



**Inquiry into the administration and transparency of the
Register of Environmental Organisations and its
effectiveness in supporting communities to take practical
action to improve the environment**

Submission by the Australian Marine Conservation Society

May 2015

1. Introduction/overview of AMCS

The Australian Marine Conservation Society (AMCS) is a national environmental organisation working towards the conservation of Australia's coastal and marine environment and the marine biodiversity they support. Our mission is to help protect Australia's oceans for the sake of current and future generations.

AMCS is a not-for-profit charity listed on the Register of Environmental Organisations (REO) and with Deductible Gift Recipient status. AMCS was entered onto the REO on 11 June 1993.

AMCS has over 50,000 members and supporters who support our work financially, undertaking voluntary activities and through social media.

AMCS has a long-standing involvement in improving the protection and management of Australia's marine environment. We were formed in 1965, initially named the Queensland Littoral Society and subsequently the Australian Littoral Society, then the Australian Marine Conservation Society.

Throughout our 50 year history we have worked through science based research, policy advocacy, on ground activity, community engagement and education to take effective action to protect Australian's marine and coastal environment. We work with and empower individuals, volunteers and communities to also be voices for marine conservation. We work with industry, stakeholder groups and Indigenous organisations to identify solutions to unsustainable use of marine resources. We seek to work with and persuade government to make long term, precautionary and ecosystems-based decisions founded on the principles of ecologically sustainable development.

2. AMCS Charitable Purpose

AMCS is an incorporated body with a formal Constitution. The Constitution establishes the charitable purpose (the 'objects') of AMCS as:

- a. **Ecosystem Based Management:** ensure that the management of coastal and marine resources is founded on integrated ecosystem approaches that recognise the linkages between terrestrial, freshwater and marine environments and the need for policies and programs to protect marine biodiversity and ecosystems.
- b. **Marine Protected Areas:** support and promote:
 - the establishment of a comprehensive, adequate and representative system of Marine Protected Areas around Australia; and
 - a well-resourced and successfully managed Australia-wide system of Marine Protected Areas.
- c. **Sustainable Fisheries:** support the sustainable management of wild harvest and aquaculture fisheries within an ecosystem-based management framework and other sustainable fisheries generally.
- d. **Threatened Species:** work to prevent the loss of Australian marine species, habitats and communities and to support and promote the recovery of threatened marine species and their habitats.

- e. **Coastal development:** work strategically to improve Australia's performance in avoiding, minimising and mitigating the impacts of coastal developments including marine infrastructure, coastal defence, ports and residential, recreational and tourism developments, working to promote sustainability in such development.
- f. **Land-based Sources of Pollution:** work strategically to improve Australia's performance in addressing land-based sources of marine pollution.
- g. **Shipping, Introduced Marine Pests and Ballast Water:** work strategically to improve Australia's performance in minimising, and where possible eliminating, the risks associated with introduced marine pests, ballast water and shipping.
- h. **Mining, Extractive Industry and Offshore Oil and Gas Exploration and Production:** work strategically to improve Australia's performance in:
 - addressing the impacts of mining and other extractive industries which affect coastal and marine environments; and
 - minimising, and where possible eliminating, the risks associated with offshore oil and gas exploration and production.
- i. **Climate change:** work to promote the adoption of climate change adaptation strategies for the marine environment to help future proof our oceans and their resources from the impacts of climate change.
- j. **Community:** work to:
 - encourage the broader community to value, appreciate, celebrate and actively support conservation of the marine environment; and
 - promote the involvement of community interest groups in the development and implementation of government policy and management arrangements for natural resources
- k. **Strategic Research:** collate and disseminate scientific information and rationale for the purpose of developing Ecosystem Based Management systems.
- l. **Operations:** facilitate the strategic involvement of the National Office and Branches in a wide range of marine conservation initiatives at the international, national, regional and local level.
- m. **Public Fund:** To establish and maintain a public fund which complies with subdivision 30-E of the *Income Tax Assessment Act (Cth) 1997* for the specific purpose of receiving all gifts of money or property in support of the Objects.

