

# Chapter 5

## Other related matters

5.1 This chapter further examines related matters concerning the current trade control framework. It first considers current enforcement and border control measures and details stakeholders' argument that law enforcement agencies do not prioritise illegal wildlife trafficking, which perpetuates the view that illegal trade is a high-profits, low-risk activity. The chapter then looks at screening processes at Australia's border and submitters' concern that the current process is inadequate.

5.2 Issues related to the CITES permit system and issuance of provenance documentation are then discussed, followed by improvements made to the system since Project Aerostar, including the commencement of the Digital Permit Service. The chapter then examines evidence that identified issues with the Department of the Environment and Energy's (DoEE) use of a wildlife statutory declaration form and calls for an expansion in the use of radiocarbon dating to determine the age of ivory and rhino horn items. The chapter considers compliance and seizure data, and the sharing of information between the DoEE, Australian Border Force (ABF) and the public.

5.3 Finally, the chapter concludes with the examination of education initiatives for consumers, travellers and traders.

### Current enforcement and border control measures

5.4 It is an offence under section 303CC and 303CD of the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) for a person to export and/or import a CITES specimen, unless the item is accompanied by a ministerial certificate authorising its export/import, or is deemed a pre-CITES specimen by the DoEE. The maximum penalty for a wildlife trade offence under the EPBC Act is ten years imprisonment and/or a \$210 000 fine for individuals and \$1 050 000 fine for corporations (1000 penalty units).<sup>1</sup>

5.5 The DoEE and ABF are primarily responsible for the enforcement of EPBC Act. Their roles are detailed below.

#### *Department of the Environment and Energy—Office of Compliance*

5.6 The DoEE has a range of powers under the EPBC Act. Section 303GN of the EPBC Act makes it an offence for a person to be in possession of illegally imported CITES species within Australia, and if the DoEE suspects an item has been illegally

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1 Mrs Monica Collins, Department of the Environment and Energy (DoEE), *Proof Hansard*, 16 August 2018, p. 12.

imported,<sup>2</sup> it has the power to seize the specimen (under section 444A). The DoEE informed the committee that:

If you go to section 445, it refers to the seizure of things other than specimens—so, if we have reasonable grounds to suspect that this would contribute evidentiary material in terms of our investigation. Section 413 is when search warrants can be used as well. Sections 417 and 418 outline our warrant powers. You might be surprised to know also that section 430 includes powers of arrest.<sup>3</sup>

5.7 The Office of Compliance within the DoEE co-ordinates enforcement matters and investigations. It works co-operatively with other Commonwealth agencies such as the Australian Federal Police, ABF and the Department of Agriculture and Water Resources.<sup>4</sup> It also has an officer embedded in the Border Intelligence Fusion Centre who has access to ABF intelligence databases and the intelligence community more broadly.<sup>5</sup>

5.8 The committee heard that the DoEE also collaborates with its state and territory co-regulators. These collaborations include negotiations about investigations (that is, to determine whether a crime is a state offence or a Commonwealth offence) or by providing state agencies with authorisations to use powers under Commonwealth legislation.<sup>6</sup>

5.9 Internationally, the DoEE co-operates with countries like the United Kingdom, Canada, New Zealand and Sweden, and with Interpol.<sup>7</sup> It is also a member of the Australasian Environmental Law Enforcement and Regulators Network (AELERT) which comprises working groups of Commonwealth, state, territory and Pacific nation members. These working groups share operational experience.<sup>8</sup>

5.10 The Office of Compliance has 54 full-time-equivalent positions, with teams dedicated to compliance, intelligence, and environmental auditing as well as 'engagement activities to help improve compliance with environmental laws'.<sup>9</sup> The DoEE explained the Office of Compliance takes:

...an outcomes based approach to compliance activity, so we use the whole range of compliance tools available to us to achieve environmental outcomes. We do that based on intelligence and based on risk. With the

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2 DoEE, *Submission 30*, p. 9.

3 Mrs Collins, DoEE, *Proof Hansard*, 16 August 2018, p. 15.

4 Mrs Collins, DoEE, *Proof Hansard*, 16 August 2018, p. 15.

5 Mrs Collins, DoEE, *Proof Hansard*, 16 August 2018, p. 14.

6 Mrs Collins, DoEE, *Proof Hansard*, 16 August 2018, p. 16.

7 Mrs Collins, DoEE, *Proof Hansard*, 16 August 2018, p. 15.

8 Mrs Collins, DoEE, *Proof Hansard*, 16 August 2018, p. 18.

9 Mrs Collins, DoEE, *Proof Hansard*, 16 August 2018, p. 13.

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small team that we've got, we focus our activities to where there are higher risks.<sup>10</sup>

### *Australian Border Force*

5.11 ABF is responsible for the enforcement of the wildlife trade requirements of the EPBC Act at Australia's border. It implements a 'risk based and intelligence informed approach' to its inspection and detection processes at the border.<sup>11</sup> It examines goods, along with accompanying documentation for 'cargo, international mail and traveller streams where a risk of non-compliance or attempted fraud has been identified, through intelligence and targeting techniques'.<sup>12</sup> The ABF informed the committee that this intelligence-led approach is how it operates at the border because of the high volume of individuals and goods that come through Australia's border.<sup>13</sup>

5.12 ABF officials seize wildlife items suspected of breaching the EPBC Act. If the ABF suspects an item is illegal ivory or rhino horn, then the ABF will refer the item to the DoEE for further analysis and investigation into its composition and origin.<sup>14</sup> The item then undergoes an initial assessment by the DoEE to 'determine the likelihood that a contravention has occurred, its seriousness and its probable consequences'.<sup>15</sup> The ABF destroys most seized wildlife items.<sup>16</sup>

5.13 Between 2010 and 2016, ABF seized 471 elephant products,<sup>17</sup> 309 of which were suspected ivory items. The majority of seized items were carvings (258), followed by trunks (49), one jewellery item and one item labelled piano keys. ABF submitted that the carvings seized may include elephant ivory and elephant bone items, and a single seizure may have included multiple items approximately equalling 1400 individual items.<sup>18</sup> This data is shown in Table 7.

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10 Mrs Collins, DoEE, *Proof Hansard*, 16 August 2018, p. 14.

11 Department of Home Affairs (Home Affairs), *Submission 35*, p. 4.

12 Home Affairs, *Submission 35*, p. 4.

13 Ms Erin Dale, Australian Border Force (ABF), *Proof Hansard*, 9 July 2018, p. 45.

14 Home Affairs, *Submission 35*, p. 4.

15 DoEE, *Submission 30*, p. 9.

16 Home Affairs, *Submission 35*, p. 4.

17 Included skin, tooth, bone, feet, hair and ivory.

18 Home Affairs, *Submission 35*, p. 5.

**Table 7: Total number of seizures suspected of containing elephant ivory, 2010–2016:**<sup>19</sup>

Product Type	2010	2011	2012	2013	2014	2015	2016	Grand Total
Carving	38	50	42	48	43	18	19	258
Jewellery - ivory	0	0	0	0	0	0	1	1
Piano keys	0	0	0	0	0	0	1	1
Tusk	13	9	9	8	7	1	2	49
<b>Grand Total</b>	<b>51</b>	<b>59</b>	<b>51</b>	<b>56</b>	<b>50</b>	<b>19</b>	<b>23</b>	<b>309</b>

5.14 The DoEE informed the committee that the majority of the 309 suspected carved ivory items were typically antiques, trinkets and tourist souvenirs. The DoEE investigations into these items indicated that many were declared upon importation into Australia, and non-compliance was inadvertent and unintentional. In one circumstance, an importer arrived with paperwork from another country but did not obtain the relevant permits for Australia.<sup>20</sup>

5.15 The DoEE's understanding of the nature of the illegal ivory trade in Australia was further informed by an intelligence report into the trade. Based on intelligence and data from between 2012 and 2016, the report concluded that illicit imports were small 'on an international scale, and largely inadvertent, with the majority of seized items declared by importers'. Further, the report found:

Australia is not a significant end destination country for ivory products. Most seized items were small and trinkets in nature. Our analysis didn't reveal clear indicators of sophisticated criminal involvement in the trade of elephant and rhino products in Australia.<sup>21</sup>

5.16 The DoEE clarified that sophisticated organised crime is known to participate in the illegal wildlife trade in Australia; however, its analysis did not reveal that to be the case for elephant ivory and rhino horn.<sup>22</sup>

5.17 The largest seizure of elephant ivory detected by Australian authorities occurred in 2015. This seizure was an air cargo transshipment that arrived at Perth Airport from Malawi en route to Malaysia. The total weight of the ivory detected in this shipment was 110 kilograms. The DoEE investigation into that matter resulted in the arrest of five in East Africa.<sup>23</sup>

19 Home Affairs, *Submission 35*, p. 5.

20 Mr Paul Murphy, DoEE, *Proof Hansard*, 3 July 2018, p. 15.

21 Mrs Collins, DoEE, *Proof Hansard*, 16 August 2018, p. 13.

22 Mrs Collins, DoEE, *Proof Hansard*, 16 August 2018, p. 13.

23 Mr Murphy, DoEE, *Proof Hansard*, 3 July 2018, p. 16; *Proof Hansard*, 9 July 2018, p. 37.

5.18 Between 2010 and 2016, there were 26 seizures of suspected rhino horn. Nineteen were listed as rhino horn, and seven as medicine. Table 8 shows these seizures by year.

