

Human right *to* a healthy environment and 'Rights *of* Nature'

Dr Michelle Maloney
Australian Earth Laws Alliance (AELA)

www.earthlaws.org.au

www.rightsofnature.org.au



Human right to a healthy environment

Enshrined in law in 177+ nations
around the world



Legal recognition of the right to a healthy environment

- ▶ As of 2012, 177 of the world's 193 UN member nations recognize this right, either through their
 - Constitutions
 - Environmental legislation
 - Court decisions,
 - Or ratification of an international agreement
- ▶ The only remaining holdouts are the U.S., Canada, Japan, **Australia**, New Zealand, China, Oman, Afghanistan, Kuwait, Brunei Darussalam, Lebanon, Laos, Myanmar, North Korea, Malaysia, and Cambodia.

Right to a healthy environment

- ▶ The rapid spread of this right is remarkable, given that its first formal articulation came just 40 years ago in the Stockholm Declaration that emerged from the first global earth summit.
- ▶ Today, citizens in 108 nations – from Argentina to Zambia – enjoy a *constitutionally protected right to a healthy environment*.
- ▶ In more than 100 countries, *the right is explicitly recognized in environmental legislation*.
- ▶ As well, 120 countries – in Europe, Latin America, Asia, and Africa – *have signed legally binding human rights treaties that include the right to a healthy environment*.
- ▶ (Boyd, Canadian Law, online)

What “rights” do you have, when you have environmental rights?

- ▶ Can include:
 - Clean air
 - Clean water to drink, for food
 - Food, fertile soil
 - Peace and privacy
 - The collective rights of indigenous peoples to their ancestral lands and resources

