



# GREENLAW

December 2009

Environmental Defenders Office (SA) Inc

## Inside this issue:

The Coorong, Lake Alexandrina & Lake Albert Update	1
SA's High Court Challenge	1
SA Water Select Committee	3
Murray Futures: Lower Lakes & Coorong	4
Engineering a Crisis: Ramsar Wetland	5
Four Mile Mine Update	7
Wild Law	6
Traveston Crossing Dam	5
New EDO Committee	6

The EDO wishes everyone a happy and safe holiday over the Christmas period. Merry Christmas!

### PLEASE NOTE:

The EDO will be closed over Christmas from 5.00pm on **Wednesday 23 December 2009** and will be re-opening at 9.00am on **Tuesday 12 January 2010**

## The Coorong, Lake Alexandrina and Lake Albert Update

### Temporary Regulators - New Referral to Keep Regulators

The State Government is seeking to maintain the regulators (which are similar to a weir) at Currency Creek, Clayton and the Finnis River (not yet built) by referring another matter to the Federal Minister for the Environment, Mr Peter Garrett under the Environment Protection and Biodiversity Conservation Act.

The State Government proposes in the referral to maintain the regulators until certain triggers are met for decommissioning. There is major concern that:

- these triggers may never be met as they involve water levels and water quality which may not be achievable. And this may mean that the regulators would never be removed;
- if the regulators are unlikely to be removed, then the description in the referral as temporary is misleading;
- the regulators are having a significant impact on the Ramsar listed wetland, particularly, Lake Alexandrina and Lake Albert which now receive limited fresh water flows as a result of the regulators.

The referral can be viewed at [http://www.environment.gov.au/cgi-bin/epbc/epbc\\_ap.pl?name=current\\_referral\\_detail&proposal\\_id=5227](http://www.environment.gov.au/cgi-bin/epbc/epbc_ap.pl?name=current_referral_detail&proposal_id=5227)

This office's submission is available on the website.

Continues on page 2



The Murray River - Photo from [www.photo.com](http://www.photo.com)

## South Australia Challenges Victoria in High Court Over Water

South Australia has commenced proceedings in the High Court against Victoria's remaining four percent water trade cap. The proceedings were lodged on December 1 by the South Australian Premier Mike Rann. It is alleged that the current Victorian water trade cap is in breach of section 92 of

the Australian Constitution, which provides for an express freedom of interstate trade, commerce and intercourse. The detriment placed on South Australia's water allocation from the Murray-Darling system, due to the restrictive Victorian water trade caps will be argued to place an unfair burden

on interstate trade and commerce when the matter goes to trial within the next six months.

South Australian Water Minister Karlene Maywald has denied that the High Court action is to the detriment of the newfound

**Continues on page 8**

## The Coorong, Lake Alexandrina and Lake Albert Update (continued)

### Water Act

The federal Water Act provides that a plan for the operation of the Murray Darling Basin must be prepared by 2011 ("the Basin Plan"). The Basin Plan is to set a "sustainable diversion limit", that is, enforceable limits on the quantities of surface and ground water which can be taken from Basin water resources.

The Sustainable Diversion Limits issues paper has been released and is available at: [http://www.mdba.gov.au/media\\_centre/media\\_releases/mr-water-extraction-limits](http://www.mdba.gov.au/media_centre/media_releases/mr-water-extraction-limits). The deadline for submissions is **Friday 18 December 2009**. If you would like assistance in preparing a submission, please contact this office.

### Water Allocation Plan for Eastern Mount Lofty Ranges

Apart from the River Murray, there are four water systems which feed water into the Lower Lakes and Coorong. They are the Rivers Angas and Bremer which feed directly into Lake Alexandrina and the Finniss River and Currency Creek which feed into the Lower Murray near Goolwa.

Under the Natural Resources Management Act (SA) 2004, the South Australian Murray Darling Basin Natural Resources Management Board is required to prepare a water allocation plan when an area becomes prescribed. The South Australian Murray Darling Basin Natural Resources Management Board ("the Board") indicates that:

- on 2 January 2001, a Water Allocation Plan for the Angas Bremer Prescribed Wells Area was adopted and was to be reviewed in 2005;<sup>1</sup>
- on 8 September 2005, the surface water, watercourse water and groundwater of the Eastern Mount Lofty Ranges which includes the Finniss River and Currency Creek were prescribed;

- the Board is preparing a single Water Allocation Plan to cover both areas (that is, the Angas Bremer Prescribed Wells Area and the area including the Finniss and Currency Creek).
- the Plan is to detail "*how much water is available for allocation; the ability of the water resources to meet current and future demand; provisions for maintaining a healthy environment; provisions for stock and domestic water; rules and conditions for water allocation and transfer; managing the impacts of water use; monitoring water recourse and catchment health.*"
- the Plan was due to be finalised a year ago in December 2008.

