



# LEAN

Labor **Environment**  
Action Network NATIONAL

Committee Secretary  
Senate Standing Committees on Environment and Communications  
PO Box 6100  
Parliament House  
Canberra ACT 2600

## **Impacts and management of feral horses in the Australian Alps**

### **Submission: Labor Environment Action Network**

This submission is made on behalf of the Labor Environment Action Network (LEAN). LEAN is a grassroots network of Australian Labor Party members and supporters formed to assist Labor in developing, adopting, campaigning for and implementing good policy and programs for climate action and environmental protection and restoration.

*Inquiry term of reference (b): Commonwealth powers and responsibilities, including:*

- i. the protection of matters of national environmental significance under the Environment Protection and Biodiversity Conservation Act 1999, including listed threatened species and communities and the National Heritage listed Australian Alps national parks and reserves,*
- ii. obligations under international treaties, such as the Convention on Biological Diversity, and*
- iii. the commitment to prevent new extinctions under the threatened species action plan*

LEAN strongly supports reform or replacement of the *Environment Protection and Biodiversity Conservation Act 1999 (Cth)* to provide fit for purpose environment protection law. In particular LEAN has noted<sup>1</sup> that

The current system for identifying and responding to key threatening processes such as invasive species is ineffective. New legislation should provide for a more systematic and strategic framework for identifying current and emerging threats to all matters of national environmental significance. The legislation should allow both key threatening processes

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<sup>1</sup> See [https://www.lean.net.au/epbc\\_institutions](https://www.lean.net.au/epbc_institutions)

and specific threats to be identified. Action required to abate threats should be identified at the time of listing.

However, LEAN submits that, notwithstanding the defects and limitations of the *Environment Protection and Biodiversity Conservation Act 1999 (Cth)*, the Committee should find that the Commonwealth Minister for the Environment already has adequate power under that Act, and consequent responsibility, to formulate and implement recovery plans including removal of feral horses as threats to relevant threatened species.

***Inquiry term of reference (c) : the adequacy of state and territory laws, policies, programs and funding for control of feral horses and other hard-hoofed invasive species in the Australian Alps, and their interaction with Commonwealth laws and responsibilities***

The now NSW Minister for the Environment, the Hon. Penny Sharpe noted in 2018 in relation to the then Liberal / National Government of NSW that

Under the Government's own Biodiversity Conservation Act, feral horses will now be listed as a "key threatening process", meaning they adversely affect threatened species and could also cause species that are not currently threatened to become threatened. This listing has the effect of requiring the Government to fund programs to address the threat that horses pose to endangered native wildlife and ecosystems<sup>2</sup>

She also noted that

Amid great controversy earlier this year, the government passed the *Kosciuszko Wild Horse Heritage Act* to protect wild horses in Kosciuszko National Park above all other environmental and cultural values within the park, ignoring the science and the irreversible damage that unmanaged wild horse populations have done to the park and the unique threatened species that live there.

These include unique alpine species like the Corroboree Frog and Mountain Pygmy Possum, which exist nowhere else on earth, as well causing damage to soil and water quality in the pristine Snowy Mountains.

Labor opposed the laws and has committed to repeal them if elected to government in 2019. Now there is a direct contradiction between the laws and the threat listing, which would leave NSW in the dubious position of actively protecting an animal that is a

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<sup>2</sup> [https://www.pennysharpe.com/berejiklian\\_s\\_chaos\\_on\\_kosciuszko](https://www.pennysharpe.com/berejiklian_s_chaos_on_kosciuszko)

serious threat to native wildlife, while at the same time spending taxpayers' money to fight the very same threat.

LEAN submits that the NSW Government possesses adequate legal power to implement urgent reduction of feral horse populations in the Australian Alps, so long as it is recognised that the *Kosciuszko Wild Horse Heritage Act 2018 (NSW)* has no valid operation, even pending implementation of NSW Labor's election commitment to repeal that Act.

LEAN submits that the Committee

- should find the *Kosciuszko Wild Horse Heritage Act 2018 (NSW)* wholly inoperative under section 109 of the *Commonwealth of Australia Constitution* for direct inconsistency with the *Environment Protection and Biodiversity Conservation Act (Cth)* - given that the Commonwealth Act requires, or at the very least provides for, action to address feral horses as a threatening process - , while the NSW Act purports to prohibit such action<sup>3</sup>
- should recommend that the Commonwealth as a matter of priority seek advice from the Solicitor-General, and if necessary a declaration from the High Court of Australia, confirming this position
- should make recommendations for appropriate action by Commonwealth agencies to pursue urgent reduction, and if possible elimination, of feral horse populations irrespective of whether and when the NSW Government has been able to secure implementation of its pre-election commitments to repeal the *Kosciuszko Wild Horse Heritage Act 2018 (NSW)*, on the basis that that Act has no legal effect
- should recommend that the Commonwealth consult with the Government of NSW on needs and options for cooperation between the Commonwealth and the Government of NSW in control and elimination of invasive species, including feral horses in the Australian Alps.

***Inquiry term of reference (d): Measures required to repair and restore native habitats for species impacted by feral horses and other hard-hoofed invasive species in the Australian Alps, including for iconic species like the corroboree frog and the platypus***

LEAN notes that, in their nature, measures for habitat repair and restoration

- must necessarily be preceded by urgent cessation or removal of threatening and destructive processes - in this case the infestation by feral horses and other hard hoofed invasive species
- are best done with close involvement of persons and organisations with relevant

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<sup>3</sup> On direct inconsistency see e.g. *Clyde Engineering Co Ltd v Cowburn* [1926] HCA 6, (1926) 37 CLR 466

scientific knowledge - in particular, local traditional owners with in excess of 60,000 years of experience, and Commonwealth and NSW environmental and scientific institutions presently embarking on rebuilding after an extended period of neglect and hostility by Coalition governments in each case

- are inherently a source of employment opportunities, in particular in regional areas as in this case, which would be expected to be very considerably in excess of any employment opportunities derived from the presence of destructive feral animals.

LEAN welcomes the Commonwealth's commitment at the 2022 election and subsequently to introduce a Commonwealth Environment Protection Authority. We note however that

- an EPA is likely to be principally concerned with the reactive process of approving applications for development (including setting conditions on development, which preferably will include enhanced focus on conditions requiring and monitoring environment restoration at the conclusion of or in offsetting for projects)
- the introduction and release of invasive species for supposed private pleasure or profit, while having environmental impact in excess of most development projects, has rarely been subject to any approval process, and thus has not been accompanied by any conditions for environmental restoration however inadequate.

LEAN submits that, having regard to the Commonwealth's announced commitment to zero extinctions henceforward, the Committee should recommend that

- the Commonwealth introduce an independent, science based, and publicly accountable mechanism for proactive planning for environmental repair and restoration, whether
  - in the form of a distinct Environment Commission; or
  - as a unit with appropriate legal and functional separation within an Environment Protection Authority; or
  - through expansion of the Climate Change Authority, which might provide an appropriate institutional home for these functions in the absence of a distinct Environment Commission, having regard to the close connections between effective action on climate change and on environmental restoration.

LEAN thanks the Standing Committees on Environment and Communications for the opportunity to make this submission.

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