



Parliamentary Joint Committee on Law Enforcement

Inquiry into the trade in elephant ivory and
rhinoceros horn

September 2018

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Acronyms and abbreviations

AAADA	Australian Antique & Arts Dealers Association
AACS	Australasian Association of Convenience Stores
ABF	Australian Border Force
ACBPS	Australian Customs and Border Protection Service
ACC	Australian Crime Commission
ACIC	Australian Criminal Intelligence Commission
ADO	Animal Defenders Office
AELERT	Australasian Environmental Law Enforcement and Regulators Network
AFP	Australian Federal Police
AMA	Australian Music Association
ANAO	Australian National Audit Office
ANU	Australian National University
APHA	Animal Plan and Health Authority
AVAA	Auctioneers and Valuers Association of Australia
BADA	British Antique Dealers' Association
CITES	Convention on International Trade in Endangered Species of Wildlife Fauna and Flora
the Census	The Great Elephant Census
COAG	Council of Australian Governments
the committee	Parliamentary Joint Committee on Law Enforcement
CoP17	Conference of the Parties
CAV	Consumer Affairs Victoria
DoEE	Department of the Environment and Energy

DEFRA	Department for Environment, Food & Rural Affairs (UK)
DIBP	Department of Immigration and Border Protection
DTO	Data Transformation Office
EIA	Environmental Investigation Agency
EPBC Act	<i>Environment Protection and Biodiversity Conservation Act 1999</i>
EU	European Union
FLOW	For the Love of Wildlife
FWS	The US Fish and Wildlife Service
Home Affairs	Department of Home Affairs
IFAW	International Fund for Animal Welfare
IUCN	International Union for the Conservation of Nature
UK Ivory Bill	Ivory Bill 2017–19
LAPADA	The Association of Art & Antiques Dealers
PSHD Act	<i>Pawnbrokers and Second-hand Dealers Act 1996</i>
SHDP Act	<i>Second-Hand Dealers and Pawnbrokers Act 1998</i>
UK	United Kingdom
UNODC	United Nations Office on Drugs and Crime
US	United States
WWF	World Wildlife Fund

Recommendations

Recommendation 1

6.17 The committee recommends that the Commonwealth, states and territories, through the Council of Australian Governments, develop and implement a national domestic trade ban on elephant ivory and rhinoceros horn. The domestic trade ban should be consistent with those implemented in other like-minded international jurisdictions.

Recommendation 2

6.23 The committee recommends the inclusion of the following exemptions applicable to elephant ivory as part of the domestic trade ban framework:

- a de minimis exemption for items content of less than 10 per cent and made prior to 1975;
- musical instruments with content of less than 20 per cent and made prior to 1975;
- portrait miniatures produced 100 years or more prior to the domestic trade ban coming into force;
- an exemption for CITES-accredited museums and art institutions; and
- an exemption for items deemed by an authorised advisory institution to be the rarest and most important items their type, and produced 100 years or more prior to the domestic trade ban coming into force.

Recommendation 3

6.25 The committee recommends that the Commonwealth government gives careful consideration to the need for exemptions for items made of or containing rhinoceros horn, and includes them in a domestic trade ban if appropriate.

Recommendation 4

6.28 The committee recommends that the Commonwealth government considers the applicability of the enforcement provisions under the proposed United Kingdom ivory ban to an Australian domestic trade ban, and in so doing consults with relevant law enforcement agencies.

Recommendation 5

6.32 The committee recommends a grace period under the domestic trade ban during which those in possession of items containing elephant ivory and rhinoceros horn may sell them if they choose.

Recommendation 6

6.59 The committee recommends that the Department of the Environment and Energy:

- reviews its education and information initiatives, in consultation with the antiques and auction industries;

- **implements changes identified during the course of the review to improve knowledge and understanding of CITES requirements; and**
- **regularly informs businesses in the antiques and auction industries to ensure they are aware of their obligations and compliant with them.**

Recommendation 7

6.61 The committee recommends that the Commonwealth government supports international public campaigns designed to make it socially unacceptable to, and create stigma around the purchase and ownership of items containing elephant ivory and rhino horn in an attempt to reduce demand.

Recommendation 8

6.64 The committee recommends that the Department of Home Affairs updates the *Importing Antiques* information sheet available on its website, to ensure the accuracy and relevance of this information.

Recommendation 9

6.67 The committee recommends that the Department of the Environment and Energy and the Department of Home Affairs develop and distribute higher profile educational material that promotes awareness about the wildlife trade, including information about elephant ivory and rhinoceros horn, and the obligations on travellers with these items.

Recommendation 10

6.70 The committee recommends that the Department of the Environment and Energy consults with Commonwealth, state and territory environment and consumer affairs agencies to develop and implement an education strategy to inform stakeholders about their obligations under a domestic trade ban.

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.

Chapter 2

Background

The illegal wildlife trade

2.1 The trade in elephant ivory and rhino horn is part of the global illegal wildlife trade, worth an estimated US\$7 to US\$23 billion per year.¹ This trade is facilitated by the activities of organised crime groups, along with rebel militia and terrorist organisations that operate through established criminal networks.²

2.2 The linkages between the illegal wildlife trade and other crime types are well established. Environmental investigator, Mr Luke Bond, commented that almost all operational activities in which he has been involved have had links to other crime types.³ IFAW reported organised crime groups direct wildlife crime profits towards other illicit activities such as human trafficking, drug manufacturing and money laundering.⁴ The illegal wildlife trade is also complex: the Jane Goodall Association, referencing research by the United Nations Office on Drugs and Crime (UNODC), explained that the market is nuanced, with each commodity having its own market demand, network and actors involved.⁵

2.3 Despite efforts to address wildlife crime globally, the UNODC submitted that wildlife crime has grown over the last decade into a 'significant and specialised area of transnational organised crime', driven by high consumer demand and 'facilitated by generally inadequate law enforcement response, low prioritisation as a serious crime, weak legislation, and non-commensurate penalties'.⁶ Further, the illegal trade exists alongside the legal supply chain, enabled by corrupt officials, fraud and inadequate regulation.⁷

2.4 The illegal wildlife trade is a global problem, and a significant threat to many plant and animal species. Elephant ivory and rhino horn are just two examples of wildlife that is traded illegally. The global seizure database 'World Wise' reveals that between 1999 and 2015 there were over 164 000 seizures of wildlife from 120 countries. Of those seizures, there were almost 7000 species seized, including

1 United Nations Office on Drugs and Crime (UNODC), *Submission 71*, p. 2.

2 See for example International Fund for Animal Welfare (IFAW), *Submission 65*, p. 5; Dr Lynn Johnson, Nature Needs More, *Proof Hansard*, 4 July 2018. p. 14; Mr Luke Bond, EcoEnforce, *Proof Hansard*, 4 July 2018, p. 23; and Ms Clair Overy, The Thin Green Line Foundation, *Proof Hansard*, 4 July 2018, p. 30.

3 Mr Bond, EcoEnforce, *Proof Hansard*, 4 July 2018. p. 23

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

5 Ms Zara Bending, The Jane Goodall Society, *Proof Hansard*, 4 July 2018, p. 31.

6 UNODC, *Submission 71*, p. 2.

7 UNODC, *Submission 71*, p. 2.

mammals, reptiles, corals, birds and fish.⁸ In Australia, there are approximately 7000 wildlife items detected by customs officials each year, along with ongoing reports of wildlife trafficking cases that implicate Australian nationals.⁹

The illegal trade in elephant ivory and rhino horn

Elephant ivory

2.5 Elephants are hunted primarily for their ivory tusks. Once removed, the ivory is used in furniture, musical instruments and for ornamental purposes. Some regard ivory as a highly valued item. In both western and eastern cultures, it has been seen as a status symbol for wealth and power, particularly in China where the 'nouveau riche' view ivory as 'white gold'.¹⁰ Although increasingly becoming a taboo object in western society, it remains highly sought after in Asia.

2.6 The price of raw ivory is variable, depending on demand in the international market. This demand is largely driven by the Asian market, in particular, China. In 2011, there were over 11 000 ivory pieces sold in the Chinese auction market, worth a total of US\$94 million, a 170 per cent increase from 2010.¹¹ Since China announced its plan to implement a domestic ban in 2012, the price of ivory has declined across Asia and resulted in the Chinese people no longer viewing ivory (and rhino horn) as an inflation-proof investment.¹² The UNODC reported that the price at one stage reached \$1000 per kilo, whereas latest figures have shown the price has dropped to approximately \$600 to \$700 per kilo.¹³ Evidence suggests that ivory traffickers are stockpiling ivory for price speculation purposes.¹⁴

2.7 The Department of the Environment and Energy (DoEE) informed the committee that raw ivory is primarily trafficked from Africa to Asia (predominantly destined for South East Asia and China) in large sea cargo shipments (between 500 and 800 kilograms)¹⁵ by transnational organised crime groups. Approximately 10 per cent of poached ivory is seized, which according to the DoEE provides 'a good indication of not only the effectiveness of the enforcement regime around the world but also where the main routes are'.¹⁶

2.8 The UNODC's 2016 *World Wildlife Crime Report* demonstrated the main flows of raw ivory between 2007 and 2014, based on raw ivory seizures. It identified

8 UNODC, *World Wildlife Crime Report*, 2016, p. 14.

9 Born Free Foundation, *Submission 62*, p. [3].

10 Ms Grace Ge Gabriel, IFAW, *Proof Hansard*, 3 July 2018, p. 2.

11 Ms Ge Gabriel, IFAW, *Proof Hansard*, 3 July 2018, p. 3.

12 Ms Ge Gabriel, IFAW, *Proof Hansard*, 3 July 2018, p. 2.

13 Dr Giovanni Broussard, UNODC, *Proof Hansard*, 9 July 2018, p. 51.

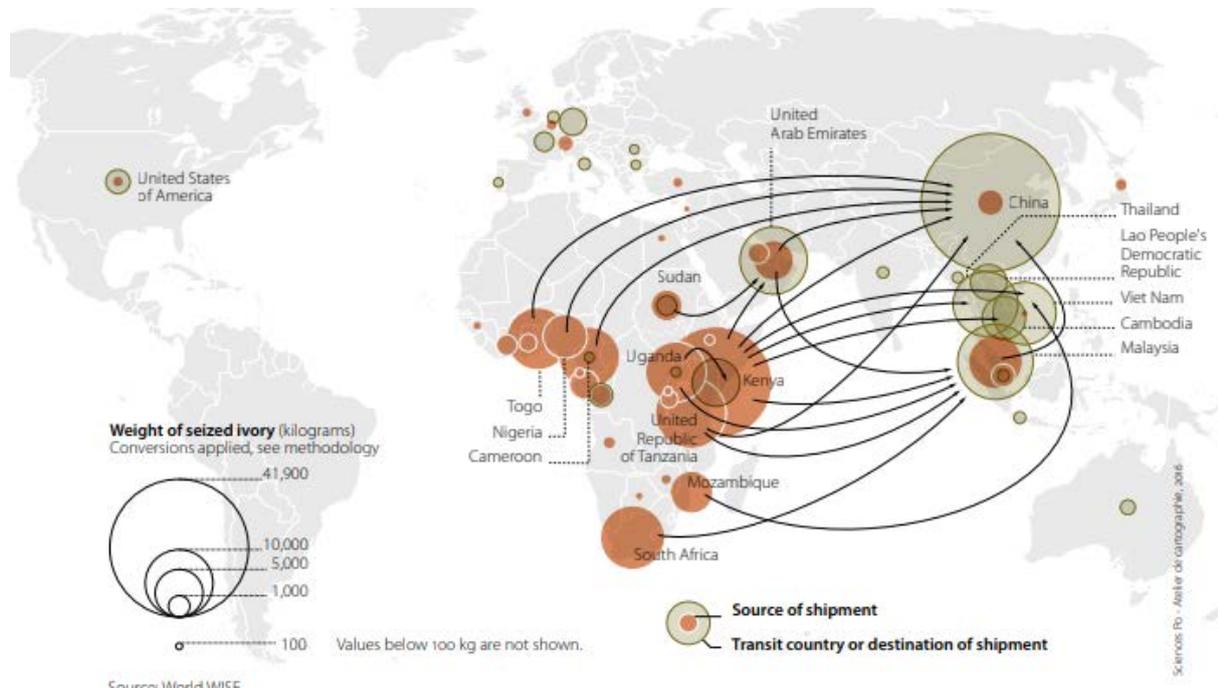
14 Dr Broussard, UNODC, *Proof Hansard*, 9 July 2018, p. 51.

15 Mr Gabriel Fava, Born Free Foundation, *Proof Hansard*, 3 July 2018, p. 26.

16 Mr Paul Murphy, Department of the Environment and Energy (DoEE), *Proof Hansard*, 3 July 2018, p. 15; *Proof Hansard*, 9 July 2018, p. 38.

source, transit and destination of shipments. Australia was recognised as a jurisdiction with less than 1000 kilograms of seized ivory, whereas China seized over 41 900 kilograms in total.¹⁷ Figure 1 shows the international flows of raw ivory from the 2016 UNODC report.

Figure 1: Main flows of raw ivory seizures (kilogram), 2007 to 2014:¹⁸



2.9 According to the UNODC, based on available data, Australia is not a major transit or destination country, which is a view shared by the DoEE.¹⁹

2.10 There are two species of elephants: the African elephants found across sub-Saharan Africa; and the Asian elephant found in 13 Asian countries. Both species have experienced significant population declines since the early 20th century, primarily due to poaching and habitat decline and degradation.

African elephants

2.11 Elephant numbers in African have rapidly declined over the past century, with their population once estimated to be five million.²⁰ The Great Elephant Census (the Census)²¹ estimated that in 2016 there were 352 271 elephants living across the

17 UNODC, *World Wildlife Crime Report*, 2016, p. 41.

18 UNODC, *World Wildlife Crime Report*, 2016, p. 41.

19 Mr Murphy, DoEE, *Proof Hansard*, 3 July 2018, p. 17.

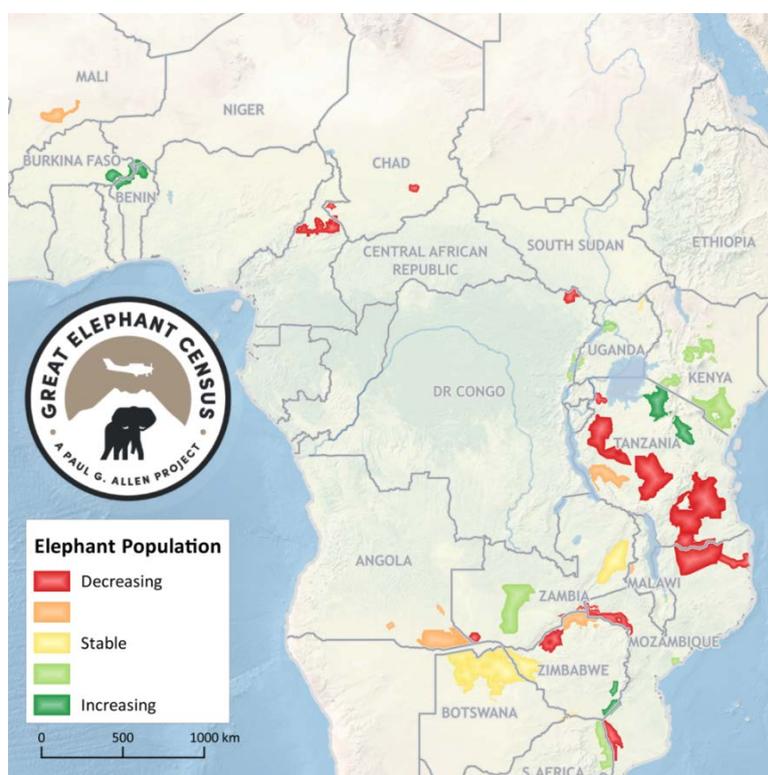
20 Born Free Foundation, *Submission 62*, p. [1].

21 Further details outlining the Great Elephant Census can be found at The Great Elephant Census, *Fact Sheet*, https://static1.squarespace.com/static/5304f39be4b0c1e749b456be/t/57c71ec12994ca8ea022a952/1472667344389/GEC+Results+Summary+Fact+Sheet+FINAL_8+26+2016.pdf (accessed 30 July 2018).

18 countries surveyed. It found African elephant populations have declined by 30 per cent between 2007 and 2014 (equal to 144 000 elephants), with an estimated decline of eight per cent each year, chiefly due to poaching.²² Approximately 20 000 African elephants are killed each year across the continent.²³

2.12 Figure 2 details surveyed countries and the status of their elephant populations between 2007 and 2014. It shows that stability of elephant populations, even in different regions of the same country, vary drastically. For example, most of Tanzania is witnessing a decline in elephant populations, whereas the northeast area of the country has seen population increase.²⁴

Figure 2: Elephant population trends across Africa over the past ten years based on Great Elephant Census data and comparable previous survey:²⁵



2.13 The International Union for the Conservation of Nature (IUCN) classifies the African elephant as a vulnerable species. This assessment is due to population numbers varying across the region. In 2007, the IUCN reported that elephant

22 The Great Elephant Census, *Final Results*, <http://www.greatelephantcensus.com/final-report/> (accessed 30 July 2018).

23 Born Free Foundation, *Submission 62*, p. [1].

24 The Great Elephant Census, *Final Results*.

25 Red landscapes declining >5%/year, orange declining 2-5%/year, yellow declining or increasing <2%/year, pale green increasing 2-5%/year, dark green increasing >5%/year. See The Great Elephant Census, *Final Results*.

populations in eastern and southern Africa were increasing by an average rate of 4 per cent per annum.²⁶

2.14 Current trends indicate that if poaching is not adequately addressed, then it is likely that elephant populations will disappear from some countries in Africa. For example, Tanzania, which once had the second-largest elephant population, went from 100 000 elephants to 40 000 elephants in a five year period.²⁷

Asian elephant

2.15 The Asian elephant (also known as the Indian elephant) is listed as endangered by the IUCN. In 2008, the IUCN reported that its population size had decreased by 50 per cent over the past 20 to 25 years. In 2016, CITES estimated that the current population was between 30 000 and 50 000,²⁸ with at least 25 per cent of the population now living in captivity.²⁹

2.16 The Asian elephant has become extinct in West Asia, Java, and a large proportion of China. Populations remain in Bangladesh, Bhutan, India, Nepal, Sri Lanka, Cambodia, China, Indonesia (Kalimantan and Sumatra), Laos, Malaysia, Myanmar, Thailand and Viet Nam.³⁰

2.17 Unlike African elephants, which are hunted primarily for their ivory, Asian elephants are mostly hunted for their meat and leather.³¹ However, the UNODC reported in recent years there has been a sharp increase in the killing of Asian elephants with both their skin and ivory removed.³²

Rhinoceros horn

2.18 Rhinoceros horn was traditionally used to adorn weaponry, but today it is primarily sought for its supposedly medicinal properties in traditional Chinese medicine, and ornamental appeal. Although its medicinal value has been disproven, and is not endorsed by Chinese medicine advocates,³³ its value as both a medicine and ornament (as a status symbol) remains.³⁴ In 2011, Chinese auction houses sold 2750

26 International Union of the Conservation of Nature (IUCN), *Loxodonta Africana*, <http://www.iucnredlist.org/details/12392/0> (accessed 30 July 2018).

27 Mr Fava, Born Free Foundation, *Proof Hansard*, 3 July 2018, p. 28.

28 CITES noted that current estimates are not based on sound data and are largely founded on historical report. See CITES, *Illegal Trade in Live Asian Elephants: A review of current legislative, regulatory, enforcement, and other measures across range States*, CoP17, Doc.57, 2016, p. [9].

29 CITES, *Illegal Trade in Live Asian Elephants: A review of current legislative, regulatory, enforcement, and other measures across range States*, CoP17, Doc.57, 2016, p. [9].

30 IUCN, *Elephas maximus*.

31 DoEE, *Submission 30*, p. 4.

32 Dr Broussard, UNODC, *Proof Hansard*, 9 July 2018, p. 53.

33 Save the Rhino International, *Poaching for rhino horn*, <https://www.savetherhino.org/rhino-info/threats/poaching-rhino-horn/> (accessed 23 August 2018).