3. Activities and achievements of AMCS

Over our 50 years, AMCS has played a significant role in many of the main advancements for marine conservation in Australia. The following is a snap shot of some of our more significant achievements:

- **Prevented mining on the Great Barrier Reef**
Known then as the Queensland Littoral Society, we contested and defeated a proposal to mine limestone on Australia's Great Barrier Reef in the 1960s. We went on to lead the public campaign to protect the Reef from mining and oil exploration.
- **Global ban on commercial whaling**
AMCS helped spearhead this successful campaign in the 1980s. We remain vigilant on current threats to whales in Australia's waters.
- **International court case against Japanese Antarctic whaling**
Since 2006, AMCS Director Darren Kindleysides has played a significant role to advocate international legal action against Japanese whaling. AMCS has been there from the inception of the plan to instigate international legal action against the Japanese whalers, to working with governments, lawyers and scientists to convince our leaders to take this case forward, which ruled Japan's whaling broke international law and must stop.
- **Secured the Great Barrier Reef as a marine park**
AMCS led and built the campaign, which eventually involved numerous groups, and secured the Reef through the declaration of the Marine Park in 1974 and later recognised it as a World Heritage Area in 1982.
- **Expanded Great Barrier Reef green zones**
Working with our conservation partners, AMCS generated the public support that led to full protection of 33.4% of the Reef in 'green zones' in 2004 and helped secure a profitable future for the Reef's thriving ecotourism industry.
- **National Network of Marine Reserves**
AMCS has played a key role in campaigns that led to the Australian government proposing the largest network of marine reserves in the world in June 2012, including the proposal to create the world's largest marine reserve in the Coral Sea. The reserves were declared in late 2012 but are yet to come to fruition.
- **Marine Parks in state waters**
In collaboration with state based groups, we have helped secure marine parks across Victoria, in central NSW, across SA, parts of WA and Queensland. We've led campaigns to create a network of marine parks in the Northern Territory - with Limmen Bight, a haven for dugongs and other seagrass loving animals, declared as the NT's first new marine reserve since the 1980s in July 2012.
- **Ningaloo Reef saved**
Along with our Patron Tim Winton, AMCS and our allies protected Ningaloo Reef, WA (Australia's largest fringing coral reef) from a major marina development. With overwhelming support from the public, we further succeeded in securing 34% of the Ningaloo Marine Park in green zones, and most recently World Heritage listing in 2011.
- **Moreton Bay protected**
Our long track record of success in Moreton Bay includes stopping coral mining on Peel and Mud Island, banning sand mining on Moreton Island and advocating for its protection as a national park. More recently we worked with the community to increase the green zones from less than 1% to 16% protection in critical areas of coral, seagrass and rocky reefs.

- **Live shark finning banned in Australia**

Thanks to us, live shark finning at sea is now illegal in all Australian states and the Northern Territory. The NT was the last Australian jurisdiction which allowed this cruel and wasteful fishing method, and our community campaign resulted in its ban in 2004. We continue to work towards a ban in the export and import of shark fins in Australia, to stop our involvement in this terrible trade.

- **Seacage fish farming stopped**

Through seeding and empowering a local community group, Friends of Sceale Bay, AMCS protected sea lion colonies in South Australia from unsustainable sea cage aquaculture development. We have also contested unsustainable sea cage proposals in NSW and Queensland. We are working with industry to lessen the impact of fish farms on our precious oceans.

- **Sustainable Seafood revolution**

Launching our highly successful *Australia's Sustainable Seafood Guide* for those who love the oceans and their seafood, AMCS revolutionised the way Australians view seafood and the fishing and fish farms that provide it. The guide is available in paperback, and as a dedicated consumer website and iPhone app which includes Greenpeace's Canned Tuna Guide. More and more Australians are recognising their part in protecting our precious oceans by choosing their seafood responsibly.

- **Australia's first seabed mining moratorium**

AMCS secured a three-year moratorium on seabed mining in Northern Territory waters in March 2012, the first Australian jurisdiction to stop this damaging activity. The battle continues.

- **Marine Wildlife protected**

We have reduced the amount of sharks that can be fished in the East Coast Inshore Finfish Fishery, protected all seahorses and relatives (33 species) in NSW waters, secured (endangered) grey nurse shark critical habitats in Queensland and saved turtles from fishing nets and crab pots. We've also worked with our partners to stop fisheries killing dolphins and sea lions off South Australia.

