Chapter 14

Imagining Ecocentric Bioregional Law in Australia

Michelle Maloney

Commentary

This judgment has been written in response to the idea that the current legal system in Australia, and the current economic and political system it supports, are not fit for purpose in the 21st century. The legal system inherited from the British Empire in 1788, which developed into Australian law over the past 250 years, is failing to look after the environment (failing to Care for Country[1]) and is failing to look after all our people (failing to Care for Kin/Citizens). The challenges we face, including climate breakdown, biodiversity loss, environmental degradation, the violent legacy of colonisation, ongoing injustices to First Peoples, and the growing gap between rich and poor people in our nation, call for profound reform in Australia's governance.

The judgment explores an alternative structure for the governance of this precious continent and its peoples. The alternative structure places Indigenous sovereignty, governance and law at the centre of the new legal system. It imagines that Indigenous and non-Indigenous people are in deep partnership together, in order to support all life on the continent and build a stable, successful culture; all people privilege Caring for Country over the old mantra of economic growth.

The imaginary judgment is inspired by the governance system of the First Peoples of the continent now known as Australia, as articulated by

Please note that within this imagined scenario, as a non-Indigenous Australian I have no right to speak for any place or Country, and I have no right to discuss any specific elements of First Peoples' culture. I have used published material about the Relationist Ethos and First Laws. I have avoided naming any specific groups, organisations or Indigenous Peoples, not out of disrespect but out of deep respect, as I acknowledge my place as a non-Indigenous person. This judgment is an imagined world, a re-writing of Australia's governance system. I have no right to entwine existing Indigenous Peoples into this imaginary world, so I refer only to 'Indigenous Elders' and 'Indigenous Peoples'.

1 In Australia, 'Country', when used in the phrase 'Caring for Country', is an Aboriginal Australian word referring to the Land as a moral entity with both physical and spiritual attributes that manifest in a myriad of life forms. See Mary Graham, 'The Law of Obligation, Aboriginal Ethics: Australia Becoming, Australia Dreaming' (2023) 37 *Parrhesia: A Journal of Critical Philosophy* 1, 5.

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Indigenous Elders, thinkers and writers including Mary Graham,[2] Anne Poelina[3] and Irene Watson.[4] The judgment has also been inspired by work within Western communities around bioregionalism[5] and bioregional governance. My organisation, the Australian Earth Laws Alliance (AELA), draws on bioregional governance and planning[6] concepts in its development of the practice-oriented Greenprints programme.[7] Greenprints supports community groups who wish to strengthen local and bioregional ecological stewardship, and advocates for Indigenous-led governance in Australia.

The Legal System of the Modern Nation State of Australia

In legal terms, Australia today is a Federation, made up of three tiers of government: a federal or Australian government, created by the *Constitution of Australia 1901* (UK), State and Territory governments which evolved out of the original colonies founded by the British Empire, and local councils, which are the creation of State Parliaments. The following features of Australia's legal system are most relevant to this judgment.

Firstly, First Peoples' sovereignty, societies, cultures and laws were not recognised by the British Empire and continue to be predominantly ignored by Australian law. The ancient pre-existing legal and governance system of the First Peoples of Australia was not recognised by the British Empire nor the post-1901 Australian government. The First Peoples of this continent have

2 Dr Mary Graham is an Adjunct Associate Professor at the University of Queensland and has written and spoken extensively about Aboriginal philosophy, ethics, the Relationist Ethos, International Relations and much more. For a comprehensive list of her papers, public talks, and interviews, visit 'Mary Graham', *Future Dreaming Australia* (Web Page, 2023) <https://www.futuredreaming.org.au/about/governance/directors/mary-graham/>

3 Dr Anne Poelina holds two Doctorates, a Master of Public Health and Tropical Medicine, Master of Education, and Master of Arts (Indigenous Social Policy). She writes and speaks extensively about a range of issues including Aboriginal First Laws, Earth Laws, and the work of the Martuwarra Fitzroy River Council. See, eg, Anne Poelina, Donna Bagnall, and Michelle Lim, 'Recognizing the Martuwarra's First Law Right to Life as a Living Ancestral Being' (2020) 9(3) *Transnational Environmental Law* 541, and 'Share in Our Dreaming', *Martuwarra Fitzroy River* (Web Page, 2023) <https://www.martuwarra.org/>.

