

Final Constitution Adopted 23 September 2011 at a General Meeting of the Environmental Law Association, Glenburn Lodge, Muldersdrift, Gauteng.

THE CONSTITUTION OF THE ENVIRONMENTAL LAW ASSOCIATION

Field

PREAMBLE

It is recorded that:

The Environmental Law Association was initially formed as an association incorporated under Section 21 of the Companies Act 61 of 1973 with reference number 1991/006956/08 and was incorporated at Pretoria on 3 December 1991.

The Members of this Section 21 Company in 2009 resolved that the Section 21 Company be wound up and that in its place an organisation to be known as the Environmental Law Association shall be formed. A constitution was initially adopted and ratified by the members of the Section 21 Company known as the Environmental Law Association. On its adoption by the Section 21 Company, the ELA was deemed to have formally come into existence in terms of this Constitution.

The Environmental Law Association was constituted and adopted a constitution in 2009.

The Environmental Law Association is the successor in title to the Section 21 Company.

CONSTITUTION

1 NAME

- 1.1 The organisation shall be known as the Environmental Law Association (referred to in this document as the "ELA").
- 1.2 The ELA shall have a legal personality distinct from that of its Members and may own assets in its own name and sue or be sued in its own name and shall exist in perpetuity notwithstanding changes in Membership until formally wound up in terms of this Constitution.

2 OBJECTS

- 2.1 The ELA is not involved in commercial business or trade for the purpose of gaining a profit for itself or for its members.
- 2.2 The principal object of the ELA is to promote education and training programmes relating to environmental awareness, greening~~The principal object of the ELA is to promote the development, teaching, application~~ and the practice of environmental law through its secondary objectives which are to:
 - 2.2.1 promote for the benefit of the public generally the enhancement and conservation of the environment in the Republic and in particular to advance the education of its Members and of the public in all matters relating to the development, teaching, application and practice of law relating to the environment;

- 2.2.2 encourage collaboration between all those interested and concerned with environmental law;
- 2.2.3 collate and disseminate information relating to environmental law;
- 2.2.4 identify, review, advise and comment on issues of environmental law and its application; and
- 2.2.5 raise and distribute funds for the purposes of carrying out the objectives given above.

3 MEMBERSHIP

Membership shall be open to natural persons who subscribe to the objectives of the ELA and conform to the obligations imposed on Members by this Constitution. Membership shall be divided into the classes set out below:

- 3.1 Normal membership, which shall be limited to natural persons who are -
 - 3.1.1 Members of the legal profession including Members of the Judiciary, Advocates, Attorneys and legal advisors;
 - 3.1.2 Professional teachers of law;
 - 3.1.3 Candidate Attorneys, Pupil Advocates and Students;
 - 3.1.4 Any other person who is interested in environmental law and who supports the objectives of the ELA; and
- 3.2 Senior membership, for persons who are 65 years or older who satisfy the requirements above.
- 3.3 Honorary membership, which may be held by any person on whom such right is bestowed by the ELA in recognition of outstanding contribution to environmental law subject to such rights and obligations as the ELA shall impose upon such entitlement.

4 COMMITTEE

- 4.1 The affairs and business of the ELA shall be conducted by its Members and by the Committee.
- 4.2 The Committee shall be elected by the Members at an Annual General Meeting for a period of three years.
- 4.3 The Committee should be drawn from the Members in order to give representation to Members on a basis of region provided that at all times there should be not less than three persons elected to the Committee.
- 4.4 If at any stage the number of Committee Members falls below three persons then the remaining Committee Members shall be entitled to co-opt further Members to bring the number of Committee Members back to three pending the election of a new Committee.

