 508.

[19] This overview comes from Bruce Lindsay, 'New ways for law to protect nature: Victoria's Yarra Act part of a gradual shift' (22 August 2017) *Environment Justice Australia* blog http://envirojustice.org.au/blog/new-ways-for-law-to-protect-nature-victoria%E2%80%99s-yarra-act-part-of-a-gradual-shift, and has been updated to reflect the passage of the legislation in September 2017.

of much discussion within law. In essence it turns on whether the law views the river as a subject of legal rights or benefits itself (the former) or whether the river – or more accurately constituent parts of it, such as land and water – are objects of legal decision-making and obligations.

Are these different approaches compatible within a single piece of legislation? It will be difficult to give a definitive answer to this question until we see how the Yarra River legislation works over time. But, while there may be tensions between issues of principle and pragmatics, this prospective law will help test that question.

It will also test the effectiveness of emerging innovative ways to govern significant natural and cultural assets. Historically, planning and environment laws have tended to place humans front and centre of statutes. This is gradually shifting as some aspects of law – in particular legal and paralegal rules – establish nature as a subject for protection in its own right. Eminent environmental law academic Professor Doug Fisher has described this rising flux between nature as object and subject of law as the basis of an 'emerging jurisprudence of environmental governance'.

The Yarra River Protection Act does not establish the river as a legal person, which has occurred elsewhere. But the objects and purposes of the Act do affirm intrinsic and human values of the river. For example, the legislation aims to protect the river as 'one living and integrated natural entity'. The objects of the law recognise 'ecological health' and the 'cultural, social, environmental and amenity values of the Yarra River and the landscape in which the Yarra River is situated'.

These are significant legal innovations.

The Act also establishes a type of institutional 'guardianship' arrangement in the advisory and advocacy functions of a new Birrarung Council and monitoring/auditing functions vested in the Sustainability Commissioner. Alongside these objects, purposes and practices, conventional models of planning and water management are also employed, in order to make the proposed river governance arrangements work. In particular, a Yarra Strategic Plan will be prepared as a 'land use framework plan' and 'healthy waterway strategies' will have to prepared consistently with that strategic land use plan.

These innovative and conventional legal approaches, therefore, are brought together by integrative management tools: a 50-year 'community vision', the 10-year Yarra Strategic Plan, and obligations for planners, water authorities and other decision-makers to act consistently with them.

Whether the 'community vision' and the Yarra Strategic Plan will fully meet the potential for protection and restoration made possible by innovative principles embedded in the Act is yet to be seen. Crucially, however, the key variable in this equation is the engagement and participation of the community. The detail of those instruments will come from the community, as well as from government and other sectors.

B. VICTORIAN ENVIRONMENTAL WATER HOLDER

Author: Dr Erin O'Donnell[20] *and Trent Wallis*

Victoria's water allocation framework was established under the Victorian Water Act 1989. All water assigned for environmental use is called the Victorian Environmental Water Reserve (EWR).[21] The EWR includes specific entitlements to water for the environment (usually but not always held in on-stream dams), as well as water set aside by placing conditions on the water rights of other water users (such as the requirement to maintain a minimum instream flow). The purpose of the EWR is to provide and maintain the necessary river flows to support the health of rivers, wetlands, and estuaries throughout Victoria.

In 2010, the state government created the Victorian Environmental Water Holder (VEWH), and transferred responsibility for ownership and decision-making for the entitlements component of the EWR to this new organization. The VEWH is a body corporate with the capacity and responsibility to hold and manage water rights for the purpose of maintaining and improving the health of the aquatic environment.[22]

The VEWH is a legal person, embodied by a Ministerially appointed commission with the capacity to hold water rights and to decide how to use the available water each year, including the power to buy and sell water on the water market.[23] The VEWH was created with legal rights, including the power to sue and be sued, the power to enter contracts, and the power to acquire, and hold and dispose of real and personal property on behalf of the environment.[24] Although the VEWH was created as a statutory corporation, it is not a corporation bound by the *Corporations Act 2001* (Cth). Instead, it is considered a public entity under Victoria's *Public Administration Act 2004*, and must also comply with Victoria's *Financial Management Act 1994*. The VEWH has three commissioners, and is about to receive a fourth (to include an Indigenous Victorian) and a small staff, composed of state public service employees.[25] Its funding comes from a tax placed on all water users in Victoria which is designated for sustainable water resource management.