4 Professor Irene Watson is Pro Vice Chancellor, Aboriginal Leadership and Strategy, and Professor of Law at the University of South Australia and has written extensively about Indigenous and colonial law and other topics. See, eg, Irene Watson, *Aboriginal Peoples, Colonialism and International Law: Raw Law* (Routledge, 2015.)

5 Advocates of bioregionalism assert that human activity should be defined by ecological or geographical boundaries rather than political ones. See 'Bioregionalism', *Greenprints – Australian Earth Laws Alliance* (Web Page, 2022) <https://www.greenprints.org.au/knowledge-base/bioregionalism/> ('Greenprints').

6 See, eg, Greenprints (n 5).

7 Michelle Maloney, 'Practical Pathways to Ecological Law: Greenprints and a Bioregional, Regenerative Governance Approach for Australia' in Kirsten Anker et al (eds), *From Environmental to Ecological Law* (Routledge, 2021) 237 and see also Greenprints (n 5).

been treated with cultural ignorance, institutional racism and the horrors of genocide. In 1992, the *Mabo* case[8] finally saw legal recognition of the First Peoples' prior and existing claim to their homes and estates. The *Mabo* case began a process of recognising Native Title but is a contentious and flawed approach to recognising the legal system that existed prior to colonisation.[9]

The reasons why First Peoples in Australia were treated the way they were, by the colonisers and successive governments, are shameful and a topic of much discussion and debate. At the time the British claimed/invaded the continent, so-called international law (law made by European powers for European powers, to support their colonisation of non-European Peoples and places) identified three different ways that new lands or colonies could be claimed. Lands could be settled, conquered or ceded.[10] By claiming that the continent was 'settled' (not conquered), it meant that the British government treated Australia as a colony that was uninhabited by a recognised sovereign or by a people with recognisable institutions and laws – 'terra nullius', or empty land. There were no treaties created with any First Peoples and no legal recognition or arrangements made for proper relations. British law – and institutionalised racism and genocide – was simply imposed on the original inhabitants. So today, while Indigenous people continue to respect and practise their ancient First Laws,[11] the ongoing colonial legacy of the British and now Australian legal system means these laws are ignored or disrespected by Australian law, except in relation to the flawed construct of Native Title and other colonial, cultural heritage style laws.

Secondly, the Australian legal system and broader society are built on an extractivist, expansionist worldview. It has no foundational obligation (legal

8 *Mabo v Queensland* (No 2) (1992) 175 CLR 1

9 For a discussion about the limitations of Native Title in Australia, see Irene Watson, 'Sovereign Spaces, Caring for Country and the Homeless Position of Aboriginal Peoples' (2009) 108(1) *South Atlantic Quarterly* 27 and also Irene Watson, 'Aboriginal Laws of the Land: Surviving Fracking, Golf Courses and Drains Among Other Extractive Industries' in Nicole Rogers and Michelle Maloney (eds), *Law as If Earth Really Mattered: The Wild Law Judgments Project* (Routledge, 2017) 215

10 Justice Blackburn in *Milirrpum v Nabalco Pty Ltd* (1971) 17 FLR 141, at 201, articulated the distinction thus:

> There is a distinction between settled colonies, where the land, being desert and uncultivated, is claimed by right of occupancy, and conquered or ceded colonies. The words 'desert and uncultivated' are Blackstone's own; they have always been taken to include territory in which live uncivilized inhabitants in a primitive state of society. The difference between the laws of the two kinds of colony is that in those of the former kind all the English laws which are applicable to the colony are immediately in force there upon its foundation. In those of the latter kind, the colony already having law of its own, that law remains in force until altered.

11 See, eg, Poelina et al (n 3).

or moral) to look after the environment or Care for Country. There is no general 'land ethic' or benchmark for maintaining ecological health within our culture, or our legal, political or economic systems. Modern Australia was built on the expansionist and extractivist worldview of European and British societies, and this continues in neoliberal growth economics today. There has never been an overarching land ethic in Australian law. The environment was not explicitly mentioned or recognised in the 1901 *Constitution*. The Australian government has slowly claimed increasing power to make laws for the environment by using, primarily, the external affairs head of power in the Constitution.[12] Responsibilities for land management and later 'environmental issues' predominantly remain the responsibility of State governments.