The Water Allocation Plan for the region is critical as it affects the flows of water entering Lake Alexandrina, Lake Albert and the Coorong.

### Temporary Weir at Wellington

The federal Minister for the Environment, Mr Peter Garrett has extended the time for the decision to build the weir at Wellington to 27 January 2010. In the meantime, at the request of the federal Minister for Climate Change and Water, Ms Penny Wong, a team of experts was appointed in October to provide advice on the long term management of the Coorong and Lower Lakes. The team of experts includes Don Blackmore, Dr Andrew Herzceg, Prof Gary Jones, Prof Richard Kingsford, Assoc Prof David Paton, Adjunct Assoc Prof Keith Walker.

### "Engineering a Crisis in a Ramsar Wetland"

Simultaneously, another team of experts (some of whom are part of Ms Wong's team) have prepared a report titled: "Engineering a Crisis in a Ramsar Wetland". The authors are the following group of scientists: Richard

Kingsford, Peter Fairweather, Michael Geddes, Rebecca Lester, Jesmond Sammut and Keith Walker. Their report is available at: [http://www.wetrivers.unsw.edu.au/CLLMM\\_final\\_SCREEN.pdf](http://www.wetrivers.unsw.edu.au/CLLMM_final_SCREEN.pdf)

A summary of the recommendations in the report is set out elsewhere in this publication.

### The Future of the Murray

On 14 December, Department for Environment and Heritage released the above Long Term Plan. Submissions on the report are due by 15 January 2010. If you would like assistance in preparing a submission, please contact this office. A brief summary of some of the salient points of the report is elsewhere in this publication.

### 4% cap

On 1 December, the State Government announced its High Court challenge to the 4% cap on water trading. Removing the cap will enable water to be purchased from New South Wales and Victoria for environmental flows.

Ruth Beach EDO Solicitor

1. [http://www.samdbnrm.sa.gov.au/Our\\_Plans/Water\\_Allocation\\_Planning\\_Eastern\\_Mount\\_Lofty\\_Ranges\\_PWRA.aspx](http://www.samdbnrm.sa.gov.au/Our_Plans/Water_Allocation_Planning_Eastern_Mount_Lofty_Ranges_PWRA.aspx)
2. *ibid*
3. South Australian Natural Resources Management Board Eastern Mount Lofty Ranges Update p1

Thanks to EDO Chairperson Felicity Niemann for producing this edition of Greenlaw

## Four Mile Mine Update



In the last issue of Greenlaw we reported on the approval by Peter Garrett, the Federal Environment Minister of the Four Mile Uranium mine. This mine is expected to be Australia's fourth uranium mine after Ranger in the Northern Territory and Olympic Dam and Beverley in South Australia.

Since the approval of the mine in July, a dispute has arisen between the joint venturers Alliance Resources and Quasar Resources regarding the native title agreement for the project. It has been reported that Alliance has sought to alter the native title agreement so that it has no liability for the existing Beverley Mine as it has no interest in this operation. This dispute has now resulted in Supreme Court litigation and delayed the start of mining. The Minister's decision is also the subject of legal challenge in the Federal Court.

In the meantime a new referral under the Environment Protection and Biodiversity Conservation Act 1999 to the Federal Environment Minister has been made by Heathgate Resources (the parent company for Quasar Resources) in respect of a proposed operation called the Beverley North Mine.

Melissa Ballantyne – EDO Solicitor

## Select Committee Makes Recommendations on SA Water

The Select Committee into SA Water, chaired by Greens MLC Mark Parnell has recently tabled its final report in the South Australian Legislative Council. Amongst the 38 recommendations arising from the report were the creation of a new South Australian Department for Water, legislated stormwater and wastewater recycling targets and an improved pricing regime to create greater water conservation incentives for South Australians.