Although the VEWH does not create legal rights for rivers per se, it offers a working example of how a legal entity has been established to hold and manage Victoria's environmental entitlements.[26]

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[20] This presentation was given by Trent Wallis, Co-Executive Officer of the Victorian Environmental Water Holder. For more detail on the work of the VEWH, see http://www.vewh.vic.gov.au/

[21] Anita Foerster, 'Victoria's New Environmental Water Reserve: What's in a Name?' (2007) 11(2) *Australasian Journal of Natural Resources Law and Policy* 145.

[22] Erin O'Donnell, 'Institutional Reform in Environmental Water Management: the New Victorian Environmental Water Holder' (2012) 22 *Journal of Water Law* 73.

[23] Victorian Environmental Water Holder, 'Reflections: Environmental Watering in Victoria 2012-13' (State Government of Victoria, 2013)

[24] *Water Act 1989* (Vic), s 33DB.

[25] *Water Act 1989* (Vic), ss 33DF, 33DM.

[26] *Water Act 1989* (Vic), ss 33DC, 33DX, 33DY; see also O'Donnell, above n 22.

Under the *Water Act 1989*, the VEWH is required to make a decision each year on how the environmental water entitlements it holds will be used to achieve the maximum environmental benefits.[27] For instance, depending on seasonal conditions and the levels of flow within a system it can plan (through its seasonal watering plan) and decide (through watering statements) how water is to be used (whether instream or wetland inundation). Where seasonal conditions warrant, it can also trade its allocation to other systems or users. In doing so, the VEWH acts as a guardian for held environmental water – working with its program partners other environmental water holders, catchment management authorities and Melbourne Water as waterway managers and storage operators to determine where, when, and how to use water for the environment in the state of Victoria.[28]

VI. FACILITATED DISCUSSION

The following summaries present the key issues raised in the small group discussion sessions. They have been presented largely unedited to reflect the diversity of discussion as captured by each of the facilitators.

A. ARE LEGAL RIGHTS AN APPROPRIATE WAY TO PROTECT THE HEALTH OF THE ENVIRONMENT?

Facilitator: Dr Elizabeth Macpherson

The discussion group did not reach consensus on whether legal rights for nature were an appropriate way to protect the health of the environment. Instead, group members agreed that such rights could be appropriate, in some cases, where necessary, but this would be dependent on context. The group thought that legal rights were 'not inappropriate' for nature, but the appropriateness would depend on a number of factors, to ensure that legal rights for nature didn't lead to merely 'paper rights'. These relevant factors identified in this discussion include:

- enforceability of the rights, via standing in court, and effective institutions with proper resources and funding;
- evidence of whether this approach works in practice, and metrics for measuring whether the approach is working in a specific context;
- effective protection of river values; and
- adequate incorporation of, and provision for, cultural values.

Provided these requirements are met, the group felt that legal rights for nature would potentially be one way (but not the only way) to improve environmental outcomes, because the creation of legal

[27] Victorian Environmental Water Holder, 'Reflections: Environmental Watering in Victoria 2015-16' (State Government of Victoria, 2016)
[28] Erin O'Donnell, *Constructing the Aquatic Environment as a Legal Subject: Legal Rights, Market Participation, and the Power of Narrative* (PhD Thesis, University of Melbourne, 2017) http://hdl.handle.net/11343/191749

personality for nature introduces a new actor in regulatory competition. Although legal rights for nature may be used for a range of reasons or interests, they represent a positive approach and a proactive position, giving nature a stronger voice and providing a vehicle for governance or corporate structuring. The group also noted that giving nature legal rights has the potential to support intangible, esoteric, subjective or metaphysical outcomes.

B. CULTURAL VALUES AND RIGHTS FOR NATURE: HOW DO THEY INTERSECT?

Facilitators: Prof Lee Godden and Dr Kathleen Birrell

This discussion session expanded on the points raised by Virginia Marshall at the start of the workshop, to explore the connections between cultural values and rights for nature, with particular emphasis on the perspective of indigenous people. Internationally, non-Western cultural values have been a key driver in the creation of legal rights for rivers, but it is unclear whether this represents a future of legal pluralism that respects non-Western legal frameworks, or whether it is an appropriation of those frameworks within a Western paradigm.