Today, although signing up to different international treaties and conventions creates responsibilities on the part of the Australian government to comply with these agreements, there are no laws setting out an overarching philosophy, responsibility, or moral code for Caring for Country. While a plethora of environmental laws now exist in the States and Territories, they are largely generic, standardised, 'top-down' laws triggered by actual and potential environmental harm (for example, possible harm to a specific list of endangered species). State planning policies, national park and reserve management plans, and other administrative and planning mechanisms are often used to develop management approaches unique to place, but it cannot be said that these create or impose obligations to Care for Country in our culture or legal system in a systemic way.

Finally, the Australian legal system is distinguished by top-down governance, in which neither Indigenous nor non-Indigenous local communities have much, or indeed any power to influence or control environmental or other laws in their own area. State governments set the parameters, through State-based planning laws, for what is allowed in terms of development in the State. Local councils are created by State legislation and must comply with State Planning Policies; local councils can be changed, amalgamated, and erased at the will of the State governments.

The Impact of 250 Years of Western Law and Governance in Australia

A mere 250 years of British and then 'modern Australian' governance across this continent has seen devastating destruction of the living world. The latest *State of the Environment Report*,[13] released in 2021, provides damning evidence that extractivist practices such as land clearing, forestry, water

12 *Australian Constitution* s 51(xxix).

13 Ian Cresswell, Terri Janke, and Emma Johnston, *Australia State of the Environment 2021* (Report, Commonwealth of Australia, 2021).

extraction, mineral extraction and more have caused a severe decline in the health and functioning of ecosystems across Australia. Native vegetation, ancient soils, wetlands, reefs, rivers and biodiversity have all been impacted. Almost 2,000 plant and animal species are currently listed as endangered, and the list grows longer every year.

Our governance failures are not limited to the realm of environmental management. Within our human societies, the gap between rich and poor people in Australia is widening, and despite being a wealthy country, Australian society is governed in such a way that not all people are receiving what they need to thrive. In 2019–2023, more than one in eight people (13.4%) lived below the poverty line – that amounts to more than three million Australians.[14] In addition to people struggling to afford basic necessities, such as food and electricity, Australia is also experiencing a chronic housing crisis, with rising homelessness being driven by escalating property and housing costs and accommodation shortages.[15] None of these problems should exist in such a wealthy country; these problems are created by our mainstream culture's creation of, and belief in, the current economic and governance system.

The Legal and Governance System That Existed in the Continent Now Known as Australia, Prior to British Colonisation

The First Peoples of the continent now known as Australia developed a complex, sustainable and highly effective governance system, which has been in place for thousands of generations. Mary Graham has described this as 'a multipolar, collaborative, sacralised ecological governance system' featuring hundreds of autonomous, interconnected communities or First Nations, living within their own territories and legal systems, governing the whole continent.[16]

Irene Watson reminds us that the law of First Nations People, 'conceived as a way of living is difficult to write about and cannot simply be described or easily translated into a foreign language that is empty of the ideas that our

14 Peter Davidson, Bruce Bradbury, and Melissa Wong, *Poverty in Australia 2023: Who Is Affected – Poverty and Inequality Partnership Report No 20* (Report, Australian Council of Social Service and UNSW Sydney, 2023) <https://povertyandinequality.acoss.org.au/poverty-in-australia-2023-who-is-affected/>.

15 Cameron Parcell, Ella Kuskoff, and Tim Reddel, 'Australia's Housing Crisis: How Did We Get Here and Where to Now?', *Contact Magazine – University of Queensland* (online, 30 January 2023) <https://stories.uq.edu.au/contact-magazine/2023/australias-housing-crisis-how-did-we-get-here-where-to-now/index.html>.

16 Greenprints, 'Indigenous Philosophy and the Relationist Ethos' (YouTube, 11 June 2022) <https://www.youtube.com/watch?v=NrSMZxDWimI>.

law ways carry. ... [First Nations Peoples'] law is the essential basis of social conduct: respect, reciprocity and caring for country, to name a few'.[17]

Anne Poelina and her co-authors explain how the law of First Nations People is guided by 'First Law':

> The wisdom of First Law is that it affords deference to the supreme law of the land and the pattern of life itself, rather than the law of mankind. It decentres human authority and places humanity in its natural order, as one species among millions that must live within the pattern of life and its biosphere ... First Law respects all life and its place in the pattern of life on which all life depends... These principles have been developed through a rigorous process of scientific experimentation and observation spanning millennia. First Law therefore contains tried and true rules (traditional laws) that are fit for purpose in assuring the sustainability and longevity of humanity while underpinning Indigenous peoples' 'sustainable life' on Country.[18]

The Future Scenario in Which the Judgment Is Handed Down

The judgment takes place in 2060, a time when ecological and socio-political crises have catalysed a new governance and legal system in Australia. In 2060, Australia has been scarred and transformed by more than 50 years of climate change impacts. Almost a million people have died across two decades of food shortages and new diseases.