**Table 8: Total number of seizures suspected of containing rhino horn product, 2010–2016:**<sup>24</sup>

Product Type	2010	2011	2012	2013	2014	2015	2016	Grand Total
Horn	1	7	4	1	3	2	1	19
Medicine	0	2	0	1	3	0	1	7
<b>Grand Total</b>	<b>1</b>	<b>9</b>	<b>4</b>	<b>2</b>	<b>6</b>	<b>2</b>	<b>2</b>	<b>26</b>

5.19 Of the rhino items identified and seized, 16 were found to be illegally imported, and the remaining ten were pre-CITES items or were not found to be made of rhino.<sup>25</sup>

### *Screening processes and prosecutions*

5.20 Two concerns expressed to the committee were the inadequate screening of cargo for ivory and rhino horn products at Australia's border and the low level of prosecutions made against those who have illegally imported ivory and rhino horn products. These two issues are considered below.

#### *Screening processes*

5.21 Several civil society representatives expressed the view that existing screening processes at Australia's border, that is, at our airports, seaports and mail processing facilities were inadequate. For the Love of Wildlife (FLOW) and Nature Needs More referred to information from people with direct experience of monitoring cargo through airports and seaports, with one individual advising them that 'in all likelihood, and optimistically, only four per cent of cargo is checked', and for this reason the 'true size of this Australian marketplace is unknown'.<sup>26</sup> FLOW stated that customs officers discover wildlife items incidentally and that '[s]ea containers that have multiple consignees almost always have something illegal in them'.<sup>27</sup>

5.22 The screening process at international mail facilities was specifically discussed. Through its work, IFAW has observed that ABF officials do not screen every parcel and this is a problem in the context of a growing online market.

24 Home Affairs, *Submission 35*, p. 5.

25 Mr Murphy, DoEE, *Proof Hansard*, 3 July 2018, p. 15

26 Dr Lynn Johnson, Nature Needs More, *Proof Hansard*, 4 July 2018, p. 8.

27 Ms Donalea Patman, FLOW, *Proof Hansard*, 4 July 2018, p. 10.

Subsequently, IFAW called for a review of screening processes, including where they come from, how they are checked and how they are labelled.<sup>28</sup>

5.23 The Jane Goodall Society also highlighted this concern, describing 'the relative ease Australians acquiring illicit drugs via post using online direct-to-consumer marketplaces' as an example of the low inspection rate.<sup>29</sup> Environmental investigator Mr Luke Bond noted screening resources were limited and primarily focused upon other priority illicit commodities.<sup>30</sup>

5.24 The committee raised these concerns with ABF. Assistant Commissioner Erin Dale explained that ABF is not able to screen every piece of cargo that enters Australia, hence ABF applies an intelligence-led, risk-based approach to all imports.<sup>31</sup> One of the key components to that approach is how ABF gets intelligence data (the accuracy of seizure data is considered further at paragraph 5.39). Assistant Commissioner Dale clarified:

That [intelligence data] can come from previous seizures or from other counterparts, for example, state, territory and Commonwealth governments. But also we actually work with international counterparts. For example, the World Customs Organization did operations on how we actually share information between law enforcement counterparts. So it comes down to how we actually build up that intelligence picture, so that all or our cargo goes through intelligence based risk assessment—so every piece of cargo, every declaration that we get, actually gets run through that intelligent mechanism. So we can actually identify and direct our resources to where we actually have suspected some undue events are happening. So it comes down to how rich our intelligence picture is and how we can target better to be able to identify those instances.<sup>32</sup>

5.25 Mr John Gibbon from the Department of Home Affairs (Home Affairs) emphasised the importance of cargo data for supporting ABF's border control strategies and added:

...we get 100 per cent of the cargo data reported to us in advance so we do know about things that are coming across the border, and the intelligence and targeting processes enable us to refine our strategies to those consignments of highest risk. The other point I would make is that the Border Intelligence Fusion Centre within Home Affairs actually has an embedded environment officer to help share information not only with Home Affairs but with other agencies, including international secondees into that centre. That will add to the intelligence picture, which helps us to

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28 Ms Rebecca Keeble, International Fund for Animal Welfare (IFAW), *Proof Hansard*, 3 July 2018, p. 6.

29 The Jane Goodall Society, *Submission 38*, p. [4].

30 Mr Luke Bond, *Submission 2*, p. 3.

31 Ms Dale, ABF, *Proof Hansard*, 9 July 2018, p. 41.

32 Ms Dale, ABF, *Proof Hansard*, 9 July 2018, p. 40.

target people, things and syndicates that are operating within the Australian environment but also internationally, so that we can assist our partners as well in terms of trying to keep these risks offshore, where possible.<sup>33</sup>

### *Training of customs officials*

5.26 Another important element to the current control framework is the training of customs officials to ensure CITES-listed species, including ivory and rhino horn, are identified through screening processes. Both the DoEE and ABF advised the committee that customs officers are trained by the DoEE to detect potential CITES-listed specimens.<sup>34</sup> ABF re-assured the committee that CITES experts from DoEE train ABF 'officers and keep them trained and upskilled on a required basis'.<sup>35</sup> In addition, the ABF College trains customs officials in 'concealment methods, the application of powers, and what are restricted and prohibited items'.<sup>36</sup> The training provided by the DoEE includes:

...looking at legislation and the provisions under the legislation, as well as how to actually question if there is a suspected case of illegal importation. There are also samples—they actually bring in samples to identify, to actually see what the genuine articles are. So the training as part of the Border Force officers' training suite is actually provided.

...

They bring in samples to identify goods of concern and show how to identify fraudulent material, which includes power point presentations, and genuine ivory or rhinoceros horns and a whole other lot of other CITES materials as well. Basically it's a touch-and-feel exercise the ABF officers go through as part of our training package. Also it's revisited on a regular basis to make sure they are up to speed with what they're looking at.<sup>37</sup>

5.27 Other stakeholders held the view that the training of customs officials is lacking. Mr Bond stated that customs officials 'may not be familiar with concealment methods nor have sufficient awareness and training to recognize the horn or ivory as a prohibited import'.<sup>38</sup> This claim was also made by FLOW, which had been advised by ex-customs officers that:

...only 3½ hours of training is provided to officers to cover 35,000 endangered species, including rhinos and elephants. We consider this insufficient. Some officers can't distinguish between bone, resin, elephant

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33 Mr John Gibbon, Home Affairs, *Proof Hansard*, 9 July 2018, p. 40.

34 See Mr Murphy, DoEE, *Proof Hansard*, 3 July 2018, p. 13; Mr Gibbon, Home Affairs, *Proof Hansard*, 9 July 2018, p. 36.

