

Environment and Communications References
Answers to questions on notice
Climate Change, Energy, the Environment and Water Portfolio

Inquiry: Impacts and management of feral horses in the Australian Alps
Question No: IQ23-000254
Hearing Date: 23 August 2023
Division/Agency: Heritage Division
Topic: Supplementary response - Legal advice
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Question Type: Spoken

Senator David Pocock asked:

Senator DAVID POCOCK: In terms of levers at your disposal, I note in the letter from the Hon. Sussan Ley she says, 'The government is considering the development of regulations under the act in response to New South Wales's failure.' What could these regulations be?

Mr Barker: I referred to the management principles that are under the act around the development of management plans for national heritage places. Those are principles that are prescribed under the regulations, and there's a capacity in the act for a minister to prescribe more regulations—that is, new principles for the development of management plans. But it's also just important to be aware that that capacity in a direct regulatory sense is also constrained by the Commonwealth's constitutional powers. So there is that capacity, but that is the regulation power that was referenced.

Senator DAVID POCOCK: I'm guessing there would have been legal advice before this letter was sent, so I want to confirm that there is a capacity for the federal environment minister to issue regulation that would override the sort of legislation that is not actually protecting the heritage values of the Alps.

Mr Barker: This gets to the constitutional limitations I think I referenced before. There is a capacity in the act for regulations to be made. However, the extent to which that can restrict a state's own legislative capacity is a more complicated constitutional area. There will be limitations in that sense in how the Commonwealth might intervene vis-a-vis the states.

Senator DAVID POCOCK: Would you be able to take notice any legal advice that was provided in the making of this?

Ms Parry: We'll take that on notice.

Answer:

On 5 September 2023 the department provided the following answer to this question:

The department sought and obtained legal advice, before the date of the former Minister's letter referenced by the Senator (10 May 2021), on the Commonwealth's regulation-making powers under the *Environment Protection and Biodiversity Conservation Act 1999* in relation to the management of feral horses in the Australian Alps National Heritage place.

It has been long-standing practice not to disclose information about privileged legal advice. Privileged legal advice provided to the Commonwealth should remain confidential.

The department also refers to correspondence from the Minister for the Environment and Water addressed to the Chair of the Committee (MC23-030380).