

Chapter 1

Introduction

Conduct of the inquiry

1.1 On 28 March 2018, the Parliamentary Joint Committee on Law Enforcement (the committee) initiated an inquiry into the trade in elephant ivory and rhino horn.

1.2 The terms of reference for the inquiry were as follows:

Pursuant to paragraph 7(1)(g) of the *Parliamentary Joint Committee on Law Enforcement Act 2010*, the committee will examine the legal and administrative arrangements for ensuring Australia's compliance with its obligations, under the Convention on International Trade in Endangered Species of Wild Fauna and Flora, to restrict the trade in elephants and rhinoceroses including:

- a. the incidence of importation to, and exportation from, Australia of elephant ivory and rhinoceros horn products;
- b. the adequacy of existing arrangements and resources for the screening of imports and exports for elephant ivory and rhinoceros horn products;
- c. the involvement of serious and organised crime groups, including international crime groups, in the importation, exportation and/or sale of elephant ivory and rhinoceros horn products in Australia;
- d. what arrangements exist with auction houses, electronic market places and other brokers to prevent illegally imported elephant ivory and rhinoceros horn being sold in Australia;
- e. the effectiveness of existing domestic legislation and compliance frameworks to restrict trade in elephant ivory and rhinoceros horn products, with particular regard to the role of the Australian Federal Police and the Australian Border Force;
- f. the effectiveness of current monitoring and regulation, including the extent and use of legally mandated provenance documentation attached to elephant ivory and rhinoceros horn;
- g. the authenticity of provenance documentation and the effectiveness of measures to detect forged or fraudulent documentation;
- h. the potential to strengthen existing legislation and administrative arrangements, including through agreements with the states and territories, to reduce the domestic trade in elephant ivory and rhinoceros horn products;
- i. supporting efforts to close domestic markets for elephant ivory and rhinoceros horn products;
- j. engagement by Australian law enforcement agencies with regional and international counterparts to address the illegal trade in elephant ivory and rhinoceros horn;

- k. the nature and effectiveness of measures, models and legislation adopted in other jurisdictions to address the trade in elephant ivory and rhinoceros horn; and
- l. any other related matters.

1.3 The committee received 84 submissions listed at Appendix 1. In addition, the committee received 1135 form letters, all in support of Australia implementing a domestic trade ban.

1.4 The committee held hearings over five days in Sydney, Melbourne, Perth and Canberra. A list of witnesses who appeared at the public hearings is at Appendix 2.

1.5 The committee also received a number of additional documents and answers to questions on notice (see Appendix 3).

1.6 The committee thanks all individuals and organisations for their participation in the inquiry.

Report summary

1.7 The illegal wildlife trade is having a devastating impact on natural environments globally. This global trade has resulted in elephant and rhino species experiencing a drastic decline in their population numbers, and in the case of the northern white rhino, a complete decimation of that species.

1.8 The global trade is facilitated, in part, by transnational criminal organisations. The profits generated from the illegal wildlife trade, especially elephant ivory and rhino horn, converge and facilitate other criminal activities such as money laundering, human trafficking and illicit drugs.¹ Evidence suggests established illegal wildlife trafficking networks are used to fund militia and terrorist activities.²

1.9 In response to the illegal wildlife trade and profiteering from the exploitation of endangered species, the international community came together in 1975 to establish the Convention on International Trade in Endangered Species of Wildlife Fauna and Flora (CITES) to restrict the trade in flora and fauna species to prevent their extinction. Today there are over 35 000 species listed and offered various degrees of protection under CITES, including both species of elephant and five species of rhinoceros. However, despite CITES' success, the illegal wildlife trade has continued, especially for elephant ivory and rhino horn.

1.10 In recognition of this ongoing problem, in 2016 the international community agreed to a non-binding resolution that called upon CITES members to implement a domestic trade ban on elephant ivory. Since that time, a significant number of countries have announced, or have implemented, a domestic trade ban on elephant

1 International Fund for Animal Welfare (IFAW), *Submission 62*, p. 5.

2 IFAW, *Submission 62*, p. 5.

ivory. The world's largest consumer of elephant ivory, China, implemented its ban in 2017.³ The world's primary exporter of elephant ivory products, the United Kingdom, is currently in the final stages of reviewing legislation that would implement a domestic ivory trade ban. The United States legislated its ban in 2016.⁴

1.11 Despite this international movement to implement domestic trade bans, Australia is yet to act. Although the Department of the Environment and Energy is supportive of those countries that have implemented domestic trade bans,⁵ it does not view a ban as necessary in the Australia because evidence suggests the domestic ivory market is not contributing to poaching or the illegal trade.⁶ However, civil society representatives challenge this view.