- In Australia, there are rights to custodianship. Is this a better model than legal personality for nature?
- There are real risks of cultural appropriation of emergent rights for nature. Connecting rights of nature and cultural rights potentially diminishes both.
- When cultural rights and rights for nature are interconnected, which has priority? What happens when there is a conflict between cultural rights and environmental rights (for example when cultural values lead to environmental impacts)?
- Rights for rivers may constrain (anthropomorphise) the ways in which rivers might be conceptualised. Founded upon the inherent dignity of the human, human rights can surely only be conceived in terms of their capacity to protect human interests (ie, right to clean water, air, etc). If so, perhaps they would be better asserted in those terms. It seems difficult to conceive of rights asserted for the river's own sake, in the absence of cultural (human) associations.
- There are risks associated with the imposition of non-Indigenous ontological and epistemological frameworks in the designation/articulation of 'rights' for rivers, or nature more broadly. In the privileging of 'nature', care must be taken in how this is conceptualised.
- Rights for rivers should perhaps be distinguished from cultural rights for Indigenous communities as custodians of land and waters. If, however, these rights are asserted as a means of protecting cultural rights, they should be asserted not as rights for rivers, but as distinct cultural rights.
- The Whanganui River right is a cultural right claimed as a part of the Treaty of Waitangi negotiations, rather than an environmental right, and these should not be conflated. The right claimed should, perhaps, be on the basis of rightful custodianship.

- But who speaks for nature? Potential conflict between cultural custodians, rights to speak/enter/protocols.
- Also, cultural appropriation is a risk associated with emergent environmental rights, where those rights might be claimed on the basis of cultural value, but not on behalf of/by cultural custodians themselves.
- What are Western relationships to nature? We need to avoid the suggestion that all Western values are against an integrated ecological approach. Rights of Nature need to be inclusive, reflecting the relationship between people and nature. We all value ecosystems.
- There is room for skepticism, however: what are we protecting? What is natural? Does the natural exclude the human, or are we part of the natural system?
- How can we resolve long standing contradictions between development and new ecological thinking?
- What role do cultural values play when granting rights of nature? Do natural systems need to have a level of cultural significance to receive legal rights?
- Rights for nature result in new forms of authority, which have the capacity to both empower and disempower different groups of people. For example, Queensland's former Wild Rivers protection legislation emphasized the pristine nature of the rivers, which was seen by some people as a way of further excluding and disempowering traditional owners.
- How does a rights framework shift authority over decision-making? How do these rights interact with existing shared management arrangements?
- Is legal personality countering or reinforcing the commodification of nature? Is granting legal personality to nature a way of embedding nature within an anthropocentric paradigm?

C. LESSONS FOR ANIMAL ADVOCACY FROM LEGAL RIGHTS FOR RIVERS

Facilitator: Dr Joanna Kyriakakis

The discussion in this break out group began with a focus on the specific legal strategy in animal advocacy circles in recent years to seek legal personality for certain specific individual animals of a high or relatively high cognitive order in the context of pursuing a claim of habeas corpus on their behalves (a common law claim of right to demand your jailor legally justify your imprisonment). This strategy – which is being pursued in a few countries but most notably by the Non-Human Right Project in the US – aims to change the legal status of at least some animals (from property to persons) through pursuing appropriate legal rights claims.

The group noted in respect of that specific legal strategy that the changing legal status of rivers in some common law jurisdictions was an important and pertinent precedent, as it:

- challenges US jurisprudence in the above litigations that adopt a social contract theory of legal personality (legal rights are correlatives of being able to assume legal duties);
- challenges an anthropocentric notion of legal personality and of legal right claim holders;

- demonstrates that a guardianship model can be appropriate and meaningful way to facilitate rights claims/personhood by vulnerable entities that are unable to communicate their interests directly;
- demonstrates that the change of legal status for at least some animals for some rights can legitimately flow from the evolution of law via the judiciary (see Indian and Colombian river examples);
- demonstrates that any such finding may need to be accompanied by structural reform directed toward implementation.