- **Mangrove protection**

AMCS has helped government and industry value mangroves as critical nursery areas for fish and other wildlife. We have undertaken extensive littoral mangrove surveys that led to protection of important wetlands, including the World Heritage Kakadu National Park in the NT and the Boondall Wetlands Reserve in Qld.

- **Stopped the Super Trawler**

Secured changes to federal environmental laws enabling new, untried and destructive fishing methods, including the operation of the MV Margiris super trawler in Australian waters to be scientifically assessed and excluded.

4. Tax deductibility and donations to AMCS

AMCS receives no Federal government funding, and very minor funding from certain State and Territory governments. We are totally reliant on the income that we generate from membership fees, donations, grants and sales of merchandise. We currently employ 14 full time and part time staff based in Queensland, NT, WA, Vic, and NSW.

AMCS report to donors through our Annual General Meeting, Annual Report, *Turning the Tide* magazine, postal newsletters and updates, electronic newsletters and social media.

We are a small self-reliant organisation that has built itself into an effective charity with a proud record of achievements. Our ability to continue to be self-sustaining and to deliver for the public benefit across Australia is very dependent on the ability to keep attracting tax-deductible donations.

We have recently invested heavily in additional fundraising programs to consolidate our current operations. The decision to invest was premised on the expectation that, as an acknowledged charity, under Australian law, carrying out legitimate activities for the protection of the environment, we would continue to be eligible for tax deductibility.

There is no question that without the tax deduction AMCS would find it harder to raise money to fund our work and in the long term it would be the public that would suffer from the loss of benefits derived from our work to protect Australia's marine environment.

5. Key role of advocacy to AMCS achieving our charitable purpose

Stretching from the warm tropical reefs of the north to cold sub-Antarctic islands in the deep south, Australia has stewardship over one of the largest maritime zones of any nation on earth.

Indeed, in 2008 under the United Nations Convention on the Law of the Sea Australia was granted a significant increase to 13.86 million square kilometres—the third largest national marine territory in the world.

Our marine area is almost twice the size of our continent and, as confirmed by the global *Census of Marine Life 2010*¹, plays host to the richest marine biodiversity on the planet.

Our oceans are not just home to a wealth of marine life, but are the powerhouse of wealth for coastal communities. Marine tourism in the Great Barrier Reef alone generates almost \$6 billion dollars for Australia's economy every year, employing more people in Queensland than the mining industry. In addition to supporting thousands of regional jobs, Australia's marine environment also provides an estimated \$25 billion in ecosystem services, including carbon storage².

Our oceans are not only pivotal to the health of our economy, but to our own health and well-being too. They drive our climate and give us food to eat, oxygen to breathe, beaches to visit, places to drop a line, weigh anchor, immerse ourselves and be inspired.

The Commonwealth Government's Minister for the Environment has overseen a five yearly State of the Environment Report since the introduction of the *Environment Protection and Biodiversity Conservation Act* in 1999. These reports are prepared by an independent body of highly respected scientists. The most recent was published in 2011.

In relation to the marine environment it notes that “the overall condition of the Australian marine environment is good” largely due to the immense offshore and remote areas, but that “there is

¹ <http://www.coml.org/>

² C Hoisington: *Stocking Up: Securing Our Marine Economy*, Centre for Policy Development 2011

substantial degradation in the east, south-east and south-west. Ecosystems near the coast, bays and estuaries in these regions are in poor to very poor condition.” Much of this decline has occurred in the past 50 years due to poorly- or un-regulated human activities in river catchments, urban and coastal developments including aquaculture, and fishing³.

The report notes that algal blooms occur regularly; natural levels of freshwater, sediment and nutrient inputs have been heavily altered; and worrying levels of pesticides are found in waters near areas of intensive agriculture. Fishing and offshore developments, particularly oil and gas extraction, all have local impacts on marine biodiversity. Land based mining and river damming are growing pressures. Fishing has reduced most populations of sought-after species to low levels, mainly in previous decades and current practice is to maintain these low levels rather than try to build a larger more resilient population⁴.