The Inquiry was primarily concerned about the role of SA Water in encouraging and enforcing water conservation in the State, whilst also having objectives to increase their financial returns to the Government, creating a potential conflict of interest regarding the matter of water use. The recommendation to resolve this issue was to transfer conservation and educational roles on water to a new Department for Water, and create opportuni-

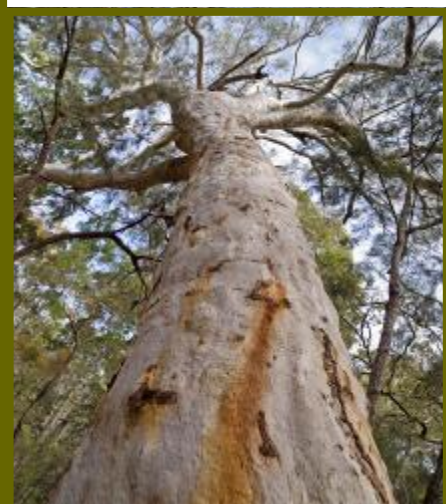
ties for public input regarding SA Water's government contracts by making such documents open to the public.

Additionally, the Inquiry found that South Australia's investment in water infrastructure was the lowest per capita of all mainland capitals for the period 2001-2005, and was not keeping pace with water demands in the State. Other key recommendations included that stormwater and wastewater recycling targets be legislated as per renewable energy targets, to provide incentives for households to reduce their water usage by shifting pricing away from fixed costs to usage costs, and to place an increased focus on SA Water's response to burst water mains.



Thomas Crompton – Law Clerk – Norman Waterhouse Lawyers

## New Tree Protection Legislation



The *Development (Regulated Trees) Amendment Act 2009* received assent on 26 November 2009. The Act amends the *Development Act 1993*, creating a new distinction between 'regulated' and 'significant' trees.

Trees that are protected under a De-

velopment Plan will be known as 'significant trees' and trees specified under the Development Regulations will be known as 'regulated trees'. A tree may also come under both categories.

An arborist's report will not be required for removing a tree that is only a 'regulated tree'. Under the amendments the Court is also given more specific powers to issue 'make good orders' where tree damaging activity has taken place. Fines of up to \$60,000 may be issued for failure to comply with those orders. The final disposition of the tree protection laws remains unclear and will depend greatly on how any new Regulations are drafted.

Richard Cook, EDO Volunteer.

## Murray Futures: Lower Lakes & Coorong Recovery

### Securing the Future: A Long Term Plan for the Coorong, Lower Lakes and Murray Mouth

On December 14 2009, the South Australian Government released the Long Term Plan for the Coorong, Lake Alexandrina, Lake Albert and the Murray Mouth. The plan aims to ensure that the Murray Mouth is generally kept open by end-of-system flows, that the freshwater Lakes Alexandrina and Albert are operated at variable lake levels, the reduction of salinity levels and the return to a dynamic estuarine zone.

Short term (2010-2014) mitigation measures to be implemented include continuation of dredging the Murray Mouth; pumping hypersaline water from the South Lagoon of the Coorong to lower its salinity; limestone dosing for acid sulfate soil management; installation of sub-surface barriers to increase soil moisture levels in areas of high acid sulfate soil risk and management of water levels in Lake Albert.

Longer-term solutions include re-vegetation at the site of the lakes and tributaries; construction of a wetland at Meningie; captive breeding of fish species; improving the connectivity between the two Lagoons of the Coorong and the translocation of water plants once salinity is stabilised.

The plan also identifies the diversion of water from the South-East of South Australia to the South Lagoon of the Coorong; the construction and installation of fishways and the management of water levels throughout the system as future management measures.

This document does not attempt a critical analysis of any of the above measures.

Whilst the plan presumes a 'freshwater future' for the area, it also indicates that research is currently underway on the impacts of the potential introduction of a minimum amount of seawater to avert acidification. The plan notes that this research is with a view to informing the environmental impact statement on the saltwater referral made to the federal Minister for the Environment, Mr Peter Garrett late last year. The plan states that the introduction of seawater is a last resort, short-term response.

However, upon the release of the Long Term Plan on 14 December, the Chief Executive Officer of the Department of Environment and Heritage, Mr Allan Holmes said on the ABC, "If governments cannot co-operate to deliver up to 500 gigalitres of fresh water needed to save the lower lakes, it is inevitable that they will have to be flooded with sea water."

Flooding the region with saltwater would permanently alter the ecological character of the wetland under the Ramsar Convention, where it is listed as fresh-brackish (slightly salty) water. As a result, the wetland would need to be listed on the Montreux Record. This is not an option given that it would be a fatal indictment on the mismanagement of the region.

Submissions on the plan are due by 15 January 2010. Please contact this office if you would like assistance in preparing a submission.