The 2019/2020 summer of horrific bushfires marked a new era for Australia. The impacts of climate change were widely acknowledged and a range of civil society actions and cases[19] drove policy reform that took far too long to activate but did mark the beginning of political and legal change. From 2024 to 2029 El Nino brought a return of severe drought and bushfires across most of the continent, leading to localised ecological collapse in many traditional food production ecosystems of Australia. Australia experienced, for the first time, food shortages and civil unrest. By 2035, the outbreak of a new global pandemic brought suffering and the deaths of hundreds of thousands of people in Australia before a vaccine was developed, and this crisis was 'managed' by health authorities in 2038. By the 2040s, sea level rise was forcing State and local governments to plan retreat from many coastal areas. In 2041, a third pandemic for the century broke out, and efforts to control

17 Watson et al (n 4) 22.

18 Poelina et al (n 3) 549.

19 See, eg, *Bushfire Survivors for Climate Action Incorporated v Environment Protection Authority* [2021] NSWLEC 92.

the contagion through lockdowns and failed vaccinations brought disturbing civil unrest.

A range of political changes took place in response to this climate-changing world. In 2035, the second pandemic of the century and the resulting civil unrest saw the creation of the 'Relationist Party', a political party forged by Indigenous Elders and community leaders, in partnership with non-Indigenous community leaders around Australia, who wanted to help their people and environment. The party became hugely popular, with a massive grassroots call for change. Extensive surveys and community discussions showed that non-Indigenous Australian people felt that they should follow the leadership and wisdom of Indigenous Peoples, in order to govern society effectively and Care for Country.

In 2045, the Relationist Party was elected with a majority into federal government, on the platform of creating a new societal structure that would bring peace and stability to the troubled continent. The new government's focus was on making ecological health and human well-being the priority for society, by building a society based on the Relationist Ethos.

After being elected, the new government hosted Citizens Assemblies across the continent from 2040 to 2042, reviewing proposals for constitutional and societal reform. Indigenous Elders now had the mandate in the Relationist Party to reform Australia's governance system. The new governance system was inspired and informed by the pre-colonial governance system of the continent, which was translated in today's terms into a more 'bioregional' framework. The popular catchcry for law reform was: 'Rainforest laws for rainforest people, desert laws for desert people'. The people of Australia were ready to embrace a new system of governance that would look after human and more-than-human life.

At the end of 2043, constitutional and law reform was enacted. The new 2043 *Constitution* creates an Australian Republic with a federal government at the national level, and 130 bioregional governments (called Bioregional Councils) are created by legislation across the continent. State governments are abolished.

The federal government has specific powers relevant to continent-wide governance, many of which existed in section 51 of the previous 1901 *Constitution*, but some of which have been modified in accordance with the new governance regime. One of the key roles of the federal government is to support Bioregional Councils in ensuring healthy ecosystems and healthy communities, as well as to carry out a range of national and international level responsibilities.

Bioregional Councils have the primary responsibilities to Care for Country and work in partnership with the Australian government to Care for Citizens, and on national ecological matters such as climate change. The 2040–2042 Citizens Assemblies held prior to constitutional reform saw communities around Australia create their own political boundaries based on ecological boundaries

relevant to the communities themselves. Some of the new Bioregional Councils were created by following Indigenous leadership and using Indigenous traditional estate boundaries; in other communities, people selected their actual bioregion (one of the 89 bioregions identified by Western science, as part of IBRA[20]); elsewhere, catchment boundaries were chosen.

Bioregional Councils are elected authorities who must be comprised of half Indigenous members and half non-Indigenous members. The Councils must (i) make all decisions and take all actions necessary to Care for Country and ensure the non-human world is healthy and able to support life, including managing the continuous work of adapting to ongoing climate change and (ii) make all decisions and take all actions necessary to Care for Citizens, within the parameters and limitations of ecological health within their jurisdiction.