34 Ms Ge Gabriel, IFAW, *Proof Hansard*, 3 July 2018, p. 3.

pieces of rhino horn carvings worth a total US\$179 million, a 111 per cent increase from 2010. According to IFAW, the average price for a rhino horn piece during that time was US\$177 000.³⁵

2.19 Although the sale of rhino horn is less common in Australia, records collated by IFAW revealed rhino horn items being sold for up to AU\$207 400 in 2011,³⁶ and between 2007 and 2017 the average price of 70 listed rhino items sold at auction was AU\$51 736.³⁷

2.20 There are five species of rhino, two of which are found in Africa and the remaining three are found in Asia. There are two species of African rhinoceros, the black rhino and the white rhino. The black rhino is found throughout the southern and eastern parts of Africa, whilst the white rhino, which is separated into two subspecies, is located in both the north and south of Africa.

White rhinoceros

2.21 The white rhino is the most prevalent species of rhino in the world, with an estimated 19 682 to 21 077 individuals. However, the white rhino is split into two subspecies: the northern white rhino and the southern white rhino. The northern white rhino is critically endangered and was declared extinct in the wild in 2008.³⁸ There remain only two female northern white rhinos in captivity after the last male, named Sudan, died in March 2018.³⁹

2.22 The southern white rhino is classed as near threatened by the IUCN due to the ongoing and increasing threat of poaching. The vulnerability status of individual populations varies depending on protection granted under each jurisdiction, and the IUCN warns that in the absence of conservation, the southern white rhino will become a vulnerable species within five years.⁴⁰ According to IFAW, in 2017 there were 1028 rhinos killed for their horns in South Africa, equating to three per day.⁴¹

Black rhinoceros

2.23 The black rhino population, once regarded one of the most numerous rhino species in Africa (several hundred thousand across the continent), started to experience significant population decline in the 19th century. By 1970, the black rhino population had reduced to 65 000 animals. In 1992, its population further declined by

35 Ms Ge Gabriel, IFAW, *Proof Hansard*, 3 July 2018, p. 3.

36 IFAW, *Submission 49*, Attachment 4, p. [4].

37 IFAW, *Submission 49*, Attachment 4, pp. [1]–[11].

38 Save the Rhino International, *White Rhino*, <https://www.savetherhino.org/rhino-info/rhino-species/white-rhinos/> (accessed 31 July 2018).

39 BBC, 'Northern white rhino: Last male Sudan dies in Kenya', BBC News, 20 March 2018, <https://www.bbc.com/news/world-africa-43468066> (accessed 31 July 2018).

40 IUCN, *Ceratotherium simum*, <http://www.iucnredlist.org/details/4185/0> (accessed 31 July 2018).

41 IFAW, *Submission 65*, p. 1.

96 per cent, to approximately 2400 rhinos.⁴² Today, the IUCN classifies the black rhino as critically endangered,⁴³ with a population of between 5040 and 5458 rhinos.⁴⁴

Greater one-horned rhinoceros

2.24 The greater one-horned rhino or the Indian rhino is found in India and Nepal and is primarily threatened by human harassment and encroachment on its habitat. Its population reached a low of 200 in the last century, but through conservation efforts has increased to 3500 today.⁴⁵

2.25 The IUCN lists the greater one-horned rhino as vulnerable due to the strict protection granted by the Indian government. Populations in Nepal and north-eastern India are decreasing due to habitat decline.⁴⁶

Sumatran rhinoceros

2.26 The Sumatran rhino is found in parts of Southeast Asia, primarily in Sumatra, Indonesia. According to research, the Sumatran rhino has experienced ongoing population decline for the last 9000 years and was believed to number only 800 in 1986. Today it is estimated that there only remains between 30 and 100 surviving in the wild.⁴⁷

2.27 The IUCN lists the Sumatran rhino as critically endangered. It anticipates that its population will continue to decline due to a lack of a subpopulation exceeding 50 animals needed to sustain population growth.⁴⁸

Javan rhinoceros

2.28 The Javan rhino is found on the island of Java, Indonesia. It is incredibly rare, and with a population of less than 67, it is unable to sustain long-term survival. Poaching and habitat loss, along with inbreeding, are primary causes of its population decline. Conservation efforts are focused on re-establishment programs, to rejuvenate threatened populations.⁴⁹

42 Save the Rhino International, *Black Rhino*, <https://www.savetherhino.org/rhino-info/rhino-species/black-rhinos/> (accessed 31 July 2018).

43 IUCN, *Diceros bicornis*, <http://www.iucnredlist.org/details/6557/0> (accessed 31 July 2018).

44 Save the Rhino International, *Black Rhino*.

45 Save the Rhino International, *Greater One-Horned Rhino*, <https://www.savetherhino.org/rhino-info/rhino-species/greater-one-horned-rhino/> (accessed 31 July 2018).

46 IUCN, *Rhinoceros unicornis*, <http://www.iucnredlist.org/details/19496/0> (accessed 31 July 2018).

47 Save the Rhino International, *Sumatran rhino*, <https://www.savetherhino.org/rhino-info/rhino-species/sumatran-rhino/> (accessed 31 July 2018).

48 IUCN, *Dicerorhinus sumatrensis*, <http://www.iucnredlist.org/details/6553/0> (accessed 31 July 2018).

49 Save the Rhino International, *Javan rhino*, <https://www.savetherhino.org/rhino-info/rhino-species/javan-rhino/> (accessed 31 July 2018).

2.29 The IUCN classifies the Javan rhino as a critically endangered species, and similar to the Sumatran rhino, its population is below the required threshold to facilitate population growth.⁵⁰

International trade regulatory framework

2.30 The Convention on International Trade in Endangered Species of Wildlife Fauna and Flora (CITES) was agreed on 3 March 1973 and entered into force on 1 July 1975.⁵¹ Its purpose is to 'ensure that international trade in specimens of wild animals and plants does not threaten their survival',⁵² and protects over 35 000 species of animals and plants.⁵³

2.31 CITES parties are required to establish a CITES management authority,⁵⁴ which is responsible for the application of CITES in each jurisdiction. A CITES management authority is empowered to: issue import, export or re-export permits and certificates of origin that enable a listed specimen to enter or leave the country;⁵⁵ communicate information to CITES parties and the CITES secretariat; and report on compliance matters and contribute to CITES annual reports.⁵⁶

2.32 CITES parties determine levels of protection granted to each species, and are allocated to one of three appendices (Articles III, IV, V of CITES) according to the degree of protection required.⁵⁷ These appendices are outlined in the following sections.

Appendix I

2.33 Appendix I includes species that are threatened with extinction, and for that reason, international trade of these species is only permitted in exceptional circumstances.⁵⁸ A CITES management authority will only issue import/export permits if:

50 IUCN, *Rhinoceros sondaicus*, <http://www.iucnredlist.org/details/19495/0> (accessed 31 July 2018).

51 Convention on International Trade in Endangered Species of Wildlife Fauna and Flora (CITES), *What is CITES?*, <https://www.cites.org/eng/disc/what.php> (accessed 14 May 2018).

52 CITES, *What is CITES?*

53 CITES, *What is CITES?*

54 In addition to a management authority, parties are required to delegate a scientific authority that monitors the export permits granted by the State for CITES specimens, and the actual exports of such specimens. If a scientific authority determines that the export of that species should be limited, then it should inform the management authority to establish suitable measures to 'limit the grant of export permits for specimens of that species'. See CITES, Washington, 3 March 1973, entry into force 27 October 1976, [1976] ATS 29, Article IV.

55 CITES, *What is CITES?*

56 DoEE, *How CITES works*, <http://www.environment.gov.au/biodiversity/wildlife-trade/cites/how-cites-works> (accessed 11 April 2018).

57 CITES, Washington, 3 March 1973, entry into force 27 October 1976, [1976] ATS 29

58 CITES, *What is CITES?*

- the Appendix I specimen is not used for commercial purposes;
- the movement of the species does not have a detrimental effect on the survival of the species or movement does not pose a 'risk of injury, damage to health or cruel treatment';
- evidence is provided to show the specimen was legally obtained; and if necessary; and
- proof of pre-existing import/export permit from a CITES management authority.⁵⁹

Appendix II

2.34 Appendix II includes species that are not immediately threatened with extinction, but their trade is controlled to avoid use that may threaten their survival.⁶⁰ Similar to Appendix I species, certificates from a management authority are required for the exportation and re-exportation of Appendix II species. The importer of an Appendix II specimen is required to present either an export permit or a re-export permit certificate.⁶¹

Appendix III

2.35 Appendix III includes species that any country has identified 'as being subject to regulation within its jurisdiction for the purpose of preventing or restricting exploitation, and as needing the co-operation of other Parties in the control of trade'.⁶²

2.36 All species of elephants and rhinoceros are CITES listed. Both the African elephant and the Asian elephant are included in Appendix I, except for African elephant populations⁶³ in Botswana, Namibia, South Africa and Zimbabwe (Appendix II).⁶⁴ All species of rhinoceros are included in Appendix I, except for the southern white rhino populations in South Africa and Swaziland, which are included in Appendix II for purposes of live trade and hunting trophies.⁶⁵

59 CITES, *What is CITES?*

60 CITES, *How CITES works*, <https://www.cites.org/eng/disc/how.php> (accessed 14 May 2018).

61 CITES, Washington, 3 March 1973, entry into force 27 October 1976, [1976] ATS 29, Article IV.

62 CITES, Washington, 3 March 1973, entry into force 27 October 1976, [1976] ATS 29, Article II.

63 Special rules are in place for the elephant populations in these countries that govern hunting trophies and the trade in elephant products including ivory. For example, the trade in raw ivory is permitted for registered government-owned stores. See CITES, *Appendices*, <https://www.cites.org/eng/app/appendices.php> (accessed 17 May 2018).

64 CITES, *What is CITES?*

65 CITES, *What is CITES?*

Permits and certificates

2.37 Article VI of CITES details the requirements for the import, export and re-export permits and certificates issued by the CITES management authority. These include:

- time restrictions on the validity of a permit (for example, a period of six months from the date a permit was granted);
- measures to prevent the duplication of permits;
- a requirement for a separate permit or certificate to be issued for each consignment of specimens;
- obligations on management authorities to retain records of export and import permits and certificates; and, if appropriate,
- an authorisation for management authorities to affix a mark upon any specimen to assist with its identification.⁶⁶

Exemptions and other special trade provisions

2.38 There are a number of exemptions under CITES, including:

- The provisions in Articles III, IV and V of CITES (the appendices) do 'not apply to the transit or transshipment of specimens through or in the territory of a Party while the specimen remains in Customs control'.⁶⁷
- CITES provisions do not apply to a specimen if it was proven to be acquired prior to that species being listed on CITES (pre-CITES). A CITES management authority is permitted to issue a pre-CITES certificate that enables the owner to export or re-export such item.⁶⁸
- The CITES appendices do not apply to specimens that are considered personal or household effects in a limited number of circumstances.⁶⁹
- Appendix I species that were bred in captivity for commercial purposes (including artificially propagated plant species) are deemed to be species listed as Appendix II.⁷⁰

66 CITES, Washington, 3 March 1973, entry into force 27 October 1976, [1976] ATS 29, Article II.

67 CITES, Washington, 3 March 1973, entry into force 27 October 1976, [1976] ATS 29, Article VII.

68 CITES, Washington, 3 March 1973, entry into force 27 October 1976, [1976] ATS 29, Article VII.

69 Different exemptions apply depending on the level of protection granted to a species (appendix I or II). For example, if an Appendix I item was acquired outside of the owner's country of usual residence and is being imported into that country. See CITES, Washington, 3 March 1973, entry into force 27 October 1976, [1976] ATS 29, Article VII.

70 CITES, Washington, 3 March 1973, entry into force 27 October 1976, [1976] ATS 29, Article VII.

- The export provisions of CITES appendices do not apply if a management authority is satisfied that an animal specimen was bred in captivity, is an artificially propagated plant, or part of an animal or plant bred for commercial use. In these circumstances, a CITES management authority may provide a certificate 'in lieu of any of the permits or certificates required under the [CITES] provisions of Article III, IV, or V'.⁷¹
- Provisions of CITES appendices do not apply in the following circumstances:
 - a non-commercial loan;
 - donation or exchange between scientists/scientific institutions that are registered with a management authority;
 - herbarium specimens (preserved, dried or embedded museum pieces); and
 - live plant material that has a label issued or approved by a management authority.⁷²
- A management authority may waive the requirements found under the appendices to permit the movement of specimens travelling for a zoo, circus, menagerie, plant exhibition or other travelling exhibition.⁷³

The application of CITES in Australia

2.39 CITES is enforceable under the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act), which regulates the import and export of elephant ivory⁷⁴ and rhino horn to and from Australia.⁷⁵ The DoEE is the assigned management and scientific authority of CITES.⁷⁶

2.40 Appendix I specimens can only be imported to or exported from Australia in exceptional circumstances, or if the specimen has a pre-CITES certificate. With regard to the importation of pre-CITES specimens into Australia, the DoEE website states:

...there is no legal requirement to apply for a permit before importing a specimen that has a pre-CITES certificate from the country of export. However, [importers] are required to declare the importation, and it is recommended that you provide a copy of the overseas pre-CITES certificate

71 CITES, Washington, 3 March 1973, entry into force 27 October 1976, [1976] ATS 29, Article VII.

72 CITES, Washington, 3 March 1973, entry into force 27 October 1976, [1976] ATS 29, Article VII.

73 CITES, Washington, 3 March 1973, entry into force 27 October 1976, [1976] ATS 29, Article VII.

74 Ivory derived from walrus is permitted because it is an Appendix III listed species. See CITES, Washington, 3 March 1973, entry into force 27 October 1976, [1976] ATS 29, Article II.

75 Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act), Part 13A

76 DoEE, *Internationally endangered plants and animals (CITES)*, <http://www.environment.gov.au/biodiversity/wildlife-trade/cites> (accessed 6 June 2018).

to the department. This will ensure that the import is recorded and that the department has evidence of legal import of your pre-CITES specimen(s) into Australia. This may be important if you wish to re-export the specimen(s) at a later stage.⁷⁷

2.41 The DoEE issues pre-CITES certificates in Australia and will do so when a CITES-listed specimen is exported or re-exported out of Australia. The exporter must satisfy the DoEE that the specimen is pre-CITES, and can do so by obtaining provenance documentation, such as:

- evidence of proof of acquisition and/or origin of a specimen; or
- a valuation certificate provided by an expert in the field or an antique dealer, which verifies the age of the item.⁷⁸

2.42 Australia has implemented stricter measures than those found in CITES.⁷⁹ Specifically, stricter domestic measures exist for African lions, cetaceans, elephants and rhinoceros.⁸⁰ African elephant populations, which are categorised under Appendix II of CITES, are included in Appendix I under subsection 303CA(1) of the EPBC Act.⁸¹ Australia has also introduced measures that restrict the trade of rhino specimens including:

- the discontinuation of permits being issued to importing rhino hunting trophies of southern white rhino (Appendix II listed);
- the ban of rhino hunting trophies being imported as personal and household effects; and
- a requirement that radiocarbon dating is compulsory to prove the age of vintage rhino horn for export.⁸²

2.43 For the export or re-export of rhinoceros horn (or products derived from rhinoceros horn), the exporter must prove the item was obtained before 1975. The DoEE specifies that satisfaction of this requirement is only met when a radiocarbon dating result shows the carbon date is pre-1957.⁸³ If the result indicates the item was

77 DoEE, *Pre-CITES certificates*, <http://www.environment.gov.au/biodiversity/wildlife-trade/permits/pre-cites-certificates> (accessed 11 April 2018).

78 DoEE, *Pre-CITES certificates*.

79 The Minister may enact stricter domestic measures. See EPBC Act, s. 303CB.

80 DoEE, *Australia's stricter domestic measures*, <http://www.environment.gov.au/biodiversity/wildlife-trade/cites/stricter-measures> (accessed 11 April 2018).

81 Commonwealth of Australia, *Listing of CITES Species: Declaration of Stricter Domestic Measures*, December 2002.

82 DoEE, *Trade in Rhinoceros Specimens*, <http://www.environment.gov.au/biodiversity/wildlife-trade/cites/stricter-measures/rhino> (accessed 11 April 2018).

83 DoEE, *Pre-CITES certificates*.

obtained post-1957, the 'margin of error associated with that result means that there is not a high degree of certainty that the item was obtained prior to 1975'.⁸⁴

2.44 The importation and exportation of newer elephant ivory and rhino horn is only permitted in a limited number of non-commercial purposes, such as for research or a museum exhibition.⁸⁵

2.45 Tables 1 and 2 show the number of imports of ivory⁸⁶ to Australia by number of items and weight, between 2010 and 2015. Table 1 shows the total number of ivory items imported into Australia over a five year period was 6455.5. Of this total, the majority (4077 items) were personal items (3769 were imported with pre-CITES certification), and 2101.5 items were imported for commercial purposes.

2.46 For the same period, the total weight was 78.805 kilograms, split between personal (32.905 kilograms) and commercial (45.9 kilograms).

Table 1: Imports of ivory (number of items) to Australia, 2010–2015:⁸⁷

Purpose of trade	Education	Hunting trophy	Personal	Exhibition	Scientific	Commercial	Blank	Total
Australian reported imports								
Pre-Convention	0	0	0	18	0	0	0	18
Other	0	0	0	5	0	0	0	5
Imports not reported by Australia								
Pre-Convention	25	0	3769	200	10	2089.5	8	6101.5
Other	0	11	308	0	0	12	0	331
Total	25	11	4077	223	10	2101.5	8	6455.5

84 DoEE, *Pre-CITES certificates*.

85 Mr Murphy, DoEE, *Proof Hansard*, 3 July 2018, p. 10.

86 The DoEE defines ivory to include: carvings, ivory carvings, ivory pieces, jewellery – ivory, piano keys, tusks, teeth, and items that are not identified (blank). Trade terms not included: bone pieces, derivatives, feet, garments, hair, leather products (small), leather products (large), skin, skin pieces, specimens, tails. See DoEE, *Submission 30*, p. 11.

87 DoEE, *Submission 30*, p. 12.

Table 2: Imports of ivory (by weight, kilograms) to Australia, 2010–2015:⁸⁸

Purpose of trade	Education	Hunting trophy	Personal	Exhibition	Scientific	Commercial	Blank	Total
Australian reported imports								
Pre-Convention	0	0	0	0	0	0	0	0
Non pre-Convention	0	0	0	0	0	0	0	0
Imports not reported by Australia								
Pre-Convention	0	0	32.804	0	0	45.9	0	78.704
Non pre-Convention	0	0	0.101	0	0	0	0	0.101
Total	0	0	32.905	0	0	45.9	0	78.805

2.47 Table 3 and 4 show the total number of ivory items (by number of items and weight) exported from Australia between 2010 and 2015. Table 3 shows that there were 1978 items exported from Australia over this period, the majority (1328) were for personal reasons, followed by commercial (435) and exhibition (215). Forty-eight of these items were not supported by pre-CITES certification.

2.48 Table 4 shows ivory exports by weight. The total was 0.751 grams and is listed entirely as personal items supported by per-CITES certification. Nothing is listed for exhibition or commercial despite Table 3 indicating that items were exported.