The discussion then moved to broader and more abstract questions around the appropriateness of a legal rights and personhood model of reform in the area of animal law and the extent to which comparisons with the legal status of rivers model was instructive/ appropriate. This discussion included:

- The value of earth jurisprudence to the question of the social condition of animals is meaningful as it shifts the focus away from sentience and cognition – to the very right to be. This may have value in the animal advocacy space;
- It is not clear what the appropriate comparator is for animals in that there are very different questions that arise when we consider a specific individual animal's interests versus (for example) the interests of species of animals and (moreover) the different interests of different animal species based on either their relationship to humans (domesticated versus wild versus liminal) and their inherent characteristics (high cognition or sentience versus low cognition or sentience) raise unique questions – again complicating the appropriateness of comparisons to the river precedents versus (say) the marginal human comparison (to infants or children) or perhaps even something else entirely (for example comparison to human slaves);
- There may also be very different types of relationships between animals or species thereof, to indigenous cultural values – which again is a potential point of differentiation with the rivers precedents, each of which pivoted to some degree on indigenous relationships with the rivers in questions and the goal of legal recognition of indigenous world views (particularly the NZ example);
- Perhaps we should be wary of a rights system in general as this can be reductive and may fail to encompass important relational factors that law should engage in; likewise perhaps it is not rights of, but obligations to, which should be the focus of legal developments.

Finally there was some discussion about being outcome oriented in terms of legal reform in the area of animal advocacy and law; while also noting that such outcomes may not only be to achieve certain practical and tangible protections for animal interests but also be expressive in nature. By the latter what was meant was the symbology or normative messaging that legal categories involve. As mentioned by a speaker regarding the importance of personhood of rivers versus other regulatory models that may otherwise have the same practical implications – it was noted that the

expressive or didactic function of legal status – may in itself be important. This idea resonated with some in this break out group in respect of the animal advocacy movement.

D. THE IMPORTANCE OF SCALE

Facilitator: Laura Ballantyne-Brodie

Discussion in this group focused on two main questions. Firstly, the group considered: how important are the local, place based values for the success of the rights of nature frameworks?

- Many of the successful examples of Rights of Nature reflect Indigenous struggles for ownership since colonialism (NZ) or examples of ecocide (Colombia). Because of this starting point for comparative cases it focuses on the question of whether Rights of Nature is suitable/ useful in the case of non-indigenous people or ecocide.
- The consideration of the above led to questioning: If it is largely to navigate ownership claims, and create an approximation of indigenous worldviews in Western law, what about examining the Western law canon to recognise its' tenets that relate to an ecological approach (Colombian example may be a good starting point for this)?
- Recognition that Rights of Nature claims largely value a system of governance based on a "bottom up approach".
- that sites of significant cultural value may best lend to Rights of Nature claims. Otherwise maybe we are inventing a complex and multilayered governance structure that is expensive to administer.
- In order to pursue an inclusive approach to Rights of Nature it is important to recognise both Indigenous and Western worldviews. Resolving longstanding contradictions may not be easy. Finding a legal solution that recognises people's claims to a safe ecosystem should be the priority.
- Further discussion and debate is necessary to develop thinking around legal/normative constructs that allow qualitative value (not just) quantitative value (aka reductionist law that reduces claims to quantified dollar value), or under the EPBC Act.

Secondly, and more briefly, the group then considered: how can we connect local values into national and international laws for environmental protection?

- Moving from a local to (regional) to international understanding of law should be a priority given that international principles may be the most effective manner of recognising Rights of Nature in national law.
- Building on the existing UN international platform Harmony with Nature that recognises and celebrates Rights of Nature, and other non-anthropocentric mechanisms to protect the environment could be an important way to connect local and international work to safeguard ecological heritage.

E. THE INTERACTION OF RIVER RIGHTS AND OTHER PEOPLES' RIGHTS

Facilitator: Dr Erin O'Donnell

One of the challenges for the creation of legal rights for rivers is how the new rights for the river will interact with the legal rights of other people, including rights to water and land. This group discussion raised the following concerns:

- Where do the legal rights for the river reside? In the example of the Whanganui River in New Zealand, the river bed and the catchment appears to have been separated from the rights to water, as well as the existing private land in the catchment. So what is a river without rights to its own water? How does this take into account the interaction between surface water and groundwater?
- Does the river have the right to improve its health, or do the new legal rights only protect existing conditions? All three international examples (India, New Zealand and Colombia) are rivers that are already heavily modified by human activities. If the new legal rights only give the river the ability to protest against future impacts, then this legal mechanism will be significantly less powerful for these rivers.
- Can the river recover rights to water from existing water users to improve its own health?
- What is the relationship between the 'voice' for the river, and the existing river management agencies? If the organization responsible for representing the river is not sufficiently independent, it may face the problem of regulatory capture, which would weaken its ability to protect the river.
- Do the legal rights for rivers include access to water infrastructure? Can the rivers now request payment where they provide services to other users? If this occurred, there was a concern that other water users may rapidly come to resent the river for imposing additional fees and charges on them.
- When the river and its catchment is a legal person, what would this mean for interbasin transfer of water? For example, in the Whanganui River, over 80% of the river flow is transferred to the Waikato River via the Tongariro Power scheme. How does this kind of bulk transfer of water outside the boundaries of the legal person affect the rights of the river?