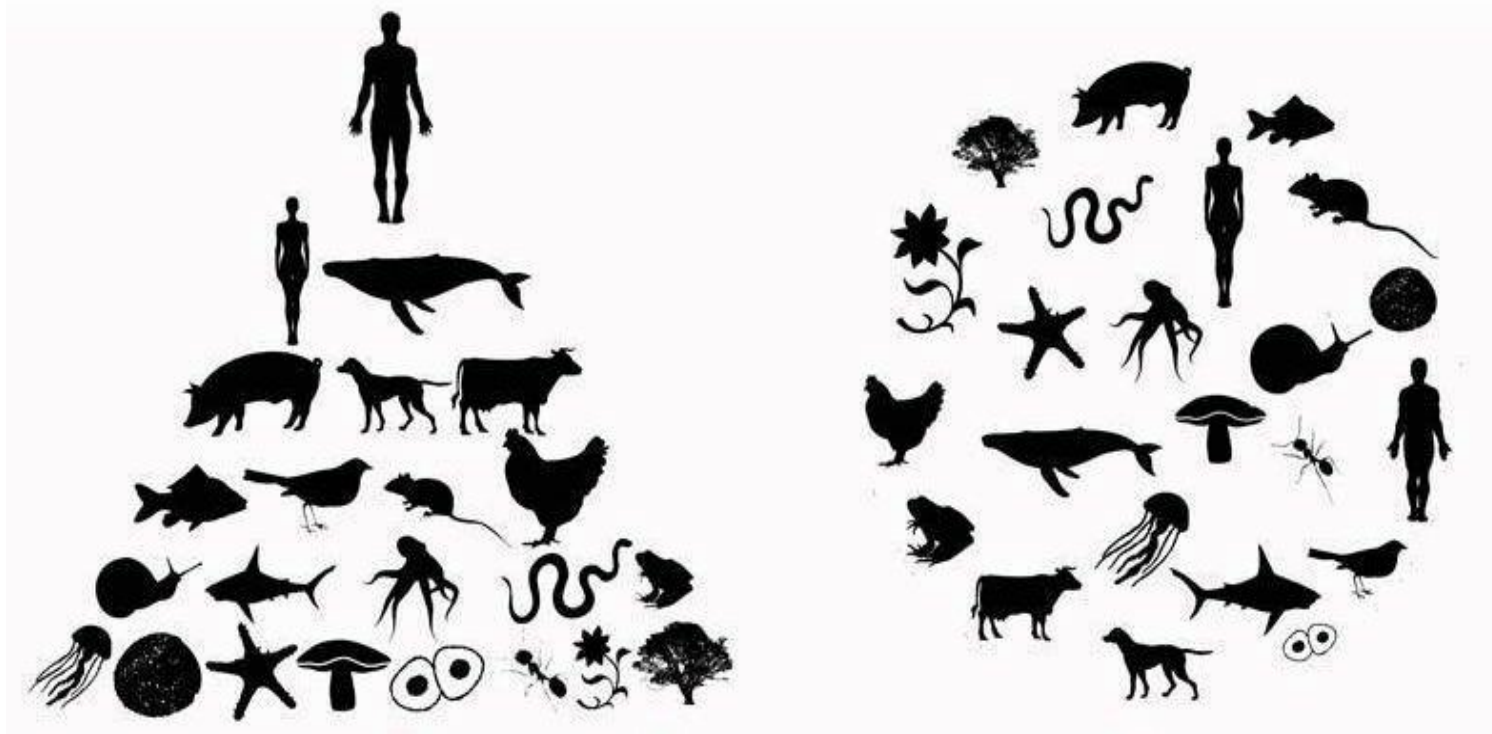
Rights *of* Nature



Rights of nature laws

- ▶ **2002- present - USA** – more than 30 local laws passed by communities, asserting the rights of local people and natural communities
- ▶ **2008 - Ecuador** – 2008 Constitution – rights of nature
- ▶ **2010 - Bolivia** – 2010 Act for the Rights of Mother Earth
 - Universal Declaration for the Rights of Mother Earth (30,000 people)
- ▶ **Since 2016 - Europe** – pushing for an EU Directive for the Rights of Nature
- ▶ **2016 - Green Party of Scotland; Green Party of England and Wales** – adopted Rights of nature policies
- ▶ **2017 - New Zealand** – Whanganui River, Urewera Forest, Mt Taranaki – legal personhood
- ▶ **2017 - India** – courts recognised two rivers have legal personhood (a second case said all of the ecosystems feeding the rivers – glaciers, mountains etc have legal rights)
- ▶ **2018 - Atrato River in Columbia** – 2017 legal personhood
- ▶ **Scotland** – lawyers looking at legal rights for Ben Nevis mountain
- ▶ **2018 - Mexico City** – new laws under development at present: rights of nature
- ▶ **2018** – process has begun to explore ‘Rights of the Pacific Ocean’
- ▶ **2019** – Uganda – Rights of Nature provisions in new EP Act

Earth jurisprudence- calls for us to shift all our **governance systems** to be ecocentric, and to nurture the Earth community