Table 3: Exports of ivory (number of items) from Australia, 2010–2015:⁸⁹

Purpose of trade	Personal	Exhibition	Commercial	Total
Australian reported exports				
Pre-Convention	1309	203	418	1930
Other	19	12	17	48
Total	1328	215	435	1978

88 DoEE, *Submission 30*, p. 12.

89 DoEE, *Submission 30*, p. 13.

Table 4: Exports of ivory (be weight, kilograms) from Australia, 2010–2015:⁹⁰

Purpose of trade	Personal	Exhibition	Commercial	Total
Australian reported exports				
Pre-Convention	0.751	0	0	0.751
Other	0	0	0	0
Total	0.751	0	0	0.751

2.49 Table 5 shows the number of rhino horn items imported into Australia between 2010 and 2015. There were 22 items in total, 14 of which were for commercial purposes, seven for personal use, and one item was a hunting trophy, which was not imported with a pre-CITES certificate. Table 6 shows the number of rhino items exported from Australia between 2010 and 2015. Eleven items were for personal use, and seven were commercial (total 18). Two commercial items did not come with pre-CITES certification. No data was provided for the weight of those items.⁹¹

Table 5: Imports of rhino horn (by number of items) into Australia, 2010–2015:⁹²

Purpose of trade	Hunting trophy	Personal	Commercial	Total
Australian reported imports				
Pre-Convention	0	0	0	0
Other	0	0	0	0
Imports not reported by Australia				
Pre-Convention	0	7	14	21
Other	1	0	0	1
Total	1	7	14	22

90 DoEE, *Submission 30*, p. 13.

91 DoEE, *Submission 30*, p. 14.

92 DoEE, *Submission 30*, p. 14.

Table 6: Exports of rhino horn (by number of items) into Australia, 2010–2015:⁹³

Purpose of trade	Personal	Commercial	Total
Australian reported exports			
Pre-Convention	11	5	16
Other	0	2	2
Total	11	7	18

Enforcement and detection of elephant ivory and rhino horn at Australia's border

2.50 The enforcement of Australia's CITES obligations is the responsibility of the DoEE and the Australian Border Force (ABF) and, if necessary, the Australian Federal Police (AFP).⁹⁴ The maximum penalty for a wildlife trade offence under the EPBC Act is 10 years imprisonment and a \$210 000 fine for individuals and \$1 050 000 fine for corporations. Wildlife items may be seized post-border if authorities suspect an item has illegally entered Australia.⁹⁵

17th Meeting of the Conference of the Parties

2.51 South Africa hosted the 17th Meeting of the Conference of the Parties (CoP17) of the CITES between 24 September and 5 October 2016. During the two week negotiations, 152 governments agreed to a resolution that:

...recommends that all Parties and non-Parties in whose jurisdiction where there is a legal domestic market for ivory that is contributing to poaching or illegal trade, take all necessary legislative, regulatory and enforcement measures to close their domestic markets for commercial trade in raw and worked ivory as a matter of priority.⁹⁶

2.52 Under the resolution, CITES parties are required to report to the CITES Secretariat the 'status of the legality of their domestic ivory markets', which results in that information being reported to the CITES Standing Committee meetings and at

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

94 According to the Department of Home Affairs, the Australian Federal Police 'contributes to Australia's role in addressing wildlife crime, through sharing information with the DoEE and other law enforcement partners in relation to illegal trade in protected wildlife'. See Department of Home Affairs (Home Affairs), *Submission 35*, p. 3.

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

96 Julia Larsen Maher, 'CITES CoP17 Delegates Adopt Resolution Recommending Closure of Domestic Elephant Ivory Markets Globally', *National Geographic*, 2 October 2016, <https://blog.nationalgeographic.org/2016/10/02/cites-cop17-delegates-adopt-resolution-recommending-closure-of-domestic-elephant-ivory-markets-globally/> (accessed 10 May 2018).

future CoPs.⁹⁷ Although the resolution is not legally binding, it does elevate the issue, 'and increase pressure on countries that have not closed their [domestic] markets'.⁹⁸

2.53 This resolution led to a number of countries announcing and/or implementing a ban on the domestic trade in elephant ivory. Recent announcements include: the United States (June 2016);⁹⁹ China (January 2018); Hong Kong (by 2021);¹⁰⁰ Taiwan (by 2020);¹⁰¹ and the United Kingdom (UK).¹⁰² In late 2017, the European Union embarked on a consultation process about restrictive measures against the ivory trade. The outcome of this consultation is yet to be released.¹⁰³ France has had a near-total ban for post-1947 ivory items since 2016, whilst Canada banned the domestic ivory trade in 1992.¹⁰⁴

2.54 Global support for the implementation of the CoP17 resolution was further advanced in 2017, with the United Nations General Assembly resolution (item 27) on *Tackling illicit trafficking in wildlife*, that called upon:

...Member States to ensure that legal domestic markets for wildlife products are not used to mask the trade in illegal wildlife products, and in this regard urges parties to implement the decision adopted at the 17th meeting of the Conference of Parties to the Convention on International Trade in Endangered Species of Wild Fauna and Flora recommending that all Governments close legal domestic ivory markets, as a matter of urgency, if these markets contribute to poaching or illegal trade.¹⁰⁵

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- 97 Maher, 'CITES CoP17 Delegates Adopt Resolution Recommending Closure of Domestic Elephant Ivory Markets Globally', *National Geographic*, 2 October 2016.
- 98 Maher, 'CITES CoP17 Delegates Adopt Resolution Recommending Closure of Domestic Elephant Ivory Markets Globally', *National Geographic*, 2 October 2016.
- 99 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).
- 100 Author undisclosed, 'SAR to phase out ivory trade, increase penalties for illicit endangered species trade from May', *The Standard*, 23 April 2018, <http://www.thestandard.com.hk/breaking-news.php?id=106217&sid=4> (accessed 3 May 2018).
- 101 Author undisclosed, 'Taiwan to revise laws for 2020 ban on ivory trade', *The Standard*, 4 April 2018, http://www.thestandard.com.hk/breaking-news.php?id=105203&story_id=105203&d_str=20180404&sid=3 (accessed 3 May 2018).
- 102 Department for Environment, Food & Rural Affairs (DEFRA), *Banning UK sales of ivory: Summary of responses and government response*, April 2018, <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/> (accessed 30 May 2018).
- 103 Stefan Gabrynowicz, *Submission 22*, p. 12.
- 104 Georgina Lee, 'Is the UK lagging behind on stopping the ivory trade?', *Channel 4 News*, <https://www.channel4.com/news/factcheck/factcheck-is-the-uk-lagging-behind-on-stopping-the-ivory-trade> (accessed 6 June 2018).
- 105 UNODC, *Submission 71*, p. 12.

Australia's domestic trade regulations

2.55 The Commonwealth government does not regulate the domestic trade of wildlife (including ivory and rhino horn); however, it is an offence under section 303GN of the EPBC Act to be in possession of a wildlife specimen that has been illegally imported into Australia.¹⁰⁶ The internal movement of wildlife species is governed by the laws found within each state and territory.¹⁰⁷ There is no specific state and territory regulation of the domestic trade in non-live elephant and rhino specimens.¹⁰⁸

2.56 Further, there is no legal requirement for domestic sellers or facilitators of ivory and rhino horn to provide evidence at the point of sale (for example at an auction house) that demonstrates the item is a legal import, or proves the provenance or age of a specimen. The DoEE may request an owner of a wildlife specimen to produce evidence of its legal source.¹⁰⁹

2.57 Despite the absence of domestic regulation, the DoEE stated that the CITES Elephant Trade Information System's 2016 assessment of Australia's domestic ivory market as 'small and/or well-regulated' and noted 'most seizures of ivory in Australia is of small, worked items being traded as personal effects'.¹¹⁰ The DoEE stated that the trading of these items within Australia is legal and that it is 'legal elsewhere in the world';¹¹¹ because the domestic trade is legal, no Commonwealth, state or territory agency is responsible for, or required to monitor the elephant and rhino horn trade within Australia.¹¹²

106 EPBC Act, s.303GN(6)(a)

107 IFAW, *Under the Hammer: Are Auction Houses in Australia and New Zealand Contributing to the Demise of Elephants and Rhinos?* (Under the Hammer), September 2016, p. 19.

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

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

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

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

112 Mr Murphy, DoEE, *Proof Hansard*, 3 July 2018, pp. 14–15.

Chapter 3

International trade control framework

3.1 This chapter considers international efforts to implement domestic trade controls for ivory and rhino horn items. The chapter then considers in more depth the UK framework, which was identified by a significant number of stakeholders as a model of best practice.

3.2 Since 2016, the United States (US), China and Hong Kong, Taiwan, France and the United Kingdom (UK) have all announced, or implemented domestic trade bans for ivory. Other nations, such as those in the European Union, Thailand and Japan are reviewing or strengthening existing measures.

3.3 Supporters of the UK framework urged the Commonwealth government to use this framework as a model for its own domestic trade ban. Each of the exemptions specified in the UK framework are discussed in this chapter, together with compliance, enforcement, offences and sanctions measures.

3.4 Finally, the chapter concludes with consideration of the *Australian Constitution*, and how best to proceed with a domestic trade ban in Australia.

International efforts

3.5 Since the 2016 Conference of the Parties (CoP17) of CITES, several countries have implemented or announced the closure of their domestic markets for the commercial trade in ivory. A summary of a number of these countries is provided in the following sections.

The United States

3.6 The US Fish and Wildlife Service (FWS) instituted a 'near-total' domestic trade ban of ivory in June 2016 to reduce the movement of ivory within US borders.¹ The ban fulfilled the 2013 restrictions announced by former President Barack Obama as part of his executive order to combat wildlife trafficking,² in response to criminal investigations that revealed the legal ivory market was serving as a cover for the illegal ivory trade.³

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- 1 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).
 - 2 The White House, 'Executive Order – Combating Wildlife Trafficking', *Executive Order*, 1 July 2013, <https://obamawhitehouse.archives.gov/the-press-office/2013/07/01/executive-order-combating-wildlife-trafficking> (accessed 16 May 2018).
 - 3 US Fish and Wildlife Service, 'Revisions to the Endangered Species Act (ESA) Special Rule for the African Elephant', *Questions and Answers*, 6 June 2016, <https://www.fws.gov/international/pdf/questions-and-answers-african-elephant-4d-final-rule.pdf> (accessed 16 May 2018).

3.7 The rules implemented by the FWS 'limits the imports, exports and sales of African elephant ivory across state lines',⁴ whilst allowing for activities such as the:

...movement of ivory for law enforcement and bona fide scientific purposes, and the non-commercial movement of certain items, such as museum specimens and musical instruments containing antique ivory or ivory removed from the wild prior to the listing of African elephants under [CITES].⁵

3.8 The rules implemented a number of exemptions, including: a 100 year rolling ban that allows ivory items older than 1918 to be sold, with the cut-off year rising annually; a de minimus exemption for items that contain less than 200 grams of ivory and comprising less than 50 per cent ivory by value and volume; and an exemption for musical instruments containing ivory.⁶

3.9 The US government's domestic ban only applies to trade across state borders (due to it being a federated system); however, some state governments have since implemented their own bans on the sale of ivory items, including New York State, New Jersey, California and Hawaii.⁷ A consequence of the US system is that regulations differ between federal and state jurisdictions. For example, the 50 per cent de minimus threshold at a federal level is different to threshold amounts at a state level, which takes priority. Subsequently the US has de minimis thresholds 'between five and 20 per cent de minimis level, depending on which state you're in'.⁸ Mr David Cowdrey of International Fund for Animal Welfare (IFAW) commented that the US approach has made 'a very confusing system'.⁹

3.10 There have been significant declines in the trade of ivory items since federal and state bans were implemented. Import data between the UK and the US shows 3526 pieces entered the US from the UK in 2010, and in 2015 that number reduced to just 17 items.¹⁰ Further, ivory vendors and ivory items sold in both New York State and California have significantly declined, as demonstrated in Table 7.¹¹

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 US Fish and Wildlife Service, 'Revisions to the Endangered Species Act (ESA) Special Rule for the African Elephant', *Questions and Answers*, 6 June 2016, <https://www.fws.gov/international/pdf/questions-and-answers-african-elephant-4d-final-rule.pdf> (accessed 16 May 2018).

6 UK government, *Submission 47*, p. 28.

7 International Fund for Animal Welfare (IFAW), *Submission 65*, p. 17.

8 Mr David Cowdrey, IFAW, *Proof Hansard*, 9 July 2018, p. 64.

9 Mr Cowdrey, IFAW, *Proof Hansard*, 9 July 2018, p. 64.

10 Environmental Investigation Agency (EIA), *Submission 33*, p. 6.

11 EIA, *Submission 33*, p. 7.

Table 7: Number of ivory vendors and ivory items, New York and California:

New York State		
Date	Ivory vendors	Ivory items
2008	124	11 376
2016	41	224
California		
2008	147	4864
2015	107	1250
2016	59	265

China and Hong Kong

3.11 At the end of 2017, China had fully implemented a ban on all ivory trade and processing activities, which included all international trade into and out of China (except for pre-CITES specimens) and the closure of all domestic workshops.¹² The ban also extended to online sales and souvenirs purchased abroad.¹³

3.12 There are several exemptions to China's domestic trade ban. For example, it still permits 'the transport, gifting and display of ivory', as well as the auction of ivory relics (defined as 'valuable works of art and handicraft articles dating from various historical periods').¹⁴ The ban does not specify cut-off dates.¹⁵ Museums and private collectors of ivory antiques are exempted.¹⁶

3.13 The Chinese ban has succeeded in undermining the price of ivory in both China and Hong Kong. In 2015 ivory was \$1322 per kilo, and in October 2016 it dropped to \$750 per kilo.¹⁷ In early 2018, a sale of tusks weighing 204 kilograms recorded a record low of \$400 per kilo.¹⁸ According to the Xinhua News Agency, the

12 Department of the Environment and Energy (DoEE), *Submission 30*, p. 19.

13 Agence France-Presse, 'All ivory dealing now illegal in mainland', *The Standard*, 2 January 2018, http://www.thestandard.com.hk/section-news.php?id=191245&story_id=50003534&d_str=20180102&sid=3 (accessed 3 May 2018).

14 UK government, *Submission 47*, p. 28.

15 UK government, *Submission 47*, p. 28.

16 Lisa Movius, 'Antique ivory not affected by China's complete trade ban', *The Art Newspaper*, 6 February 2018, <https://www.theartnewspaper.com/news/complete-ban-on-ivory-trading-comes-into-force-in-china> (accessed 3 May 2018).

17 Mr Cowdrey, IFAW, *Proof Hansard*, 9 July 2018, p. 62.

18 Mr Cowdrey, IFAW, *Proof Hansard*, 9 July 2018, p. 62.

ban had resulted in an 80 per cent decline in seizures of ivory imported into China, and before its total ban, the price of raw ivory had decreased by 65 per cent.¹⁹

3.14 In Hong Kong, the Protection of Endangered Species of Animals and Plants (Amendment) Ordinance 2018 came into effect on 1 May 2018. This amendment is the first step in a three-part plan to bolster regulations on the import and export of ivory and elephant hunting trophies, along with the domestic ivory trade in Hong Kong.²⁰ The next phase of the plan, which commenced on 1 August 2018, saw a ban on importing and re-exporting of pre-CITES ivory, and implemented licensing controls for 'commercial possession of pre-Convention ivory in local markets'.²¹ The final phase will ban the commercial possession of all ivory in Hong Kong, excluding antique ivory, by 31 December 2021.²²

The European Union and France

3.15 In 2016, the European Union (EU) voted in support of a global ban on ivory trade, which included the commencement of a consultation process on proposed legislative action.²³

3.16 The French government implemented an ivory and rhino horn trade ban in France and all overseas French territories in May 2016. The ban permits the sale of worked ivory as late as 1 July 1975 when an item is supported by CITES documentation.²⁴

Taiwan, Thailand and Japan

3.17 Taiwan, Thailand and Japan have announced measures to restrict the domestic trade in ivory. The Taiwan government has reportedly determined that 'the most prudent course of action would be an outright ban for its domestic trade',²⁵ and the Japanese government has announced a plan to introduce a registration system for the domestic ivory trade.²⁶

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- 19 Agence France-Presse, 'All ivory dealing now illegal in mainland', *The Standard*, 2 January 2018, http://www.thestandard.com.hk/section-news.php?id=191245&story_id=50003534&d_str=20180102&sid=3 (accessed 3 May 2018).
- 20 Author undisclosed, 'SAR to phase out ivory trade, increase penalties for illicit endangered species trade from May', *The Standard*, 23 April 2018, <http://www.thestandard.com.hk/breaking-news.php?id=106217&sid=4> (accessed 3 May 2018).
- 21 Author undisclosed, 'SAR to phase out ivory trade, increase penalties for illicit endangered species trade from May', *The Standard*, 23 April 2018, <http://www.thestandard.com.hk/breaking-news.php?id=106217&sid=4> (accessed 3 May 2018).
- 22 Author undisclosed, 'SAR to phase out ivory trade, increase penalties for illicit endangered species trade from May', *The Standard*, 23 April 2018, <http://www.thestandard.com.hk/breaking-news.php?id=106217&sid=4> (accessed 3 May 2018).
- 23 The Jane Goodall Institute Australia, *Submission 38*, p. [11].
- 24 The Jane Goodall Institute Australia, *Submission 38*, p. [11].
- 25 Born Free Foundation, *Submission 62*, p. [5].
- 26 Mr Paul Murphy, DoEE, response to Question on Notice, pp. 1–2, (received 3 August 2018).

3.18 Thailand, once believed to have had the largest unregulated market in the world, has since 2014 transitioned to a well-regulated ivory market. This transition has been achieved through the revision of wildlife crime laws to criminalise the import, export and sale of African elephant ivory, and the introduction of the *Elephant Ivory Act 2015* to regulate the domestic market, including a national register of ivory stocks. Evidence of its success was supported by a June 2016 survey that revealed a 96 per cent drop in the amount of ivory being openly sold by retailers in Bangkok.²⁷

The United Kingdom: a model of best practice?

3.19 Whilst acknowledging the considerable efforts of the international community to implement domestic ivory trade bans, the committee heard overwhelming support for the United Kingdom (UK) government's proposed framework.

3.20 On 6 October 2017, the UK government announced it would impose a ban on the sale of elephant ivory. At that time, the UK Secretary of State for Environment, Food and Rural Affairs, the Honourable Michael Gove MP, declared that '[i]vory should never be seen as a commodity for financial gain or a status symbol' and for that reason, the UK government will 'introduce one of the world's toughest bans on ivory sales to protect elephants for future generations' and demonstrate the UK government's 'belief that the abhorrent ivory trade should become a thing of the past'.²⁸

3.21 The initial announcement noted that the ban would cover ivory items of all ages, not just those created after a certain date, and proposed four exemptions: musical instruments; items containing only a small proportion of ivory (de minimis exemption); items of 'significant historic, artistic and cultural value'; and sales to and between museums.²⁹ At the time of the announcement, regulations concerning ivory prohibited the trade of raw ivory and allowed 'worked ivory items produced after 3 March 1947 to be sold with a certificate, with no restrictions at all on worked ivory produced before that date'.³⁰

3.22 As part of this announcement, the UK government initiated a 12-week consultation process to work with conservationists, the arts and antique industries, and other interested parties to determine how the exemptions would be defined,

27 United Nations Office on Drugs and Crime (UNODC), *Submission 71*, p. 13.

28 UK government, 'Government confirms UK ban on ivory sales', *Press release*, 3 April 2017, <https://www.gov.uk/government/news/government-confirms-uk-ban-on-ivory-sales> (accessed 17 September 2018).

29 UK government, *Government sets out plans for ivory ban*, 6 October 2017, <https://www.gov.uk/government/news/government-sets-out-plans-for-ivory-ban> (accessed 7 May 2018).

30 UK government, *Government sets out plans for ivory ban*, 6 October 2017, (accessed 7 May 2018).

implemented and enforced.³¹ This consultation process generated over 70 000 responses, with over 88 per cent of respondents supporting a domestic trade ban.³²

3.23 In April 2018, the UK government released a summary of responses to the government's proposal to ban UK sales of ivory, along with its policy response. The UK government confirmed that it would proceed with the ban 'on commercial activities³³ concerning ivory in the UK that could directly or indirectly fuel the poaching of elephants'.³⁴ The response noted that the ban would not impact on the 'right to own, gift, inherit or bequeath ivory where that is currently allowed'.³⁵ Further, the report included the details of five proposed exemptions for commercial activities (considered in more detail at paragraph 3.38):

- **de minimis** is to include items with an ivory content of less than 10 per cent by volume, and made prior to 1947;
- **musical instruments** are excluded if they have an ivory content of less than 20 per cent, and were made prior to 1975;³⁶
- **portrait miniatures**³⁷ that were produced 100 years prior to the ivory ban coming into force;

31 UK government, *Government sets out plans for ivory ban*, 6 October 2017, (accessed 7 May 2018).

32 Her Excellence Menna Rawlings CMG, British High Commissioner to Australia, *Proof Hansard*, 9 July 2018, p. 16.

33 Commercial activities is defined as: buying, selling or hiring ivory; offering or arranging to buy, sell or hire ivory; keeping ivory for sale or hire; exporting ivory from the UK for sale or hire; and importing ivory into UK for sale or hire. See Department for Environment, Food & Rural Affairs (DEFRA), *Banning UK sales of ivory: Summary of responses and government response*, April 2018, p. 23, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/696474/banning-ivory-consult-sum-resp.pdf (accessed 7 May 2018).