VII. WORKSHOP OUTCOMES

This workshop aimed to bring together a diverse range of academics, policy makers and practitioners from the government, NGO and private sectors, to share knowledge, participate in frank discussion and identify emerging research issues in the environmental water law and policy space. Each participant was given the opportunity to complete a short survey:

1) What part of today's workshop did you find most valuable?
2) Based on our discussions today, what do you think is the biggest opportunity, or biggest

challenge, for the legal status of nature?

Twenty-three participants provided feedback on the workshop. Feedback was provided anonymously in written form.

A. VALUED OUTCOMES

The participants highly valued the range of speakers, the quality of the presentations, and the international examples:

- *All the presentations were really interesting.*
- *I found all of today's workshop valuable. The outlines of recent developments were really helpful in facilitating the later group's discussions, i.e. provided useful context.*
- *To be honest, I loved the whole thing. It was all valuable!*
- *Expert panels.*
- *The integration of economics, legal, environmental and political science frameworks to consider environmental protection broadly, such as transactional costs, questions of authority and empowerment, and legislative frameworks and to analyse the value of legal personhood for nature.*
- *People involved in campaigns who are enthusiastic about their work.*
- *The presentations provided a lot of insight about what's happening in this space, both locally and internationally.*
- *The presentations were all extremely enlightening. Being provided with the snapshot of developments in various specific contexts was extremely helpful. All the speakers did a great job summarising and encapsulating complex legal developments. Thanks for a great afternoon!*
- *Diverse perspectives.*
- *The range of panelists and topics that were covered. For me, working in this space, but not from a legal background, it has been incredibly valuable to me to get another perspective. Communication and discussion across sectors with the river basin management industry is crucial.*
- *I enjoyed the discussion by the speakers on international developments in the legal status of rivers. As a student, it was interesting to see how each country tackles legal personhood for rivers. It will be of great assistance towards my research.*
- *International developments in the legal status of rivers.*
- *Discussion of Colombia river case. Links between human rights models and environmental management/governance.*
- *The presentations!*
- *Succinct but detailed overview of developments in this emerging area of law.*
- *That this 'revolution' is happening globally, especially New Zealand leading the way and*

setting a strong template and legal framework for future action.

- *Range of speakers on a common theme. Hearing about similar actions and movements in different parts of the world.*
- *Conferring legal rights upon the rivers and consequences thereof, especially courts' attitude towards the legal personality of rivers.*
- *Learning more about legal rights for nature in general and finding which avenues are available to give nature legal rights based on the international cases discussed.*

Participants found Dr Virginia Marshall's framing of the workshop from the perspective of Australia's First Nations extremely valuable:

- *Virginia's words at the start [were] an important framing for the discussions that carried through the workshop.*

Participants also enjoyed the extended question and answer sessions, and the interactive discussion sessions:

- *The opportunity to speak to other experts and discuss ideas in a more intimate space than e.g. a conference*
- *Facilitated discussion allowed for in depth (relatively) exploration and leading of new info/questions people had thought of during panels.*
- *Having the opportunity to participate in the discussion group, especially in relation to standing rights that can emerge from changing legal status*
- *The panels. They have diverse views on the topic discussed. The discussion session is also great but should've gone on longer.*
- *Interactive groups*
- *The Q&A session prompted really good thought provoking discussion. I think it was well placed in the workshop, a lot of people had time to think of interesting questions.*
- *Discussion based on presentations.*
- *The group discussion, as it allowed us to throw ideas around. Hearing 5 different presentations I think was great - it provided a lot of context for the discussion*.

Finally, participants valued the opportunity to engage in informal networking and discussions during and after the workshop:

- *Conversations 'on the side', over coffee and in small groups*.

B. FUTURE CHALLENGES AND OPPORTUNITIES

The aims of this workshop were to generate wider awareness of and engagement with legal rights for nature. In particular, this workshop aimed to provide input to the broader AELA project *Exploring*

the Legal Status of Nature.