From 2044 to 2046, the new federal government required (and provided funding for) all Bioregional Councils to host community input processes. These processes were led by Indigenous Elders, in partnership with scientists and community leaders, to map out what healthy ecosystems look like within their jurisdiction/ecological boundary. The information from these workshops was fed into a further series of Citizen's Assemblies, and community members worked together to develop their unique 'Benchmark for Ecological Health' for their bioregion. These Benchmarks, updated every two years, provide the basis for ongoing ecological restoration, climate change adaptation strategies, and ecological maintenance. Rather than backward-looking 'State of the Environment' Reports, the Benchmarks collate current information about the ecological health of each bioregion, compare it against pre-colonial ecological damage, and set out the ongoing restoration and maintenance required to properly Care for Country. These Benchmarks form a critical foundation for many aspects of bioregional governance. Relevant to this judgment, these Benchmarks are the basis upon which all decisions are made about new human commercial and other activities. The key question is: does the new proposed activity support the living world, based on what is needed in the current Benchmark, or does it take away from the health of the living world? If the latter applies, the activity is not permitted.

Bioregional governance includes a tripartite judicial system. In addition to Bioregional and National Court processes for civil and criminal law (between humans), Bioregional Tribunals are created for each bioregion, to adjudicate law between Country and people. These Tribunals exist permanently but are comprised using random selection (sortition) to bring different community

20 The Interim Biogeographical Regionalisation of Australia (IBRA) classifies Australia's landscapes into 89 large geographically distinct bioregions based on common climate, geology, landform, native vegetation, and species information. See 'Australia's bioregions (IBRA)', *Australian Government* (Web Page, 10 October 2021) <https://www.dcceew.gov.au/environment/land/nrs/science/ibra>.

members into the Tribunal for set periods of time. They are made up of 15 people – Indigenous and non-Indigenous people, men, women, and non-binary people – who are selected through sortition processes. These Tribunals are responsible for all matters regarding Caring for Country; they have the authority to hear submissions for new economic activities within their jurisdiction and cases of conflict regarding ecological health matters.

Indigenous leadership, sovereignty, knowledge, wisdom and governance systems are prioritised in this legal system. Indigenous and non-Indigenous people are in deep partnership together, in order to support all life on the continent and build a stable, successful culture.

Judgment

The Permanent Peoples' Tribunal of the Darling Riverine Plains Bioregion
Tribunal: Bioregional Peoples' Tribunal, Darling Riverine Plains Bioregion

Date: 10 May 2060

Order: The Peoples of the Darling Riverine Plains Bioregion (DRPB) have reviewed and assessed Commercial Proposal No 2060/2439 from Cotton Growers United Pty Ltd (CGU) and the application is denied.

Members of the Permanent Peoples' Tribunal (PPT) of the Darling Riverine Plains Bioregion (DRPB), comprising Indigenous and non-Indigenous citizens who reside in the bioregion, have reviewed Commercial Proposal 2060/2439 (the Proposal) against the 2058 Benchmark for Ecological Health for the DRPB, consulted with Indigenous Elders, scientific experts, economic experts and the wider community about the Proposal, and after weighing up the details of the Proposal against the principles of the Relationist Ethos and Laws of Obligation, which form the foundation of our Bioregional Laws, have unanimously decided that the proposed development would not be beneficial for Country or our Peoples. The application has been denied. Reasons are provided in the judgment below.

Summary of the Commercial Proposal

CGU submitted a proposal to buy land and extract water from the tributaries leading into the Barka River in order to grow cotton. CGU claims that the production of cotton must resume to meet the needs of Australian people to have access to local fibre, for clothing and other uses. In accordance with the *Bioregional Council Act 2044* (Federal), CGU submitted its Commercial Application including a Statement of Benefit and Reciprocity with Country, which was assessed by the Bioregional Council's Indigenous Elders, Scientific Panel and Economic Panel, and their reports were provided to the PPT. All the details are set out in Appendices I to IV.[21]

21 These have not been included, due to the space constraints.

Relevant Laws and Planning Instruments

Legislation and planning documents

1 *Constitution of Australia 2043.*
2 *Bioregional Council Act 2044* (Federal).
3 *Bioregional Judiciary Act 2044* (Federal).
4 *Bioregional Ecological Health Benchmark Act 2046* (Federal).
5 Darling Riverine Plains Bioregional Ecological Health Benchmark 2058 (This Bioregional benchmark is created in accordance with section 21 of the *Bioregional Council Act* 2044 and because the land is the source of the law, the benchmark has the status of a Bioregional Law).