34 DEFRA, *Banning UK sales of ivory: Summary of responses and government response*, April 2018, p. 23.

35 DEFRA, *Banning UK sales of ivory: Summary of responses and government response*, April 2018, p. 23.

36 The UK government stated that it had opted for a later date (1975) than that applied to de minimis (1947) is in recognition that many instruments, in particular pianos and violin bows, continued to be made using ivory into the late 20th century, and in use by professional musicians. See DEFRA, *Banning UK sales of ivory: Summary of responses and government response*, April 2018, p. 24.

37 Portrait miniatures contain a small amount of ivory, often painted, and are not valued for their ivory content. Portrait miniatures were primarily created between the 17th and 19th centuries. The UK government supported stakeholders' view that the sale of portrait miniatures would not 'fuel, directly or indirectly, the continued poaching of elephants'. See DEFRA, *Banning UK sales of ivory: Summary of responses and government response*, April 2018, p. 24.

- **rare and most important items of their type**³⁸ that contain ivory, are considered 'outstandingly high artistic, cultural or historical value' and are 'the rarest and most important item of their type'; and
- **accredited museums** and their commercial activities which include sales, loan and exchanges of items to, or between, museums will be permitted. These accredited museums will also be permitted to sell to, or buy from, non-UK museums that are recognised by the International Council of Museums.³⁹

3.24 To ensure compliance with these new measures, the UK government announced that the Animal Plan and Health Authority (APHA) would implement and administer an online registration of ivory items in the UK. This online database will be accessible by the government, the regulatory body and the UK Police.⁴⁰

3.25 The UK government also announced a new registration system for the sale of ivory items. If an owner of an ivory item intends to sell such an item, then that person will need to apply for an exemption through APHA and provide provenance documentation. If the seller believes the item would qualify for the rarest and most important items exemption, then an institution with a recognised specialist will need to assess the validity of the claim.⁴¹

3.26 With regard to CITES, the UK government stated the new measures would 'build upon, rather than replace, current CITES rules'⁴² and:

No item that cannot be sold now, will be permitted to be sold after the ban is implemented. Items that currently need a certificate to be sold, imported or re-exported under the EU Wildlife Trade Regulations will continue to require one. This will be in addition to having to comply with the ban.⁴³

3.27 The UK government will delegate enforcement responsibility to an existing regulatory body that will work with the UK Police, a wildlife crime unit and the UK Border Force. This regulatory body will be provided powers to enable the detection

38 The UK government advised that a 'limited amount of institutions, such as selected museums' would be required to provide advice to a governing body 'on whether an item should be exempted under this category'. The UK government will also 'provide statutory guidance to participating advisory institutions on the criteria that items falling under this exemption must meet'. Eligibility for exemption is only available for items produced at least 100 years prior to the ivory ban coming into force. See DEFRA, *Banning UK sales of ivory: Summary of responses and government response*, April 2018, pp. 24–25.

39 DEFRA, *Banning UK sales of ivory: Summary of responses and government response*, April 2018, pp. 24–25.

40 DEFRA, *Banning UK sales of ivory: Summary of responses and government response*, April 2018, pp. 24–25.

41 DEFRA, *Banning UK sales of ivory: Summary of responses and government response*, April 2018, p. 26.

42 DEFRA, *Banning UK sales of ivory: Summary of responses and government response*, April 2018, p. 26.

43 DEFRA, *Banning UK sales of ivory: Summary of responses and government response*, April 2018, p. 26.

and pursuit of illegal sales and instances of non-compliance, along with the power to issue civil penalties to those who breach the ivory sales ban.⁴⁴ Police and customs officers will use their powers to investigate and charge breaches of the ban.⁴⁵

3.28 The Ivory Bill 2017–19 (the UK Ivory Bill) will introduce new offences. These offences include civil⁴⁶ or criminal⁴⁷ sanctions, dependent on the nature of the breach.⁴⁸ The three categories of offences that apply to the commercial use of ivory are:

- engaging in commercial activity without meeting an exemption;
- improperly or falsely registering an item for exemption from sale; and
- causing or facilitating the sale of ivory or other commercial activities.⁴⁹

3.29 British High Commissioner to Australia, Her Excellency Menna Rawlings, informed the committee that the UK Ivory Bill was introduced to the UK Parliament on 23 May 2018. Once passed, there will be a six-month period before the Act enters into force to ensure adequate time for people to prepare for its introduction and application.⁵⁰

Exemptions and their application within an Australian framework

3.30 The committee heard overwhelming support for the UK framework and its limited exemptions for commercial trade. Support for the UK framework was expressed by a range of stakeholders, many of whom advocated for implementation of a similar framework in Australia.

3.31 IFAW opined that the UK framework 'was a very well thought-through piece of legislation as a whole' and recognised the purpose of the exemptions is to 'remove the value of ivory...so you're not celebrating ivory or putting a price tag on it'.⁵¹ The

44 DEFRA, *Banning UK sales of ivory: Summary of responses and government response*, April 2018, p. 26.

45 DEFRA, *Banning UK sales of ivory: Summary of responses and government response*, April 2018, p. 27.

46 Civil sanction will consist of: stop notices, monetary penalties, enforcement undertakings and enforcement cost recovery notices. Non-compliance with a civil sanction could result in a criminal prosecution. See DEFRA, *Banning UK sales of ivory: Summary of responses and government response*, April 2018, p. 27.

47 Criminal sanctions will align with existing offences concerning for ivory under the UK Control of Trade in Endangered Species Regulations. See DEFRA, *Banning UK sales of ivory: Summary of responses and government response*, April 2018, p. 27.

48 DEFRA, *Banning UK sales of ivory: Summary of responses and government response*, April 2018, p. 27.

49 DEFRA, *Banning UK sales of ivory: Summary of responses and government response*, April 2018, p. 27.

50 Her Excellency Rawlings CMG, British High Commissioner to Australia, *Proof Hansard*, 9 July 2018, p. 17.

51 Mr Cowdrey, IFAW, *Proof Hansards*, 9 July 2018, p. 64.

Animal Defenders Office (ADO) commented that the UK framework seemed 'reasonable and limited', and thought it sound for there to be similar exemptions should a domestic ban exist in Australia.⁵² Even the Australian Border Force (ABF) commented that '[c]ertainly from a supply-and-demand perspective, if there's no demand domestically, it'd be less likely that things are actually brought in through the border'.⁵³

3.32 However, support for specific exemptions varied. Whilst a majority of submitters called for exemptions similar to the UK framework, others expressed caution, and warned that there is a risk of ongoing laundering if exemptions are not heavily monitored and enforced.

3.33 Nature Needs More raised this concern. It supported an Australian framework with exemptions for ivory items (specifically supporting the musical instruments and museum exemptions), however:

If these exemptions exist, the key thing is that we would like to know that they're being heavily regulated so there's no opportunity for laundering—no loopholes for laundering new product into the market.⁵⁴

3.34 The Thin Green Line Foundation, which called for a complete ban, expressed a similar view:

...we certainly appreciate and understand the calls for exemptions for musical instruments and other artefacts of cultural value; but, from our evidence in the field and our perspective, the more exemptions that you have, the greater the loophole there is for laundering the illegal products through that trade. We do understand why those exemptions are being asked for, and...there would need to be a heavily regulated and accountable process if those exemptions were brought into force.⁵⁵

3.35 This concern was shared by Professor Grant Pink, who argued 'the fewer [exemptions] the better from law enforcement's perspective because the more exemptions that exist the more challenging it is' when determining whether an item is legally or illegally traded.⁵⁶

3.36 A number of submitters highlighted the importance of carefully defined exemptions. The Environmental Investigation Agency (EIA) supported three of the exemptions included in the UK framework (de minimis, musical instrument and museums) but urged Australia to ensure exemptions are 'as narrow and tightly-focused as possible and limited to domestic trade (i.e. any exempt items should not be allowed to be imported/exported)'.⁵⁷ This view was shared by Gordon Consulting, which

52 Mr Scott Dempsey, Animal Defenders Office (ADO), *Proof Hansard*, 9 July 2018, p. 3.

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

54 Dr Lynn Johnson, Nature Needs More, *Proof Hansard*, 4 July 2018, p. 11.

55 Ms Clair Overy, The Thin Green Line Foundation, *Proof Hansard*, 4 July 2018, p. 33

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

57 EIA, *Submission 33*, p. 8.

added that these narrowly defined 'exemptions should not contribute to poaching or illegal trade'.⁵⁸

3.37 Dr Rebecca Johnson from the Australia Museum and Museums and Galleries Australia called for a domestic ban, but explained the ongoing threat to elephant and rhino populations means exemptions should only be applied to 'collecting institutions such as museums', and 'any exemptions be made only on the basis of rigorous science being applied to validate those claims as the exemption', such as radiocarbon dating.⁵⁹

3.38 Each of the exemptions found in the UK framework are discussed in the following sections. The UK framework is explicitly designed for ivory, and for this reason, the commentary is focused on ivory items and excludes rhino horn.

3.39 The UK government advised the committee that it had recently strengthened its measures to protect rhinoceros. For example, since 2010 the UK no longer issues CITES permits for people wanting to re-export rhino products, unless they meet a strictly limited criteria. These measures were adopted by the EU in 2014.⁶⁰

De minimis

3.40 The de minimis exemption, as defined under the UK framework, applies to items made prior to 1947, which contain an ivory content of less than 10 per cent of its total volume. The UK government stated that a 10 per cent threshold is both strong and practical to enforce;⁶¹ whilst the 1947 date threshold aligns with the current pre-CITES date threshold for ivory items established under EU Wildlife Trade Regulations.⁶²

3.41 The UK Ivory Bill specifies that the ivory content must be 'integral' to the item, meaning that it cannot be 'removed from the item without difficulty or without damaging the item'.⁶³

3.42 Several civil society organisations supported the de minimis exemption.⁶⁴ IFAW called for Australia to adopt the de minimis exemption with a 10 per cent threshold.⁶⁵ IFAW's Mr David Cowdery advised the committee that it was a good idea because 'it removes all solid ivory items from the market'.⁶⁶

58 Gordon Consulting, *Submission 48*, p. [4].

59 Dr Rebecca Johnson, Australia Museum, Museums and Galleries Australia, and the Council of Heads of Australian Faunal Collections, *Proof Hansard*, 9 July 2018, p. 26.

60 Her Excellency Rawlings CMG, British High Commissioner to Australia, *Proof Hansard*, 9 July 2018, p. 17.

61 UK government, *Submission 47*, p. 23.

62 UK government, *Submission 47*, p. 24.

63 UK Ivory Bill, section 6, p. 5.

64 For example see: Mr Gabriel Fava, Born Free Foundation, *Proof Hansard*, 3 July 2018, p. 26.

65 Ms Rebecca Keeble, IFAW, *Proof Hansard*, 3 July 2018, p. 5.

66 Mr Cowdery, IFAW, *Proof Hansard*, 9 July 2018, p. 65.

3.43 Whilst the UK's de minimis threshold was supported by many submitters, others argued in favour of either a higher or lower ivory content threshold. For example, the Born Free Foundation submitted that the Californian de minimis threshold should be considered, with an exemption for antique items that contain 200 grams or less of ivory and an ivory content of less than five per cent.⁶⁷ By contrast, the Australian Antique & Arts Dealers Association (AAADA) called for the ivory content threshold to be slightly increased 'because it would exclude a lot of items'.⁶⁸

3.44 Bloomsbury Antiques supported the UK framework. Its manager, Therese Howard informed the committee that she agreed with the exemptions found in the UK framework, and thought the date thresholds were quite generous.⁶⁹

3.45 Leonard Joel reported that its self-imposed de minimis principle applied to items 'where the ivory component is integral but so insignificant that it cannot be meaningfully contributing to maintaining the value or trade in ivory', with the aim to 'disrupt the value in ivory while respecting the incidental, ancillary or insignificant use of ivory within the decorative arts'.⁷⁰ Leonard Joel's de minimis principle is defined under the term 'incidental ivory' as:

- an item with ivory content that is fixed or an integral component(s) of a larger manufactured or handcrafted item, which the ivory is not its primary source of value, 'that is, the ivory does not account for more than 50 [per cent] of the value of the item';
- an item that does not include raw ivory;
- an item not made wholly or primarily of ivory, and that the ivory content does not account for more than 50 per cent of the item by volume; and
- the total weight of the ivory in the item is less than 200 grams.⁷¹

3.46 Jane Raffan from the Auctioneers and Valuers Association of Australia (AVAA) raised the issue of different threshold being legislated in different jurisdictions, and advised that different thresholds are 'potentially problematic and large for the antiques industry'; however, AVAA supported the:

...main principle, which is to devalue ivory. The UK's Ivory Bill ensures that the value for decorative arts and other material being traded is not tied to the ivory component because of its strict de minimis ratio. Devaluing

67 Born Free Foundation, *Submission 62*, p. 6.

68 Dawn Davis, Australian Antique & Arts Dealers Association (AAADA), *Proof Hansard*, 4 July 2018, p. 38.

69 Ms Therese Howard, Bloomsbury Antiques, *Proof Hansard*, 5 July 2018, p. 10.

70 Leonard Joel, *Submission 51*, Attachment 1, p. 11.

71 Leonard Joel, *Submission 51*, Attachment 1, p. 5.

ivory through restricting trade is a significant benchmark of conservation efforts and the AVAA supports this endeavour.⁷²

3.47 The importance of devaluing ivory was highlighted by the Australia Museum, which informed the committee that since July 2017 a national framework for valuation of collections was adopted by the Council of Australasian Museum Directors.⁷³ This framework prevents ivory and rhino horn being valued to address the 'perception in the sector that valuing that material basically encourages trade in that material'.⁷⁴

Musical instruments

3.48 A range of musical instruments have used ivory material: namely piano keys, violin bows and bagpipes. In recognition of their use, the UK framework establishes a separate exemption for musical instruments. The ivory content threshold is set at 20 per cent by volume, and applicable for instruments made prior to 1975. The UK government's submission clarified that the 20 per cent ivory content threshold covered 'the vast majority of commonly used and traded instruments'.⁷⁵

3.49 The musical instrument date threshold of 1975 differs from the de minimis threshold 'in recognition that many instruments, such as pianos and violin bows, continued to be made using ivory into the late 20th century'. Further, the UK government acknowledged that many of those instruments are still in use by professional musicians.⁷⁶

3.50 The UK Ivory Bill excludes items that may be used as a musical instrument but were 'not made primarily for that purpose'. The exemption includes 'a bow, plectrum and other things made for playing a musical instrument'.⁷⁷

3.51 The committee heard from representatives of the music industry about the exemption for musical instruments. Overall, music industry stakeholders supported a domestic trade ban but called for an exemption for musical instruments that contain ivory. The Australian Music Association (AMA) advised that many heritage instruments contain a small amount of ivory and that these instruments do not get discarded or thrown away. Instead, these instruments grow in value and are exchanged between musicians.⁷⁸

72 Jane Raffan, Auctioneers and Valuers Association of Australia (AVAA), *Proof Hansard*, 3 July 2018, p. 35.

73 Mr Cameron Slatyer, Australian Museum, Museums and Galleries Australia, and the Council of Heads of Australian Faunal Collections (Australia Museum), *Proof Hansard*, 9 July 2018, p. 32.

74 Mr Cameron Slatyer, Australia Museum, *Proof Hansard*, 9 July 2018, p. 31.

75 UK government, *Submission 47*, p. 24.

76 UK government, *Submission 47*, p. 24.

77 UK Ivory Bill, section 8, p. 5.

78 Mr Robert Walker, Australian Music Association (AMA), *Proof Hansard*, 4 July 2018, p. 1.

3.52 The ivory content of these items is typically minuscule. Pianos used approximately 200 grams of ivory to cover the piano keys, whereas violins used a small amount of ivory on the faceplate of a bow.⁷⁹ The AMA stated that the exemption proposed in the UK framework would sufficiently cover both pianos and violin bows,⁸⁰ and the de minimis exemption, with a threshold amount of 200 grams:

...would cover the vast majority of musical instruments; however, there are a few extremely rare, ancient instruments that would exceed this limit, but have huge historic, artistic and cultural importance. They, perhaps, require special protection.⁸¹

3.53 For example, a larger volume of ivory is commonly used in pipe instruments, such as bagpipes. The Celtic Piping Club explained that some pipes have traditionally used ivory mounts and ferrules, which prevent the cracking and splitting of wooden drones and chanters. Although this ivory is a decorative element, it is also integral to the functions of the instrument.⁸² The Celtic Piping Club added that these bagpipes are relatively rare, and the use of ivory:

...has no effect on present elephant populations; it is practically impossible to engage in trade of illegal ivory by attaching it to a historic musical instrument. Any ban on domestic trade of pre-CITES musical instruments containing ivory would have nil effect on eliminating global trade in illegal ivory, but it would have catastrophic and irreversible consequences for the historic, cultural, and artistic legacies they represent.⁸³

3.54 Another consideration is the industry's use of 'recycled ivory'. This occurs when an older piano is discarded: its ivory content is stripped and reused as spare parts for other pianos.⁸⁴ In these cases, Pianos Recycled submitted that it 'can reasonably identify and authenticate the age of piano ivory and does already provide a heritage certificate for an unwanted piano'.⁸⁵

3.55 Music industry representatives did not object to the 1975 date proposed in the UK framework. Pianos Recycled submitted that the 1975 date is 'meaningless as no manufacturer of any repute has produced an ivory-covered keyboard on a piano since then', and that pianos as early as the 1870s used cellulose-nitrate instead of ivory coverings.⁸⁶ The AMA noted that the industry has not used ivory in making new instruments for over 40 years.⁸⁷

79 Mr Brent Ottley; Mr Alex Grant, Alex W Grant Violins; *Proof Hansard*, 4 July 2018, pp. 3–4.

80 Mr Walker, AMA, *Proof Hansard*, 4 July 2018, p. 3.

81 AMA, *Submission 32*, p. [3].

82 Celtic Piping Club, *Submission 83*, p. 1.

83 Celtic Piping Club, *Submission 83*, p. 3.

84 Mr Ottley, *Proof Hansard*, 4 July 2018, p. 4.

85 Pianos Recycled, *Submission 81*, p. [3].

86 Pianos Recycled, *Submission 81*, p. [1].

87 AMA, *Submission 32*, p. [2].

Portrait miniatures

3.56 Portrait miniatures were highly popular items between the 17th and 19th centuries, and contain a small sliver of painted ivory. Once existing in large numbers, portrait miniatures were eventually replaced with a synthetic substitute and with the advent of photography.⁸⁸

3.57 The UK government has included an exemption for portrait miniatures because their continued sale would not fuel the continued poaching of ivory, and because they are valued for their artistry, rather than their ivory content.⁸⁹ This exemption permits the commercial sale of portrait miniatures 'produced prior to 100 years before the coming into force of the UK ivory ban'.⁹⁰ The UK Ivory Bill establishes a pre-1918 date threshold.⁹¹

3.58 The AAADA advocated for the inclusion of portrait miniatures as an exemption because these items are 'culturally and highly definitive social items of the time'.⁹² The committee did not receive any objections to this exemption.