Participants were asked to identify the greatest challenge or opportunity for the legal status of nature. Their answers included a mix of both challenges and opportunities, across five main themes.

1. INTERSECTION OF WESTERN AND INDIGENOUS LEGAL FRAMEWORKS

Participants acknowledged the strong influence of non-Western and indigenous values on the creation of legal rights for rivers, but could see that there is the potential for conflict between western legal systems and indigenous laws:

- *…negotiating the encounter between earth/river rights (an essentially Western thus colonialist concept) and Indigenous law: can and should this colonized law concept reflect, accommodate, respect Indigenous laws?*
- *…how do we appropriately balance the inherent rights of nature with indigenous perspectives and their legal understandings of environment resources, while operating in a western legal system?*
- *Tensions between values of government and indigenous groups and animals and other community 'stakeholders' provides a big barrier.*
- *… in Australia, where there is conflict of interests between Indigenous and non-Indigenous people. It makes it more difficult to find the balance between the human-nature interaction.*
- *Differing cultural values/world views*.

2. LEGAL CHANGES AND CONSEQUENCES OF RIGHTS FOR NATURE

Although the concept of legal rights for nature is no longer new, successful implementation remains rare. Many participants were concerned about the legal challenges of creating legal rights and legal personality for nature:

- *The biggest challenge will be to understand the legal consequences of creating this new legal person or the process to make it work*
- *For me, the most interesting question is: what will be the practical implications of this new model or framework for legal thinking? And how does this interplay with the experience and implications in changing the foundational legal status of specific rivers?*
- *Biggest challenge: maybe it would take time to advocate/change the law.*
- *Regulation and appropriate definition.*
- *Biggest challenge: what are the consequences of legal personhood? For instance, does it mean we can sue rivers? Biggest opportunity: legal standing.*
- *Further developing and defining the legal and administrative machinery that will facilitate models of legal subjectivity. Both an opportunity and a challenge. This machinery will be*

crucial in resolving tensions and contests over interests and resources.

- *In Victoria, our constrained legal/constitutional arrangements. We don't have any 'hooks' on which to readily build these recognitions.*
- *The greatest opportunity is changing people's minds regarding nature and rivers in particular as living, breathing, spiritual beings and the opportunity to integrate with Aboriginal ontology that holds all of nature and all living being as KIN - pan-continentally as per the four nations who have compiled their constitutions in the sovereign union. Placing our relationships with the living world as the foundation of our own constitution.*
- *Nature is commonly recognised as the part and parcel of the environment. To protect the environment, nature should be given legal status. So, this common recognition is the biggest opportunity for the legal status of nature.*

3. VALUES, ATTITUDES AND POLITICS

Granting nature legal rights that establish it as a legal equal to humans is a profound cultural and legal shift in terms of how we relate to, and interact with, the environment. Participants identified both opportunities and challenges arising from these shifts in values and attitudes, and how this would affect political realities.

- *Biggest challenge [is] government, which makes the law!*
- *Risk that it is seen as symbolic, not substantial.*
- *The opportunity to shift the values underpinning nature from property to personhood. Currently, the western paradigm is heavily weighted toward nature as a resource or a commodity. Personhood represents the opportunity for an ontological shift in how we relate to nature.*
- *If we do continue down the path of legal personhood for nature, how do we redeem the legal personality framework/rights from its use against nature by corporations?*
- *Opportunity: to encourage people/societies/governments to look at the environment as something other than a commodity*
- *Biggest opportunity: that people (courts, academics, activists, etc) start talking about it.*
- *Greater community discussion.*
- *Opportunity: empowering and thus compelling respect for natural objects and entities [leading to] potential to pose a real contest to [the] capitalist world system.*
- *Politics, implementation, enforcement.*
- *Opportunity: to try and halt environmental destruction and to articulate shared values. Challenge: agreeing shared values, implementing the legal rights of nature (i.e. political will and resources)*
- *Legal rights of nature are often ignored by the people. So, people's attitude towards legal rights of nature may be the biggest challenge.*

4. COMPETING INTERESTS AND RIGHTS

Some participants identified the capacity for the legal rights of nature to compete with existing legal rights of humans:

- *The competing interests of all entities involved.*
- *Balancing nature's legal rights with existing rights to aspects of nature as a commodity (i.e. water rights).*

5. DEFINING THE INTERESTS OF THE RIVER

An enduring challenge for legal rights of nature is the capacity to define the interests of the natural object, particularly when it is an inanimate object like a river:

- *[The challenge] would be to encapsulate what interests nature actually has, and how we go about defining nature's interests and speaking on behalf of it.*
- *[The opportunity is] to consider a systems based approach to environmental rights that takes into account the integrated nature of ecosystems on our planet.*

VIII. SPEAKERS AND FACILITATORS

We are grateful to have had such a diverse range speakers and facilitators as part of this workshop. They are listed below in alphabetical order.