Ruth Beach, Solicitor

<http://www.abc.net.au/news/stories/2009/12/14/2771436.htm>

<http://www.environment.sa.gov.au/cllmm/murray-futures.html>

## “Engineering a Crisis in a Ramsar Wetland”

Richard Kingsford, Peter Fairweather, Michael Geddes, Rebecca Lester, Jesmond Sammut and Keith Walker released the above report in November. Their report is available at [http://www.wetrivers.unsw.edu.au/CLLMM\\_final\\_SCREEN.pdf](http://www.wetrivers.unsw.edu.au/CLLMM_final_SCREEN.pdf)

A summary of the recommendations quoted from the report are as follows:

- As part of the Basin Plan, the Murray-Darling Basin Authority (MDBA) should establish as a target, a median annual flow at the barrages of at least 3,800 GL. Such a flow would restore low flows (below the median) when the system is most vulnerable to about one third of natural volume. This would represent an increase of about 700 GL (6%) in median annual flows at the barrages.
- In the short term, vigorous efforts are needed to recover fresh water for the Coorong Lower Lakes and Murray Mouth and riparian wetlands along the Murray below Lock 1 (Blanchetown). Claims that too little water is available demonstrate the low priority given to critical environmental needs.
- Water levels in Lake Alexandrina and Lake Albert should be restored to +0.3 (approx. sea level) to +0.8 m AHD, and allowed to vary rather than being kept stable.
- The Australian Government could commission an independent public review of scientific knowledge of the Coorong Lower Lakes and Murray Mouth and the science that underpins present and planned interventions (e.g. weirs).
- The proposal to build a ‘temporary’ weir across the Murray at Pomanda Island, at the junction of the River Murray and Lake Alexandrina should be abandoned. This is planned to secure a potable water supply for Adelaide and rural towns in the event of continued drought, or highly saline water in Lake Alexandrina, but its incidental ecological effects would be overwhelmingly negative. Part of the supply will be met by the recent decision to construct a desalination plant at Port Stanvac, Adelaide. Also, an increase in flows would potentially avoid any need for a weir.
- The proposal to open the barrages and admit seawater to the Lower Lakes also should be abandoned, as it would irrevocably change the freshwater character of the lakes. If the proposal were implemented, a weir at Pomanda Island would be inevitable.
- Immediate steps are needed to protect environmental values in the main body of Lake Alexandrina, which is continuing to regress and become more saline. Its decline will be accelerated by weir construction and pumping.
- Lake Albert should be restored and maintained as a freshwater environment, and one option is to dig a channel between the lake and the Coorong therefore should be abandoned.
- There should be adaptive governance, planning and management, requiring a ‘vision’, objectives and targets that are achievable, measurable and open to review.
- For long-term management of the Coorong, Lower Lakes and Murray Mouth, consideration should be given to forming a joint steering committee of the South Australian Department for Environment and Heritage, the Murray-Darling Basin Authority and the federal Department of Environment, Water, Heritage and the Arts.
- Better hydrological data are needed for the Coorong Lower Lakes and Murray Mouth. This should include modelling inflows under scenarios that include a more equitable balance than prevails between the needs of the environment and human consumers.
- The Australian Government should reconsider the Ramsar listing of the Coorong Lower Lakes and Murray Mouth with a view to a more realistic basis for sustainable management, should all the values for which the wetland was nominated no longer apply.”

Ruth Beach, Solicitor

## Wild Law by Peter Burdon\*

On the 16-18 October 2009, 60 people from each state and territory in Australia gathered to discuss an emerging philosophy of law, Earth Jurisprudence. This term was coined in 2001 by the late 'geologist', Thomas Berry and has since been developed in research centres in the UK and North America. Central to this emerging philosophy is Berry's challenge to "carry out a transition from a period of human devastation of the Earth to a period when humans would be present to [on] the planet in a mutually beneficial manner".

In his book *Wild Law*, South African lawyer, Cormac Cullinan notes that the problem is not that we have developed human laws or human rights; it is rather that "we are no longer aware that our legal systems exist within the Earth system [of life] and consequently do not see the need for any connection or continuity between our legal system and the Earth system<sup>2</sup>". A local example of this division is the allocation of greater water withdrawals than the Murray-Darling Basin can sustain.

Rather than maintaining this division, Earth Jurisprudence contends that human made laws should be bound by the laws of nature. This is based on the premise that human made laws derive their legal quality from their conformity to the greater laws of nature. While this proposition might appear radical, the basic framework ought to be familiar. Indeed, currently legislation must be consistent with our national constitution and receives its legal character from this consistency. Earth Jurisprudence advocates a similar framework but recognises nature's law (not human law) as the ultimate reference point.