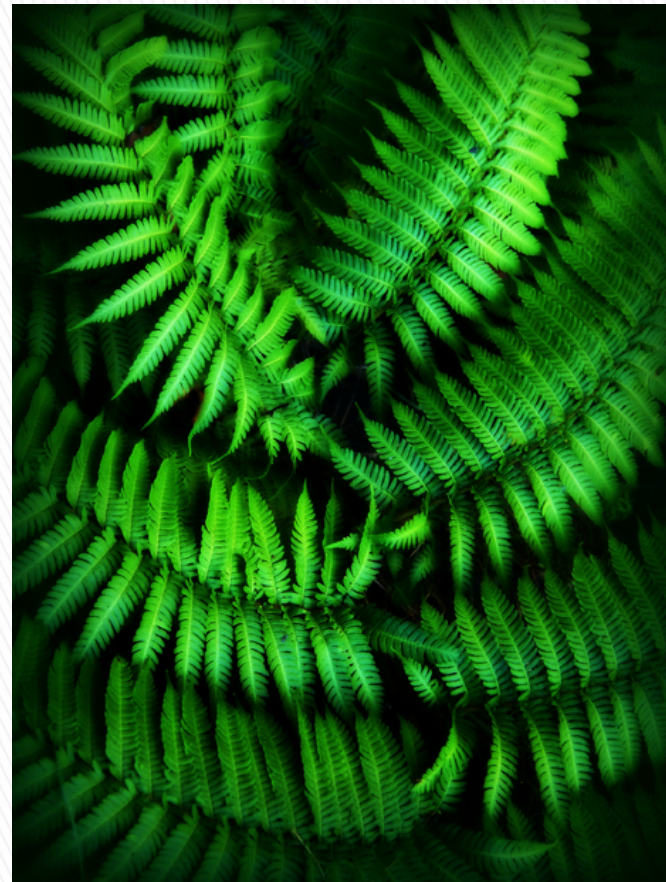


Human centred

Earth centred

Rights of Nature v “human rights”

- ▶ Chris Stone “Should Trees Have Standing” (1972)
- ▶ Berry: Any future governance system must recognise the rights of the non-human world to exist, thrive, evolve and regenerate
- ▶ “Rights exist where life and life supporting systems exist”
- ▶ **‘bee rights’, ‘river rights’**
- ▶ ***Nature rights are NOT human rights***
- ▶ Earth community = relationships
- ▶ ***We are a community of subjects, not a collection of objects***



Rights of nature – two streams emerging around the world

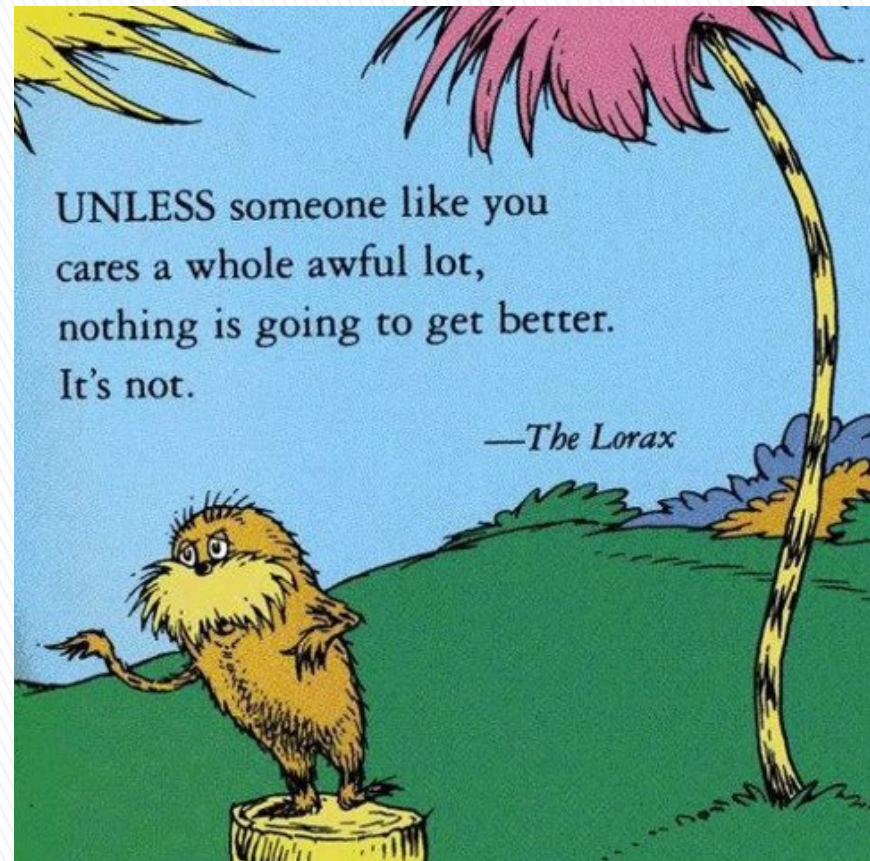
- ▶ “blanket” positive rights, across a jurisdiction
 - USA local laws
 - Ecuador
 - Bolivia
 - Uganda
- ▶ “legal personhood” for ecosystems
 - New Zealand – river, forest, mountain
 - India – rivers, mountains, glaciers
 - Colombia – river, bioregion
 - Bangladesh