Condition remains poor to very poor for a number of iconic marine species that have failed to recover from excessive hunting and fishing in the past. Australian sea lion populations are showing no substantial signs of recovery and there are many migratory wading birds which appear to be continuing to decline across many of their Australian habitats. Southern bluefin tuna, formerly a major predator of our regional seas, has been fished to the edge of population survival⁵. In the north dugong are at serious risk with the most recent surveys in the southern Great Barrier Reef showing the lowest numbers on record⁶.

The major looming threat for our oceans and coastal waterways is the changing global climate, which is creating significant changes in ecosystems, biodiversity, shorelines and coastal lands. The main impacts of climate change for the marine environment are increased temperature, ocean acidification and sea level changes. There is already evidence of the East Australian Current changing its pattern of extension into Tasmanian waters, becoming warmer and saltier. Climate change threatens our wealth generation from the oceans, and the existence of our coral reefs at their present-day scale and grandeur⁷.

All these pressures are cumulative and while the report notes that improvements in management systems including protected areas at both state and national levels have produced substantial and persistent positive outcomes for our marine world, far more action is needed. It notes that:

“The evidence shows that our management systems are still too fractured, weakly coordinated and poorly integrated to halt the accelerating degradation of the unique values of our oceans and coastal ecosystems”. “Each region has specific pressures that will almost certainly worsen over the coming 20–50 years, under current management arrangements.”⁸

³ <http://www.environment.gov.au/science/soe/2011>

⁴ *ibid*

⁵ *ibid*

⁶ Great Barrier Reef Outlook Report 2014

⁷ <http://www.environment.gov.au/science/soe/2011>

⁸ *ibid*

The report concludes that the outlook for Australia's marine environment is uncertain: "We need our oceans and coastal ecosystems to continue to sustain and inspire Australia's future, as they have in our past. Perhaps the most critical challenge of all now confronts us—our ability to design and deliver effective and efficient governance to address the known threats and accelerating risks to our unique marine environment."⁹

If this is the government view on the future of our marine environment, then as a charity dedicated to the protection of our coasts and seas, we would ask the members of the House of Representatives Environment Committee what is being done to change this situation?

If there is a failure of governance, fisheries that are not being managed to rebuild populations to previous levels, poor coastal management and planning, inadequate protected areas, and unsustainable levels of development that threaten our oceans, then these are the things that should be addressed. As a charity dedicated to the protection of our coasts and seas, AMCS is addressing these things. Indeed these are many of the issues which AMCS works tirelessly on.

For decades we have advocated for improved fisheries management with some success. We have seen the introduction of better fisheries assessments and management, limitations on the most unsustainable fisheries and the introduction of bycatch reduction devices and turtle exclusion devices to protect threatened species.

We promote sustainable seafood to the community through our Sustainable Seafood Guide and Good Fish Project.

We continue to work towards the establishment and good management of dedicated highly protected areas that support our marine life and protect them from exploitation, in both State/Territory and Commonwealth waters.

We work to tackle pollution threats, such as marine debris and agricultural run-off. We also continue to work to protect marine species from threats including bycatch, habitat loss and degradation, ship strikes and entanglement.

These activities require advocacy, the direct involvement with government agencies, with decision makers, with planners and policy makers. All of these activities result in a better outcome for the marine environment and therefore a better outcome for the community.

If these activities were not supported by tax-deductible donations then Australia's oceans would be the poorer for them.

We recognise that all change is a challenge and that when change happens it can be an upheaval. But AMCS would challenge anyone reflecting back on our achievements over the past 50 years to argue they were not changes for the better of the environment and the community.

Local Fisherman and Owner of the Whitsunday Seafood Company, Matt Fitzgerald, is a case in point: when the Howard Government's increased area of no-take green zones came into effect in the Great Barrier Reef in 2004, he says there was initial panic among the local fishing fleet. Matt was innovative enough to restructure his fishing business, partnering with chef Geoffrey Morgan and supplying seafood to local resorts like Hamilton Island. Now, his business is reliant on the success of the green zones, which attract tourists from around the world. In May 2015 Matt state: "Now, there wouldn't be a fishermen in my community who wouldn't have any objections to any future closures whether it was in the Great Barrier Reef or the Coral Sea provided that it was done for the right reasons."

