

Environment and Communications References Committee

Impacts of feral horses in the Australian Alps

Australian Conservation Foundation response to Question on Notice from Senator Grogan

Question:

Senator Grogan: I have a quick question for Mr Sydes. You talked about the EPBC reform. Obviously there are those of us who have been pushing for that to occur for well over a decade, and we like to think that that's coming forward really soon. Maybe you'll want to take this on notice. You do reference it in your submission but in quite a generic way. If there are any particular things that you believe that EPBC reform should cover that would be applicable to this area, could you please come back to us on notice with some further detail?

Mr Sydes: I'm happy to take that on notice and come back with some specifics. I could say, in very general terms, a lot of the language and the framing of the Commonwealth functions and responsibilities under the EPBC Act at the moment really reinforce the timidity and reluctance to actually step up and deal with these sorts of issues. One of the overarching things that we'd like to see coming through the reforms is a much stronger focus on the Commonwealth's responsibilities under our international agreements and for dealing with cross-jurisdictional issues like this and much stronger language to reflect that, in terms of not just the functions but also the responsibilities and the duties and powers that the Commonwealth should be exercising to stop these problems arising in the first place. I'm happy to elaborate further on that in writing.

Answer:

Recommended reforms to the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) applicable to the matters before this inquiry are listed below. We understand that the EPBC Act will be replaced by new legislation so recommendations are framed in terms of what should be included in this new legislation.

1. The new legislation should retain Part 15 of the EPBC Act which covers Protected Areas, but these provisions should be strengthened to ensure that the Commonwealth has clear powers and a responsibility to intervene where, as here, other jurisdictions act in a manner which is inconsistent with protecting and conserving National Heritage Places and other area based Matters of National Environmental Significance (MNES). Specifically:
 - a. Commonwealth responsibilities in relation to development of management plans (s 324X in the case of National Heritage Places) should be expressed as a clear positive obligation. For example the words "must use its best endeavours" in s 324X(2) could be replaced with "must take all reasonably available steps" or similar (cf. the manner in which the obligations of Commonwealth agencies is expressed in s 324X(3)).
 - b. Section 324Y creates an obligation to prescribe National Heritage Management Principles to guide the development of management plans for National Heritage Places but the Act is silent as to what these Principles must contain. The Principles that have been developed (Schedule 5B to the *Environment Protection and Biodiversity Conservation Regulations 2000*) are high level and generic, and as a result have proved ineffective in guiding a response to feral horse impacts in the Australian Alps despite State and Territory governments saying they are committed to abiding by the Principles when developing Management Plans. The wording of this section should be amended in the new legislation to specifically require the Principles to cover managing risks and threats to the National Heritage values of a place.

New legislation should also specifically require that the Principles ensure that key threatening processes and listed threatened species and ecological communities are managed and protected in accordance with the objectives of the legislation and consistently with plans and strategies developed under it.

- c. Section 324Y(2) enables the Commonwealth to create regulations to give effect to the Principles. This should be re-cast as a positive obligation to develop and implement regulations to give effect to the Management Principles where another Commonwealth agency or a State or Territory fails to develop and implement a management plan consistent with the Principles. The tabled correspondence from Minister Ley to the NSW Minister for Energy and Environment dated 21 June 2012 foreshadowed use of these regulation making power but nothing eventuated. The reforms suggested would avoid this situation arising in the future by requiring the Minister to follow through and take action.
2. A key reform committed to under the Nature Positive Plan and recommended in the Independent Review of the EPBC Act is the development of National Environmental Standards including for MNES such as National Heritage Places. It is unclear at this stage how these standards will relate to the current Management Principles and whether these will be combined or maintained as separate instruments. Regardless of the approach adopted, the new legislation should ensure that there continues to be a clear basis for specifying what Management Plans for National Heritage Places need to provide for, and that the Commonwealth retains the power for regulatory intervention currently provided for in s 324Y.
3. The definition of “action” in s 523 of the EPBC Act should be clarified in the new legislation to ensure that it covers policies, plans and programs of governments or agencies in relation to the place based MNES designated under the Act (National Heritage Places, World Heritage Properties and Ramsar wetlands). This would ensure that such actions where they are likely to have a significant impact on the Place, Property or wetland or other MNES (such as threatened species) would need to be referred and assessed under the new legislation. If the recommendations listed under 1 above were fully implemented these provisions would not be expected to be engaged much if at all, however they should be included as an important fail-safe measure to ensure that such actions cannot be carried out without an approval.
4. Section 25A of the EPBC Act provides an important regulation making power which can be used to clarify actions which are regulated under Part 3 of the Act, including National Heritage Places. This power was used in the context of the Victorian government’s proposed alpine grazing trials (see Department’s submission to this inquiry) but does not seem to have been contemplated as a useful tool in the case of managing the impact of feral horses in the Australian Alps. This section should nonetheless be retained in new legislation as it provides an important mechanism for the Commonwealth to clarify the application of regulatory controls to National Heritage Places.
5. The Government has committed in the Nature Positive Plan to overhauling the current system of conservation planning. This should include updating and improving the current provisions relating to key threatening processes and threat abatement plans. Submissions and evidence presented to this Committee reinforce the need for these reforms. We endorse the specific reforms recommended in the submission of the Invasive Species Council to this inquiry:

- a. Enabling multiple threat abatement plans to be listed for listed key threatening processes (essential as the Department has reached the view that the EPBC Act does not allow this to occur).
 - b. Requiring the comprehensive listing of threats to MNES on the advice of the Threatened Species Scientific Committee.
 - c. Classifying listed threats hierarchically as:
 - i. Key threatening processes – overarching processes such as habitat loss and invasive species.
 - ii. Threats of national environmental significance – more-specific threats within each key threatening process such as a particular invasive species.
 - d. On listing a threat of any category, requiring the Threatened Species Scientific Committee to prepare a statement about the actions (management, research) and instruments (plans, policies, regulations) needed to abate the threat (to the extent that it can be delisted).
 - e. Streamlining the process for preparing threat abatement plans and recovery plans or their replacement instruments under new legislation and reducing the timeframes in which they must be finalised.
 - f. Better integrating threat abatement and recovery actions, including through new proposed recovery strategies.
6. The EPBC Act contains provisions to designate “critical habitat” for listed threatened species and communities. These provisions have been ineffective. The new legislation should ensure that these provisions are reformed and strengthened so that critical habitat for species such as the Southern Corroboree Frog and Stocky Galaxis is designated, mapped and protected. This could provide effective legal protection as well as a clear and authoritative message as to areas where protection is essential. A commitment to zero new extinctions is meaningless without effective protection of critical habitat.
 7. The new legislation must include strong new institutional arrangements – these will assist in ensuring that the Commonwealth has the authority to step in and act on issues like feral horse management in the Australian Alps in the future. The welcome proposal to create a new national Environment Protection Authority is covered in our submission.
 8. Environment Minister Tanya Plibersek has also recently indicated that she is also willing to consider the creation of a National Environment Commission as part of future reforms. Such a body could have an important complementary role to the EPA, undertaking functions such as monitoring impacts and emerging issues, as well as conducting investigations or inquires on specific matters such as protected area management or impacts of invasive species. A well-designed Commission could promote accountability for the administration of the new legislation. The Commission is not a new idea – it was recommended by the first Independent Review of the EPBC Act - but this inquiry provides a timely reminder of the value of such a reform.¹

¹ Material submitted to inquiries conducted by predecessors of this Committee outlines possible roles and functions for a Commission on issues such as those considered by this inquiry -see for example [A proposal for the establishment of a National Environment Commission](#), EDO Victoria, 2013.