

ENVIRONMENTAL DEFENDERS OFFICE (SA) INCORPORATED

CONSTITUTION & RULES

As at 26th October 2011

[Note: This constitution replaces the constitution dated 18th November 2005]

1. Name

The name of the incorporated association is the ENVIRONMENTAL DEFENDERS OFFICE (SA) INC., (hereinafter called "the association").

2. Definitions

"**environment**" means any aspect of the natural environment

"**environmental matter**" means any matter concerning the environment as well as the rights and responsibilities of individuals or groups seeking to protect the environment

"**general meeting**" means a general meeting of members of the association convened in accordance with these rules

"**gift fund**" means any fund established by the association to receive tax deductible donations

"**Management Committee**" means the Management Committee of the association

"**Management Committee Member**" means a member of the Management Committee of the association

"**member**" means an ordinary member, a corporate member or a life member of the association

"**month**" shall mean a calendar month

"**ordinary resolution**" is a resolution passed by a simple majority at a general meeting

"**special resolution**" means a special resolution defined in the Act

"**the Act**" means the Associations Incorporation Act 1985

"**person**" includes natural persons and incorporated bodies

3. Objects

The objects of the association are:

- a. To empower and encourage the community to protect the environment through law;
- b. To provide legal services (information, advice and representation) to disadvantaged persons and classes of persons for whose needs the services of lawyers in private practise are inadequate;
- c. To promote ecologically sustainable development;
- d. To promote public interest environmental litigation;
- e. To undertake community education to increase awareness within the community about legal aspects of environmental problems;
- f. To promote forms of alternative environmental dispute resolution;
- g. To promote the expansion of the association in South Australia;
- h. To carry out and publish research on environmental law;
- i. To seek appropriate law reform to improve environmental protection; and
- j. To promote links between the association and similar organisations interstate and overseas.

4. Powers

- a. The association shall have all the powers conferred by section 25 of the Act.
- b. For the purpose of achieving the said objects the association shall take all powers available pursuant to the Act including the power to:
 - i) enter into agreements with any government, government authority, commission or other institution;
 - ii) produce publications or provide services to members of the public for fee or otherwise;
 - iii) to make charges including nominal or no charges in respect to work carried out by the association;
 - iv) to seek out and obtain information, assistance or co-operation from any person or organisation who has similar objects; and
 - v) to employ or retain on a full-time or part-time basis and on such terms as to pay and other conditions of employment as the association shall agree, (or on a voluntary basis), any person whose particular skills, qualifications or knowledge may be of assistance to the attainment of the objectives of the association.

- c. The income and property of the association, howsoever derived, is to be applied solely towards the promotion and aims and objectives and no portion is to be paid or transferred by way of profit to members.

5. Membership

Membership of the association is open to any person who supports the objectives of the association, and is willing to commit to the achievement of those objectives and agrees to be bound by its rules.

No applicant for membership shall become a member unless and until their application has been approved by the Management Committee in accordance with these rules.

5.1 Categories of membership

The categories of membership of the association are as follows:

- a. Ordinary member - an ordinary member is entitled to attend and to have one vote at any meeting of the association;
- b. Corporate member - a corporate entity is entitled to nominate a natural person to attend and have one vote at any meeting of the association; and
- c. Life member - any person who has performed distinctive services for the association over a long period may be elected by a general meeting to be a life member of the association. A life member has all the rights and responsibilities of an ordinary member other than an obligation to pay an annual subscription.

The association may determine concessional rates of membership.

5.2 Application for membership of the association

- a. The application for membership shall be made in writing and signed by the applicant.
- b. The signing of an application for membership shall be regarded as a declaration of commitment to the objects of the association.
- c. The Management Committee shall have the absolute and unfettered discretion to accept or reject any application for membership without giving any reason for doing so.
- d. Upon acceptance of the application by the Management Committee and upon the payment of the first annual subscription, the applicant shall be a member of the association.

5.3 Subscriptions

- a. The subscription fees for categories of membership shall be such sum as the members shall determine from time to time at the annual general meeting.

- b. The subscription shall be payable on joining and thereafter on 1st July of each year or at such other date as the Management Committee shall determine.
- c. Any member whose subscription is outstanding for more than three months after the due date for payment shall cease to be a member of the association, provided always that the committee may reinstate such a person's membership on such terms as it thinks fit.