Laura Ballantyne-Brodie is an Australian environmental and climate change lawyer, and Continental Facilitator (Australia and Pacific) for the United Nations Harmony with Nature program. Laura is an advisor to the Program Director, working to develop programs and research that promotes Earth Jurisprudence and the Rights of Nature internationally. Admitted to practice to the Supreme Court of Victoria and High Court of Australia in 2010, Laura commenced legal practice at Baker & McKenzie (Melbourne and Sydney) as an Associate in the climate change and environmental markets practice group. Based in New York from 2014, Laura lectured at Yale University and New York University. Laura holds a Bachelor of Arts, a Bachelor of Law with Honors from Monash University, and a Masters Degree in Bioethics and Public Policy. Laura is a visiting research fellow at the American University of Sovereign Nations in Arizona. For more on Laura's work, see http://www.harmonywithnatureun.org/rightsofnature.html

Kathleen Birrell is a McKenzie Postdoctoral Fellow at Melbourne Law School. Her research is strongly interdisciplinary, encompassing property law, native title, environmental and climate change law, human rights law and intersections between Indigenous peoples and the law, as well as critical legal theory, philosophy of law, sociolegal studies and law and literature. Her postdoctoral project investigates intersections between the global imperatives of international climate change initiatives and associated legal frameworks and their domestic implementation, international human

rights, and the narratives of Indigenous communities.

Lisa Caripis is a former researcher for the Centre for Resources, Energy and Environmental Law. In 2016 she volunteered with Tierra Digna, the organisation that brought the Rio Atrato legal action in Colombia. Lisa currently works for Transparency International, where she is the research and policy coordinator for their global mining programme.

Lee Godden is a Professor at the University of Melbourne Law School, and the Director, Centre for Resources, Energy and Environmental Law. Professor Godden's research interests include environmental law, natural resources law (especially water) property law and indigenous peoples' land rights. The impact of her work extends beyond Australia with comparative research on environmental law and sustainability, property law and resource trading regimes, water law resources and Indigenous land rights issues, in countries as diverse as Canada, New Zealand, UK, South Africa, and the Pacific. Her contribution to environmental conservation and social justice has been recognised by invited membership of leading international and national environmental, and natural resource organisations. Her work continues with engagement in public interest issues such as the impact of climate change on environmental law and water law and economic development for indigenous communities.

Joanna Kyriakakis is a Senior Lecturer at the Monash Law Faculty and the Deputy Director of the Castan Centre for Human Rights Law. Joanna teaches and researches on issues related to corporate accountability, human rights, international criminal justice, torts, and animal law. Prior to entering academia, Joanna practice law in South Australia, including within the South Australian Crown Solicitor's Office and in private and community legal settings.

Bruce Lindsay is a lawyer at Environmental Justice Australia, where he has worked, since 2013, on various law reform projects and cases, especially relating to water, biodiversity, planning and Aboriginal rights. He is also currently teaching environmental law at the Australian Catholic University's Thomas More Law School.

Elizabeth Macpherson is a Law Lecturer at the University of Canterbury. She researches natural resources, environmental and indigenous law, in Australasian and Latin American contexts. Elizabeth completed her PhD on Indigenous Water Rights at the University of Melbourne in 2016, under the Human Rights Scholarship, and worked as a teaching and research fellow at the Centre for Resources, Energy and Environmental Law. She has practiced indigenous rights and natural resources law in New Zealand, Australia and Chile, including representing Māori claimants in the Waitangi Tribunal and as Principal Legal Adviser, Aboriginal Affairs for the Victorian Government. In 2016 she was the Assistant Director, Aboriginal Affairs Policy, where she advised on the proposal for a Treaty with Aboriginal Victorians.