The rarest and most important items of their type

3.59 The UK framework establishes an exemption for the 'rarest and most important items of their type'. This exemption was based on a recognition that there is a small:

...number of ivory items that are of outstandingly high artistic, historic or cultural significance and that may be assessed as being rare and important examples of their type e.g. in their particular category of function, artistic or historical period etc. We do not believe that such items contribute directly or indirectly to the continued poaching of elephants.⁹³

3.60 According to British High Commissioner, an assessment will be done through a limited number of independent advisory institutions to confirm the validity of an item's eligibility for this exemption. The High Commissioner expected that the bar for this exemption would be set quite high and that the items are 'valued not for their ivory content but because they are of wider importance and therefore the trading of them will not fuel the poaching of elephants'.⁹⁴

3.61 The UK government did not consider items eligible for this exemption would contribute directly or indirectly to the continued poaching of elephants, and would

88 UK government, *Submission 47*, p. 19.

89 UK government, *Submission 47*, p. 20.

90 UK government, *Submission 47*, p. 24.

91 UK Ivory Bill, Section 6, p. 5.

92 Dawn Davis, AAADA, *Proof Hansard*, 4 July 2018, p. 38.

93 UK government, *Submission 47*, p. 25.

94 Her Excellence Rawlings CMG, British High Commissioner to Australia, *Proof Hansard*, 9 July 2018, p. 18.

only apply for items 'produced at least 100 years prior' to the sales ban coming into force (the year 1918).⁹⁵

3.62 The UK's inclusion of this exemption was not fully supported, in particular by the EIA and IFAW, who engaged in the UK consultation process. The EIA informed the committee that it was 'strongly opposed' to this exemption because:

We believed it would be extremely difficult to produce adequate guidance to ensure the exemption did not become unworkable and that it provided a potential loophole for the continued illegal trade.⁹⁶

3.63 Further, the EIA argued that it would be difficult to determine with accuracy what would be covered by this exemption.⁹⁷

3.64 IFAW commented that the UK government had originally anticipated between 70 and 150 items per year being granted this exemption; however, argued the bill itself had included vague terms like 'outstandingly valuable' and these 'very vague definitions' provide an opportunity for abuse 'and for the ivory trade to continue in some form or another'.⁹⁸

3.65 Despite their concerns, both the EIA and IFAW highlighted the importance of having experts from museums:

...to provide the highest possible standard and have no vested interest in a commercial trade to make a decision about whether in fact it is absolutely the highest and the rarest and the most important of their type.⁹⁹

3.66 Gordon Consulting was concerned that this exemption will maintain the monetary value of ivory, and certain items in this category would only further fuel demand for, and the monetary value of, the ivory items.¹⁰⁰

3.67 The Australia Institute (TAI) acknowledged that a domestic ban would result in the decline in the financial value of ivory and rhino horn goods, including items valued for their artistic, historic and cultural worth. However, TAI argued these items' value is not diminished by a domestic trade ban; instead, its owners 'can continue to enjoy them, the only change is that the artistic, historic, cultural values cannot be exchanged for money'.¹⁰¹ Further:

The artistic or cultural value of the piece isn't lost just because you can't trade it. The ability to change it for money is lost. And so, strictly by the economics textbooks, that value isn't actually lost; it's that the owner of the piece loses the ability to trade it. If such a policy were given a decent

95 UK government, *Submission 47*, p. 25.

96 EIA, *Submission 33*, p. 8.

97 Mr Brown, EIA, *Proof Hansard*, 9 July 2018, p. 59.

98 Mr Cowdrey, IFAW, *Proof Hansard*, 9 July 2018, p. 59.

99 Mr Cowdrey, IFAW, *Proof Hansard*, 9 July 2018, p. 59.

100 Gordon Consulting, *Submission 48*, p. 1.

101 The Australia Institute (TAI), *Submission 78*, p. 8.

amount of promotion and a reasonable phase-in time, it gives people who are in that position—who do own a culturally and historically significant piece of ivory that they see real value in—an opportunity to say, 'I'd rather have the money' or, 'I really value this and I'd like to keep it.'¹⁰²

3.68 Both the AAADA and AVAA supported this exemption.¹⁰³

Museums

3.69 The commercial activities of accredited museums are also exempted under the UK framework. These museums will be permitted to continue commercial activities, such as sales, loans and exchanges to, and between accredited museums. In addition, accredited museums will be allowed 'to sell to, or buy from, non-UK museums that are accredited by the International Council of Museums'.¹⁰⁴ The UK government outlined its position on this exemption, stating it did:

...not intend, through our ban on ivory sales, to affect the display of historic, artistic and cultural items to members of the public by accredited museums. Accredited museums play a vital role in protecting the nation's cultural heritage, and in making our heritage accessible to the public, and as such will be permitted to purchase items that do not meet any of the listed exemptions, but are in line with their acquisitions and ethical policies. Museums accredited...must abide by strict codes of ethics and standards of governance, including acquisitions policy.¹⁰⁵

3.70 The committee did not receive any objections to museums being exempted under an ivory and rhino horn trade ban in Australia and such an exemption was largely supported by supporters of a domestic ban. Representatives from the Australia Museum declared their support for a domestic trade ban with limited exemptions 'for collecting institutions such as museums' because 'these materials provide essential scientific specimens that also act as a reference materials for casework and training'.¹⁰⁶ The Australia Museum stated it is:

...strongly supportive of the continued ability of museums, in particular, to be able to lend ivory and rhino horn materials to other CITES-registered institutions—that those protocols are followed by a number of institutions around the world.¹⁰⁷

3.71 Ms Slatyer added that it is important for museums to 'preserve important elements of cultural heritage into the future'. However, an ethical consideration 'is whether museums and galleries should be in a position where they can trade in that material'.¹⁰⁸ Ms Slatyer explained that the trade between CITES-registered museums

102 Mr Roderick Campbell, The Australia Institute (TAI), *Proof Hansard*, 16 August 2018, p. 4.

103 See Dawn Davis, AAADA, *Proof Hansard*, 4 July 2018, p. 41;

104 UK government, *Submission 47*, p. 25.

105 UK government, *Submission 47*, p. 25.

106 Dr Johnson, Australia Museum, *Proof Hansard*, 9 July 2018, p. 26.

107 Mr Slatyer, Australia Museum, *Proof Hansard*, 9 July 2018, p. 27.

108 Mr Slatyer, Australia Museum, *Proof Hansard*, 9 July 2018, p. 33.

and galleries is not typically a commercial transaction; instead, it occurs if an institution has multiple assets of one particular item, and trades items in order to increase its collection.¹⁰⁹

3.72 Ms Slatyer advised that the movement of ivory and rhino horn items between CITES-registered institutions is closely monitored, both nationally and internationally, with 'a lot of attention paid to the provenance of that material', and that the sector 'sees the continuation of that as being fundamental to the core purpose of museums'.¹¹⁰

3.73 Various stakeholders also called for museums and galleries to be permitted under a domestic trade ban to receive donated items that are deemed culturally significant ivory and rhino horn items. For example, John Albrecht argued that Leonard Joel's ivory and rhino horn policy did not seek to destroy those items:

...nor seize them: it merely seeks to remove them from circulation and advocates for their retention by the holder or donation to a public museum, if that is deemed significant enough.¹¹¹

3.74 The AVAA commented that if Australia's 'domestic ivory trade is banned, there will still be museums the world over that'll showcase the finest examples of carving from human history';¹¹² the Australia Museum advocated, rather than destroying ivory and rhino horn items, for them to be:

...deposited securely in a collection such as one of the state or territory museums so that it, too, becomes available for scientific study, on the proviso that a secure collection storage space can be provided.¹¹³

3.75 The Australia Museum confirmed that it accepts donated ivory and rhino horn items, which is frequently done by those who have a collection. These donations are valuable as reference material for the museum's wildlife forensic work and training purposes. The Australia Museum informed the committee that these items are kept under secure conditions.¹¹⁴

Other measures

3.76 In addition to the proposed exemptions, the UK framework specifies new compliance, enforcement, offence and sanction measures. Each of these are briefly considered below.

Compliance

3.77 The UK government announced that it intends to implement a compliance system based on a registration model administered by the Animal Plan and Health

109 Mr Slatyer, Australia Museum, *Proof Hansard*, 9 July 2018, p. 33.

110 Mr Slatyer, Australia Museum, *Proof Hansard*, 9 July 2018, p. 27.

111 John Albrecht, Leonard Joel, *Proof Hansard*, 3 July 2018, p. 45.

112 Jane Raffan, AVAA, *Proof Hansard*, 3 July 2018, p. 36.

113 Dr Johnson, Australia Museum, *Proof Hansard*, 9 July 2018, p. 26.

114 Dr Johnson, Australia Museum, *Proof Hansard*, 9 July 2018, p. 30.

Authority (APHA) (the UK CITES Management Authority). This includes a new online system and database to register ivory items. In order to sell an ivory item, the seller must register that an item meets an exemption criteria. It will be illegal to sell an exempt ivory item that is not registered with the APHA. Specific requirements will be applicable for each exemption.¹¹⁵

3.78 For items deemed the rarest and most important items of their type, the UK government will introduce a certificate system with a select number of advisory institutions permitted to evaluate an item's eligibility and issue a certificate.¹¹⁶

3.79 The UK government stated that the new compliance framework will build upon existing CITES measures, and items that currently need a certificate to be sold, imported or re-exported under the EU Wildlife Trade Regulations will continue to do so.¹¹⁷

Enforcement

3.80 An existing regulatory body will be nominated to enforce the UK ivory ban and work closely with the UK National Wildlife Crime Unit and Border Force. This regulatory body will be given the power to detect and pursue illegal sales and non-compliance, and to issue civil penalties for breaches of the ban. It will also work with the antiques industry and others most affected by the ban in order to ensure they comply with the ban and avoid breaches.¹¹⁸

3.81 Enforcement provisions included in the UK Ivory Bill are:

- power to stop and search persons, vehicles (including vessels and aircraft), and enter and search premises;
- search warrant provisions;
- powers of examination;
- power to require the production of documents; and
- powers concerning the seizure of ivory items.¹¹⁹

Offences and sanctions

3.82 New offences are proposed under the UK ivory ban. A person who is found to have breached the ban could receive either a civil or criminal sanction. If issued a civil

115 UK government, *Submission 47*, p. 25.

116 Department for Environment, Food and Rural Affairs, *Ivory Bill Factsheet, Compliance*, 29 June 2018, p. 3, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/721456/ivory-bill-factsheet-compliance.pdf (accessed 21 August 2018).

117 UK government, *Submission 47*, p. 25.

118 UK government, *Submission 47*, pp. 26–27.

119 AVAA, *Submission 49*, Attachment 2, pp. 8–15.

sanction, a person could still be subjected to criminal prosecution if they do not comply with the terms of the civil sanction.¹²⁰ The three categories of offences are:

- engaging in commercial activity without meeting an exemption;
- improperly or falsely registering an item for an exemption; and
- causing or facilitating the sale of an ivory item or other commercial activities.¹²¹

3.83 Those found guilty of a criminal offence may be liable to either a fine and/or a maximum prison sentence of up to five years. Civil sanctions will depend on the type and severity of the offence and consist of: stop notices, monetary penalties, enforcement undertakings and enforcement cost recovery notices.¹²²

3.84 In developing the provisions of the UK ivory bill, IFAW advised that the UK government had consulted with a range of stakeholders, including law enforcement agencies.¹²³

Constitutional considerations

3.85 The application of a domestic trade ban on ivory and rhino horn items is complicated in Australia due our federated system. The Commonwealth, under section 51(i) of the *Australian Constitution* (trade and commerce with other countries, and among the states) already regulates and restricts the import and export of ivory and rhino horn items entering Australia.¹²⁴ However, the Commonwealth government is unable to legislate a domestic trade ban within state and territory jurisdictions. The Animal Defenders Office (ADO) stated that the division of powers between the federal, state and territory parliaments is a key point of difference between the UK and Australia, and for this reason:

It's very difficult for the federal parliament to pass the same sort of ban without consulting the states and territories. It has been suggested the federal government can do a lot of it on its own, and that's undoubtedly true, but there would still be loopholes. It would still be impossible, for example, for you and I to meet outside this room as natural persons and engage in an oral contract for a particular piece of ivory or rhino horn and, if I agree to drop it off at your house afterwards, that would be completely legal under the unilateral model because it would escape any law that could be passed under the corporations power or the communications power. That's why we've really emphasised the need to get the states and territories involved and that's why we've pushed for a national agreement.¹²⁵

120 UK government, *Submission 47*, p. 27.

121 UK government, *Submission 47*, p. 27.

122 UK government, *Submission 47*, p. 27.

123 Mr Cowdrey, IFAW, *Proof Hansard*, 9 July 2018, p. 59.

124 IFAW, *Submission 62*, Attachment 2, p. [1].

125 Mr Scott Dempsey, ADO, *Proof Hansard*, 9 July 2018, p. 6.

3.86 Legal advice provided by the ADO, on behalf of IFAW, outlined constitutional considerations and legislative options available to the Commonwealth government. Although the Commonwealth government is unable to implement a domestic ban within the states and territories, section 51(i) of the *Australian Constitution* provides the legislative power for the Commonwealth government to regulate trade and commerce 'among the States'.¹²⁶ This means the trade in ivory and rhino horn between state and territory jurisdictions could be banned.¹²⁷ This option would be similar to the approach taken by the US government.

3.87 The ADO also noted that section E(c) of the *Intergovernmental Agreement on Mutual Recognition* and section 9 of the *Mutual Recognition Act 1992* (Cth) prevent any federal, state or territory parliament 'unilaterally banning the sale of ivory and rhino horn without first securing an exemption to the mutual recognition principle' and an exemption of this type would first 'need to be unanimously approved by the federal government and all state and territory governments'.¹²⁸ Subsequently, the ADO concluded that the best course of action is for:

...any legislative solution to the sale of ivory and rhino horn within Australia would have to be driven by a national agreement to ban the sale of ivory and rhino horn within Australia.¹²⁹

3.88 The ADO discussed this proposal with the committee. It confirmed that a national agreement could consist of Commonwealth, state and territory governments signing on and agreeing to implement similar legislation in their respective jurisdictions, or for the states and territories to refer their powers to the Commonwealth on this matter. It added:

We're rather agnostic on whether we go down the path of the states and territories referring their powers to the Commonwealth and passing identical legislation or whether it's the states, territories and federal government passing complementary legislation, but it's probably one or the other.¹³⁰

3.89 The ADO recommended this process be negotiated either through the Council of Australian Governments (COAG) or between environment ministers. It added that the process would need to be co-ordinated across portfolios, such as environment, foreign affairs, trade and tourism.¹³¹

3.90 The committee asked whether the Nationals Firearms Agreement was a good example of how an ivory and rhino horn trade ban could be implemented. In response, the ADO agreed that it is, because of:

126 IFAW, *Submission 62*, Attachment 2, p. [1].

127 IFAW, *Submission 62*, Attachment 2, p. [1].

128 IFAW, *Submission 62*, Attachment 2, p. [1].

129 IFAW, *Submission 62*, Attachment 2, p. [2].

130 Mr Dempsey, ADO, *Proof Hansard*, 9 July 2018, p. 7.

131 Mr Dempsey, ADO, *Proof Hansard*, 9 July 2018, p. 7.

...the way the federal government took the lead, consulted with the states and territories and achieved a very good solution. That's certainly one of the models we looked at in preparing our advice. Again, it came out of a national agreement, and they passed the complementary legislation.¹³²

3.91 Finally, the ADO advised the committee that any new legislation would need to complement the existing international control framework. For example, the current pre-CITES date threshold for ivory products in 1975 would need to be maintained domestically because it:

...would be absurd if a piece of ivory got into Australia and suddenly you couldn't trade any ivory no matter what the year, so certainly they need to be coordinated and complementary.¹³³

3.92 Complementary legislation would also be required for offences under the national framework. Professor Grant Pink agreed that the existing penalties under the EPBC Act sufficiently recognise that trading internationally in illegal wildlife items is a serious criminal offence and that similar penalties would be required at a domestic level.¹³⁴

132 Mr Dempsey, ADO, *Proof Hansard*, 9 July 2018, p. 7.

133 Mr Dempsey, ADO, *Proof Hansard*, 9 July 2018, p. 8.

134 Professor Pink, *Proof Hansard*, 9 July 2018, p. 7.

Chapter 4

Domestic trade control framework

4.1 Chapter 4 considers the absence of a domestic ivory and rhino horn trade control framework in Australia, and evidence that the market within Australia is unregulated and inadequately monitored by any Commonwealth, state and territory agency. It then examines the argument that if Australia does not establish a trade control framework, it risks organised crime groups using Australia's weaker domestic control framework to facilitate the trade in illegal ivory and rhino horn. The risk of this occurring is considered with respect to the antiques industry, auction industry and online marketplaces.

4.2 The chapter examines these three at-risk industries, their vulnerabilities, and steps they have taken to address the illegal trade. Finally, the chapter considers stakeholders' reflections about the impact societal and cultural change has had on demand for ivory and rhino horn products.

Elephant ivory and rhino horn: an unregulated domestic market

4.3 As discussed in chapter 2, regulation and enforcement of the trade in ivory and rhino horn is the responsibility of the Department of the Environment and Energy (DoEE) and Australia Border Force (ABF). A criticism of the current exotic wildlife trade framework in Australia, which includes ivory and rhino horn items, is that it inadequately monitors and regulates the trade within Australia. As discussed in the previous chapters, the Commonwealth government does not regulate the domestic trade in wildlife, including elephant ivory and rhino horn. However, it is an offence under section 303GN of the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) to be in possession of ivory or rhino horn (and any other wildlife specimen) that has been illegally imported into Australia. Each state and territory governs the internal movement of wildlife species within its jurisdiction.¹ However, according to the International Fund for Animal Welfare (IFAW) the Australian Capital Territory, under the *Nature Conservation Act 2014* (ACT), is the only jurisdiction with legislation that prevents the trade in ivory and rhino horn.²

4.4 On that basis, advocates for a domestic trade ban challenge the view that the current regulatory framework is sufficient:

...regulators cannot say with absolute confidence that the Australian domestic market for ivory and rhinoceros horn and the potential illegal trade in items does not contribute to the poaching crisis in Africa.³

4.5 Australia's contribution to the poaching and illegal trade of ivory (and rhino horn) is a point of contention between the DoEE and civil society groups. As outlined

1 International Fund for Animal Welfare (IFAW), *Submission 65*, p. 10.

2 IFAW, *Submission 65*, p. 10.

3 IFAW, *Submission 65*, p. 2.

in chapter 2, the 17th Meeting of the Conference of the Parties (CoP17) agreed to the resolution that 'all Parties and non-Parties in whose jurisdiction where there is a legal domestic market for ivory that is contributing to poaching or illegal trade' be closed.⁴

4.6 The DoEE maintains there is minimal evidence to suggest Australia is contributing to the poaching of elephants and the illegal trade in their ivory.⁵ Correspondence from July 2017 between the then Environment Minister and the then South Australian Minister for Sustainability, Environment and Conservation detailed Australia's support for countries that have closed their 'domestic ivory markets that are driving poaching and illegal trade'.⁶ However, the Environment Minister wrote that 'Australia's small domestic ivory market is not significant to international illegal trade'.⁷

4.7 The DoEE reflected the former Environment Minister's comments:

Australia promotes and supports international commitments to strengthen wildlife trafficking laws including the closure of significant ivory markets which are contributing to poaching. The most effective measures to combat illegal trade in elephant and rhino are those taken by significant source, transit and destination countries.⁸

4.8 The DoEE added that of all the wildlife species, 'more is known about elephants population' and evidence from the most recent CITES Elephant Trade Information System assessed:

Australia's domestic ivory market...as being small and/or well-regulated. In addition, it's noted that most seizures of ivory in Australia is of small, worked items being traded as personal effects. That's what's legal in Australia. It's legal elsewhere in the world.⁹

4.9 On this basis, the DoEE reviewed the CoP17 resolution and its relevance to Australia, and concluded that the 'call for the ban was for parties that are driving poaching, and all of our assessments about our domestic trade are that it is not driving poaching'.¹⁰ The committee challenged the DoEE on this view, and pointed to reports of issues with its gathering and use of data.¹¹ In response, the DoEE explained that

4 CITES, 'Closure of domestic ivory markets that are contributing to poaching or illegal trade', *Notification to the Parties*, No.2017/077, 19 December 2017, <https://www.cites.org/sites/default/files/notif/E-Notif-2017-077.pdf> (accessed 27 August 2018).