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- 4.5 Quorum for any Committee Meeting, save a meeting to co-opt a Member as contemplated in 4.5 above, shall be three, one of whom shall be the Chairperson or Vice-Chairperson.
- 4.6 In the event of there being no quorum at a duly advertised meeting then such meeting shall be postponed for seven days when the Committee Members present shall form a quorum.
- 4.7 The Committee shall have the full power of governing the ELA and shall have power to fill any vacancy on the Committee that may occur and to employ any person. A person appointed to the Committee by the Committee shall hold office for the remainder of the three year term of the Committee that appointed such member and may be removed by the Committee at the instance of the Members or the Committee itself.
- 4.8 Decisions of the Committee shall be taken at meetings by a majority vote.
- 4.9 Committee meetings may be held by electronic medium, including video and telephone conferences, telephone calls, and email round-robins.
- 4.10 The Committee shall meet at least four times a year and all meetings shall be convened by the Chairperson.
- 4.11 Notice of meetings shall be circulated by the Secretary to all Committee Members together with an agenda for the meeting.
- 4.12 Notwithstanding any of the above any meeting of Committee Members at which quorum is present shall be valid irrespective of how such meeting was convened provided that adequate notice of the meeting was given alternatively that the notice requirement is waived by no less than 60% of all the Committee Members.
- 4.13 The Committee may levy such subscriptions on Members of the ELA as it may decide from time to time and may levy subscriptions which differ amongst the classes of Members provided for.
- 4.14 The Members shall elect the Committee at the AGM and shall elect Members of the Committee to be office bearers. If there is any change in the composition of the Committee during its period of office the Committee Members shall be able to elect office bearers from amongst themselves.
- 4.15 The office bearers shall be the following:
- 4.15.1 Chairperson
- 4.15.2 Vice-Chairperson
- 4.15.3 Treasurer
- 4.15.4 Secretary
- 4.15.5 Regional representatives

- 4.15.6 Additional members co-opted by the Committee
- 4.15.7 Editor or editorial member of the South African Journal of Environmental Law and Policy (SAJELP)
- 4.16 The Committee may create additional positions and committees as need be. Provided that any of the offices may be combined except that of the Chairperson who shall hold no other office.
- 4.17 Duties of the office bearers
 - 4.17.1 The Chairperson shall perform the following:
 - 4.17.1.1 Act as Chairperson at all Committee and General Meetings:
 - 4.17.1.2 Have the power to sign cheques or make electronic withdrawals or payments from the ELA's bank account in conjunction with the Treasurer or the Secretary:
 - 4.17.1.3 Present a report at the Annual General Meeting:
 - 4.17.1.4 Ensure that the ELA records are kept in safe custody during the period of his or her office:
 - 4.17.1.5 Generally take responsibility for the affairs of the ELA and in running the organisation:
 - 4.17.1.6 Approve the minutes of a meeting or resolution in conjunction with the Secretary.
 - 4.17.2 The Vice-Chairperson shall:
 - 4.17.2.1 Perform any of the duties or obligations of the Chairperson at a meeting at which the Chairperson is not present;
 - 4.17.2.2 Assist the Chairperson with any delegated or assigned power or function of the ELA provided that the Chairperson's powers in respect of ability to sign cheques or operate the ELA bank account may not be assigned or delegated;
 - 4.17.3 The Secretary shall:
 - 4.17.3.1 Keep full and accurate minutes of all resolutions and proceedings of meetings whether of the Committee or general meetings and shall circulate such minutes;
 - 4.17.3.2 Sign the minutes of a resolution of a meeting in conjunction with the Chairperson;
 - 4.17.3.3 Keep records of all correspondence;
 - 4.17.3.4 Carry out instructions from time to time issued by the Chairperson and/or the Committee;
 - 4.17.3.5 Serve all notices as required by the Committee or in terms of this Constitution;
 - 4.17.3.6 Keep a register of all Members; and

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4.17.3.7 Be a co-signatory with the Chairperson or Treasurer on the cheque account and electronic withdrawal or payment instructions.

4.17.4 The Treasurer shall have oversight responsibility for:

4.16.4.1 The opening and keeping of proper books of account showing all transactions of ELA as required by the Committee.

4.16.4.2 The immediate banking of any money paid to the ELA into the bank account of the ELA;

4.16.4.3 Be empowered to operate the ELA bank account by means of signing cheques or withdrawal forms or via the Internet or other suitable electronic means.

4.16.4.4 Make all payments authorised by the Committee

4.16.4.5 Have the bank account balance available at all Committee meetings;

4.16.4.6 Send out accounts and receive all fees and subscriptions;

4.16.4.7 Arrange the preparation of a balance sheet and profit and loss account in conjunction with the Chairperson for presentation at the Annual General Meeting; and

4.16.4.7 Be a co-signatory with the Chairperson or Secretary on the bank account and electronic withdrawal or payment instructions.