Michelle Maloney is the convenor and co-founder of the Australian Earth Laws Alliance. She has 25 years' experience designing and managing climate change, sustainability and environmental justice

projects in Australia, the United Kingdom and the USA, and this includes ten years working with indigenous colleagues in Central Queensland on a range of community development, sustainability and cultural heritage projects. Michelle met and fell in love with Earth jurisprudence and Wild Law in 2009 and since 2011 has been working to promote the understanding and practical implementation of Earth centred law, governance and ethics in Australia through her work with AELA. Michelle is passionate about researching and disseminating information about how we can create legal and governance structures to help us reduce consumption and live within our ecological limits. To this end, she is currently working with AELA's Scientific Advisory Group to research new models for Earth centred, bio-regional governance, as part of AELA's 'GreenPrints' project. Michelle is also passionate about promoting new ways of thinking about environmental governance and the rights of nature. She has recently launched a new research and writing project for AELA called 'Exploring the Legal Status of Nature', and has just completed editing a book with Dr Nicole Rogers of the Southern Cross University, which emerged from the Wild Law Judgements Project. This project involved more than 20 authors rewriting common law judgements from an Earth centred, rather than a human-centred perspective, and the book will be available in mid 2017.

Virginia Marshall has a PhD (Macquarie University) and Master of Laws (ANU) and was admitted to the NSW Supreme Court and the High Court in 2003. She has worked for NSW Legal Aid as a criminal lawyer, worked in several government positions, and in 2010-11 was a Senior Legal Officer with the Australian Law Reform Commission. Dr Marshall established Triple BL Legal in 2013, as Principal Solicitor/Director. Dr Marshall was recently awarded the National Stanner Prize from the Australian Institute of Aboriginal and Torres Strait Islander Studies (AIATSIS) for her thesis on Aboriginal water rights.

Erin O'Donnell is an environmental water law and policy specialist. She has worked in environmental planning and management and water governance since 2002, in both the private and public sectors. Erin's research explores the role of the new legal institutions and organizations in delivering efficient, effective and legitimate environmental water management in the context of water markets, and is informed by comparative analysis across Australia, New Zealand, the USA and Chile. Erin's recently completed PhD examines how environmental water organizations construct the aquatic environment as a legal person, with responsibility to hold and manage water rights on behalf of the environment. Her research findings are broadly applicable to the emerging field of legal rights for nature, as well as corporate governance for environmental outcomes, and the use of markets as a form of regulation in other environmental and resource management areas.

Christine Parker is a Professor at the University of Melbourne Law School. She has written, researched and consulted widely on how and why business comply with legal, social and environmental responsibilities, what difference regulatory enforcement makes and how businesses can work with lawyers and compliance professionals to build internal corporate social responsibility systems that work. Christine's current research focuses on the politics, ethics and regulation of food. She is working on an ARC Discovery Project grant with Dr Gyorgy Scrinis and Dr Rachel Carey (in the

Faculty of Veterinary and Agrcultural Science) to examine the possibilities for food labeling to increase democratic engagement with and governance of the food system using free range and higher animal welfare labeling of eggs, chicken meat and pork products as a case study. Christine has a deep interest in both conceptualizing and communicating how law and regulation can help individuals and especially businesses live more sustainably well in our ecological systems.

Julia Talbot-Jones has just completed a PhD in economics at the Crawford School of Public Policy, at the Australian National University. She has an interest in how social arrangements or structures, what economists call institutions, solve environmental and natural resource problems. Her PhD research examined how granting legal rights to public goods and common pool resources may affect the use of resources, particularly water systems. A former NZ-US Fulbright scholar, her work bridges economics, ecology, and resource management. Julia is the Managing Editor of UNESCO Global Water Forum.

Trent Wallis is the co- Executive Officer of the Victorian Environmental Water Holder. Trent has pursued a career in natural resource management, which he commenced in 1997 in Mildura with the then Victorian Department of Natural Resources and Environment. In 2001 he took a position with the Mallee Catchment Management Authority (CMA) as the River and Wetland Health Manager, focussed on protection of the Murray River and its floodplain. In 2008 Trent moved to Geelong where he has worked as Executive Manager Integrated Catchment and Strategy at the Corangamite CMA, overseeing delivery of major projects to protect and restore biodiversity and the health of rivers, wetlands and estuaries within the Barwon, Corangamite and Otway Coast regions of South West Victoria. Prior to his current role, Trent took on a 15 month secondment with the Department of Environment Land Water and Planning (DELWP) to assist with water policy development and roll out of a new trial framework to demonstrate and communicate progress in delivering waterway health outcomes.