⁹ ibid

6. AMCS submissions on specific Terms of Reference

AMCS is concerned that the terms of reference for the Inquiry reflect a bias towards on-ground activities of environment groups, and fail to reflect the full suite of activities carried out by environment groups towards their charitable purpose and public benefit of environmental protection.

Statements by the Chair of the Committee, Alex Hawke that “the environment register is for groups to do actual practical environmental work or some education and other purposes¹⁰” suggest the Chair does not fully appreciate the current and legitimate role of the REO. Further, there have been statements by some members of the Committee including Senators Matthew Canavan and Eric Abetz and MP Andrew Nikolic that suggest they hold preconceived views about the legitimacy of many environment groups. We trust that all members of the Committee will bring an open mind to understanding the complex and vital role played by all environmental organisations in securing a safer, cleaner, healthier environment upon which Australia’s economic prosperity is based.

The definition of 'environmental organisation' under the Income Tax Assessment Act 1997, including under Subdivision 30-E

The current definition is clear and workable. It states clearly that the principal purpose of an environmental organisation must be:

- (a) the protection and enhancement of the natural environment or of a significant aspect of the natural environment; or
- (b) the provision of information or education, or the carrying on of research, about the natural environment or a significant aspect of the natural environment.

The definition does not endeavour to prescribe the particular ways in which the organisation undertakes its work for the protection of the environment. It is acknowledging that it is the *purpose* of the organisation which makes it eligible, subject to the broader considerations of being a charitable purpose and in the public benefit.

This is commendable as there are a plethora of means by which environmental protections can be delivered and it would be inconsistent with a range of practices already operating under taxation laws to endeavour to prescribe them. For example, a company that produces widgets can claim the cost of production against its profits before tax. The Tax office does not try to prescribe how the company should run its operations nor the type of manufacturing it should implement to produce the widgets. This would be totally inappropriate.

Similarly then, it would seem obvious that the Tax office should not be engaged in trying to prescribe to an environmental charity how it undertakes its activities for an environmental purpose.

We recommend keeping unchanged the current definition of ‘environmental organisation’ under the *Income Tax Assessment Act 1997*.

The requirements to be met by an organisation to be listed on the Register and maintain its listing

The current requirements of organisations on the Register include maintaining a public fund, complying with any rules that the Environment Minister makes to ensure that gifts are used only for

¹⁰ ABC’s 7:30 Report

its principal purpose and preparing a report each year that contains statistical information about gifts made to the public fund during that income year.

Additionally, incorporated associations such as AMCS are required to produce a set of annual accounts which they report to their members annually.

These processes are transparent and accountable. There have been a number of investigations by the tax office into the activities of environmental charities on the Register over many years and in all of these cases the organisations have been found to have been compliant with the current regulations.

Environmental organisations are also subject to scrutiny from the public and endeavour to maintain high levels of integrity in the work they undertake.

We recommend that the administrative burden on environmental organisations is not increased.

Activities undertaken by organisations currently listed on the Register and the extent to which these activities involve on-ground environmental works

AMCS has outlined in section 5 the nature of its work and how it delivers for the protection of the environment. We consider that the focus in this terms of reference on ‘on-ground’ environmental works is misguided as this is only a subset, important in its own right, of all the activities needed to secure the protection of the environment for the long term.

All of our activities serve a purpose in ultimately delivering results in changes to the ‘on-ground’ or rather ‘in-sea’ condition of the marine environment. Let us quantify this with one specific recent example.

In 2012 AMCS undertook an assessment that identified extensive plans for capital dredging in the Great Barrier Reef. There was over one hundred million tonnes of dredging and dumping proposals planned and almost all of the dredge spoil from these proposed operations was to be dumped in the Reef’s world heritage waters. This posed an immense threat to seagrass beds, the feeding ground for endangered dugongs, and inshore coral reefs already struggling from poor water quality, storm damage and crown of thorns infestations.

Through environmental advocacy, the AMCS, working with other environment groups, secured a commitment from the Federal Environment minister to ban the dumping of capital dredge spoil in the Great Barrier Reef Marine Park and a complementary commitment from the Queensland government for a ban in coastal Reef waters.