4.16.5 Regional Representatives are responsible for:

4.16.5.1 Convening and organising regional activities that support the objectives of the ELA such as seminars and workshops;

4.16.5.2 Convening and organising at least one regional activity per year;

4.16.5.3 Collaborating with the Secretariat in affairs applicable to their regions; and

4.16.5.4 Keeping track of environmental law developments of relevance in their regions.

14.16.6 *Ad hoc* members shall exercise the tasks allocated to them by the Committee.

5 GENERAL MEETINGS

5.1 The Members shall hold a General Meeting at least once a year, this meeting to be the Annual General Meeting (AGM).

5.2 The Members may hold a General Meeting other than the AGM if such meeting is called by the Committee.

5.3 Notice of AGM

5.3.1 The AGM shall be called by the Committee. The Members shall be given not less than 30 days notice of an AGM. The notice referred to shall:

5.3.1.1 Include an agenda (which may be altered or supplemented prior to the meeting provided that the final agenda is circulated not less than two weeks prior to the AGM).

5.3.1.2 Include nomination for election of office bearers and Committee Members, such nominations to be in writing and in the hands of the Secretary one week prior to the AGM for circulation to all Members;

5.3.1.3 Indicate and communicate the resignation of any office bearer from the Committee;

5.3.2 Notice of meetings is to be circulated electronically to the e-mail address provided by Members.

5.4 Business of the AGM

The AGM shall conduct the following:

5.4.1 approval of the minutes of the previous AGM and consideration of any matters arising therefrom;

5.4.2 consideration of the Chairperson's annual report and any matters arising therefrom;

5.4.3 consideration of the statements of accounts and balance sheet together with the Treasurer's report and any matters arising therefrom.

5.4.4 election of the Chairperson, Vice-Chairperson, Treasurer, Secretary and remaining Committee Members.

5.4.5 appointment of an auditor should this be required.

5.4.6 any other business which the Committee had placed on the agenda or which any Member of the ELA has requested the Secretary to place on the agenda. This request is received timeously to allow the Secretary to place such extra items on the final agenda for circulation not less than two (2) weeks prior to the AGM.

5.4.7 Any other business which is required in terms of this constitution to be dealt with at an AGM.

5.5 Quorum for an AGM shall consists of not less than 3 (three) Committee Members (one of whom shall be the Chairperson or Vice-Chairperson) together with not less than 5 (five) Members of the ELA, or a majority of Members, whichever is the fewer. Where a written proxy is received such proxy shall constitute a Member / Committee Member present for purposes of Quorum subject to the limitations described under the part dealing with proxies below.

5.6 Should quorum not be reached at the AGM then those Members present shall adjourn the AGM to a suitable date within 2 months. Such suitable date to be one on which it is anticipated that Quorum can be met alternatively to reconstitute the AGM *de novo*.

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5.7 Voting at General Meetings:

5.7.1 All normal and Senior Members shall have a single vote and shall be entitled to attend a General Meeting and to speak at the General Meeting.

5.7.2 an Honorary Member shall have the voting rights granted to him or her by the Committee.

5.7.3 for the purposes of the above any Member who has not paid their annual subscriptions shall not, without the leave of the Committee, be entitled to exercise any of the benefits granted to them until such time as their subscriptions are fully paid to date.

5.7.4 a general meeting other than a AGM may be convened by the Chairperson in the following circumstances:

5.7.4.1 By order of the Committee, or

5.7.4.2 On a written request signed by at least 10 (ten) Members.

5.7.4.3 General meetings, including an AGM, may be held by video or telephone conference or electronic equivalent.

5.7.5 The provisions relating to giving of notice required for an AGM shall apply provided that the Committee shall determine time frames in keeping with the circumstances in which the meeting was called. Quorum shall be as required at the AGM.

5.7.6 Proxy

5.7.6.1 Any Member may give a written proxy to any other Member to be exercised on their behalf. The Proxy shall be given in writing and shall clearly indicate how the Member wishes to vote on any matter set down on the agenda.