35 Ms Dale, ABF, *Proof Hansard*, 9 July 2018, p. 42.

36 Ms Dale, ABF, *Proof Hansard*, 9 July 2018, p. 42.

37 Ms Dale, ABF, *Proof Hansard*, 9 July 2018, p. 39.

38 Mr Bond, *Submission 2*, p. 3.

ivory or mammoth ivory, and there is inadequate support to assist with this.<sup>39</sup>

5.28 The Born Free Foundation, which also submitted that training of frontline officers was lacking, called for 'scaled-up training of customs officers for improved detection at borders',<sup>40</sup> whilst the Australian National Audit Office (ANAO) considered it beneficial that:

...the Department of Immigration and Border Protection, which is now Home Affairs, [update] their guidance to their staff to ensure that they're aware of all their obligations under the act.<sup>41</sup>

5.29 Along with being updated more regularly, the ANAO thought training could be conducted more regularly.<sup>42</sup>

5.30 The importance of adequate training of customs officers and screening processes was raised by the CITES Standing Committee in November 2017. The 69<sup>th</sup> meeting of the CITES Standing Committee stated for:

...all countries along the trade chain, awareness concerning commercial-scale movements of worked ivory needs to improve. In particular, strategies for targeting worked ivory illegally moved by air as check-in or carry-on baggage, or by couriers need to be improved.<sup>43</sup>

### *Prosecutions*

5.31 The low level of prosecutions for wildlife trafficking was discussed at length with the DoEE. The DoEE, as stated in paragraph 5.14, argued that the majority of items illegally brought to Australia were declared upon arrival, and non-compliance with CITES was unintentional. The DoEE re-assured the committee that '[i]f suspicions are raised about [a] person, they will be investigated by our office of compliance or by Border Force'.<sup>44</sup>

5.32 Despite the DoEE's assurances, the committee heard concerns that a contributing factor to the low level of prosecutions is due to law enforcement agencies not viewing the illegal wildlife trade as a priority. Whilst acknowledging that there are a number of reasons for the lack of prosecutions, the Centre for Environmental Law highlighted:

...the fact that this issue hasn't been taken as a priority until now when you're doing an actual inquiry. So, to date, there hasn't been a lot of

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39 Ms Patman, FLOW, *Proof Hansard*, 4 July 2018, p. 10.

40 Mr Gabriel Fava, Born Free Foundation, *Proof Hansard*, 3 July 2018, p. 25.

41 Ms Lisa Rauter, Australian National Audit Office (ANAO), *Proof Hansard*, 9 July 2018, p. 11.

42 Ms Rauter, ANAO, *Proof Hansard*, 9 July 2018, p. 12.

43 IFAW, *Submission 62*, p. 4.

44 Mr Murphy, DoEE, *Proof Hansard*, 3 July 2018, p. 16.



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attention to actually drive that. Without investigations, again, you don't have anything driving a result that's going to lead to prosecutions.<sup>45</sup>

5.33 Concerning the large shipment of ivory detected in 2015, the DoEE advised that prosecutions were not made in Australia because:

That seizure was a transshipment—it wasn't intended to come into Australia; it was en route to Malaysia—and it was 110 kilograms of ivory. Our investigations with the Australian Museum resulted in the arrest of people in East Africa.<sup>46</sup>

5.34 The Centre for Environmental Law noted that ABF's emphasis is on illegal drugs, and although law enforcement agencies have powers in relation to wildlife trafficking under the EPBC Act, without implementation and enforcement it becomes a 'paper tiger'.<sup>47</sup>

5.35 The ANAO informed the committee that it too had noticed a difference in the level of priority given to the management of compliance with wildlife trade provisions. It found that:

There was also the difference in priority, perhaps, between the two departments, so a higher priority perhaps for the Department of the Environment, but for the implementing department, which was Customs at the time, it was not as high a priority for them, given the other requirements they are required to carry out at the border.<sup>48</sup>

5.36 The lack of prosecutions for this crime type was highlighted by Project Aerostar. Despite that investigation revealing illegal conduct, Mr Bond reported he was not aware of prosecutions made as a result of Project Aerostar's investigation.<sup>49</sup> Mr Bond also gave an example of an individual investigated by Victoria Police, found in possession of wildlife products (including ivory and rhino horn items), but was not 'prosecuted for those because he was in possession of them and we couldn't prove their provenance'.<sup>50</sup> Mr Bond argued a challenge for investigators is:

The case for prosecution rests with the prosecution. We needed to be able to prove whether or not they were actually unlawfully imported into the country—but how else do you get tigers, ivory and bear into Australia? 'Beyond reasonable doubt' is a high standard.<sup>51</sup>

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45 Dr Shireen Draft, Centre for Environmental Law, *Proof Hansard*, 3 July 2018, p. 20.

46 Mr Murphy, DoEE, *Proof Hansard*, 3 July 2018, p. 16.

47 Ms Zara Bending, Centre for Environmental Law, *Proof Hansard*, 3 July 2018, p. 20.

48 Ms Rauter, ANAO, *Proof Hansard*, 9 July 2018, p. 12.

49 Mr Bond, *Submission 2*, p. 2.

50 Mr Bond, EcoEnforce, *Proof Hansard*, 4 July 2018, p. 25.

51 Mr Bond, EcoEnforce, *Proof Hansard*, 4 July 2018, p. 25.

5.37 Stakeholders commented that a consequence of the lack of prosecutions is perpetuation of the image that illegal wildlife trafficking is 'a low-risk, high-reward industry',<sup>52</sup> and a prevailing narrative that the profits gained through this trade outweigh the associated risks.<sup>53</sup>

5.38 The UNODC reinforced this point. It explained that 'the most serious forms of wildlife trafficking generally meet the definition of organised crime' and it is, therefore 'important that domestic legislation not only criminalises wildlife crime, but that proportionate and dissuasive sanctions...are applied to convict persons in appropriate cases'. For this reason, the 'issuance of low penalties is a key weakness that contributes to the high-profit, low risk perception of wildlife crime' and 'the deterrence factor for criminal offences is significantly lessened if courts cannot or do not impose realistic forms of punishment'.<sup>54</sup>

### **Compliance, seizure and trade data**

5.39 In 2015–16, the ANAO released an audit report on the Department of Environment and the Department of Immigration and Border Protection (DIBP)/Australian Customs and Border Protection Service (ACBPS) management of compliance with the wildlife trade provisions of the EPBC Act (ANAO audit report).

5.40 The ANAO audit report found the regulation of Part 13A of the EPBC Act had been 'undermined by the absence of appropriate and tailored policy and procedural guidance, functional IT support systems and a risk-based approach to monitoring compliance'.<sup>55</sup> A component of this issue was:

...the quality of wildlife seizure data in both systems was generally poor, with no automated exchange of data between the two entities, which limited the ability to use that data for intelligence analysis and risk assessment.<sup>56</sup>

5.41 One of the primary factors that contributed to issues with the management of the compliance framework was IT systems that lacked the capability to use data as a means to forecast and collect intelligence to identify areas of non-compliance. The IT systems lacked sufficient data 'to inform a risk based approach to how they went about dedicating the resources that they did have to follow up on in instances of noncompliance'.<sup>57</sup>

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52 Ms Hayley Vella, For the Love of Wildlife (FLOW), *Proof Hansard*, 4 July 2018, p. 9.

53 Mr Bending, Centre for Environmental Law, *Proof Hansard*, 3 July 2018, p. 22.

54 United Nations Office on Drugs and Crime (UNODC), *Submission 71*, p. 10.

55 ANAO, *Submission 58*, p. [2].

56 Ms Rauter, ANAO, *Proof Hansard*, 9 July 2018, p. 11.

57 Ms Rauter, ANAO, *Proof Hansard*, 9 July 2018, p. 12.

5.42 The committee queried the ANAO about its findings, and whether the ANAO thought data should be made publicly available to improve the integrity of wildlife trade data. In response, the ANAO explained that it had found, with regard to data:

...the fact that instances that were reported were only recorded when it was something that needed to be investigated— suspect instances, for example, that were later dismissed perhaps weren't then recorded in the system, so they weren't able to track whether perhaps that same person had suspected instances at numerous times and therefore that might be something they might want to monitor more closely. They were only reporting actual investigations that were then undertaken or then decided not to be undertaken. We thought there was a more comprehensive data set that they could have pulled together to better inform their intelligence activities.<sup>58</sup>

5.43 The committee asked the ANAO whether it would be correct to surmise, based on the issues found in its audit, that it would be difficult for the DoEE to conclude that the illegal trade in ivory and rhino horn was not an issue.<sup>59</sup> In response, the ANAO said 'I think we have stated in the report that it limits their ability to provide assurance that all of the regulations are being complied with, yes'.<sup>60</sup> Further, the ANAO stated that it would be difficult for the DoEE to use historic data because of missing and inaccurate data, and subsequently it 'would be a matter of starting from a point and looking forward and then creating a historical data set from a point in time'.<sup>61</sup>

5.44 The ANAO discussed the inadequacy of seizure data reported in the system. Regarding the absence of specific details of each seizure, the ANAO advised the committee that:

Different officers were filling in different types of information when they made a seizure, and often the reason for releasing that seizure wasn't recorded, or the volume...wasn't recorded, or sometimes exactly what the material was wasn't recorded. There were inconsistencies in the comprehensiveness of the data that was recorded.<sup>62</sup>

5.45 To address this issue, the ANAO recommended that the Department of Environment and the DIBP 'agree on minimum data standards for seizures that incorporate standardised quantify recording and develop strategies for enforcing those data standards'.<sup>63</sup>

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58 Ms Rauter, ANAO, *Proof Hansard*, 9 July 2018, p. 14.