‘Balancing’ rights of nature

- ▶ “Recognizing Rights of Nature does not put an end to human activities, rather it places them in the context of a healthy relationship where our actions do not threaten the balance of the system upon which we depend. Further, these laws do not stop all development, they halt only those uses of land that interfere with the very existence and vitality of the ecosystems which depend upon them.”
 - Mari Margil, “Building an International Rights of Nature Movement” in M.Maloney and P.Burdon (eds) *Wild Law in Practice* (Routledge, 2014)

How do you speak for nature?

- Relationships – rights / duties
- ‘Standing’
- Concept of Guardian at law
- ‘Constellations’
- Remedies?
 - Injunction
 - Compensation
 - Restoration



UNLESS someone like you
cares a whole awful lot,
nothing is going to get better.
It's not.

—*The Lorax*

“I speak for the trees”
The Lorax – Dr Seuss

Standing v Guardianship

- ▶ What is standing?
- ▶ What is 'guardianship'?
 - Is it just the right to speak for the voiceless, or something else?
 - How is it emerging in the rights of nature and legal personhood space?

Expansion of 'rights'

- ▶ Every time we expand 'rights' there is resistance
- ▶ Ending slavery – world view view from *slaves as property*, to slaves as human
- ▶ Votes for women (South Australia, 1894 – the rest of Australia, early 20th Century; USA 1920s)



Problems with rights?

- ▶ Contentious – how do you implement them?
How do you ‘weigh up’ nature’s rights?
- ▶ Criticisms
 - Using legal positivism to fight legal positivism
 - (“the same thinking that got us into this mess in the first place”)
 - “Australia doesn’t have a culture of civil rights, how can we think about creating rights for nature?”
- ▶ Rights vs duties/obligations/ethics
 - Many cultures have duties and obligations, not ‘rights’ – is this a better starting point?

**What's possible in
Australian law?**



How do we change the law in Australia?

- ▶ Constitutional reform is rare in Australia
- ▶ Chances of ‘top down’ law reform minimal in current political climate
- ▶ ‘bottom up’?

Communities exploring potential of 'rights of nature'

- ▶ Blue Mountains (NSW)
- ▶ Kunanyi (Mt. Wellington/Tasmania)
- ▶ The Kimberley, (WA)
- ▶ Margaret River (WA)
- ▶ East Gippsland (Victoria)
- ▶ Sunshine Coast (Queensland)





In Australia – Margaret River communities rally for river rights (Western Australia)



[Sign the petition](#)

Recognise the legal rights of the Great Barrier Reef

#RightsoftheReef

Recognise the Legal Rights of the Great Barrier Reef

Sign the petition to transform Australia's legal system

Australia's legal system has failed to protect the Great Barrier Reef.

Despite extensive efforts by First Nations Peoples, scientists and environmental protection groups, **our current laws have not stopped the key known threats to our Reef – they have not stopped runaway climate change, have not stopped new**

[Donate!](#)

[Become an AELA Member](#)

Sign the Petition!