5 Mr Paul Murphy, Department of the Environment and Energy (DoEE), *Proof Hansard*, 3 July 2018, p.16.

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

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

8 DoEE, *Submission 30*, p. 19.

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

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

11 The issue of data is considered further in Chapter 5 of this report. See Chapter 5, paragraph 5.39–5.59.

although issues of data integrity existed between it and the Department of Home Affairs:

...internationally it's very well known what drives the poaching of elephants and what drives the poaching of rhino, and Australia is not considered significant in any international way in the poaching of those animals. And the resolution is quite specifically worded around that. It is to close domestic markets that are leading to poaching.¹²

4.10 The committee heard other concerns regarding the current trade control framework and Australia's decision not to implement a domestic trade ban. The IFAW reported that it had consulted with Commonwealth and state and territory governments, and through this engagement 'revealed a lack of understanding as to who possesses the regulatory responsibility to deal with the domestic trade of exotic wildlife products' in Australia:

The federal government believe they lack the jurisdiction to regulate domestic trade of ivory and rhinoceros horn and see it firmly as a state responsibility. Queensland, South Australia and New South Wales governments are all of the opinion that it is the federal government who should be regulating and monitoring the trade.¹³

4.11 According to IFAW, it is these situations that 'provide[s] ideal cover for the illegal trafficking of ivory and rhinoceros horn to occur'.¹⁴

4.12 The DoEE refuted the IFAW's argument that 'Commonwealth and the states [are] pointing to each other'.¹⁵ The DoEE stated that there are only laws in place for the international trade, and 'there are no laws on domestic trade', therefore:

...it's not a matter of governments shirking responsibility or not enforcing laws. The laws that are in place are for international trade and they are in place at the Commonwealth level under the EPBC Act. I just want to make that very clear. There are no laws regulating domestic sale.¹⁶

4.13 For this reason the DoEE does not:

...monitor an unregulated market. It doesn't require—you're allowed; people are allowed to sell these items domestically. It's not a regulated market. There's nothing really for the department to be monitoring. If there is evidence that items have been illegally imported, then the department is very interested in that, because that is what we are regulating—imports and exports over Australia's border. So we don't have powers because it's not

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

13 Ms Rebecca Keeble, IFAW, *Proof Hansard*, 3 July 2018, p. 2.

14 Ms Keeble, IFAW, *Proof Hansard*, 3 July 2018, p. 2.

15 Mr Murphy, DoEE, *Proof Hansard*, 3 July 2018, pp. 12–13.

16 Mr Murphy, DoEE, *Proof Hansard*, 3 July 2018, pp. 12–13.

regulated. There's almost no point. The people in the auction houses aren't necessarily doing anything that's illegal.¹⁷

4.14 Although targeting the ivory and rhino horn trade in high-risk countries is important, IFAW argued that strengthening Australia's domestic trade regulations through decisive government action on this matter would support the:

...efforts of 29 African range states to protect elephant populations for the future and implement a legislative ban on the domestic trade of elephant ivory and rhinoceros horn in Australia.¹⁸

4.15 The Animal Defenders Office (ADO) commented that 'a progressive country like Australia cannot justify playing a role, however small, in driving these magnificent animals to extinction',¹⁹ and for this reason was supportive of a:

...regulatory framework that with some reasonable and very limited exceptions prohibits the trade of elephant ivory and rhinoceros horn in all Australian states and territories—that is to say both across and within state and territory borders.²⁰

4.16 This support for a domestic trade ban, with limited exemptions, was conveyed by the vast majority of submitters and witnesses to this inquiry. For example, all but one non-government witness supported a domestic trade ban (with exemptions) on ivory and rhino horn items. The committee heard that failure to do so would result in an increased risk of criminal organisations exploiting Australia's weaker control framework, and the continued facilitation of the illegal trade of ivory and rhino horn through the domestic market.

Risk of displacement

4.17 Many witnesses highlighted that, if Australia fails to implement a domestic trade ban, actors involved in the illegal trade could move their operations to Australia to exploit its weaker control framework. This phenomenon is known as displacement.

4.18 The Born Free Foundation highlighted the issue of displacement in Asia, with reports that ivory traders from China are moving to unregulated markets, such as Vietnam and Laos. Born Free argued that the risk of displacement means the domestic trade issue 'should be seen less as a domestic affair and more as a global affair'.²¹

4.19 Both the Centre for Environmental Law and the Environmental Investigation Agency (EIA) shared the concern about displacement. The Centre for Environmental Law stated:

17 Mr Murphy, DoEE, *Proof Hansard*, 3 July 2018, pp. 14–15.

18 IFAW, *Submission 65*, p. 2.

19 Mr Scott Dempsey, Animal Defenders Office (ADO), *Proof Hansard*, 9 July 2018, p. 1.

20 Mr Dempsey, ADO, *Proof Hansard*, 9 July 2018, p. 1.

21 Mr Gabriel Fava, Born Free Foundation, *Proof Hansard*, 3 July 2018, p. 29.

...a common concern is that displacement will see the activities of these resilient criminal networks shift to states where legal rules are lax in substance or implementation or are ambiguous or non-existent.²²

4.20 The EIA stated that displacement is a key issue, and that:

For anybody who might suggest that perhaps the total amount of ivory and rhino horn trading in Australia is relatively low, now is your opportunity to prevent it from becoming any higher because of the displacement from those countries that have introduced bans.²³

4.21 The British High Commissioner to Australia, Her Excellency Menna Rawlings, also called for global action in order to combat displacement because:

...as we close down markets, [criminal groups] might shift to other places—is a risk that countries like Australia can and should be mindful of as they consider their own case for legislation. Annual figures for the illegal wildlife trade range from seven billion pounds to 17 billion pounds. We're talking about big transnational organised crime operations here. That's the illegal trade, and then obviously the legal trade might become more attractive here if it's more difficult in other places. It does create a global context in which the level of expectation for countries to look at some sort of domestic ivory trade ban becomes more and more important.²⁴

4.22 Environmental investigator Dr Sylvia Loh made clear that Australia needs to enact a domestic ban, in line with its international counterparts; otherwise, Australia will be viewed as vulnerable and subsequently exploited.²⁵ Mr Luke Bond echoed Dr Loh's comment, and added Australia is just another player in the international wildlife trade, and for that reason, needed to have a 'more global perspective on what [Australia's] role is and what [it] can do to make a difference'.²⁶ Whilst acknowledging that Australia is not a major destination or transit route for this trade, Mr Bond opined that it is Australia's role to be a leader in this space, to multiply the impact of a domestic trade ban across the globe.²⁷

4.23 These opinions were shared by Professor Grant Pink, who expressed the view that whilst this debate is a national issue, it is also global, and Australia does not:

...want to be seen as the weakest link where we create a market for people to trade illegally or around the margins. That's critically important, and I

22 Ms Zara Bending, Centre for Environmental Law, *Proof Hansard*, 3 July 2018, p. 18.

23 Mr Andrew Brown, Environmental Investigation Agency (EIA), *Proof Hansard*, 9 July 2018, p. 56.

24 Her Excellency Menna Rawlings, British High Commissioner to Australia, *Proof Hansard*, 9 July 2018, p. 23

25 Dr Sylvia Loh, EcoEnforce, *Proof Hansard*, 4 July 2018, p. 26.

26 Mr Luke Bond, EcoEnforce, *Proof Hansard*, 4 July 2018, p. 26.

27 Mr Bond, EcoEnforce, *Proof Hansard*, 4 July 2018, p. 26.

think that's why we're seeing leadership in those countries that you mentioned and the London declaration.²⁸

The legal trade: a conduit for illicit trade

4.24 The committee heard from civil society groups that warned an unregulated legal market is 'a conduit for illicit trade'.²⁹ According to IFAW, the illegal trade is facilitated by the parallel legal wildlife trade (worth an estimated US\$3 billion per year),³⁰ which provides 'an avenue for the supply-and-demand chain to continue and, with it, opens the door for laundering of illegal products'.³¹ The expansion of online markets further fuels the illegal trade, enabled by 'confusing wildlife trade laws, lack of enforcement and basic governance structures and fast developing economic markets'.³²

4.25 The SAVE African Rhino Foundation commented that the more the legal trade is restricted, the easier it is to determine whether trade is legal or illegal, and argued:

Wherever there is a legal market, it makes it harder to understand whether the movement of ivory or rhino horn is an illegal act. Essentially, the more holes that are shut up for that trade to occur anywhere in the world the easier it is to say it's illegal and that it's happening through that port or through that country or through that area. Wherever there's legal trade, it acts as a smokescreen to the illegal trade.³³

4.26 This risk was raised by Her Excellency Menna Rawlings, who explained that the UK domestic ban addresses the UK government's view:

...that any legal ivory market may contribute to the illegal trade. This is because any legal ivory market lends acceptability to the sale of ivory and provides opportunities for criminals to launder illegal, freshly poached ivory through a legal market, often passing it off as much older than it is to get around restrictions due to age.³⁴

4.27 These comments are consistent with the United Nations Office on Drugs and Crime (UNODC) recommendations in the 2016 *World Wildlife Crime Report* which found that the international illegal wildlife trade would decline if each country, under its domestic law, prohibited the 'possession of wildlife that was illegally harvested in, or illegally traded from, anywhere in the world' and that:

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

29 Ms Bending, Centre for Environmental Law, *Proof Hansard*, 3 July 2018, p. 18.

30 IFAW, *Submission 65*, p. 2.

31 Ms Keeble, IFAW, *Proof Hansard*, 3 July 2018, p. 1.

32 IFAW, *Submission 65*, p. 2.

33 Dr Cameron Murray, SAVE African Rhino Foundation, *Proof Hansard*, 5 July 2018, p. 6.

34 Her Excellency Rawlings, British High Commissioner to Australia, *Proof Hansard*, 9 July 2018, p. 16.

...current international controls regulating trade do not extend into national markets, so domestic environmental laws should be expanded to provide protection to wildlife from other parts of the world.³⁵

4.28 Several witnesses provided examples of how the legal and illegal trade exist in parallel to each other. Internationally, IFAW's representative from China, Ms Grace Ge Gabriel, spoke of a 2011 case where an owner of a licenced ivory carving factory had illegally imported seven tonnes of raw ivory into China from East Africa. The illegally sourced ivory was mixed with CITES sanctioned stocks, which complicated law enforcement agencies ability to identify the illegally sourced ivory.³⁶ Another example involved an Australian citizen and antique dealer, Mr Graham Chen, who in 2017 was found guilty in a US court for smuggling illegal ivory and rhino horn from the US into China.³⁷ Mr Chen reportedly smuggled goods worth AU\$911 120; US authorities worked with the Australian Federal Police (AFP) and the Attorney-General's Department to apprehend and extradite Mr Chen.³⁸

4.29 The UNODC referred to Operation Cash in the US.³⁹ Since 2011, this large-scale, ongoing and multi-law enforcement agency investigation has targeted the elephant ivory and rhino horn trade connected to international poaching and smuggling syndicates. As of October 2017, Operation Cash has charged more than 50 suspects, 38 of whom have been convicted. The operation has recovered over US\$7.8 million in fines and restitution, and the seizure of smuggled ivory and rhino horns worth an estimated US\$75 million.⁴⁰

4.30 According to the UNODC, the US experience has shown that 'law enforcement authorities didn't understand the full extent of the US implication in rhino horn and ivory trafficking until they began conducting the covert investigations'.⁴¹ The UNODC argued, '[g]iven the parallels between the [the US and Australia]', that similar risks and serious consideration of those risks is needed in Australia.⁴²

4.31 Similar examples have occurred in Australia. For example, the 2011–12 investigation by the Australian Crime Commission (ACC) named Project Aerostar. The purpose of Project Aerostar was to research 'the methodology and potential nexus between international trafficking syndicates of endangered species and serious

35 United Nations Office on Drugs and Crime (UNODC), *World Wildlife Crime Report*, 2016, p. 11.

36 Ms Grace Ge Gabriel, IFAW, *Proof Hansard*, 3 July 2018, p. 7.

37 Ms Ge Gabriel, IFAW, *Proof Hansard*, 3 July 2018, p. 7.

38 Mr Matt Young, 'An Australian man has faced a US court and admitted he was the mastermind behind a massive smuggling operation', *News.com.au*, 31 October 2017.

39 UNODC, *Submission 41*, p. 13.

40 UNODC, *Submission 41*, p. 13.

41 UNODC, *Submission 41*, p. 14.

42 UNODC, *Submission 41*, p. 14.

organised crime groups'.⁴³ According to the Australian Criminal Intelligence Commission (ACIC), that investigation revealed the activities of the syndicate and methods to circumvent international regulatory controls; it also 'exposed some second-hand, high-value antiques markets as being vulnerable to money laundering activities'.⁴⁴

4.32 Environmental investigator and former member of Project Aerostar, Mr Bond shared a number of key findings that highlighted how the legal market facilitates the illegal trade in ivory and rhino horn. Mr Bond explained that an individual targeted as part of Project Aerostar was found to have provenance documentation, including pre-CITES certificates, that were falsified to export ivory and rhino horn items from Australia to China.⁴⁵ Further, the individual was found to 'ingratiate himself to experts within the antique trade', and had groomed younger people working in the antiques industry as a means to assist with the production of falsified documentation.⁴⁶

4.33 Mr Bond stated that prior to Project Aerostar, the Department of Environment had identified antiques dealers and traders who were providing statutory declarations to confirm provenance and age of items without the expertise or knowledge to do so. These dealers took on face value the histories of these items, with many being sold for \$200 000 or \$300 000 apiece, with the antique dealers taking a commission of up to 40 per cent. Mr Bond concluded that '[t]here was not a great deal of due diligence around that process at that time'.⁴⁷

4.34 A consequence of Project Aerostar and the Department of Environment's investigations was a review of legislation, which led to a tightening of laws related to the importation of ivory and rhino horn in 2015. It also led to a stronger engagement with antiques traders and dealers across Australia to develop an awareness that law enforcement personnel were targeting premises in Sydney and Melbourne.⁴⁸ However, Mr Bond submitted that no one was prosecuted as a result of Project Aerostar.⁴⁹

4.35 With respect to online marketplaces, the IFAW investigation into the illegal sale of wildlife online resulted in the Department of Environment executing:

...two search warrants at properties of a Sydney-based online trading company, where they found and seized a large number of carved ivory ornaments and jewellery with an estimated value of \$80 000.⁵⁰

43 Mr Jeremy Johnson, Australian Criminal Intelligence Commission (ACIC), *Proof Hansard*, 9 July 2018, p. 46.

44 Mr Johnson, ACIC, *Proof Hansard*, 9 July 2018, p. 47.

45 Mr Bond, EcoEnforce, *Proof Hansard*, 4 July 2018, pp. 20–21.

46 Mr Bond, EcoEnforce, *Proof Hansard*, 4 July 2018, p. 22.

47 Mr Bond, EcoEnforce, *Proof Hansard*, 4 July 2018, p. 21.

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

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

50 IFAW, *Click to Delete: Australian websites selling endangered wildlife* (Click to Delete), 2013, p. 4.

At-risk industries

4.36 The legal elephant ivory and rhino horn trade in Australia is primarily conducted through three industries: the antiques⁵¹ industry, auction industry, and online marketplaces. Consequently, the committee heard these industries are at a high-risk of enabling the illegal trade of ivory and rhino horn.

4.37 Investigations conducted by IFAW have revealed vulnerabilities for these industries. For example, the committee heard evidence about IFAW's most recent investigation into the antiques industry, which demonstrated the inadequacy of mechanisms in place to minimise the risk of ivory and rhino horn being illegally traded by antiques dealers. It also highlighted a lack of understanding about the current trade control framework (CITES); in some cases, incorrect advice or advice contrary to current law had been provided to customers concerning existing trade controls. As discussed earlier, Project Aerostar revealed how the antiques industry had been used by criminal groups to launder illegal wildlife, including ivory and rhino horn items.

4.38 Some industry participants have made considerable efforts to reduce their handling of ivory and rhino horn, and have taken an ethical stance on this matter. For example, Leonard Joel was the first auction house to implement a self-imposed ban on the sale of ivory and rhino horn in 2017, and in 2018, the Auctioneers and Valuers Association of Australia (AVAA) board formally agreed to support a domestic trade ban.⁵² Online marketplaces have implemented terms of use provisions that prohibit the sale of CITES-listed species on their platforms. In 2018, online marketplaces such as Alibaba, eBay and Facebook joined with international environmental groups to form a Global Coalition to End Wildlife Trafficking Online by 80 per cent in 2020.⁵³

4.39 The following sections considers each of these industries, their vulnerabilities, efforts to address the illegal trade, and views concerning a domestic ban on the trade in ivory and rhino horn in Australia.

Antiques industry

4.40 The antiques industry was identified as a high-risk industry for facilitating the illegal trade in ivory and rhino horn. This risk was highlighted in IFAW's most recent investigation⁵⁴ into the ivory and rhino horn trade in antique stores across Australia. This investigation included stores located in Sydney, Melbourne, Perth, Hobart, Adelaide, Canberra and Brisbane. Investigators also attended the Australian Antique & Art Dealers Association (AAADA) fair in Melbourne.⁵⁵ The investigation revealed

51 This includes second-hand and pawn shop enterprises.

52 See John Albrecht, Leonard Joel, *Proof Hansard*, 3 July 2018, p. 44; and Jane Raffan, AVAA, *Proof Hansard*, 3 July 2018, p. 35.

53 Facebook, *Submission 73*, p. [2].

54 The committee was advised that IFAW had provided the DoEE with a copy of the report. At the time, the DoEE had not concluded whether criminal offences had been made under the EPBC Act. See Mr Murphy, DoEE, *Proof Hansard*, 9 July 2018, p. 43.