59 Senator Lisa Singh, *Proof Hansard*, 9 July 2018, p. 14.

60 Ms Rauter, ANAO, *Proof Hansard*, 9 July 2018, p. 14.

61 Ms Rauter, ANAO, *Proof Hansard*, 9 July 2018, p. 14.

62 Ms Rauter, ANAO, *Proof Hansard*, 9 July 2018, p. 15.

63 Ms Rauter, ANAO, *Proof Hansard*, 9 July 2018, p. 15.

5.46 The ANAO audit report made concluding remarks about the reporting on the extent of the illegal trade. It wrote that the Department of Environment provided:

...limited external reporting on the extent of illegal wildlife trade to and from Australia. As the lead regulator, and the only Commonwealth entity with access to both wildlife trade permit and seizure data, the department is well positioned to make such reporting available to the public. In contrast, some international organisations provide significantly more data on wildlife trade. The United Kingdom Border Force, for example, publishes a quarterly 'transparency report' that detail the types of species seized, the category of item, and the quantity (in the form of both number of seizures, and volumes) of items involved. In the absence of such information, there is limited awareness in the community of the magnitude of the illicit wildlife trade and a paucity of information on which to base decisions relating to the resources and supporting infrastructures required to address future challenges in this area.<sup>64</sup>

5.47 The ANAO acknowledged the complexities and challenges of making 'an accurate assessment of the extent of the illegal wildlife trade within Australia' and that isolated cases of wildlife trafficking did not 'provide evidence of an extensive illegal wildlife trade issue', but noted that recent examples 'suggest a degree of international coordination'.<sup>65</sup>

5.48 The ANAO concluded that:

These seizures reiterate the importance of producing reliable and accessible data on the extent of the illegal trade in wildlife. The last publicly available data on Australian seizures was published in 2008, which was based on ACBPS seizure and prosecutions data from 1994 to 2007.<sup>91</sup> The ACBPS last conducted detailed intelligence analysis on wildlife trade in 2009, but the results were not made publicly available.<sup>66</sup>

5.49 Another concern about the CITES permit system and discrepancies between international trade data was discussed during the course of the inquiry. This data is available on the CITES Trade Database, which holds over 13 million records of CITES-listed species traded around the world. All 178 CITES Parties are required to provide CITES trade data by 31 October of each year, which is annually uploaded into the trade database.<sup>67</sup>

5.50 The Born Free Foundation referred to CITES trade data between 2006 and 2016. In this dataset, Australia declared that there had been 12 ivory carvings imported into Australia and 16 tusks, 757 carvings and 57 pieces exported from

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64 ANAO, *ANAO Report No. 7 2015–16*, p. 60.

65 ANAO, *ANAO Report No. 7 2015–16*, p. 61.

66 ANAO, *ANAO Report No. 7 2015–16*, p. 61.

67 CITES, *CITES Trade Database–Users guide*, Version 8, October 2013, pp. 2–3.

Australia. However, trade data from 'other countries reported exporting over 177 ivory tusks, over 3286 ivory carvings and over 1118 ivory pieces'.<sup>68</sup>

5.51 FLOW and Nature Needs More shared a similar concern about the CITES Trade Database. These organisations investigated trade data from the UK to Australia for ivory items between 2010 and 2016. According to FLOW, there were 2953 elephant specimens exported from the UK to Australia, whereas Australian import data only revealed three quantities<sup>69</sup> imported (a discrepancy of 2950 items or units).<sup>70</sup> FLOW was also concerned with the CITES Trade Database which references 'importer recorded quantity or exporter recorded quantity' but it is unclear whether the records are 'about the number of permits issued or the actual quantity that was imported or exported'.<sup>71</sup>

5.52 Nature Needs More recognised that businesses may be abiding by the CITES permit system and trade rules; however, argued that this system is undermined without comprehensive monitoring of the movement of animal parts. Subsequently, Nature Needs More opined that the 'CITES trade database and permit system is not fit for purpose', and highlighted by the discrepancies between import and export data between countries.<sup>72</sup>

5.53 FLOW's founder, Ms Donalea Patman argued that the recording of CITES trade data is 'considered a joke by conservation groups and even by the environment department'.<sup>73</sup> When FLOW approached the DoEE with its concern that 'the data is incomplete and insignificant', the DoEE response was: 'It's the best we've got. We know it's bad, but this is it'.<sup>74</sup> The Born Free Foundation concluded that the inconsistency between trade data:

...suggests that any record keeping system currently in place is fundamentally flawed. The lack of accurate and consistent records of trade transactions in such a high profile product reflects a particularly poor level of oversight, and undermines confidence in the government agencies tasked with regulating trade in protected species.<sup>75</sup>

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68 Born Free Foundation, *Submission 62*, p. 2.

69 FLOW submitted that the CITES trade data system does not provide information about what a particular unit (or quantity) is. For example, a carving could comprise of a small trinket or a whole elephant tusk. Other issues were raised, including the 'lack of clarity about whether data represents the number of specimens that were actually traded or whether it represents permits/certificates issued'. See FLOW, *Submission 53*, pp. 2–3.

70 Ms Vella, FLOW, *Proof Hansard*, 4 July 2018, p. 15.

71 Ms Vella, FLOW, *Proof Hansard*, 4 July 2018, p. 15.

72 Dr Johnson, FLOW, *Proof Hansard*, 4 July 2018, p. 8.

73 Ms Patman, FLOW, *Proof Hansard*, 4 July 2018, p. 15.

74 Ms Patman, FLOW, *Proof Hansard*, 4 July 2018, p. 15.

75 Born Free Foundation, *Submission 62*, p. 2.

5.54 The Born Free Foundation submitted that according to the CITES website, the last time Australia provided trade data on transactions of CITES-listed species was in 2014. The Born Free Foundation added that other countries were overdue with reporting their trade data, which makes direct comparisons between jurisdiction very problematic,<sup>76</sup> and 'means that a more complete dataset may become available for analysis in future, and that actual trade figures may be significantly higher'.<sup>77</sup> Mr Gabriel Fava explained:

...CITES parties have until October of the following year to submit the data for the previous year. So, for the data for 2018, the deadline for that to be submitted will be October 2019. That's quite a significant delay, and that's one of the issues which I believe need to be tackled within CITES, because it is an ongoing issue. If it's supposed to be a reactive framework based on decisions that we can only make from data, that's obviously a bit of a delay. I think that a lot of parties perhaps may not be submitting data on time because they have to sometimes compile data from different jurisdictions, different internal jurisdictions and different states, and there may be some difficulties there.<sup>78</sup>

5.55 The committee raised this issue of trade data with the British High Commissioner Menna Rawlings. In response, Her Excellency highlighted the complexities of obtaining accurate data and discrepancies between UK and Australian data:

...some of the challenge is the sort of variable nature of the datasets that we're looking at. In previous questions we've talked about export figures and import figures. We've also talked about trade within our own countries. We're talking about everything from big auction houses to small market stalls. So I imagine that getting a comprehensive cut of the data through all those different issues is a real challenge. As I mentioned earlier, the huge discrepancy—just looking at the CITES database—between what we've got coming out of the UK and coming into Australia was, I thought, really stark and quite striking. There are also a lot of personal goods in this as well—household items that are probably not declared anywhere, unless they exit the household and come onto the trading system as new items. So I can understand why Australia might be also struggling with the data around this. I think that isn't an excuse, I suppose, for inaction; it makes it incumbent on all of us to work even harder to try and get a fix on what is going on within our own jurisdictions.<sup>79</sup>

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76 Mr Fava, Born Free Foundation, *Proof Hansard*, 3 July 2018, p. 32.