5.7.6.2 Where a Member is deemed to be present by virtue of its Proxy then such Members shall be discounted where Quorum is sought in respect of any matter not set out on the circulated agenda.

5.7.7 Voting

5.7.9.1 If it is not possible to convene a meeting and an urgent matter arises, the Committee may decide to appoint an electoral officer and follow an electronic voting process.

5.7.9.2 The electoral officer shall determine the rules of the electronic voting process.

6 ALTERATIONS TO CONSTITUTION

6.1 This constitution may be amended by the Members at a General Meeting.

6.2 Where an amendment to the constitution is sought then at least two thirds of the total Members must be present or represented at the meeting.

- 6.3 The resolution to amend the constitution must be adopted by two thirds of those present and voting.
- 6.4 Any amendments to the constitution must be submitted to the Commissioner of Public Benefit Organisations if compulsory in terms of legislation.

7 COMPLIANCE WITH SECTION 30 OF THE INCOME TAX ACT¹

Notwithstanding anything to the contrary in this Constitution, the Committee shall at all times comply with all and any conditions of the South African Revenue Service ("SARS") as contained in or provided for in section 30 of the ITA. In particular:

- 7.1 the Committee shall have at least 3 (three) Trustees, who are not connected persons in relation to each other, to accept the fiduciary responsibility of the ELA and no single person shall directly or indirectly control the decision-making powers relating to the ELA;
- 7.2 the ELA is prohibited from distributing any of its funds to any person (otherwise than in the course of undertaking any Public Benefit Activity) and is required to utilise its funds solely for the objects for which it has been established;
- 7.3 the ELA is required on dissolution to transfer its assets remaining after the discharge of all liabilities to:
- 7.3.1 any similar PBO which has been approved in terms of section 30(3) of the ITA (or if so directed by SARS, to an NPO having similar objectives as the ELA);
- 7.3.2 any institution, board or body which is exempt from tax under the provisions of section 10(1)(cA)(i) of the ITA, which has as its sole or principal object the carrying on of any Public Benefit Activity; or
- 7.3.3 any department of state or administration in the national, provincial or local sphere of government in South Africa as contemplated in section 10(1)(a) or (b) of the ITA;
- 7.4 the ELA is prohibited from carrying on any business undertaking or trading activity;
- 7.5 the ELA is prohibited from accepting any donation which is revocable at the instance of the donor for reasons other than a material failure to conform to the designated purposes and conditions of such donation, including any misrepresentation with regard to the tax deductibility thereof in terms of section 18A of the ITA; provided that a donor (other than a donor which is an approved PBO or an institution, board or body which is exempt from tax in terms of section 10(1)(cA)(i) of the ITA which has its sole or principal object the carrying on of a Public Benefit Activity) may not impose conditions which could enable such donor or any connected person in relation to such donor to derive some direct benefit from the application of such donation;

¹ Income Tax Act, 58 of 1962 ("ITA").

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7.6 the Committee must submit to SARS a copy of each amendment from time to time made to this Constitution;

7.7 the ELA shall not knowingly be a party to or knowingly permit itself to be used as part of any transaction, operation or scheme of which the sole or main purpose is or was the reduction, postponement or avoidance of liability for any tax, duty or levy which, but for such transaction, operation or scheme, would have been or would have become payable by any person under the ITA or under any other legislation administered by SARS;

7.8 the ELA has not paid and will not pay any remuneration, as defined in the Fourth Schedule to the ITA, to any employee office bearer, member, member of the Committee or other person which is excessive, having regard to what is generally considered reasonable in the sector and in relation to the service rendered, and has not and will not economically benefit any person in a manner which is not consistent with its objects;

7.9 the ELA shall comply with such reporting requirements as may be determined by SARS; and

7.10 the Committee must take reasonable steps to ensure that the funds of the ELA are utilised solely in pursuance of the objects of the ELA and where funds are provided by the Committee to any association of persons contemplated in paragraph 10 of Part I of the Ninth Schedule to the ITA, the Committee will take reasonable steps to ensure that those funds are utilised for the purpose for which they have been provided. No Committee member nor any connected persons of such Committee member shall be awarded any part of the income or assets of the ELA.