Another important argument in Earth Jurisprudence is that human beings exist as part of a broader earth community and that each part of this community is a subject (not an object) capable of holding rights. Importantly, this concept has been adopted by 12 municipalities in Pennsylvania who have enacted a law, which states that, "*Natural communities and ecosystems possess inalienable and fundamental rights to exist and prosper*". Of greater significance, in 2008 the Constitution of Ecuador was amended to state, "*Nature or Pachamama, where life is reproduced and exists, has the right to exist, persist, maintain and regenerate its vital cycles, structures and its processes in evolution*".

While still in its infancy, Earth Jurisprudence is gaining momentum as a worldwide movement. As we move forward, it is important to remember that law is a continually evolving and dynamic social institution. As the impact of the environmental crisis becomes increasingly felt, we will need new and novel ideas for evolving our legal system toward a mutually enhancing human-earth relationship.

For more information on Earth Jurisprudence please contact the author at [peter.d.burdon@adelaide.edu.au](mailto:peter.d.burdon@adelaide.edu.au) or visit the Friends of the Earth Wild Law page for links: [http://www.adelaide.foe.org.au/?page\\_id=233](http://www.adelaide.foe.org.au/?page_id=233)



Liffey Falls, Tasmania - Photographed by David Smith

## Proposal for Traveston Crossing Dam Rejected

Federal Environment Minister Peter Garrett has rejected the Queensland Government's proposal for the Traveston Dam Crossing on the Mary River, near Gympie. The Minister was of the view that the dam would have 'unacceptable impacts' on the environment and that there wouldn't be sufficient confidence in the measures that were proposed, to reduce those impacts. In particular the Minister determined that there would be particularly serious impacts over time on species such as the Mary River turtle, the Mary River cod and the lungfish. Queensland Premier Anna Bligh has indicated her government will not appeal the decision but has announced plans for two more desalination plants for the State's south-east.

The scientific reports and the economic analysis of the proposal can be found at: [www.environment.gov.au/epbc](http://www.environment.gov.au/epbc) The site for the proposal is: <http://www.travestoncrossingdam.com.au/>

Information can be found: <http://www.environment.gov.au/epbc/notices/assessments>

Melissa Ballantyne – EDO Solicitor

1.Thomas Berry, *The Great Work* (1999). P 4.

2.Cormac Cullinan, *Wild Law* (2002) p 54.

\*Peter Burdon is a Phd Student in Law at the University of Adelaide and works with NGO Friends of the Earth Adelaide.

## MC Mehta—A Short Biography

MC Mehta is described as one of the world's foremost environmental lawyers and is one of the founders of the Indian Council for Enviro-Legal Action (ICLEA), and director of the M.C. Mehta Environmental Foundation in New Delhi. Earlier this year, in a Festival of Ideas session entitled 'Pushing the Limits: Environmental law and the role of the judiciary and citizens' he outlined some of his extraordinary achievements as an attorney in the Supreme Court of India.

Mehta's first encounter with environmental law came as the result of an informal conversation with a man concerned about the effects of acid rain on the Taj Mahal. Pollution from local industries was turning the world famous monument yellow. Mehta filed a petition in 1984 and in December 1996 the Supreme Court delivered a historic judgment, directing industry to cease using coal and coke and to switch over to compressed natural gas. According to Mehta this case changed his life; just a thirty second conversation about the Taj Mahal started his journey in environmental law.

He was subsequently involved in a remarkable array of landmark cases resulting in orders against industries causing pollution in the Ganges River, orders for the relocation of industries causing air pollution in Delhi, orders for the removal of a river diversion and forest encroachment undertaken by the Minister of Environment and Forests to beautify a motel owned by his family, and orders for environment to be a compulsory subject through to Year 12 level.

There are differences between the Australian and Indian legal systems in relation to how cases are brought and determined but it is still heartening to see that an environmental lawyer can have such a profound impact. Mehta takes the view that lawyers are like scientists; it is their job to discover new things and the court room is their laboratory. This analogy captures the mixture of method and creativity necessary in addressing the complexities of the environmental issues we are currently faced with.

Kathy Whitta – EDO Administrator

<http://www.mcmef.org/landmark.htm>

Ibid

## Water For Good

The Water Industry Act Discussion Paper has been published by the SA Government as a component of the creation of the 'Water for Good' State Plan. The paper outlines the proposed actions in the plan to facilitate discussion on how they can be adopted into the new legislation while working in conjunction with existing resource laws. The discussion paper covers regulatory matters including price setting, licensing, and the establishment of an independent economic regulator. The deadline for submissions on the paper is 31 December 2009.