77 Born Free Foundation, *Submission 62*, pp. 2–3.

78 Mr Fava, Born Free Foundation, *Proof Hansard*, 3 July 2018, p. 32.

79 Her Excellency Menna Rawlings, British High Commissioner to Australia, *Proof Hansard*, 9 July 2018, p. 21.

5.56 The committee discussed concerns about the CITES Trade Database with the DoEE. It explained that Australia only records import data when the DoEE has issued an import permit, and:

If you're in another country and you receive a pre-convention certificate from that country then the item is allowed to come into Australia without further paperwork, because it's a vintage item. That country will report to the CITES database that they've issued the pre-convention certificate. We won't have any reporting to us that that item has come in.<sup>80</sup>

5.57 If an item arrives in Australia accompanied by a pre-CITES certificate, Australian officials are not required to make a record of that import.<sup>81</sup> The DoEE does, however, maintain a record of CITES permits it has issued, and permits traders have used. Once the DoEE provides a permit, the permit holder must acquit their permit with the DoEE to verify that the trade occurred. The DoEE then shares this data with the CITES Secretariat, and:

Data submitted by other Parties includes trade they undertook with Australia. Data submitted by Australia to the CITES trade database is based, as far as possible, on acquitted data that reflects the actual number of imports/exports that took place in a given year. Due to Australia's stricter measures, some trades authorised by exporting countries can be inconsistent with Australian requirements.<sup>82</sup>

5.58 The DoEE also informed the committee that it, together with Home Affairs, had mostly finished implementing the recommendations made by the ANAO; however, it was still working:

...on improvements to our data and the way we share data. We've done a lot of work there. Our department has a new database for seizures in place, and we're also in the middle of developing a new database for the issuing of permits. The Department of Immigration and Border Protection led a DTO project—a data transformation office project—that's enabled the electronic transfer of all our permit data. So every time we issue a permit, it electronically goes across to the department. But we're trying to pursue more work on our data standards and the potential to share our seizures data in real time, if you like, which we don't yet have.<sup>83</sup>

5.59 Concerning public access to trade data, the DoEE added that it reports:

...on wildlife trade through our department's annual report, and we significantly enhanced it last year to provide more detail on our regulation of wildlife trade in the department's annual report.<sup>84</sup>

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80 Mr Murphy, DoEE, *Proof Hansard*, 3 July 2018, p. 13.

81 Mr Murphy, DoEE, *Proof Hansard*, 3 July 2018, p. 14.

82 DoEE, *Submission 30*, p. 10.

83 Mr Murphy, DoEE, *Proof Hansard*, 9 July 2018, p. 38.

84 Mr Murphy, DoEE, *Proof Hansard*, 9 July 2018, p. 38.

## **CITES permit system and provenance documentation**

5.60 In light of issues identified by both Project Aerostar and the ANAO's audit report, the DoEE in partnership with the Department of Home Affairs has made improvements to the CITES permit system and requirements for proving the provenance of an item. One of these improvements has been the creation of a Digital Permit Service.

5.61 The Digital Permit Service was implemented in 2017 and tracks permits and exemptions for the import and export of CITES-listed species. It auto-verifies permits, rather than manually inspecting each permit, and according to Home Affairs 'significantly reduces the likelihood of fraudulent documents being used to illegally import or export ivory and rhinoceros horn'.<sup>85</sup> Further, permit data is transferred electronically and ensures ABF has access to accurate information at Australia's border.<sup>86</sup> Along with the permit system, Home Affairs submitted that there was ongoing work to 'improve real time intelligence and information sharing' between ABF and DoEE, especially for the trade in CITES-listed species.<sup>87</sup>

5.62 The committee questioned the DoEE about instances of fake permits and provenance documentation. In response, the DoEE advised that since issues were identified some years ago, the DoEE has strengthened its documentation by issuing unique identifiers and maker's marks, and attached images to the certificates for ivory and rhino horn'.<sup>88</sup> In addition, if a fake document is discovered by a CITES member, then a notification is sent around the world alerting all 183 CITES members of its existence and to be on the lookout for similar documents.<sup>89</sup>

5.63 On notice, the ABF informed the committee that it had 'not encountered any cases of fraudulent documents for the import or export of CITES listed species through' its electronic permit system.<sup>90</sup>

5.64 Although the DoEE and ABF reassured the committee that fraudulent documentation is not a significant issue in Australia, especially since the use of the electronic permit system, Leonard Joel reported that there was a general disregard for issuance of documentation proving an item's provenance. This disregard, according to Leonard Joel, is driven by the perception that ensuring a product is pre-CITES before its sale hinders the prospect of its sale. Overall, Leonard Joel called for a collective effort to ensure provenance documentation is legal, and shared between regulators, industry and citizens. However, Leonard Joel reminded that committee that:

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85 Home Affairs, *Submission 35*, p. 4.

86 Home Affairs, *Submission 35*, p. 4.

87 Home Affairs, *Submission 35*, p. 4.

88 Mr Murphy, DoEE, *Proof Hansard*, 3 July 2018, p. 14.

89 Mr Murphy, DoEE, *Proof Hansard*, 3 July 2018, p. 14.

90 ABF, answers to questions on notice, 9 July 2018 (received 8 August 2018).



My concern is that it's not just fraudulent documentation. I'll speak from the experience of Leonard Joel before they became committed to this issue. There was a complete lack of documentation. The reality is that most ivory is being traded in this country with zero documentation, unless the piece is identified as one that might attract public interest or might be of interest internationally, so there's a commercial benefit in getting a CITES certification for that piece. Leonard Joel is one of those auction houses. I wouldn't say it was a deliberate avoidance of the CITES regulations that are supposed to be implemented here, but it was just a complete disregard for them. My position is that most auction houses and antique dealers, whether wilfully or not, disregard the documentary requirements.<sup>91</sup>

### *Statutory declaration*

5.65 The committee heard one measure intended to ensure the legality of an item is the use of the DoEE's wildlife statutory declaration. This statutory declaration, which is not publicly available on the DoEE website, was developed by the DoEE 'to assist auction houses to work with vendors' and is provided 'directly to auction houses'.<sup>92</sup> The wildlife statutory declaration specifies that to:

...enable relevant information to be provided to the [DoEE] (if requested), this declaration should be fully completed and provided to the Auction House together with any other supporting documentation prior to the sale of any CITES listed specimens.

5.66 The wildlife statutory declaration also identifies other evidence to support an item's provenance, including:

- invoices and receipts of purchase (including internet sale description);
- previous CITES permits and importation documentation;
- a signed antique appraisal, or valuation that confirms the age of a specimen;
- travel documents, immigration records, military service records, old photographs; and
- other relevant information regarding the age and origin of the specimen.<sup>93</sup>

5.67 However, evidence to this inquiry revealed a lack of knowledge that a statutory declaration exists. For example, IFAW's investigation into the antique sector revealed that not a single antique dealer referred to the DoEE's statutory declaration.<sup>94</sup> Meanwhile, the Australian Valuers and Auctioneers Association (AVAA) submitted that it was only made aware of the statutory declaration during an auction industry roundtable with IFAW on 22 March 2017. In its roundtable report, the AVAA noted a

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91 John Albrecht, Leonard Joel, *Proof Hansard*, 3 July 2018, p. 48.