First Name *

Last Name *

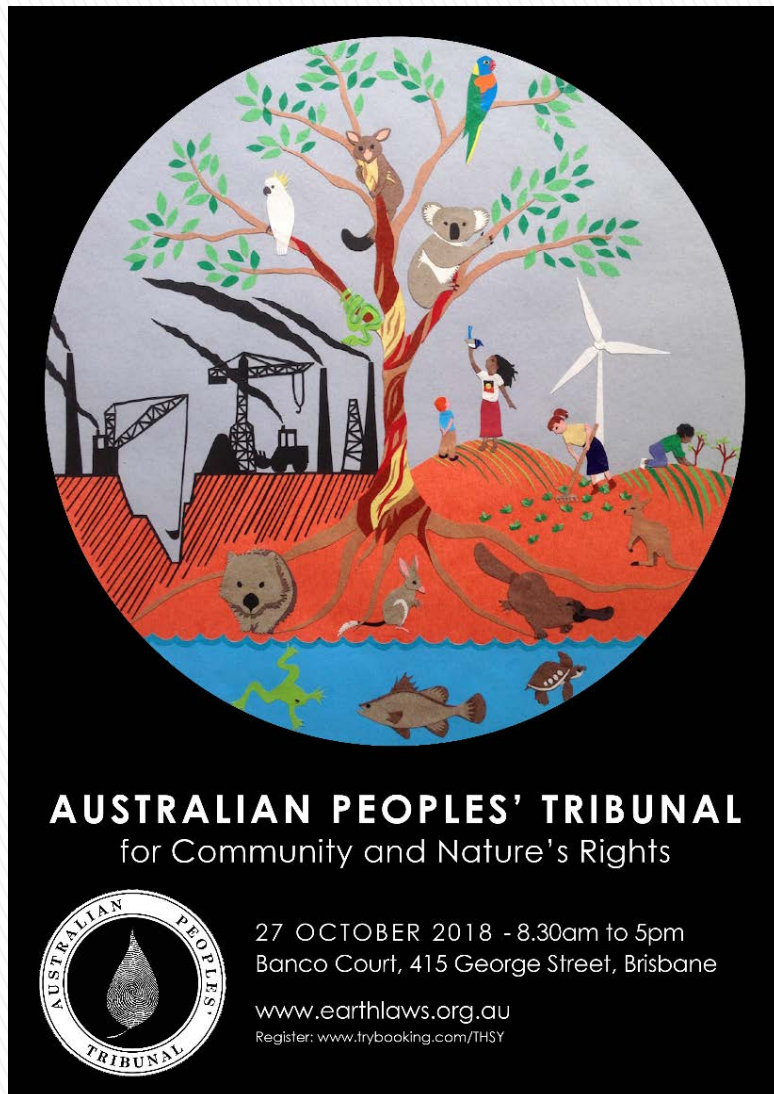
Recognise the legal rights of the Great Barrier Reef

Sign the petition to transform Australia's legal system

Join the movement and transform the system – [sign our petition](#) to create new laws that acknowledge the Reef's rights to exist, thrive, and evolve.

- [Sign the Petition](#)
- [Read the Draft Laws & FAQs](#)
- [Read about the Rights of the Reef Campaign](#)
- [Connect your organisation to the campaign](#)
- [Promote the GBR petition – share our awesome](#)

Australian Peoples Tribunal for Community and Nature's Rights



- ▶ New, permanent 'civil society institution'
- ▶ Educative + Alternative voice for justice
- ▶ 2018 Citizen's Inquiry into Industrial Scale Agriculture and the Rights of Nature
- ▶ 2019 Citizens Inquiry into the Health of the Darling River
- ▶ 2020 Tribunal tba

Peoples' Tribunal



Ocean Rights – the Pacific

- ▶ Meeting last year in Auckland
- ▶ People from Australia, NZ, Cook Islands, Samoa, Noumea, Fiji
- ▶ Could a regional convention be created asserting the rights of the Pacific Ocean?
- ▶ What's possible?



Should Trees Have Standing? Christopher Stone, 1972

‘So, what would a radically different law-driven consciousness look like? ... One in which Nature had rights ... Yes, rivers, lakes ... trees ... animals ... How would such a posture in law affect a community's view of itself?’



THIS IS A COMMUNITY TOO.