The paper is available at [www.waterforgood.sa.gov.au/wp-content/uploads/2009/11/discussion-paper\\_water-industry-act\\_final\\_5-nov-2009.pdf](http://www.waterforgood.sa.gov.au/wp-content/uploads/2009/11/discussion-paper_water-industry-act_final_5-nov-2009.pdf)

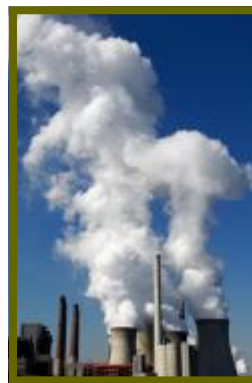
## Richard Cook - GDLP Placement

During the months of August through to November this year, I was very fortunate to be invited to undertake a placement with the EDO as part of my Graduate Diploma in Legal Practice (GDLP). During my time with the EDO I had the opportunity to do several tasks that might not have arisen in the course of a GDLP placement elsewhere. These include; helping to draft submissions to parliamentary inquiries; reviewing and analysing proposed legislation and pursuing freedom of information claims. Despite the EDO's very limited resources, their excellent work still managed to exceed all of my expectations. I have decided to stay on for as long as I can, remaining as a volunteer. My very great thanks to the EDO Staff, Melissa, Ruth and Kathy. You each worked to make my placement interesting and memorable.



## Emissions Trading Scheme Laws Rejected

The Federal Parliament has voted to reject legislation in relation to emissions trading. Emissions trading is a scheme that is market based. It allows parties to buy and sell permits for emissions or credits for reductions in emissions of



certain pollutants. It is generally referred to as a 'cap and trade' scheme. A cap is the limit that is put on greenhouse gas emissions. The word 'trading' refers to a company's ability to buy and sell permits. If a company wants to emit a tonne of greenhouse pollution they will need to pay for a permit. Just as an ordinary person would pay to dispose of rubbish in a tip organisations affected by the scheme would have to

pay to put greenhouse gasses in the atmosphere. The Federal Government has announced plans to reintroduce amended legislation in 2010.

Melissa Ballantyne – EDO Solicitor

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## South Australia Challenges Victoria in High Court Over Water (Continued)

co-operation between the States on water resource issues and the River Murray. She has stressed that the States are still in the process of developing a new basin-wide plan, which aims to set new sustainable diversion limits on all of the rivers and catchments within the Murray-Darling Basin area, whilst avoiding a right of veto of any state on the establishment of those new caps. The

South Australian Government is hopeful that along with a basin-wide plan currently being developed amongst the States, a High Court win will help to return healthy water flows to the River Murray's ailing lower lakes and Coorong.

Thomas Crompton Law Clerk, Norman Waterhouse Lawyers

## New EDO Committee

At our AGM on the 21<sup>st</sup> October the committee for 2009/2010 was elected. The new committee comprises:

Rob Fowler	Andrew Hall	Sophie Hansen
Duncan Hartshorne	Paul Leadbeter	Richard Cook
Felicity Niemann	Simon Ower	Sarah Avey
Alex Mackey	Cimon Burke	

Our new chairperson is Felicity Niemann and Duncan Hartshorne is continuing as Treasurer. Congratulations to all and welcome to the new members.

## EDO SUBSCRIPTION

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ENVIRONMENTAL DEFENDERS OFFICE (SA) INC MEMBERSHIP FORM

I wish to join the Environmental Defenders Office (SA)

Name..... Signature.....

Address.....

.....P/C.....

E-mail.....

Telephone: (work).....(home).....

I enclose my annual fee of \$44.00

\$22.00 – concession

\$99.00 – corporate (includes law firms)

\$44.00 – corporate concession (not for profits)

(all GST inclusive)

Donation \$..... (pay no GST on this)

Total \$.....

Payment (CHEQUE, MONEY ORDER, CASH) enclosed or

Credit card (circle one) Visa Mastercard Bankcard

Name on Card.....Signature.....

Card No \_ \_ \_ \_ \_ Expiry Date:.....

All memberships expire on 30<sup>th</sup> June

The information contained in this newsletter is not a substitute for proper legal advice. Contact the EDO or your solicitor for more detailed legal advice if you have a specific problem on an environmental law issue