This charity work undertaken by AMCS and others has resulted in a substantial ‘on-ground’ (in-sea) outcome across hundreds of kilometres of the Reef’s waters. A massive area has been spared from the environmental harm which dredge spoil dumping would result in. It is consistent with good management of the Reef as required of government under the GBRMP Act and with the protection of threatened species and world heritage areas as required under the EPBC Act.

It is clearly activity that delivers a public good, measurable in environmental health and in terms of community attitude. Polls have consistently revealed more than 80% of the community support the view that the Reef should not be used as a dumping ground¹¹.

¹¹ Essential Research 2013, 2014

Any recommendation of the Committee that seeks to curtail the lawful activities of environmental groups on the Register would go against the decision of High Court of Australia in *Aid/Watch* and current tax rulings.

Compliance arrangements and the measures available to the Department of the Environment and the Australian Taxation Office to investigate breaches of the Act and Ministerial Guidelines by listed organisations

Tax law provides certain concessional tax treatments for charitable institutions and funds that are ‘established for public charitable purposes’ as specified in section 50-5 of the ITAA 1997. A revised Tax ruling 2011 – 004 was prepared following the landmark *Aid/Watch* case in the High Court which established a number of important fundamentals relevant to the Register of Environmental Organisations.

TR 2011 – 004 states that for an organization to be charitable it must be within the spirit and intent of the Statute of Elizabeth, or deemed charitable by legislation; and for the public benefit.

Charitable purposes are commonly grouped, following the terminology used in *The Commissioners for Special Purposes of Income Tax v. Pemsel* [1891] AC 531; [1891-1894] All ER Rep 28 (*Pemsel*), as the ‘four heads of charity’ namely, the relief of poverty; the advancement of education; the advancement of religion; and other purposes beneficial to the community.

A purpose is for the public benefit if it offers a benefit to the community that is real and of value, either tangible or intangible; and that benefit is available to the public.

Following the High Court’s decision in *Aid/Watch* the current tax ruling states an entity can be charitable if it has a purpose of generating public debate with a view to influencing legislation, government activities or government policy in relation to subject matters that come within one or more of the four heads of charity, as long as the means used and the ends to be achieved are not inconsistent with the rule of law and the established system of government.

Generating public debate to influence legislation, government activities or government policy can be a charitable purpose under the fourth head where the subject matter either comes within the spirit and intendment of the Preamble to the Statute of Elizabeth be deemed charitable by legislation.

TR 2011/4 recognises protection of the environment as a charitable purpose, and that charities have all legal activities at their disposal to achieve their charitable purpose just as governments and businesses do. Businesses are not accountable to the ATO for what brand of machinery they invest in to achieve their production and charities should not be challenged by the ATO for what strategies they implement to achieve their recognised charitable purpose.

It further recognises an entity does not necessarily have to present a balanced position in order to be considered an entity with a purpose of generating public debate: it could express a singular point of view about a subject matter that comes within one of the four heads of charity.

TR 2011/4 provides specific examples of legitimate environmental activities that are eligible for deductible gift recipient status including “to advocate and publicly campaign for policy changes and actions to minimise global warming” and “to engage with and inform policy makers and the community about the risks to human health from climate change and the solutions available to reduce risks”.

Activities such as “gathering evidence to develop policy papers and submissions, commissioning and publishing research, analysing the climate change policies of political parties, meeting with Members of Parliament and government officials with a view to influencing their position on climate change, publicly commenting on climate change issues, and commenting on, and issuing media releases in relation to, government environmental policies and legislative proposals.”

Further, TR 2011/4 notes that where charities establish a peak or similar body to further their common charitable endeavours, the same principles and considerations apply in determining the purpose of that body as would apply to any entity.

Clearly there is a constitutional recognition of the legitimate charity status of environmental organisations under the fourth head of power. The current arrangements whereby environmental organisations must apply to be on the Register is specific to this class of NGOs and provides for a mechanism of compliance which is readily complied with.

AMCS recommends that the current recognition of environmental groups as charities eligible to receive tax deductible status remains unchanged.

Changes to restrict the eligibility of current groups would be an attack on the independence of Australian civil society, restrict the free exchange of views and opinions within our community, and have negative consequences for our environment.

End.