Bioregional Tribunal Cases

1 *Sustainable Springwater Extractivists Pty Ltd Commercial Application to Blue Mountains Bioregional Tribunal 2059* (denied).
2 *Cotton Growers United Pty Ltd Application to Brigalow Belt Bioregional Tribunal 2057* (denied).
3 *Rice Growers Pty Ltd Application to Margaret River Bioregional Tribunal 2059* (denied).
4 *Hemp Australia Application to Brigalow Belt North Bioregional Tribunal 2058* (approved).

Application of the Relationist Ethos and Bioregional Laws to the Details of the Commercial Proposal

We the People of the PPT DRPB have worked together to fulfil our legal and moral obligations in accordance with the Law of the Land and the Bioregional Laws of Australia, here in our Bioregion.

We have considered the core principles embedded in the Relationist Ethos and our Bioregional Laws, so that we can then ask if the current commercial proposal meets the Law of Obligation in our Place. We have asked the key questions we always ask when considering human activities in our Place: How do we best Care for Country? How do we best Care for Each Other? Does this proposal help us Care for Country and for Each Other?

Matters to Consider

Information Provided by Proponent

The Proposal has applied to buy 10,000 hectares of land at the top of the bioregion, in order to grow cotton that would be irrigated from creeks and tributaries that flow into the Barka/Darling River. The proponents have claimed that with the steadily decreasing yield of food and fibre across Australia, it is necessary to resume growing cotton to meet the needs of our

Peoples. The proposed cotton production will need approximately 7.8 megalitres of water per hectare (78,000 megalitres of water per year) to produce its annual cotton yield. The proponents have claimed that this is a small enterprise compared to the scale of the cotton industry that was nationalised and closed down in 2044 due to its cumulative destructive impacts on the environment. The proponents noted that in 2017, cotton farms in the Murray Darling basin used 2.505 trillion litres of water on 320,000 hectares of land[22] and they noted that one cotton farm, Cubby Station, was 80,000 hectares. In contrast, their proposal is of a much smaller scale and could be sustainable in the long term. Details provided by the proponents are in Appendix I.

The Constitution 2043

Sections 11 and 12 of the *Constitution* state that: 'The land is the source of the law', and '[a]ll human activities must be regenerative and to the benefit of all life'. Section 13 of the *Constitution* states that: 'The Relationist Ethos is the guide for our society. It is the foundation and the template for how people Care for Country, and how people Care for Each Other'.

Our first task was to reflect on the unique ecosystems within our Bioregion, take the time to commune with the land, visit the places that the proponents want to develop, and listen to what Country and People need to be healthy.

The Bioregion – Key Features and History of Human Use

The Ecological Health Benchmark 2058 describes the Darling Plains Bioregion, including the land and tributaries that the Proposal refers to. The full details of the Tribunal's trip to the relevant sub-region, including observations and discussions with local communities, are in Appendix II. For the purposes of this judgment, we note the following:

(i) The DRP Bioregion is a long, narrow riverine corridor that runs southwest along the Barka/Darling River. It occupies a total area of 10,651,748 hectares and includes the lower reaches and alluvial fans of the Bogan, Macquarie, Castlereagh, Namoi, Barwon, Culgoa, Bokhara, Narran, Gwydir and Macintyre rivers;[23]

22 Peter Hannam, 'Murray-Darling Water Use Increased Even as Basin Dried Out, ABS Says', *Sydney Morning Herald* (online, 30 April 2019) <https://www.smh.com.au/environment/sustainability/murray-darling-water-use-increased-even-as-basin-dried-out-abs-says-20190430-p51iln.html>.

23 'Darling Riverine Plains Bioregion', *NSW Department of Planning and Environment* (Web Page, 5 May 2023) <https://www.environment.nsw.gov.au/topics/animals-and-plants/biodiversity/bioregions/bioregions-of-nsw/darling-riverine-plains>.