92 DoEE, answers to questions on notice, 9 July 2018 (received 3 August 2018).

93 AVAA, Submission 49, Attachment 2, p. 2.

94 Ms Josey Sharrad, IFAW, *Proof Hansard*, 3 July 2018, p. 5.

discussion that the DoEE statutory declaration placed a 'legal obligation on the auction and antiques industry to ensure that this document is completed for every single item covered by CITES prior to consignment/sale'.<sup>95</sup> However, the report concluded that there was a 'lack of industry awareness requiring obligatory completion of the DEE's (sic) Wildlife Statutory Declaration for all CITES controlled items being traded domestically'.<sup>96</sup>

5.68 Subsequently, the roundtable resolved that the AVAA would 'promote this legal obligation to its members'.<sup>97</sup> IFAW submitted that it was surprised to discover that only one of the auction houses present at the roundtable knew of the statutory declaration. It consequently contacted the DoEE with a list of 50 auction houses for the department to contact about the statutory declaration.<sup>98</sup> IFAW added that its ongoing work with:

...auction houses and antiques stores has demonstrated that the majority of traders in ivory and rhinoceros horn, or wildlife items generally, are unaware of the Department's Wildlife Statutory Declaration form.<sup>99</sup>

5.69 The committee asked the DoEE why its wildlife statutory declaration form was not available on its website. In response, the DoEE advised that:

The declaration form was not developed for general use by the public. The Department developed the seller's declaration form to assist auction houses to work with vendors. The Department provides the form directly to auction houses.<sup>100</sup>

5.70 Some submitters and witnesses queried how the wildlife statutory declaration fits within the current trade control framework. IFAW reported that:

Ongoing discussions with the Department has failed to provide clarity as to the use of this Declaration. IFAW has been informed that even if a CITES listed specimen such as an ivory piece or rhinoceros horn only had the Wildlife Statutory Declaration to prove its provenance, this would not be sufficient for the Australian CITES Management Authority to grant a CITES export permit.<sup>101</sup>

5.71 IFAW sought clarification from the DoEE regarding the use of wildlife statutory declarations. In response, the DoEE declared:

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95 Australian Valuers and Auctioneers Association (AVAA), *Submission 49*, Attachment 2, p. 2.

96 AVAA, *Submission 49*, Attachment 2, p. 3.

97 AVAA, *Submission 49*, Attachment 2, p. 3.

98 IFAW, *Submission 65*, p. 7.

99 IFAW, *Submission 65*, p. 8.

100 DoEE, answers to questions on notice, 9 July 2018 (3 August 2018).

101 IFAW, *Submission 65*, p. 12.

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We continue to work with auction houses, antique dealers and the like regarding requirements for trade in CITES listed specimens. Together, with the auction house industry, we have developed a document that assists in establishing the lawful provenance of specimens being consigned for sale. This document contains a series of questions regarding the origins and how the specimen came into Australia. Also included in the document is a statutory declaration, to attest the information provided by the vendor. While there is no direct requirement to complete this document, auction houses will often utilise the document in satisfying themselves of the lawful provenance prior to agreeing to consign a specimen for sale and submit the document to the Department of their own accord. The completed documentation assists the Department in working with the auction house if we receive allegations regarding the provenance of specimens they have consigned for sale. In our experience, the auction house industry have embraced this document and find it extremely useful in deciding whether to consign specimens for sale. I have attached this document for your information.<sup>102</sup>

5.72 Jane Raffan from the AVAA commented that the wildlife statutory declaration does not fit within the current framework, and recommended that, as an interim measure prior to the implementation of a domestic trade ban, there should be an 'enforceable and mandatory [statutory declaration process] for every item that currently fits within the legal framework of CITES'.<sup>103</sup>

5.73 Barsby Auctions advised that it requires every seller to sign this statutory declaration; however, both Leonard Joel<sup>104</sup> and Barsby Auctions suspect very few people do this. Barsby Auctions has been audited by the Department of Environment in the past and for this reason is very consciousness of the legality of items sold at its auction house.<sup>105</sup>

### ***Radiocarbon dating***

5.74 Another potential improvement to the current CITES control framework is mandatory radiocarbon dating for all ivory and rhino horn items. Currently, radiocarbon dating is only required for rhino horn items when applying for a pre-CITES permit through the DoEE.<sup>106</sup> For this to occur, the exporter must have a horn tested by an authorised laboratory, and the 'date must conclusively demonstrate that the horn was obtained from an animal that died before 1975' (that is, a radiocarbon date of pre-1957).<sup>107</sup>

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102 IFAW, *Submission 65*, Attachment 1, p. 1.

103 Jane Raffan, AVAA, *Proof Hansard*, 3 July 2018, p. 43.

104 John Albrecht, Leonard Joel, *Proof Hansard*, 3 July 2018, p. 48.

105 Mr David Barsby, Barby Auctions, *Proof Hansard*, 3 July 2018, p. 49.

106 Mr Murphy, DoEE, *Proof Hansard*, 3 July 2018, p. 16.

107 Mr Murphy, DoEE, *Proof Hansard*, 3 July 2018, p. 12.

5.75 The DoEE explained that radiocarbon dating for rhino horn:

...was brought in because of the specific risk of laundering rhino horn. The relative value of rhino horn is of orders of magnitude greater than ivory, and it was a very targeted regulation for that purpose.<sup>108</sup>

5.76 Whilst acknowledging that the test could be applied to ivory, the DoEE highlighted the cost to conduct the test (over \$600) 'compared to the value of the items that are likely to be traded'.<sup>109</sup>

5.77 The committee heard from the Australian National University (ANU) Radiocarbon Dating Laboratory. The Laboratory explained the complexities of radiocarbon dating, and the limitations of this testing; mainly, that each ivory tusk or rhino horn item has different levels of carbon 14. For example, the oldest part of a tusk—the tip—will have a higher carbon 14 reading than the base of a tusk. In order to determine an accurate determination of an items age, a sample is taken at both ends of a tusk or horn, which is then measured against a bomb curve<sup>110</sup> to determine its date parameters.<sup>111</sup> For this reason:

If we have an entire tusk, or horn, we can do multiple measurements. Because elephants live for decades and we know the end of the horn is the oldest part and the inside is the youngest part, we know which direction time should go. If we do multiple measurements, we can tell whether the sample is before 1950 or where it is on the bomb curve.<sup>112</sup>

5.78 The radiocarbon test is more difficult when only a fragment of an elephant tusk or rhino horn item is provided. Despite this difficulty, the ANU Radiocarbon Dating Laboratory recommended that the radiocarbon date requirement is made compulsory for ivory and rhino horn, rather than just rhino horn.<sup>113</sup>

5.79 The long-term effectiveness of radiocarbon dating is being diminished by the depletion of carbon 14 in the atmosphere, due to the burning of fossil fuels. By approximately 2025, the depleted carbon 14 in the atmosphere will make it particularly difficult to date fragments of ivory and rhino horn; dating of entire

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108 Mr Murphy, DoEE, *Proof Hansard*, 9 July 2018, p. 48.

109 Mr Murphy, DoEE, *Proof Hansard*, 9 July 2018, p. 48.

110 The term bomb curved is used because carbon 14 is a consequence of nuclear weapon testing from the 1950s doubling the amount of carbon 14 in the atmosphere. See Dr Stewart Fallon, Australian National University's (ANU) Radiocarbon Dating Laboratory, *Proof Hansard*, 9 July 2018, p. 27.

111 Dr Stewart Fallon, ANU Radiocarbon Dating Laboratory, *Proof Hansard*, 9 July 2018, p. 27.

112 Dr Fallon, ANU Radiocarbon Dating Laboratory, *Proof Hansard*, 9 July 2018, p. 27.

113 Dr Fallon, ANU Radiocarbon Dating Laboratory, *Proof Hansard*, 9 July 2018, p. 27.

horns/tusks will remain possible.<sup>114</sup> The ANU Radiocarbon Dating Laboratory is considering other testing techniques for use in the future.<sup>115</sup>

5.80 The ANU Radiocarbon Dating Laboratory advised that since 2012 it had conducted 15 tests on ivory samples and two rhino horn samples for the DoEE. A further nine rhino horn samples have been tested for individuals seeking a pre-CITES permit.<sup>116</sup>

## **Education initiatives**

5.81 An essential component of the current trade control framework and any future framework is ensuring adequate education is provided to stakeholders, such as consumers, travellers and traders, as well as ensuring appropriate training of customs officials. The committee sought information from both the DoEE and the Home Affairs/ABF about education initiatives, as well as the ANAO, which had identified shortcoming with the educational processes both agencies had in place. The committee also heard from the New South Wales and Victorian consumer affairs agencies about their role in consumer and trader education.