5.4 Resignations

A member may resign from membership of the association by giving written notice to the secretary or public officer of the association.

5.5 Expulsion of a member

- a. Subject to giving a member the right to be heard or to make a written submission, the Management Committee may resolve to expel a member upon a charge of conduct or misconduct detrimental to the interests of the association.
- b. Particulars of the charge shall be communicated to the member at least one month before the meeting of the committee at which the matter will be determined.
- c. The determination of the Management Committee shall be communicated to the member, and in the event of an adverse determination shall, subject to (d) below, cease to be a member 14 days after the Management Committee has communicated its determination to the member.
- d. It shall be open to the member to appeal to the association in general meeting against the expulsion. The intention to appeal shall be communicated to the secretary or public officer of the association within 14 days after the determination of the Management Committee has been communicated to the member.
- e. In the event of an appeal under (d) above, the appellant's membership of the association shall not be terminated unless the determination of the Management Committee to expel is upheld by the members of the association in general meeting. After the appeal has been heard by members of the association membership shall be terminated at the start of the general meeting of which the determination of the Management Committee is upheld.

5.6 Register of members

A register of members shall be kept and contain:

- a. The name and address of each member;
- b. The date at which each member was admitted to the association;
- c. If applicable, the date of, and reason(s) for the termination of membership; and
- d. The names and addresses of the Management Committee of the association.

5.7 Founding members

For historical reference only, the names of the founding members are set out in the schedule attached to this constitution

6. Management Committee

6.1 Powers and Duties

- a. The affairs of the association shall be managed and controlled by a Management Committee which, in addition to any powers and authorities conferred by these rules, may exercise all such powers and do all such things as are within the objects of the association, and are not by the Act or by these rules required to be done by the association in general meeting.
- b. The committee has the management and control of the funds and other property of the association.
- c. The committee shall have the authority to interpret the meaning of these rules and any other matter relating to the affairs of the association on which these rules are silent.
- d. The committee shall appoint a public officer as required by the Act.

6.2 Election of the Management Committee

- a. The Management Committee shall be comprised of up to 12 members.
- b. A Management Committee Member must be a natural person.
- c. The staff of the association shall be entitled to elect one Management Committee Member; the remainder of the Management Committee shall be elected from members at the annual general meeting.
- d. Any member of the association may nominate or be nominated to the Management Committee. Nominations must be in writing and delivered to the secretary prior to the meeting at which the election is to be held.
- e. Subject to clause 6.6 all the Management Committee Members shall be elected for a period of eighteen months or up until the date of the Annual General meeting following their appointment, whichever is the sooner.

6.3 Proceedings of the Management Committee

- a. A quorum for meetings of the Management Committee shall be fifty percent of the members.
- b. The Management Committee shall meet together for the dispatch of business at least quarterly.
- c. The Management Committee shall determine the office bearers who may include a chairperson, a secretary and a treasurer. Any of these positions may be combined with any other position.
- d. Questions arising at any meeting shall be decided by a majority of votes, and in the event of equality of votes the chairperson shall have a casting vote in addition to a deliberative vote.

6.4 Meetings using technology

- a. A Management Committee meeting may be held with one or more of the members taking part by telephone or video link. Such members are regarded as present at the Management Committee meeting if such members are able to hear the proceedings of the entire Management Committee meeting and to be heard by all others attending the Management Committee meeting.
- b. Without limiting clause 6.4(a), a Management Committee meeting may be called or held using any technology consented to by all Management Committee Members. The consent may be a standing one and can only be withdrawn by a Management Committee Member on seven days' notice.
- c. A Management Committee meeting conducted in accordance with clauses 6.4(a) or (b) is deemed to be held at a place determined by the Management Committee Members, provided that at least one of the Management Committee members present at the Management Committee meeting was at such place for the duration of that Management Committee meeting.

6.5 Circulating resolutions

- a. The Management Committee Members may pass a resolution without a Management Committee meeting being held if at least 75 percent of the Management Committee Members entitled to vote on the resolution sign a document containing a statement that they are in favour of the resolution set out in the document.
- b. Separate copies of a document may be used for signing if the wording of the resolution and statement is identical in each copy.
- c. The resolution is passed when the last Management Committee Member signs.