(ii) Our Bioregion is a sacred place and the Barka/Darling River, its streams, wetlands, and ground water are precious culturally, spiritually, and for all life in our bioregion;
(iii) Our bioregion is an important inland river system where the streams flow into an arid region, not out to the ocean. It is important for the life of neighbouring bioregions and neighbouring Peoples;
(iv) From the 1920s to 2030s the Bioregion was used unsustainably and was almost destroyed;
(v) With the introduction of the new *Constitution*, and the prioritisation of ecosystem/bioregional health, the new federal government launched the 2045 Inquiry into the Barka/Darling River. The Inquiry found that the existing management practices of the region (created and managed by the former State governments of Queensland and NSW) were in violation of the Relationist Ethos. Destructive levels of water extraction, pesticide and chemical use, the heinous practice of flood-plain harvesting, and much more nearly killed the entire river system and interconnected ecosystems; and
(vi) In 2046 the federal government nationalised the remaining cotton farms and other large-scale agricultural practices that were taking much needed water from the Bioregion and closed them down. A major restoration programme was launched, which is bringing the river system and its connected communities of life back to good health.

Does the Proposal Reflect the Key Principles of the Relationist Ethos?

Relationality literally means 'concerning the way in which two or more people or things are connected'.[24] In Australian Aboriginal societies, the primary relationship is between people and land (this conjunction is termed 'Country' in Aboriginal English). Other relations, including those with more-than-human relatives, are always contingent/built upon the relationship between people and land.[25]

A foundational description of the Relationist Ethos was provided in the Preamble to the Constitution, and the Bioregional Laws. They are drawn from the scholarly works of Indigenous Elder and political scientist, Mary Graham:

> Aboriginal relationalism – traditionally the foundation of Aboriginal law – is an elaborate, complex and refined system of social, moral, spiritual

24 'Relationality', *Oxford Reference* (Web Page, 2023) <https://www.oxfordreference.com/display/10.1093/oi/authority.20110803100412539;jsessionid=0B64E78A8F9B25F45C0DBA97DB549E14>.

25 Mary Graham, 'Some Thoughts About the Philosophical Underpinnings of Aboriginal World Views', (2008) 45 *Australian Humanities Review* 181, 181–182

> and community obligations that provides an ordered universe for people. Within the context of this system: relationalism embraces uncertainty and imprecision; consents to being driven by feeling; accepts and makes room for conflict while regarding invasion and war-likeness as not only invalid but highly inefficient; resolves the contradiction between power and authority; provides coherence about the meaning of life, and finally; assumes that not only groups, but all people and more-than-human relatives are autonomous beings.[26]
>
> So, any notion of Aboriginal social and political order has to begin with the Aboriginal relationship to Land, which is primary: The Land is the source of the Law. Expanding one's sphere of influence by conquest of other lands does not confer security – just the opposite – it ensures insecurity in a number of ways, not least of which is grievance of long standing of the 'conquered' which may or may not express itself in myriad ways. Coercion in relations sooner or later rebounds – the act(s) of coercion is not forgotten. They are solidly embedded in the narratives of all those involved in conquest projects. The establishment and maintenance of relationalism rests with its attributes, which are – Autonomy; Balance; Place/Identity; Ethics/Custodial Ethic.[27]
>
> Aboriginal societies embedded ourselves within the patterns of the living world. Through thousands of generations, we developed the intimacy of place, managed resources across an ancient continent efficiently and managed our population sizes carefully. Like most human groups, and for other life forms throughout history, everything starts with some form of guarantee of security for the group and its members. For Aboriginal people security was to be found in the development of a system of co-existence with the more-than-human world, or the life force, in all its forms. This 'Relationist Ethos' formed the deep foundations of Aboriginal societies and created a remarkable governance system and culture.[28]

To consider the commercial Proposal against the Relationist Ethos, we are required to consider the key attributes mentioned above: Autonomy; Balance; Place/Identity; Ethics/Custodial Ethic.

Opinions of the Elders

The Elders were unanimous in their rejection of the Proposal. They said letting cotton be grown again at the top of the Barka River would be in violation of their role as custodians of the lands and waters. Using the Barka River

26 Mary Graham, 'Aboriginal Notions of Relationality and Positionalism: A Reply to Weber' (2014) 4(1) *Global Discourse* 17, 18

27 Ibid.

28 Ibid.

system to irrigate crops like cotton would bring the land and its waters out of balance again. It would cause harm to the restored vegetation and biodiversity in those places and destroy the soils. The Elders remembered the crimes committed by cotton companies and the State Governments at the top of, and along, the Barka River system in the first half of the century. They provided their advice about what happens to Country when cotton is grown. They shared their stories and feelings about the terrible state of the Barka River by 2040, and how they did not want all that had been done since then to restore and bring the river back to life, to be lost. Their rejection of the Proposal is sufficient for this Tribunal to also reject the Proposal. We also provide further reasoning below.