### ***Consumer, traveller and trader education***

#### *Online information*

5.82 The ANAO audit report identified issues with the availability of online information for travellers and traders. It called for the Department of Environment and the then Australian Customs and Border Protection Service (ACBPS) to develop a communication plan and to evaluate their collaboration.<sup>117</sup>

5.83 The ANAO reported that although both the Department of Environment and the ACBPS' compliance and enforcement policies incorporated education as a key strategy to encourage compliant behaviour, neither agency had established a communication strategy or plan to guide these activities. Further, neither agency sufficiently used intelligence data to inform better-targeted education strategies.<sup>118</sup>

5.84 The ANAO recognised that both agencies provide educational information on their website, through targeted education activities and capacity building initiatives in the region; however:

...neither Environment nor the ACBPS has evaluated the usefulness, benefit, or the most effective placement of education material (either on Environment's website, the ACBPS', or both) on wildlife regulation.

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114 Dr Fallon, ANU Radiocarbon Dating Laboratory, *Proof Hansard*, 9 July 2018, p. 33.

115 Dr Fallon, ANU Radiocarbon Dating Laboratory, *Proof Hansard*, 9 July 2018, p. 34.

116 Dr Fallon, ANU Radiocarbon Dating Laboratory, *Proof Hansard*, 9 July 2018, p. 27.

117 ANAO, *ANAO Report No. 7 2015–16*, p. 43.

118 ANAO, *ANAO Report No. 7 2015–16*, p. 43.

Undertaking a joint evaluation would better inform the development, updating and placement of online information.<sup>119</sup>

5.85 Under questioning about its audit report, the ANAO acknowledged that information is available on both departments' websites; however, the ANAO did not find evidence that either department:

...had analysed its compliance or intelligence data holdings to see how those education materials were addressing the issues identified we suggested that there would be benefit in them going back and doing a bit of a review of what they have and how appropriate those materials are.<sup>120</sup>

5.86 While critical of the effective use of educational information and that this information had not been updated in a number of years, the ANAO reported that it did not find any issues with specific information on the websites.<sup>121</sup>

5.87 The ANAO subsequently recommended that:

To improve voluntary compliance with wildlife trade regulation, the ANAO recommends that the Department of the Environment:

- (a) update its website information for travellers and traders;
- (b) develop a communications plan, taking into account the results of intelligence analysis and risk identification; and
- (c) evaluate, in collaboration with the Department of Immigration and Border Protection, publicly available information with a view to maximising its effect on traveller and trader behaviour.<sup>122</sup>

5.88 The Department of Environment agreed to this recommendation;<sup>123</sup> the DIBP responded that it would co-operate with 'the evaluation of publically available information to educate traders and travellers'.<sup>124</sup> The DoEE told the committee that it was yet to implement this recommendation, and that it had:

...undertaken an extensive update of its website information on wildlife trade regulation for travellers and traders. The final stage of the website update is expected to be completed in September 2018. It is likely to be presented to the audit committee for closure in December 2018.<sup>125</sup>

5.89 The committee asked the DoEE about the resources allocated to the education of the public and traders about exporting ivory and rhino horn items. In response, the

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119 ANAO, *ANAO Report No. 7 2015–16*, p. 43.

120 Mr Benjamin Siddans, ANAO, *Proof Hansard*, 9 July 2018, p. 14.

121 Mr Siddans, ANAO, *Proof Hansard*, 9 July 2018, p. 15.

122 ANAO, *ANAO Report No. 7 2015–16*, p. 11.

123 ANAO, *ANAO Report No. 7 2015–16*, p. 11.

124 ANAO, *ANAO Report No. 7 2015–16*, p. 12.

125 DoEE, answers to questions on notice, 9 July 2018 (received 3 August 2018).

DoEE pointed out that information is available on its website about the rules for both individuals and traders planning to take a wildlife specimen into or out of Australia.<sup>126</sup>

Further:

We have contact numbers and email addresses so people can contact a staff member and discuss their situation and establish whether or not what they're proposing to do with the wildlife trade would be legal, what sort of paperwork that would need to authorise that and whether there's evidence they need to produce. They can submit an application online. We have a permit section which looks after our client base and helps facilitate trade where it's legal.<sup>127</sup>

5.90 The DoEE also advised the committee that it informs the ABF and the Department of Agriculture and Water Resources about content for their websites and ensures all information is linked and current.<sup>128</sup> However, despite the DoEE's assurances, the committee was advised by the Australian Antique & Art Dealers Association (AAADA) that a customs fact sheet available on the Home Affairs website was not up-to-date, even though the AAADA contacted Home Affairs requesting that it be updated. Specifically, the AAADA requested that the list of qualified experts to identify objects that comply with CITES be updated, along with the list of recognised art dealers qualified to verify antiques.<sup>129</sup> The AAADA also recommended the document include reference to trade controls for ivory and rhino horn products.<sup>130</sup>

5.91 The committee identified this out-of-date public document on the Home Affairs website. Dated June 2012, it provides advice about importing antiques. It is branded as an official ACBPS document that also refers to the then Department of Agriculture, Fisheries and Forestry. The document itself makes no reference to CITES, and the link provided to access information about prohibited and restricted goods directs the user to the Home Affairs homepage. The contact information on the fact sheet is also out of date.<sup>131</sup>

### *Traveller education*

5.92 The committee asked the DoEE what information is made available to tourists about what is illegal and legal to import into and export out of Australia, as far as wildlife products and other products are concerned. In response, the DoEE stated that

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126 Mr Murphy, DoEE, *Proof Hansard*, 3 July 2018, p. 13.

127 Mr Murphy, DoEE, *Proof Hansard*, 3 July 2018, p. 13.

128 Mr Murphy, DoEE, *Proof Hansard*, 3 July 2018, p. 13.

129 Australian Antiques and Art Dealers Association (AAADA), *Submission 60*, p. [2].

130 AAADA, *Submission 60*, p. [2].

131 Department of Home Affairs, *Importing Antiques*, June 2012, <https://www.homeaffairs.gov.au/Factsheets/Documents/importingantiquesfactsheet.pdf> (accessed 27 August 2018).

a communication strategy has been in development since the ANAO's audit report. This strategy is about 'improving the knowledge for travellers', which includes 'boosting' the DoEE's website through Google searches.<sup>132</sup>

5.93 In relation to information available to travellers at Australia's airports and seaports, the DoEE confirmed that it had developed a display that was used on cruise liners in the Pacific, and some time ago displays at airports.<sup>133</sup> When asked whether the DoEE targets communication at tourists or traders entering Australia with ivory and rhino horn, the DoEE responded that it had not.<sup>134</sup> However, the committee heard that the DoEE was:

...looking at ways to better educate people coming into and going out of the country. Our first efforts were actually on the internet side and looking at the websites for us and for Home Affairs, and also with the department of agriculture. There has been a lot of enhancement work done on that. We've also had some discussions with the area in the department of foreign affairs that deals with the issue of passports to see if there's an opportunity there to give Australians information, should they wish to travel, when they go and get their passports—that sort of thing.<sup>135</sup>

5.94 Home Affairs added that arrangements exist with airport owners to display information, if required, but would need to be negotiated. Further:

There has also been work done in airports, and you'll know from transiting airports many times there's signs and things everywhere. So we've really got to road-test what goes into there, because a lot of people are just so blinded by so much information that it's not effective. What we were trying to do with Environment and others around traveller information is use the internet, use social media, use the TV program on borders to get the message out about what you can and can't take out of the country or bring back into the country and those sorts of things. We've also got information that people are required to declare on the incoming passenger card.<sup>136</sup>

5.95 Home Affairs and the ABF both confirmed that video educational material from agriculture had been used;<sup>137</sup> however, the use of this material varies between the 54 airlines operating in Australia.<sup>138</sup> ABF added that it makes:

...sure that passengers actually understand their requirements when they're coming in and out. But we work with the department of environment to make sure that we've got the right information.<sup>139</sup>

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132 Mr Murphy, DoEE, *Proof Hansard*, 9 July 2018, p. 44.