6.6 Disqualification or resignation of Management Committee Members and other casual vacancies

- a. The office of a Management Committee Member shall become vacant if a Management Committee Member is:
 - i) disqualified from being a Management Committee Member under the Act;
 - ii) expelled as a member under these rules;
 - iii) permanently incapacitated by ill- health (or dies);
 - iv) absent without leave of the chairperson for more than three meetings in a financial year;
 - v) is no longer the duly appointed representative of a corporate member; or
 - vi) resigns by notice in writing to the chairperson.
- b. Upon a vacancy arising in the Management Committee occurring pursuant to clause 6.4 (a) or where the number of elected members is less than the maximum allowed in 6.2 (a), the

chairperson of the association may, with the consent of the majority of members of the Management Committee, invite a member of the association to join the Management Committee for the remainder of the current term of the Management Committee.

- c. Management Committee Members appointed to fill casual vacancies have the same rights and responsibilities, including voting rights at Management Committee meetings, as members of the association elected to the Management Committee at the annual general meeting or appointed as staff representative to the Management Committee.

6.7 Chairperson

The Chairperson shall perform the following functions:

- a. Be responsible for the safe keeping of the Common Seal which shall be affixed only by resolution of the Management Committee;
- b. Chair meetings except in the absence of the chairperson or at the request of the chairperson, or of a majority of the meeting, another member of the Management Committee may be elected as the Chairperson of the meeting;
- c. Cause the agenda for meeting to be prepared; and
- d. Act as spokesperson for the association unless an alternative spokesperson has been appointed by the Management Committee. The spokesperson shall make statements in accordance with any previously agreed policy, where such policy exists.

6.6 Secretary

The Secretary shall perform the following functions:

- a. Call meetings in accordance with the provisions of this constitution; and
- b. Cause records to be kept of the business of the association, including the constitution and policies, register of members, a register of minutes of meetings and of notices, a file of correspondence, and records of submissions or reports made by or on behalf of the association.

6.7 Treasurer

The treasurer shall perform the following functions:

- a. Cause monies received to be paid into an account authorised by the Management Committee in the name of the association. Payments shall be as petty cash, direct debit or by cheque signed by one authorised signatory of whom there shall be no more than four appointed by the Management Committee;
- b. Ensure payments for amounts above \$2,000 are approved by resolution of the Management Committee. Major or unusual expenditures shall be authorised in advance by the Management Committee;

- c. Cause records to be kept of all receipts and payments and other financial transactions. These records shall be available for inspection by any member;
- d. Cause to be prepared financial budgets and statements and shall submit a report on the finances to each general meeting and each Management Committee meeting; and
- e. Present audited reports to the annual general meeting.

7. The Seal

- a. The association shall have a common seal upon which its corporate name shall appear in legible letters.
- b. The seal shall not be used without the express authorisation of the Management Committee, and every use of the seal shall be recorded in the minute book.
- c. The affixing of the seal shall be witnessed or attested by two Management Committee Members.

8. General Meetings

8.1 Annual General Meetings

- a. The Management Committee shall call an annual general meeting in accordance with the Act and these rules.
- b. The annual general meeting shall be held within six months after the end of the financial year.
- c. The order of business at the meeting shall be:
 - i) the confirmation of the minutes of the previous annual general meeting and of any special general meeting held since that meeting;
 - ii) the consideration of the accounts and reports of the committee and the auditor's report;
 - iii) the election of the committee members;
 - iv) the appointment of auditors;
 - v) to determine the membership fee for the year; and
 - vi) any other business requiring consideration by the association in general meeting.

8.2 Special General Meetings

- a. The Management Committee may call a special general meeting of the association at any time.

- b. Upon a requisition in writing of not less than 10 members of the association or 5 percent of total membership, whichever is the greater, the Management Committee shall within one month of receipt of the requisition, convene a special general meeting for the purpose specified in the requisition.
- c. Every requisition for a special general meeting shall be signed by the relevant members and shall state the purpose of that meeting