7.11 Furthermore, the ELA shall in respect of every donation furnish the donor with a receipt on which the following particulars shall be given:

7.11.1 the reference number issued to the ELA by the Commissioner of the SARS for the purposes of section 18A of the ITA;

7.11.2 the date of receipt of the donation;

7.11.3 the registered name of the ELA, together with any address to which enquiries may be directed in connection therewith;

7.11.4 the name and address of the donor;

7.11.5 the amount of the donation or the nature of the donation if not in cash; and

7.11.6 a certificate to the effect that the receipt is issued for the purposes of section 18A of the ITA and that the donation has been or will be used exclusively for the objects of the ELA.

8**79 TERMINATION AND WINDING-UP OF THE ELA**

The affairs of the ELA may only be wound-up in the following circumstances:

~~7.19.1~~ By order of a Competent Court:

~~7.29.2~~ By resolution of at least two-thirds of Members present at a duly constituted General Meeting, the following shall apply to a voluntary winding-up:

~~7.2.19.2.1~~ Where the ELA's assets exceed or equal its liabilities on discharge of all of its liabilities the Members may resolve to voluntarily wind up the ELA and distribute any remaining assets as provided for in this Constitution.

~~7.2.29.2.2~~ Where the liabilities exceed the assets but where one or more member(s) guarantee(s) any shortfall in the liabilities of the ELA and makes good such shortfall prior to final winding up by the Members.

810 FINANCIAL PROVISIONS

~~8.410.1~~ The ELA is required to utilise its funds primarily for the object for which it has been established.

~~8.210.2~~ The ELA may not pay, distribute, give or reimburse any of its Members or pay any of its assets to a Member save where the ELA pays for work done by such Member or Committee Member on behalf of the ELA. Such payment must be commensurate to the nature of the work done and must have been authorised by the Committee prior to such work being undertaken.

~~8.310.3~~ No Member or Committee Members shall have any right to any property or asset of the ELA ownership and all rights thereto vest in the ELA.

~~8.410.4~~ The fiduciary responsibility for managing the ELA's financial affairs is that of the Treasurer, Secretary and one Committee member appointed by the Committee for a specific term and at least two persons must authorise all decisions with regard to disbursement of the ELA finances.

~~8.510.5~~ The financial year-end for the ELA shall be the last day of February.

~~8.610.6~~ On the winding up of the ELA any assets shall be distributed to an organisation having a similar ethos to the ELA and which is a public benefit organisation and is registered as such with the South African Revenue Services.

~~8.710.7~~ The ELA may invest any surplus funds held by from time to time in a bank account and utilise the capital on interest accruing to fulfil its objectives and in the manner in accordance with this constitution.

~~8.810.8~~ The ELA may accept benevolent donations provided that these are irrevocably given.

~~8.910.9~~ In the event of the ELA providing funding to any approved beneficiary it shall only do so where it is in a position to ensure that the funds are correctly utilised by the beneficiary concerned.

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~~8.10~~10.10 All financial records and books of account shall be stored for at least four years after the date of last entry.

9.11 INTERPRETATION

~~9.1~~11.1 The headnotes to this constitution and to the individual paragraphs are for reference purposes only, and shall not govern the interpretation of any of the clauses of this constitution, or any of the provisions contained herein;

~~9.2~~11.2 The preamble shall form part of this constitution;

~~9.3~~11.3 In this constitution, unless the contrary intention appears from the context:-

~~9.3.1~~11.3.1 words signifying the one gender shall include the other genders;

~~9.3.2~~11.3.2 words signifying the singular shall mean and include the plural and vice versa;

~~9.3.3~~11.3.3 words in capital letters throughout denote such words are used as defined above unless the context clearly indicates the contrary;

~~9.4~~11.4 When any number of days is prescribed in this agreement, the number shall be reckoned exclusively of the first and inclusively of the last day unless the last day falls on a Saturday, Sunday or proclaimed public holiday (in the Republic of South Africa) in which event the last day shall be the next succeeding day which is not such a Saturday, Sunday or public holiday.

~~9.5~~11.5 Where figures are referred to in numerals and in words, if there is any conflict between the two, the words shall prevail.

CHAIRPERSON

VICE CHAIRPERSON

SECRETARY

SIGNED AT GLENBURN LODGE 23 SEPTEMBER 2011