133 Mr Murphy, DoEE, *Proof Hansard*, 9 July 2018, p. 44.

134 Mr Murphy, DoEE, *Proof Hansard*, 9 July 2018, p. 44.

135 Mr Murphy, DoEE, *Proof Hansard*, 9 July 2018, p. 44.

136 Mr Gibbon, Home Affairs, *Proof Hansard*, 9 July 2018, p. 44.

137 Ms Erin Dale, ABF, *Proof Hansard*, 9 July 2018, p. 44.

138 Mr Gibbon, Home Affairs, *Proof Hansard*, 9 July 2018, p. 44.



5.96 ABF achieves this through the Home Affairs website:

...which gives travellers some hints and more details as to what they can bring back. That's in addition to incoming passenger cards where there is a question dedicated to that as well.<sup>140</sup>

5.97 This information, however, does not include signage on walls at airports because according to Home Affairs, it is no longer effective.<sup>141</sup> However, on notice, the ABF clarified that ABF has two cabinets located in the international arrival section of Brisbane and Adelaide airports displaying ivory and/or rhino horn products, and confirmed there is no specific signage in Australia's airports relating to the import or export of ivory and rhino horn products.<sup>142</sup>

### *Consumer and trader education*

5.98 Consumer education is another important aspect of reducing demand for wildlife products. Barsby Auctions spoke of the impact education has had on the trade in rhino horns. It explained that through consumer education, the market for rhino horn has dropped out, and has consequently impacted on rhino horn prices.<sup>143</sup> Mr David Barsby reported that 10 years ago large rhino horns were selling for \$120 000 apiece, five years later that type of item had reduced to \$40 000 apiece.<sup>144</sup>

5.99 Ms Collette Dinnigan argued that current educational initiatives are lacking in part because '77 per cent of the Australian population already think the trade of ivory and horn is illegal in Australia'.<sup>145</sup> Ms Dinnigan added that along with education, peer pressure plays an important part in changing consumer and trader activity, and added:

It's like the fur trade here. People aren't putting furs into their wardrobes and keeping them and wearing them in secret. People are actually getting rid of their furs, because it's just too much. With what we know now and, as I said before, education and common knowledge, no-one wants to wear a fur because of peer pressure and what the community says and what we all know about it, with big houses in Europe banning the use of fur...If we ban ivory, peer pressure will not say, 'Let's buy some more ivory and put it in in secret and look at it in our homes.' It won't be acceptable to have it. I think that comes through education and with legislation changing and law enforcement and having a strong voice; the community will very quickly

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139 Ms Dale, ABF, *Proof Hansard*, 9 July 2018, p. 44.

140 Ms Dale, ABF, *Proof Hansard*, 9 July 2018, p. 44.

141 Mr Gibbon, Home Affairs, *Proof Hansard*, 9 July 2018, p. 44.

142 ABF, answer to question on notice, 9 July 2018 (received 8 August 2018).

143 Mr Barsby, Barsby Auctions, *Proof Hansard*, 3 July 2018, p. 47.

144 Mr Barsby, Barsby Auctions, *Proof Hansard*, 3 July 2018, p. 47.

145 Ms Collette Dinnigan, *Proof Hansard*, 4 July 2018, p. 18.

adopt the attitude that it's not cool to have ivory, because it kills an animal.<sup>146</sup>

5.100 Professor Grant Pink also highlighted the importance of education, especially in the absence of a law enforcement presence. He explained that without:

...a law enforcement presence, you require more on education, outreach and partners to actually extend that enforcement network, not in a responsive perspective but an educative, preventive perspective.<sup>147</sup>

5.101 Education initiatives for traders were also discussed. The committee raised a concern that the DoEE's engagement with traders was very reactive, rather than proactive. In response, the DoEE explained that it does:

...have regular communications with the big auction houses about their items and, as a result of that, we developed a form, which was mentioned by [IFAW] before, that helps them work out the provenance of the item. So it's a form of statutory declaration which guides them to the type of evidence that they might need to establish. Invariably, we also find it happens the other way: a member of the public or an NGO might contact an auction house, and that's enough for them to ring us. So we've done a lot of work over the last few years, which is why we have a good relationship with these auction houses.<sup>148</sup>

5.102 However, whilst the DoEE argued that it engages with traders, evidence suggests otherwise. As already demonstrated, IFAW's investigation into the antiques industry highlighted a significant number of traders lacked any knowledge of CITES, and if they did, they provided incorrect information to purchasers. Evidence from IFAW and AVAA revealed that all but one AVAA member was unaware of the DoEE's wildlife statutory declaration.

5.103 The committee also received evidence from the New South Wales Fair Trading (NSW Fair Trading) and Consumer Affairs Victoria (CAV) regarding their educational and regulatory roles (including consumer protection).

5.104 NSW Fair Trading outlined its responsibilities, which include the 'regulation and protection' of consumers and businesses in NSW through mediation of consumer complaints and 'enforce compliance through licensing, inspection, investigations, prosecutions and other enforcement actions'.<sup>149</sup> Further, NSW Fair Trading explained that whilst it is 'happy to assist in any cooperative efforts with the Commonwealth agencies responsible for the enforcement of elephant ivory and rhino horn importation

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146 Ms Dinnigan, *Proof Hansard*, 4 July 2018, p. 19.

147 Professor Grant Pink, *Proof Hansard*, 9 July 2018, p. 5.

148 Mr Murphy, DoEE, *Proof Hansard*, 3 July 2018, p. 14.

149 Mr Peter Dunphy, New South Wales Fair Trading (NSW Fair Trading), *Proof Hansard*, 16 August 2018, p. 20.

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bans', presently there 'are no proscriptive provisions specially addressing the regulation' of these items.<sup>150</sup>

5.105 Specific NSW legislation does not apply to auctioneers that sell 'personal goods and chattels, such as items containing ivory or horn'; however, auctioneers and retailers of ivory and rhino horn are required to comply with Australian Consumer Law (administered by the Australian Competition and Consumer Commission). In Victoria, second-hand dealers and antique dealers are covered by the *Pawnbrokers and Second-hand Dealers Act 1996* (PSHD Act) but that Act only applies if a good is 'proscribed under the associated regulations, and the proscribed goods do not include elephant ivory and rhino horn. Accordingly, dealers do not require a second-hand dealer's licence to trade in those goods' in Victoria.<sup>151</sup> NSW Fair Trading clarified that although jewellery is a proscribed item under the PSHD Act, only applies to gemstones and precious metals.<sup>152</sup>

5.106 With regard to NSW Fair Trading educational and enforcement duties, Mr Peter Dunphy stated that:

We're always happy to provide information and make sure that traders are aware of their obligations, regardless of what those are. So we do certainly promote providing traders with the broadest amount of information they need to know to perform their duties and to ensure that they're aware of other obligations under other legislation. In terms of the enforcement of that, our role is around consumer safety and consumer protection, so our role would really be in relation to protecting consumers and ensuring that they're safe. Any ban on that would be really more an environmental ban in terms of environmental protection, and we'd see that as being outside the scope of our involvement.<sup>153</sup>

5.107 In Victoria, the CAV outlined its regulatory and educational role, which includes ensuring Victorian businesses comply with consumer laws and consumer protection. CAV, along with Victoria Police, have oversight of Victoria's *Second-Hand Dealers and Pawnbrokers Act 1998* (SHDP Act).<sup>154</sup> CAV's educational role includes:

...consumer awareness educational material and information updates through its Information Services Division. Educational material for consumers is distributed through CAV's website, and CAV conducts occasional targeted campaigns through its stakeholders or mainstream media, for example, when new laws are made which affect consumers, or a current issue affecting consumers is brought to CAV's attention. CAV also

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150 Mr Dunphy, NSW Fair Trading, *Proof Hansard*, 16 August 2018, p. 20.

151 Consumer Affairs Victoria (CAV), *Submission 85*, p. 1.

152 Mr Dunphy, NSW Fair Trading, *Proof Hansard*, 16 August 2018, p. 20.

153 Mr Dunphy, NSW Fair Trading, *Proof Hansard*, 16 August 2018, p. 21.

154 CAV, *Submission 85*, p. 1.

provides educational material and updates to industry stakeholders and (Business Licensing Authority)-licensed industry members when legal changes or other changed circumstances may affect those industries.<sup>155</sup>

5.108 However, the CAV clarified that it 'would not normally educate consumers or industry groups to raise their awareness of criminal activity' including the 'illegal importation of rhino horn and elephant ivory, unless there was a demonstrated consumer or fair trading detriment arising from such activity'.<sup>156</sup> Further, these issues are not typically 'brought to CAV's attention via industry or consumer groups, unless there are related consumer protection or fair trading issues'.<sup>157</sup>

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155 CAV, *Submission 85*, p. 2.

156 CAV, *Submission 85*, p. 2.

157 CAV, *Submission 85*, p. 2.