8.3 Notice of General Meetings

- a. Subject to rule 8.3 (b), at least 14 days notice of any general meeting shall be given to members. The notice shall set out where and when the meeting will be held; and the particulars of the nature and order of business to be transacted at the meeting.
- b. Notice of a meeting at which a special resolution is to be proposed shall be given at least 21 days prior to the date of the meeting.
- c. The association may give a notice to any member by serving the member with the notice personally, by sending it through the post to the address appearing in the register of members. Where the member has agreed, any notices may be sent electronically by facsimile transmission or e-mail.
- d. Where a notice is sent by post:
 - i) the service is effected by properly addressing, prepaying and posting a letter or packet containing the notice; and
 - ii) unless the contrary is proved, service will be taken to have been effected at the time at which the letter or packet would be delivered in the ordinary course of the post.
- e. Where a member of the association has agreed to be served electronically by facsimile or email, it shall be sufficient for the secretary to provide any notice in accordance with that request. The secretary shall keep a record of all notices sent electronically. Where a notice is sent electronically, unless the contrary is proved, service will be taken to have been effected at the time of transmission.

8.4 Quorum

Ten members present shall constitute a quorum for the transaction of business at any general meeting.

8.5 Procedure at General Meetings

- a. If within 30 minutes after the time appointed for the meeting a quorum of members is not present, a meeting convened upon the requisition of members shall lapse. In any other case, the meeting shall stand adjourned to the same day in the next week, at the same time and place. If at such adjourned meeting a quorum is not present within 30 minutes of the time appointed for the meeting the members present shall form such a quorum.
- b. Subject to 8.5c, the chairperson of the Management Committee shall preside as chairperson at a general meeting of the association.

- c. If the chairperson is not present within five minutes after the time appointed for holding the meeting, or he or she is present but declines to take or retires from the chair, the members may choose a committee member or one of their own number to be chairperson of that meeting.

8.6 Voting at General Meetings

- a. Subject to these rules, every member of the association has only one vote at a meeting of the association.
- b. Subject to these rules, a question for decision at a general meeting, other than a special resolution, must be determined by a majority of members who vote in person at that meeting.
- c. Unless a poll is demanded by at least five members, a question for decision at a general meeting must be determined by a show of hands.
- d. A member being a body corporate shall be entitled to appoint one person, to represent it at a particular general meeting or at all general meetings of the association. Such a person shall be deemed to be a member of the association for all purposes until the authority to represent the corporate member is revoked.

8.7 Poll at general meetings

- a. If a poll is demanded by at least five members, it must be conducted in a manner specified by the person presiding and the result of the poll is the resolution of the meeting on that question.
- b. A poll demanded for the election of a person presiding or on a question of adjournment must be taken immediately, but any other poll may be conducted at any time before the close of the meeting.

9. Minutes

- a. Proper minutes of all proceedings of general meetings of the association and of meetings of the Management Committee, shall be entered within one month after the relevant meeting in minute books kept for this purpose.
- b. The minutes kept pursuant to this rule must be confirmed by the members of the association or the members of the Management Committee (as relevant) at a subsequent meeting.
- c. The minutes kept pursuant to this rule shall be signed by the chairperson of the meeting at which the proceedings took place or by the chairperson of the next succeeding meeting at which the minutes are confirmed.
- d. Where minutes are entered and signed they shall, until the contrary is proved, be evidence that the meeting was convened and duly held, that all proceedings held at the meeting shall be deemed to have been duly held, and that all appointments made at a meeting shall be deemed to be valid.

10. Financial Reporting

10.1 Financial Year

The financial year of the association shall be the period ending on the 30 June of each year.

10.2 Accounts to be kept

The association shall keep and retain such accounting records as are necessary to correctly record and explain the financial transactions and financial position of the association in accordance with the Act

10.3 Appointment of Auditor

- a. At each annual general meeting, the members shall appoint a person to be auditor of the association.
- b. The auditor shall hold office until the next annual general meeting and is eligible for re-appointment.
- c. If an appointment is not made at an annual general meeting, the committee shall appoint an auditor for the current financial year.

10.4 Accounts and Reports to be laid before members

The accounts, together with the auditor's report on the accounts, the committee's report and the staff report shall be laid before members at the annual general meeting.

11. Alteration of Constitution

- a. The provisions of this constitution may be altered by a resolution of a general meeting, which is passed by a majority of not less than seventy-five per cent of the members present at the meeting and voting thereon.
- b. At least twenty-one days notice of such proposed resolution shall be given to members together with details and reasons for the proposed amendments.