The Relationist Ethos – The Proposal and its Impacts on Country

The Scientific Panel said that the volume of water that is proposed to be taken would have detrimental effects on all downstream biodiversity. Plants, animals, fish, insects, and all life would suffer from the extraction of this volume of water on an annual basis, especially as climate change is drying out the ecosystems and is predicted to continue to change the ecosystems over time. If we see ourselves in relationship with, and having custodial responsibilities for, the nonhuman life in our Bioregion, we must not approve the commercial application for growing cotton and extracting water.

Relevant Economic Issues

The proponents have stated that cotton production should be accepted, as declining yields around Australia mean we have to increase fibre production. However, our Economic Expert Panel has advised the Tribunal that, while climate change is affecting all agricultural yields around Australia, the introduction of effective, small-scale hemp production around multiple bioregions of Australia since 2045 has meant that today our local and bioregional fibre requirements are being met. Hemp production needs less than a third of the water needed for cotton and yields 220% more fibre. The plant grows without the need for harmful pesticides and herbicides and replenishes soil quality[29] and when grown sensitively to local places, and in small-scale farms, it can be grown in most bioregions across Australia. The Economic Panel noted the successful, federally funded, hemp incentive programmes, and how these programmes work in partnership with federal laws and regulations passed in 2047 to promote slow fashion and reduce overall demand for fibre. The members of the Economic Panel were of the opinion that Australia does

29 Olivia Elliott, 'From Eco Benefits to Legal Status: Everything You Need to Know About Wearing Hemp', *The Guardian* (online, 2 October 2019) <https://www.theguardian.com/fashion/2019/oct/02/from-eco-benefits-to-legal-status-everything-you-need-to-know-about-wearing-hemp>.

not need to return to growing crops like cotton, which use unsustainable amounts of water and chemicals.

Relevant Precedents

It should be noted that there are several recent Bioregional Tribunal judgments from other parts of Australia that are relevant to our deliberations. The key thread among all these judgments is that commercial proposals were rejected because they would take too much from the living world, they had no way of reciprocating or regenerating life, and the land and water would not be used for purposes essential to human life; the local Peoples considered them to be unnecessary economic activities.

In the *Cotton Growers United Pty Ltd Application Brigalow Belt Bioregional Tribunal 2058*, the Peoples' Tribunal in that community denied the application to grow cotton again in the southern parts of the Bioregion, due to the harm it would cause to water, soil, biodiversity, and people in that Bioregion – a region where the cotton industry was paid out and removed in 2046 due to its destruction of the environment.

In the *Sustainable Springwater Extractivists Pty Ltd Commercial Application to Blue Mountains Bioregional Tribunal 2059*, the Peoples' Tribunal in that community denied the application to extract freshwater as, when applying the principles of the Relationist Ethos, it would cause suffering to nonhuman and human life in their Bioregion. The sheer volume of water being sought was not sustainable.

In *Lithium Mining Pty Ltd Application to Margaret River Bioregional Tribunal 2059*, the Peoples Tribunal stated that they would never approve any commercial proposals that would extract minerals from the ground in their Bioregion. There were important cultural and environmental reasons provided, including the fact that such activities would harm Country and put the system out of balance.

In contrast, the decision in *Hemp Australia Application to Brigalow Belt North Bioregional Tribunal 2058* should be noted. In this judgment, the Bioregional Tribunal approved the commercial proposal, because the hemp farm was a small-scale operation that would not cause harm due to its careful design and engineering and its minimal use of water from the Artesian Basin.

Final Statement of the Tribunal

While in the past, top-down Australian laws allowed and regulated human activities that caused harm to the environment, and supported endless extraction from our land, waters, and biodiversity, our Bioregional Laws impose different obligations on us all. We are obliged to Care for Country and to proactively protect the ecological health and cultural values of all ecosystems, within the parameters of their unique needs and their specific boundaries.

The Benchmarks of Ecological Health created by the people, for their own Bioregions, are used to identify what activities will cause harm, and what activities will support life and provide reciprocal benefits. Only projects that are regenerative and provide reciprocal benefits to Country are to be considered in a favourable light. The current proposal does not meet any of our principles for Caring for Country and therefore must be denied.