1.12 Evidence to this inquiry revealed a weakness in Australia's current wildlife trade control framework; chiefly, the absence of regulations that apply to the domestic market. For example, there is no legal requirement for any ivory or rhino horn item to be identified as a pre-CITES item before it is traded within Australia.⁷ The committee heard that this lack of regulation is problematic because the illegal wildlife trade exists alongside the legal trade, and acts as a conduit to the illegal trade.

1.13 Other broader concerns were discussed with the committee. Civil society groups called into question existing law enforcement and border control arrangements. In particular, criticisms were directed at the enforcement of environmental laws and the lack of prosecutions against people found in possession of illegal ivory and rhino horn. Civil society groups argued the low prioritisation of environmental crime had resulted in the wildlife trade becoming a low risk/high reward venture. Screening procedures to identify illegal ivory and rhino horn at Australia's border were also criticised.

1.14 The committee heard overwhelming support for the implementation of a domestic trade ban for both elephant ivory and rhino horn. The individual traders and industry representatives that would be adversely impacted by a ban also recognised that action is needed. However, there was debate about the best way to implement a domestic ban, and what type of exemptions would be included if one were implemented. Advocates for a domestic ban described the UK framework as a model

3 'China's ban on ivory trade comes into force', BBC News, 1 January 2018, <https://www.bbc.com/news/world-asia-china-42532017> (accessed 13 September 2018).

4 US Fish and Wildlife Service, 'Administration Takes Bold Step for African Elephant Conservation: Completes Near-Total Elephant Ivory Ban to Cut Off Opportunities for Traffickers', *Press release*, 2 June 2016, https://www.fws.gov/news/ShowNews.cfm?ref=administration-takes-bold-step-for-african-elephant-conservation%3A-&_ID=35686#.V1BhTjFIG2Q.twitter (accessed 16 May 2018).

5 For the Love of Wildlife (FLOW), *Submission 54*, Attachment C, p. [9].

6 FLOW, *Submission 54*, Attachment C, p. [9].

7 IFAW, *Under the Hammer*, September 2016, p. 19.

of best practice. The committee considered, at length, the UK framework and stakeholders' views about its application in Australia.

1.15 Evidence to this inquiry highlighted the legal considerations that would need to be taken into account when considering the implementation of a domestic trade ban in Australia. Constitutional limitations restrict the Commonwealth government from unilaterally implementing a domestic ban; however, advocates and legal experts detailed options for how the Commonwealth government could proceed with a domestic trade ban.

Structure of the report

1.16 This report considers the following issues in six chapters.

1.17 Chapter 2 provides background information about the illegal wildlife trade, with a specific focus on the illegal trade in elephant ivory and rhino horn. The chapter then describes the CITES international trade regulatory framework and its application in Australia, including Australia's domestic trade regulations for ivory and rhino horn.

1.18 Chapter 3 first looks at international efforts to implement domestic trade bans, or stricter measures since the 2016 Conference of the Parties (CoP17) of CITES. It then considers in more detail the proposed UK framework currently being considered by the UK Parliament, in particular, evidence for and against the exemptions in that framework, as well as the compliance, enforcement offence and sanction provisions. The chapter concludes with consideration of how a domestic trade ban could be implemented in Australia.

1.19 Chapter 4 examines Australia's current trade control framework, and its gaps. It considers the elephant ivory and rhino horn trade in Australia, and arguments that a domestic trade ban is needed to reduce the risk of criminal networks use of Australia's domestic market as a means to trade illegal ivory and rhino horn. Specifically, legal markets can act as a conduit of the illegal trade. This chapter then proceeds to address evidence of industries that have been found to be at-risk of facilitating the illegal trade. These include online marketplaces, and the auction and antique industries. This chapter concludes with consideration of societal and cultural change in consumer behaviour, and how this has impacted on the desirability for items made of ivory and rhino horn.

1.20 Chapter 5 looks at the current enforcement and border control measures, including screening processes for ivory and rhino horn at Australia's border, training of customs officers and concerns about the low level of prosecutions. This chapter then considers: compliance, seizure and trade data; and the CITES permit system (including provenance). Finally, the chapter examines education initiatives to inform customs officers and the general public.

1.21 Chapter 6 outlines the committee's views and recommendations.

Terminology

1.22 Throughout this report, a 'domestic trade ban' refers to the total ban on commercial activities that involve elephant ivory and rhino horn, unless those items meet specified exemptions. Commercial activities⁸ include:

- the buying, selling or hiring of items made of, or containing ivory or rhino horn;
- offering or arranging to buy, sell, or hire ivory and rhino horn items;
- keeping ivory and rhino horn for the purpose of sale or hire;
- exporting and/or importing ivory and rhino horn into or from Australia for sale or hire.

8 The definition of commercial activities is drawn from the UK government's definition provided in its submission. See UK government, *Submission 47*, p. 23.