12. The Gift Fund

12.1 Maintenance and purpose

- a. The association will establish and maintain, in Australia, a public fund to be known as the EDO Gift Fund ("the Gift Fund"). The Gift Fund shall:

- i) receive gifts of money or property for the environmental objects of the association;
 - ii) be credited with any interest on money in the Gift Fund;
 - iii) be credited with money derived from the property given to the Gift Fund;
 - iv) not receive any other money or property; and
 - v) only be used to support the environmental objects of the association.
- b. The Gift Fund is to be maintained as a separate public fund for the specific purpose of the environmental objects of the association as set out in this constitution and is to comply with the Income Assessment Act 1936 and the Income Tax Assessment Act 1997 as amended.

12.2 Allocation of Funds or Property

The association may allocate funds or property held in the Gift Fund to other organisations, persons or groups only in accordance with the objects of the association as set out in this constitution and will not be influenced by the expressed preference or interest of a particular donor to the Gift Fund.

12.3 Rules of the Gift Fund

The Gift Fund shall be bound by the following rules:

- a. Receipts must be issued in the name of the Gift Fund;
- b. Gifts to the Gift Fund must be held separate from other funds in a separate bank account;
- c. The members of the Management Committee of the association shall constitute the Management Committee of the Gift Fund;
- d. The majority of members of the Gift Fund Management committee must be persons with a degree of responsibility to the general community (as defined in the "Register of Environmental Organisations Eligibility Criteria - Explanatory notes" issued by Environment Australia or any subsequent amendments to those guidelines);
- e. Environment Australia must be advised of any changes to the rules governing the Gift Fund and changes in the membership of the Management committee of the Gift Fund;
- f. Within four months after the end of each financial year the association shall provide to Environment Australia statistical data about gifts to the Gift Fund during the financial year. This data shall be provided on a "Register of Environmental Organisations Statistical Return" form;
- g. The association shall comply with rules, that may from time to time be issued by the Treasurer or the Minister with responsibility for the environment that relate to the maintenance and/or administration of the Gift Fund; and
- h. The Gift Fund shall be wound up in accordance with clause 13 of the constitution of the association.

13. Winding Up

- a. The association may be wound up in the manner provided for in the Act.
- b. The association may be wound up by a resolution at a general meeting which is passed by a majority of not less than seventy-five per cent of the members present at the meeting and voting thereon.
- c. At least twenty-one days notice of a resolution to wind up the association shall be given to all members in writing.
- d. In the event of the winding up of the association and/or the Gift Fund, any surplus assets (after payments of all debts and liabilities) shall be transferred to some other institution or institutions having similar objects to the association, provided such institution or institutions are eligible to receive tax deductible gifts under the relevant section of the Income Tax Assessment Act 1997. Such institution or institutions are to be determined by a resolution of a general meeting which is passed by a majority of not less than seventy-five per cent of the members present at the meeting and voting therein. At least twenty-one days notice of such proposed resolution shall be given to all members in writing.

Constitution approved by the members of the association at an Annual General Meeting held in Adelaide on Wednesday 26th October 2011

SCHEDULE 1

Founding members of the Environmental Law Community Advisory Service (South Australia) [ELCAS]

April 1992

Names and Addresses of Members

Marcus Beresford	Executive Officer, Conservation Council of SA Conservation Centre 120 Wakefield Street, Adelaide SA 5000
David Cole	Solicitor Cole & Associates Pty Ltd, 252a Rundle Street, Adelaide SA 5000
Rob Fowler	Director, Environmental Law and Policy Unit, Law School, University of Adelaide, GPO Box 498, Adelaide SA 5001
Brian Hayes QC	Barrister Murray Chambers 12 Coglein Street, Adelaide SA 5000
Paul Leadbeter	Solicitor, Norman Waterhouse, GPO Box 639, Adelaide SA 5001
Stephen Lieschke	Solicitor, Workcover Review, 100 Waymouth Street, Adelaide SA 5000
Mark Parnell	State Coordinator, Australian Conservation Foundation, Conservation Centre, 120 Wakefield Street, Adelaide 5000
John Scanlon	Solicitor, Ward and Partners, GPO Box 438, Adelaide SA 5001
Felicity Tepper	Law Student, 4 Churinga Road, Aldgate SA 5154
Christine Trenorden	Solicitor, Corrs Australian Solicitors, GPO Box 9925, Adelaide SA 5001
Penny Wright	Solicitor, 3 Watson Street, Beverley SA 5009