55 Ms Josey Sharrad, IFAW, *Proof Hansard*, 3 July 2018, p. 4.

that ivory items were readily available in all antique stores visited by IFAW; 72 of the 121 shops sold ivory items, which ranged from a single piece to large collections. IFAW did not identify any rhino horn items.⁵⁶

4.41 In addition to the availability of ivory in antiques stores, IFAW sought to investigate the knowledge sellers had regarding the CITES framework. This was done by the investigator, Miss Josey Sharrad, who posed as a British tourist wanting to buy an ivory item to take to the UK. Miss Sharrad informed the committee that she asked questions that related to the age of an item and whether proof of an item's provenance was needed to take the item back to the UK.⁵⁷

4.42 Miss Sharrad reported that she received 'varying and conflicting levels of advice' with some sellers informing her of CITES regulations, and others not aware of there being laws concerning the international ivory trade. Some sellers either unknowingly or knowingly provided Miss Sharrad with advice contrary to current law; others informed her of the CITES framework but then suggested ways to circumvent customs controls. This advice included recommendations to wear or carry the item on her person, hide the item in her luggage or declare it as bone or xyconite, and offering to write a receipt supporting this false claim. One shop was found to have falsely labelled the ivory items as bone.⁵⁸

4.43 The investigation found that only one antique seller of the 121 sellers investigated provided detailed and correct advice; that is, ivory items must have provenance documentation, including a pre-CITES certificate issued by the DoEE, to be exported from Australia.⁵⁹

4.44 Whilst IFAW's investigation highlighted significant shortcomings with the industry's regard to the current legal framework, the peak industry body, the AAADA, submitted that 'the antiques trade is well regulated, with the import of any ivory works of art requiring a certificate that the ivory components date from before the adoption of the CITES Treaty'.⁶⁰ The President of the AAADA, Dawn Davis, advised the committee that its members⁶¹ only deal with items that are dated pre-1947, and not much past the 1920s and 1930s.⁶²

4.45 The committee put to the AAADA allegations made that antique dealers were providing incorrect and advice contrary to current law to potential buyers. In response, the AAADA asserted its members abide by its code of practice,⁶³ which members

56 Ms Sharrad, IFAW, *Proof Hansard*, 3 July 2018, p. 4.

57 Ms Sharrad, IFAW, *Proof Hansard*, 3 July 2018, p. 4.

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

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

60 The Australian Antique & Arts Dealers Association (AAADA), *Submission 60*, p. [2].

61 The AAADA has 103 members from across Australia. See AAADA, *Submission 60*, p. [2].

62 Dawn Davis, AAADA, *Proof Hansard*, 4 July 2018, pp. 37–38.

63 Mrs Keren Lewis, AAADA, *Proof Hansard*, 4 July 2018, p. 39.

agree to adhere to when they join the AAADA.⁶⁴ Dawn Davis added that AAADA has a:

...membership of about 100 antique dealers. We are the peak industry body. We do not represent every antique dealer in Australia, and there are lots of second-hand dealers, antique dealers, that are outside our jurisdiction. But we're saying that, as an organisation, we maintain that our members do adhere to our strict policy and, on that basis, that is how we put in our submission—based on our membership, saying that we believe that our members are able to discern between modern and antique ivory. As such, we have this system in place whereby they have to provide certification and a proper receipt and valuation with every item that they sell, not only antique ivory items but every item that they sell.⁶⁵

4.46 With regard to antique dealers providing buyers with advice on how to avoid customs detection, the AAADA reassured the committee that it believes its members comply with the code of practice and would refute otherwise. The AAADA emphasised it would expel a member if AAADA found them not to comply with the code of practice.⁶⁶ However, AAADA acknowledged concerns that some antiques dealers 'have a very colourful background',⁶⁷ but efforts to reform the industry has led to a 'change in the reputation of antique dealers'.⁶⁸

4.47 Subsequently, the AAADA recommended that the committee consider the licensing arrangements for second-hand dealers and pointed out that dealers are not required to obtain a license in all jurisdictions. The AAADA argued if this was to change, it could lead to better regulation of the sector.⁶⁹

4.48 The prospect of a domestic ban in Australia was also discussed with the AAADA. In its submission, the AAADA stated that it supported a domestic trade ban on non-worked post-CITES elephant ivory, but did not support a total ban or the restriction of 'fair trade in pre-CITES worked ivory'.⁷⁰ Dawn Davis opined that 'banning all trade in ivory and rhino horn would be highly counterproductive', and warned that it would force the trade underground, and not 'necessarily stop the illegal trade in modern ivory'.⁷¹ She called for a distinction:

64 Dawn Davis, AAADA, *Proof Hansard*, 4 July 2018, p. 39.

65 Dawn Davis, AAADA, *Proof Hansard*, 4 July 2018, pp. 39–40.

66 Dawn Davis, AAADA, *Proof Hansard*, 4 July 2018, p. 40.

67 Dawn Davis, AAADA, *Proof Hansard*, 4 July 2018, p. 43.

68 Mrs Lewis, AAADA, *Proof Hansard*, 4 July 2018, p. 43.

69 Mrs Lewis, AAADA, *Proof Hansard*, 4 July 2018, p. 43.

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

71 Dawn Davis, AAADA, *Proof Hansard*, 4 July 2018, p. 37.

...between the market for ivory as a substance...and the market for works of art, whose significance lies in their status as works of art and not what they are made of.⁷²

4.49 The AAADA also argued that:

Much if not most of the works of art were created from the ivory of elephants who died of natural causes. This is the same with all items crafted from natural animal materials.⁷³

4.50 This position was challenged by both the committee and the AVAA. The committee questioned AAADA's guarantee that its members do not sell items made from poached ivory and only from elephants that have died from natural causes (mortality ivory), especially when there is no way to make such a determination. In response, Dawn Davis said there is no way to prove 'that it wasn't from natural causes' and 'therein lies the issue'.⁷⁴

4.51 The AVAA also disagreed with the AAADA's view that most works of ivory sold by its members were mortality ivory, and that these 'items have a legitimate right of trade'.⁷⁵ The AVAA commented that AAADA's statement was both problematic and disingenuous, because although there is 'no way to tell if the ivory used in a bona fide antique carving came from a found tusk or from a slain elephant',⁷⁶ historical evidence demonstrates global demand for ivory led to the extinction of the Syrian elephant and increased poaching of elephants in Africa.⁷⁷

4.52 The committee asked about the financial implications of a domestic trade ban on the antiques industry. When asked whether there was an AAADA member that depends on the sale of ivory for their survival, Dawn Davis responded that there were none.⁷⁸ Ms Therese Howard from Bloomsbury Antiques shared this sentiment. She declared that only one per cent of her business was invested in ivory and when asked whether a domestic ban would affect her business' bottom line, Ms Howard responded with '[a]bsolutely not'.

4.53 Jane Raffan of the AVAA refuted claims that a commercial ban would 'be disastrous for the industry'.⁷⁹ She referred to a 2017 investigation into the antiques and auction trade in the UK that revealed that ivory lots sold at auction houses only comprised of 0.7 per cent of annual sales.⁸⁰

72 Dawn Davis, AAADA, *Proof Hansard*, 4 July 2018, p. 37.

73 AAADA, *Submission 60*, p. [4].

74 Dawn Davis, AAADA, *Proof Hansard*, 4 July 2018, p. 40.

75 Jane Raffan, AVAA, *Proof Hansard*, 3 July 2018, pp. 35–36.

76 Jane Raffan, AVAA, *Proof Hansard*, 3 July 2018, pp. 35–36.

77 Jane Raffan, AVAA, *Proof Hansard*, 3 July 2018, p. 36.

78 Dawn Davis, AAADA, *Proof Hansard*, 4 July 2018, p. 45.

79 Jane Raffan, AVAA, *Proof Hansard*, 3 July 2018, p. 35.

80 Jane Raffan, AVAA, *Proof Hansard*, 3 July 2018, p. 35.

4.54 The committee received no evidence that a domestic trade ban would have significant adverse financial implications on the antiques industry. However, this concern has been expressed in other forums, especially in the context of the UK ivory ban. In July 2018, the Chairman of the British Antique Dealers' Association (BADA) reported that it and the Association of Art & Antiques Dealers (LAPADA) had raised \$125 000 pounds to conduct a judicial review of the legality of the UK ivory ban.⁸¹

Auctioneers

4.55 In 2016, IFAW released a report titled *Under the hammer: Are auction houses in Australia and New Zealand contributing to the demise of elephants and rhinos?* (Under the hammer report). This report investigated cases of ivory and rhino horn being sold at Australian and New Zealand auction houses. The IFAW identified '2772 ivory items for sale at 175 auctions in 21 auction houses' with 78 per cent of these items being sold.⁸² At the time, only seven of the 21 auction houses had written policies on their websites, and only two referred to the trade in endangered species. Of further concern, the IFAW found that only eight per cent of ivory items were accompanied by provenance documentation, such as information on the item's origin, its history and authenticity.⁸³

4.56 The report highlighted that ivory and rhino horn were 'readily available for sale in auction houses' and '[d]emand for these products and final sale prices remain high'.⁸⁴ IFAW surmised that despite international and national laws governing the trade in ivory and rhino horn, 'auction houses provided an astounding lack of information regarding the provenance, authenticity and legality of these items',⁸⁵ a concern validated by the auction house, Leonard Joel.⁸⁶

4.57 According to Leonard Joel's Chief Executive Officer, John Albrecht, the auction and antiques industries should, in theory, ensure items meet the regulatory framework and are not illegally imported. However, in reality, the industry rarely ensures the legality of items.⁸⁷ Leonard Joel added that compliance occurs in the 'very rare occasion when they believe the piece might attract enough public attention to warrant selling the item lawfully'.⁸⁸

4.58 A consequence of IFAW's Under the Hammer report was Leonard Joel implementing a Voluntary Cessation Policy in 2017; the first auction house in

81 Mr Michael Cohen, 'On the battle for antique ivory: an appeal from BADA's chairman', *Antiques Trade Gazette*, 2 July 2018, <https://www.antiquestradegazette.com/news/2018/on-the-battle-for-antique-ivory-an-appeal-from-bada-s-chairman/> (accessed 10 August 2018).

82 IFAW, *Under the hammer*, September 2016, p. 2.

83 IFAW, *Under the hammer*, September 2016, p. 2.

84 IFAW, *Under the hammer*, September 2016, p. 3.

85 IFAW, *Under the hammer*, September 2016, p. 3.

86 Leonard Joel, *Submission 51*, pp. [2]–[3].

87 Leonard Joel, *Submission 51*, pp. [2]–[3].

88 Leonard Joel, *Submission 51*, p. [3].

Australia to do so. At the time, Leonard Joel was the largest trader of ivory products in the country.⁸⁹ The policy meant Leonard Joel no longer auctioned rhino horn (both worked and unworked) irrelevant of an item's age, and all unworked elephant ivory. Then over a two year period, Leonard Joel phased out all items that were wholly, primarily and predominately made of ivory,⁹⁰ and no longer sold items with a post-date of 1921. As of 1 January 2018, Leonard Joel only traded in ivory items that met its de minimis principle (discussed previously in chapter 3).⁹¹

4.59 Leonard Joel's decision to no longer trade in elephant ivory and rhino horn items was based on the principle that international efforts to address the slaughter of elephants and rhinos will continue to be undermined as long as monetary value is derived from the sale of ivory and rhino horn items.⁹²

4.60 John Albrecht advised the committee that since the 2017 ban, there had been no negative commercial or human resource impact on Leonard Joel, and its business and staff numbers have since increased.⁹³ Leonard Joel reported a mixed response to its voluntary policy. John Albrecht spoke of two auctioneers adopting a similar position, anger from some collectors, and disdain from other auction houses. However, Leonard Joel has received overwhelming public support for its policy.⁹⁴

4.61 Further momentum towards an ivory and rhino horn ban across the auction industry occurred in March 2017, with the board of the AVAA,⁹⁵ in consultation with IFAW, considered its position on the Australian trade in ivory and rhino horn. Initially, the AVAA board was unable to reach consensus, however, with the release of the UK's Ivory Bill in May 2017, and the commencement of the committee's inquiry into this matter, the board released a position statement in support of both the UK's proposed legislation for ivory, and a complete ban on the trade in rhino material.⁹⁶ Although not an outright ban, the position statement has meant AVAA encourages its members 'to adopt those principles and ethics in their own practices'.⁹⁷

4.62 Whilst Leonard Joel and the AVAA supported the implementation of a domestic trade ban, Barsby Auctions argued against a ban, stating that '[t]here is no proof that [a] ban would have any effect' and that the 'sale of antique ivory is an easy

89 John Albrecht, Leonard Joel, *Proof Hansard*, 3 July 2018, p. 44.

90 Leonard Joel, *Submission 51*, p. [1].

91 John Albrecht, Leonard Joel, *Proof Hansard*, 3 July 2018, p. 45.

92 John Albrecht, Leonard Joel, *Proof Hansard*, 3 July 2018, p. 44.

93 John Albrecht, Leonard Joel, *Proof Hansard*, 3 July 2018, p. 44.

94 John Albrecht, Leonard Joel, *Proof Hansard*, 3 July 2018, p. 49.

95 The Auctioneers and Valuers Association of Australia (AVAA) represents 180 members from across the auction house and antique industry. See Jane Raffan, AVAA, *Proof Hansard*, 3 July 2018, p. 37.

96 Jane Raffan, AVAA, *Proof Hansard*, 3 July 2018, p. 35.

97 Jane Raffan, AVAA, *Proof Hansard*, 3 July 2018, p. 40.

target for fixing a difficult problem'.⁹⁸ Mr David Barsby, the Director of Barsby Auctions, argued that the ivory trade was not worth a significant amount, and therefore of no interest to organised crime. Further, he expressed the view that there is no market for newly poached ivory in Australia; instead, demand is for antique ivory.⁹⁹

4.63 Mr Barsby said the current laws were working well, but called for a licensing system for dealers of CITES products because '[a]uction houses are currently not regulated in any way'.¹⁰⁰ Mr Barsby also held the view that public opinion should be permitted to bring an end to the ivory trade, rather than a legislative ban.¹⁰¹

4.64 One concern expressed by Mr Barsby was that the destruction of ivory items would increase their rarity, and subsequently lead to higher prices and an increased risk of poaching and criminal activity.¹⁰² Another concern was the financial implication for collectors under a domestic ban, preventing people from selling their legally acquired ivory items.¹⁰³ John Albrecht challenged the latter concern, arguing that he had not come across a collector whose 'business and family depends on their ivory collection', and that ivory tended to be 'incidental to the collection or a small component of it'; John Albrecht was unaware of a client whose 'commercial wellbeing depended on the sale of their ivory'.¹⁰⁴

4.65 Despite Mr Barsby's concerns, he advised the committee that his auction house sold approximately \$100 000 worth of ivory in a year, which was not a significant amount. Further, Mr Barsby agreed with John Albrecht that if Barsby Auctions did not trade in ivory, 'financially it wouldn't affect' his business.¹⁰⁵

Online marketplaces

4.66 In 2013, IFAW released a report entitled *Click to Delete: Australian websites selling endangered wildlife* (Click to Delete report) which investigated online marketplaces and the illegal trade in wildlife in Australia. The report found a 266 per cent increase in the number of endangered wildlife items traded on Australian websites between 2008 and 2013.¹⁰⁶ One of the primary drivers of the rise in endangered wildlife trade was the number of elephant ivory items listed for sale, the number one wildlife item traded via online marketplaces in 2013.¹⁰⁷

98 Mr David Barsby, Barsby Auctions, *Proof Hansard*, 3 July 2018, p. 44.

99 Mr Barsby, Barsby Auctions, *Proof Hansard*, 3 July 2018, p. 44.

100 Mr Barsby, Barsby Auctions, *Proof Hansard*, 3 July 2018, p. 44.

101 Mr Barsby, Barsby Auctions, *Proof Hansard*, 3 July 2018, p. 44.

102 Mr Barsby, Barsby Auctions, *Proof Hansard*, 3 July 2018, p. 44.

103 Mr Barsby, Barsby Auctions, *Proof Hansard*, 3 July 2018, p. 45.

104 John Albrecht, Leonard Joel, *Proof Hansard*, 3 July 2018, p. 46.

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

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

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

4.67 At that time, eBay Australia was responsible for the largest number of ivory items for sale, with two-thirds of the 145 ivory items listed found on eBay. Two rhino horns were for sale during IFAW's investigation: one via Quicksales and the other on the online auction site eBid.¹⁰⁸ IFAW calculated that the total value of all illegal wildlife traded on the investigated online marketplaces was \$637 387, with \$175 568 of that total coming from Australian sellers.¹⁰⁹

4.68 Since the release of the Click to Delete report, IFAW has seen improvements in the way online marketplaces manage this problem, motivated by a recognition:

...that distinguishing legal from illegal trade online was virtually impossible, and it didn't make a good business model for them. The amount of resources that they would have to invest to distinguish what was legal from what was illegal just wasn't viable...So the companies went above and beyond the law by introducing holistic bans—initially ivory bans and now bans in endangered and threatened wildlife on CITES Appendix I.¹¹⁰

4.69 For example, eBay has strictly prohibited the sale of ivory on its website, and submitted that 'it makes explicitly clear that sellers and buyers review our guidelines and follow applicable laws before listing items'.¹¹¹ eBay added that:

Unfortunately, legal trade in ivory has for too long made it difficult to combat the illegal trade. Distinguishing legal from illegal ivory is extremely complex and time consuming, making enforcement of a particle ban impractical. We therefore support banning all trade in ivory.¹¹²

4.70 To highlight the extent of the problem, eBay informed the committee that in 2017 it had 'blocked or removed over 45 000 listings' that violated its policy on endangered or threatened species.¹¹³ eBay's efforts, together with those of civil society groups, have meant that 80 per cent of wildlife items identified on eBay were not sold.¹¹⁴

4.71 Facebook confirmed that it too has policies in place that prohibits the 'poaching or selling of endangered species and their parts', including both ivory and rhino horn.¹¹⁵ The committee heard that if a user identifies content that breaches Facebook's community standards, then it can be reported to Facebook's community operations team who will review and remove content within 24 hours if it is found to have breached those standards.¹¹⁶

108 IFAW, Click to Delete, 2013, p. 4.

109 IFAW, Click to Delete, 2013, p. 4.

110 Ms Tania McCrea-Steele, IFAW, *Proof Hansard*, 9 July 2018, p. 63.

111 eBay, *Submission 70*, p. [1].

112 eBay, *Submission 70*, p. [2].

113 eBay, *Submission 70*, p. [2].

114 Ms McCrea-Steele, IFAW, *Proof Hansard*, 9 July 2018, p. 63.

115 Facebook, *Submission 73*, p. [2].

116 Mr Max Slackman, Facebook, *Proof Hansard*, 16 August 2018, p. 7.

4.72 Facebook was not able to provide the committee with evidence about the number of listing it had removed from its platforms.¹¹⁷ When challenged on the effectiveness of its policy and the measures in place to identify and remove content such as ivory, Facebook commented that it was:

...working to try to make sure we can effectively enforce our policies, including through the partnerships that we have. I wouldn't want to represent that it's a perfect system, as I think you have ably demonstrated, but it's something where we will continue to try improve to make sure we're able to actively enforce our policies. Another challenge we face is that bad actors are very determined and will often iterate their strategies. So we also need to adapt. This where working with community partners and having users report content brought to us can help us continue to stay up to speed.¹¹⁸

4.73 In March 2018, online marketplaces such as eBay, Facebook and Alibaba, along with the IFAW, World Wildlife Fund (WWF), TRAFFIC and Interpol formed the Global Coalition to End Wildlife Trafficking Online (the Global Coalition). The purpose of this coalition is to develop an 'industry-wide approach to reduce wildlife trafficking online by 80 [per cent] by 2020'.¹¹⁹

4.74 Facebook advised the committee that since joining the Global Coalition it has developed training materials and doubled its security and content review teams from 10 000 to 20 000 in the past 12 months. Further investment has also been made into Facebook's use of smart technology, which uses machine learning and artificial intelligence to identify 'and stop bad actors of all kinds on the platform', including organised wildlife trafficking.¹²⁰

4.75 Civil society and individuals also play an important part in the monitoring of online sales. The committee heard that IFAW regularly monitors online marketplaces, along with a large number of supporters who identify wildlife items, who contact the online marketplaces and request that the item be taken down, or inform the DoEE and IFAW.¹²¹ According to IFAW, these collaborations between civil society groups and online marketplace companies show that it is essential:

...when you're implementing these bans or when you're working with companies to go above and beyond the ban, that we take a cross-sector collaborative approach to addressing this issue. It's so large that enforcers alone won't be able to tackle the problem without the support and engagement of companies.¹²²

4.76 However, despite best efforts, IFAW recommended that:

117 Mr Slackman, Facebook, *Proof Hansard*, 16 August 2018, p. 8.

118 Mrs Mia Garlick, Facebook, *Proof Hansard*, 16 August 2018, p. 10.

119 Facebook, *Submission 73*, p. [2].

120 Mr Slackman, Facebook, *Proof Hansard*, 16 August 2018, p. 9.

121 Ms Keeble, IFAW, *Proof Hansard*, 3 July 2018, p. 6.

122 Ms McCrea-Steele, IFAW, *Proof Hansard*, 9 July 2018, p. 63.

...there should be a complete ban on the sale of ivory pieces online. Purchases should be made in person at auctions and antique dealers' premises. Personal inspection, rather than basing decisions on online descriptions, will assist purchasers in identifying whether ivory is legal and, perhaps more importantly, will make it more difficult for sellers to launder illegal ivory. If online trade is to continue, there should be specific measures for online trade: for example, sellers should provide access to copies of documentation and website operators must publicise relevant legislation and remove postings that fail to comply.¹²³

Transfer to the darknet and black market

4.77 A related matter discussed during the inquiry was the risk that a ban would transfer the ivory and rhino horn market to the darknet. The committee raised this matter with a number of stakeholders who all largely dismissed this concern. Nature Needs More acknowledged that if a ban were implemented, there would be a percentage of people that would use underground resources to access these items. However:

There are always those individuals in the market. But there are an awful lot of customers who feel, because of the openness of trade, because of the ease of trade, because of what they're told from the people they're buying it from, that it's completely legitimate to do that. I think those are the individuals who will not access the dark web or go to underground resources to get hunter ivory. Many of them are simply buying it because it's so easy to buy. Yes, there will be a small percentage of individuals who can access the dark web and go underground, but that's a relatively small percentage, when you speak to customers who just think it's perfectly legal given what they're seeing in the Australian retail and auction sector.¹²⁴

4.78 The Born Free Foundation highlighted that 'there is already a criminal activity' and stressed 'that domestic markets stimulate demand. They propagate demand. They sustain it quite actively. That's what needs to be addressed'.¹²⁵ The Centre for Environmental Law emphasised that legitimate online marketplaces are facilitating much more wildlife trafficking than the darknet; however, the Centre also spoke of reports of darknet:

...users giving advice as to how to fool Border Force, what to put on a label, quantities, the type of packaging and how to make it look less suspicious. Anecdotally I've heard of similar instructions being given with respect to wildlife in relation to mail as well.¹²⁶

4.79 More broadly, the committee was advised by IFAW that it regularly comes up against the argument that a domestic ban would drive the trade to the black market. It rebuts this view, on the grounds that the trade is already underground, and a 'black

123 Environmental Investigation Agency (EIA), *Submission 33*, pp. 8–9.

124 Dr Lynn Johnson, Nature Needs More, *Proof Hansard*, 4 July 2018, p. 19.

125 Mr Fava, Born Free Foundation, *Proof Hansard*, 3 July 2018, p. 27.

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

market in these items exist' and is helped by the current situation 'that there are so many of these sellers and so much of this trade going on all across the country and no-one is regulating it'.¹²⁷

Societal and cultural change

4.80 A point raised by many stakeholders, including those from the auction and antiques industries, is the impact and influence of societal and cultural change on demand for ivory and rhino horn items. Most importantly, customers' views about the ethics of the trade is shaping the behaviour of both consumers and retailers, as has previously been demonstrated in the fashion industry¹²⁸ and its use of fur, or the trade in Indigenous artwork.¹²⁹

4.81 Ivory crush events, including the 2016 Melbourne Crush, are symbolic of the change in public opinion concerning the sale of ivory and rhino horn items. At these events, individuals voluntarily destroy ivory items to raise public awareness of the impact of their trade on elephant populations.¹³⁰ A global survey commissioned as part of the global crush events revealed 77 per cent of Australians already think it is illegal to sell ivory in Australia, and when told the trade remains legal in Australia, 86 per cent expressed the view that it should be banned.¹³¹ An IFAW Galaxy poll showed that '76 per cent of Australians surveyed support the federal government banning the trade altogether'.¹³²

4.82 The high degree of public support for an end to the domestic ivory trade has influenced those that trade in ivory and rhino horn items. Jane Raffan spoke of traders experiencing 'push-back from the citizenry' and subsequently realising that the trade in ivory and rhino horn material 'isn't as high or important to them as goodwill from the public, which is going to ensure a much greater flow of material to them'.¹³³ Leonard Joel experienced 'overwhelming support from [its] client base and the public generally' in response to its self-imposed ivory and rhino horn policy, a policy that 'resonates with what we called the new collector, who are younger collectors'.¹³⁴ Further, Leonard Joel's policy is reinforced by 'profound changes in taste that are occurring based on living environments and ethics and how we all want to live and respect the environment'.¹³⁵

127 Ms Keeble, IFAW, *Proof Hansard*, 3 July 2018, p. 6.

128 See Collette Dinnigan, *Proof Hansard*, 4 July 2018, p. 14.

129 Jane Raffan, AVAA, *Proof Hansard*, 3 July 2018, p. 36.

130 Ms Dinnigan AO, *Submission 5*, Attachment 1, p. 1.

131 Ms Dinnigan AO, *Submission 5*, Attachment 1, p. 1.

132 Ms Keeble, IFAW, *Proof Hansard*, 3 July 2018, p. 4.

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

134 John Albrecht, Leonard Joel, *Proof Hansard*, 3 July 2018, p. 49.

135 John Albrecht, Leonard Joel, *Proof Hansard*, 3 July 2018, p. 49.

4.83 When asked if a time will come when ivory and rhino horn items are no longer seen in auction and antique stores, Jane Raffan responded:

The reason there are so many of these things sitting in antique stores is that half the time no-one wants to buy them. They sit there and they sit there. You go in and you see rows of silver-plated knives with ivory handles. There's the public revulsion, you can't put them in a dishwasher et cetera. Times change. People's thinking about the world changes. People don't like putting heavy brown furniture in their house anymore. There's a natural process going on with regard to this material and people's divorce from it; it's just not going on fast enough.¹³⁶

4.84 One important ethical consideration, highlighted by Jane Raffan, is the principle of intergenerational equity. She stated that the responsibility of the present generation is to ensure 'the health, diversity and productivity of the environment is maintained or enhanced for the benefits of future generations'.¹³⁷

4.85 Although societal and cultural change has reduced demand for ivory and rhino horn items in Australia, complacency and reliance upon this cultural shift should not be relied upon, primarily because of globalisation and the fluidity of human movement across the globe. The Centre for Environmental Law spoke of how commercial ties between countries facilitate the illegal trade of wildlife. In the case of Australia, its 'significant commercial ties with China' and its multicultural society with a 'number of diaspora communities' demonstrate the risk of ongoing demand for ivory and rhino horn within Australia.¹³⁸

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

137 Jane Raffan, AVAA, *Proof Hansard*, 3 July 2018, p. 37.

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

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).¹

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

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

imported,² 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.³

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.⁴ 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.⁵

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.⁶

5.9 Internationally, the DoEE co-operates with countries like the United Kingdom, Canada, New Zealand and Sweden, and with Interpol.⁷ 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.⁸

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'.⁹ 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

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.

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

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.¹¹ 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'.¹² 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.¹³

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.¹⁴ 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'.¹⁵ The ABF destroys most seized wildlife items.¹⁶

5.13 Between 2010 and 2016, ABF seized 471 elephant products,¹⁷ 309 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.¹⁸ This data is shown in Table 7.

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, 2010–2016:¹⁹

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
Grand Total	51	59	51	56	50	19	23	309

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.²⁰

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.²¹

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.²²

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.²³

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, 2010–2016:²⁴

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
Grand Total	1	9	4	2	6	2	2	26

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.²⁵

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'.²⁶ 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'.²⁷

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.²⁸

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.²⁹ Environmental investigator Mr Luke Bond noted screening resources were limited and primarily focused upon other priority illicit commodities.³⁰

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.³¹ 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.³²

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

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.³³

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.³⁴ ABF re-assured the committee that CITES experts from DoEE train ABF 'officers and keep them trained and upskilled on a required basis'.³⁵ In addition, the ABF College trains customs officials in 'concealment methods, the application of powers, and what are restricted and prohibited items'.³⁶ 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.³⁷

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'.³⁸ 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

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.³⁹

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',⁴⁰ 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.⁴¹

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

5.30 The importance of adequate training of customs officers and screening processes was raised by the CITES Standing Committee in November 2017. The 69th 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.⁴³

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'.⁴⁴

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

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.

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

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.⁴⁶

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'.⁴⁷

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.⁴⁸

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.⁴⁹ 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'.⁵⁰ 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.⁵¹

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',⁵² and a prevailing narrative that the profits gained through this trade outweigh the associated risks.⁵³

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'.⁵⁴

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'.⁵⁵ 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.⁵⁶

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'.⁵⁷

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.⁵⁸

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.⁵⁹ 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'.⁶⁰ 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'.⁶¹

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.⁶²

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'.⁶³

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.⁶⁴

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'.⁶⁵

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 2007.⁹¹ The ACBPS last conducted detailed intelligence analysis on wildlife trade in 2009, but the results were not made publicly available.⁶⁶

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.⁶⁷

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

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'.⁶⁸

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 quantities⁶⁹ imported (a discrepancy of 2950 items or units).⁷⁰ 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'.⁷¹

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.⁷²

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'.⁷³ 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'.⁷⁴ 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.⁷⁵

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,⁷⁶ and 'means that a more complete dataset may become available for analysis in future, and that actual trade figures may be significantly higher'.⁷⁷ 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.⁷⁸

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.⁷⁹

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.⁸⁰

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.⁸¹ 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.⁸²

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.⁸³

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.⁸⁴

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'.⁸⁵ Further, permit data is transferred electronically and ensures ABF has access to accurate information at Australia's border.⁸⁶ 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.⁸⁷

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'.⁸⁸ 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.⁸⁹

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.⁹⁰

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:

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.⁹¹

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'.⁹² 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.⁹³

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.⁹⁴ 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

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'.⁹⁵ 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'.⁹⁶

5.68 Subsequently, the roundtable resolved that the AVAA would 'promote this legal obligation to its members'.⁹⁷ 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.⁹⁸ 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.⁹⁹

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.¹⁰⁰

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.¹⁰¹

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

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.

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.¹⁰²

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'.¹⁰³

5.73 Barsby Auctions advised that it requires every seller to sign this statutory declaration; however, both Leonard Joel¹⁰⁴ 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.¹⁰⁵

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.¹⁰⁶ 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).¹⁰⁷

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.¹⁰⁸

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'.¹⁰⁹

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 curve¹¹⁰ to determine its date parameters.¹¹¹ 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.¹¹²

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.¹¹³

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

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.¹¹⁴ The ANU Radiocarbon Dating Laboratory is considering other testing techniques for use in the future.¹¹⁵

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.¹¹⁶

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.¹¹⁷

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.¹¹⁸

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.

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.¹¹⁹

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.¹²⁰

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.¹²¹

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.¹²²

5.88 The Department of Environment agreed to this recommendation;¹²³ the DIBP responded that it would co-operate with 'the evaluation of publically available information to educate traders and travellers'.¹²⁴ 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 2018.¹²⁵

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

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.¹²⁶

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.¹²⁷

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.¹²⁸ 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.¹²⁹ The AAADA also recommended the document include reference to trade controls for ivory and rhino horn products.¹³⁰

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.¹³¹

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

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.¹³²

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.¹³³ 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.¹³⁴ 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.¹³⁵

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.¹³⁶

5.95 Home Affairs and the ABF both confirmed that video educational material from agriculture had been used;¹³⁷ however, the use of this material varies between the 54 airlines operating in Australia.¹³⁸ 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.¹³⁹

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.¹⁴⁰

5.97 This information, however, does not include signage on walls at airports because according to Home Affairs, it is no longer effective.¹⁴¹ 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.¹⁴²

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.¹⁴³ 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.¹⁴⁴

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'.¹⁴⁵ 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

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.¹⁴⁶

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.¹⁴⁷

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.¹⁴⁸

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'.¹⁴⁹ 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

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.

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

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.¹⁵¹ NSW Fair Trading clarified that although jewellery is a proscribed item under the PSHD Act, only applies to gemstones and precious metals.¹⁵²

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.¹⁵³

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).¹⁵⁴ 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

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.¹⁵⁵

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'.¹⁵⁶ 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'.¹⁵⁷

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

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

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

Chapter 6

Committee views and recommendations

6.1 On 1 July 1975, the international community united to establish the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), an international trade control framework 'conceived in the spirit of...cooperation' and designed to ensure the long-term survival of wild animal and plant species.¹ Since that time, CITES has encompassed over 35 000 species of animals and plants, and has grown into one of the largest international conservation agreements with 183 Parties.²

6.2 Despite its accomplishments and the vital role CITES plays in the prevention of the exploitation of flora and fauna, elephant and rhino populations in Africa and Asia have continued to decline. The severity of this issue is demonstrated by the sheer number of elephants and rhinos killed each year: in the six months taken to complete this inquiry approximately 10 000 elephants have been killed across the African continent, and in South Africa alone, approximately 528 rhinos have been killed. On 3 September 2018, it was reported that a 'poaching frenzy' in Botswana resulted in the killing of 87 elephants, many for their tusks. According to Elephants without Borders, the execution of these elephants was the largest killing of its kind on record.³

6.3 To address the ongoing population decline of elephants, the international community came together again during the 2016 Conference of the Parties (CoP17) of CITES and agreed to a resolution that:

...recommends that all Parties and non-Parties in whose jurisdiction where there is a legal domestic market for ivory that is contributing to poaching or illegal trade, take all necessary legislative, regulatory and enforcement measures to close their domestic markets for commercial trade in raw and worked ivory as a matter of priority.⁴

6.4 As outlined in chapter 3, since that time the United States (US), the United Kingdom (UK), China, Hong Kong, France and Taiwan have all implemented or

1 Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), *What is CITES?*, <https://www.cites.org/eng/disc/what.php> (accessed 3 September 2018).

2 CITES, *What is CITES?*, <https://www.cites.org/eng/disc/what.php> (accessed 3 September 2018).

3 Alastair Leithead, 'Dozens of elephants killed near Botswana wildlife sanctuary', *BBC News*, 3 September 2018, <https://www.bbc.com/news/world-africa-45396394> (accessed 6 September 2018).

4 Julia Larsen Maher, 'CITES CoP17 Delegates Adopt Resolution Recommending Closure of Domestic Elephant Ivory Markets Globally', *National Geographic*, 2 October 2016, <https://blog.nationalgeographic.org/2016/10/02/cites-cop17-delegates-adopt-resolution-recommending-closure-of-domestic-ivory-markets-globally/> (accessed 10 May 2018).

announced an end to their respective unregulated domestic ivory markets by announcing domestic trade bans (with minimal exemptions).

6.5 Whilst action has been taken by these countries, Australia has not sought to implement a similar domestic trade ban. The Department of the Environment and Energy (DoEE), the designated CITES Management Authority for Australia, concluded that the CoP17 resolution does not apply to Australia. It argued evidence shows that Australia is not contributing to the poaching or the illegal trade of elephant ivory, and for the most part, the majority of seized ivory items identified by the Australian Border Force (ABF) are typically antiques, trinkets and tourist souvenirs. Further, these seized items were declared upon arrival and non-compliance with CITES was inadvertent and unintentional.

6.6 The DoEE assured the committee that it is supportive of measures taken by countries to strengthen their respective wildlife trafficking laws, and maintains that responsibility to do so rests on countries that are identified as significant source, transit and destination countries.

6.7 The committee agrees with the DoEE's position that Australia's domestic ivory market is not a major contributor to the illegal trade of ivory and rhino. On a global scale, Australia cannot be compared with known source and destination countries such as Kenya, South Africa, China and Viet Nam. However, the lack of regulatory oversight of the domestic trade, and issues with intelligence and data, undermine the DoEE's ability to determine an accurate measure the extent of the illegal trade within Australia.

6.8 The lack of regulatory oversight is not a criticism of the DoEE. Although some stakeholders were concerned by the lack of oversight demonstrated by the DoEE and its state and territory counterparts, the fact remains that the DoEE is not required to monitor the currently unregulated domestic market, nor is there any legal requirement for traders within Australia to ensure an ivory and rhino horn items are pre-CITES if sold domestically. If, however, there is evidence that an item was imported illegally into Australia, then the DoEE is empowered to conduct an investigation. It is, therefore, the responsibility of legislators, both at the Commonwealth and state and territory level to address this issue.

6.9 The committee is persuaded by arguments made by civil society groups and the UK government that failure to implement a domestic trade ban could result in an increased risk of criminal organisations exploiting Australia's weaker control framework, and the continued facilitation of the illegal trade in ivory and rhino horn through the domestic market. As demonstrated in chapter 4, there is ample evidence of displacement occurring in countries where regulatory oversight is lacking. In addition, investigations conducted by civil society groups, especially IFAW, have highlighted ways in which the legal trade acts as a conduit of the illegal trade even within Australia.

6.10 The committee believes a domestic trade ban would ensure Australia's leadership role in tackling illegal wildlife trafficking and add significant weight to the momentum toward shutting down the illegal trade in elephant ivory and rhino horn around the globe. This global momentum aligns with the UNODC's view that the illegal international wildlife trade would decline if each country, under its domestic laws, prohibited the 'possession of wildlife that was illegally harvested in, or illegal traded from, anywhere in the world'.⁵

6.11 The committee emphasises the high level of public support for a domestic trade ban in Australia. A global survey revealed that 77 per cent of Australians surveyed already thought it was illegal to sell ivory in Australia, and 86 per cent expressed the view that the trade in ivory should be banned. Support for a domestic trade ban is bolstered by a societal and cultural shift away from the consumption of products that contain ivory and rhino horn, due to the ethical understanding that this market drives poaching.

6.12 The committee therefore recommends that Australia develops and implements a domestic trade ban on commercial activities involving elephant ivory and rhinoceros horn.

6.13 As discussed elsewhere in this report, and unlike the UK, the Commonwealth must enact a domestic trade ban within the parameters established by the *Australian Constitution*. That is, the Constitution prevents the Commonwealth government from unilaterally implementing a domestic trade ban without the agreement of the states and territories.

6.14 The Commonwealth could rely on section 51(i) of the Constitution to regulate trade and commerce 'among the States', by prohibiting the trade in ivory and rhino horn between the states and territories. As noted in chapter 3, this would be similar to the domestic trade ban implemented by the US government. However, the US approach has led to a complex domestic trade control framework, where individual states have implemented their own domestic trade bans that do not align with federal laws. For this reason, the committee is wary of any unilateral approach that could result in such jurisdictional issues.

6.15 Consequently, the committee agrees with the Animal Defenders Office (ADO) that a domestic trade ban should be implemented by a national agreement, with the development and adoption of model legislation by the Commonwealth and states and territories, or by the states and territories referring their powers to the Commonwealth.

6.16 The ADO was agnostic about the preferred of these two options. The committee suggests that the best approach is for the Commonwealth, states and territories, through the Council of Australian Governments (COAG), to develop and

5 UNODC, *World Wildlife Crime Report*, 2016, p. 11.

implement a national domestic trade ban. The National Firearms Agreement provides an excellent example of how Australian governments could proceed with a domestic trade ban on elephant ivory and rhino horn.

Recommendation 1

6.17 The committee recommends that the Commonwealth, states and territories, through the Council of Australian Governments, develop and implement a national domestic trade ban on elephant ivory and rhinoceros horn. The domestic trade ban should be consistent with those implemented in other like-minded international jurisdictions.

6.18 The committee suggests the Illegal Wildlife Trade Conference hosted in London on 11 to 12 October 2018 provides the Commonwealth government with a unique opportunity to announce to the international community Australia's intention to implement a domestic trade ban for elephant ivory and rhino horn.

Exemptions

6.19 The committee is supportive of the framework introduced by the UK government, which is currently being considered by the UK Parliament. This framework, the strongest of its kind, seeks to put an end to the domestic trade in elephant ivory within the UK by introducing a near complete ban with limited exemptions. As outlined in chapter 3, these exemptions include a de minimis exemption, and exemptions for musical instruments, portrait miniatures, items deemed the rarest and most important items of their type, and transactions between accredited museums.

6.20 Whilst the majority of advocates for a domestic trade ban fully supported the proposed exemptions, others called for more generous exemptions, or the application of a complete ban with no exemptions included.

6.21 The committee considers that a framework similar to that in the UK, including exemptions, is suitable for Australia, applicable to both elephant ivory and rhino horn. Specifically, the committee calls for the following exemptions to be included in the Australian framework applicable to elephant ivory:

- a de minimis exemption for items with content of less than 10 per cent and made prior to 1975;
- musical instruments with content of less than 20 per cent and made prior to 1975;
- portrait miniatures produced 100 years or more prior to the domestic trade ban coming into force;
- for transactions between accredited museums and art institutions; and
- items deemed the 'rarest and most important items of their type'.

6.22 With respect to items deemed the 'rarest and most important items of their type', the committee understands objections to this exemption (that is, the difficulty determining an item's eligibility, and that such an exemption could undermine efforts to devalue ivory) but believes an exemption of this type is necessary to preserve culturally important heritage items. The committee is of the view that the definition of 'rarest and most important' must be narrowly define, and the eligibility of such items must be determined by an authorised advisory institution and should only be applicable for items produced 100 years or more prior to the domestic trade ban coming into force. Where the exemption is applicable, the authorised advisory institution must issue an exemption certificate, which must be registered with the DoEE.

Recommendation 2

6.23 The committee recommends the inclusion of the following exemptions applicable to elephant ivory as part of the domestic trade ban framework:

- **a de minimis exemption for items content of less than 10 per cent and made prior to 1975;**
- **musical instruments with content of less than 20 per cent and made prior to 1975;**
- **portrait miniatures produced 100 years or more prior to the domestic trade ban coming into force;**
- **an exemption for CITES-accredited museums and art institutions; and**
- **an exemption for items deemed by an authorised advisory institution to be the rarest and most important items their type, and produced 100 years or more prior to the domestic trade ban coming into force.**

6.24 The committee is cognisant that the UK framework on which these exemptions are based do not include rhino horn. Indeed, some of these exemptions are not applicable to rhino horn: the committee is not aware of any known musical instrument or portrait miniature that contains rhino horn, and only a small number of items containing rhino horn may be exempt under a de minimis exemption. The committee is also aware that there may be other exemptions applicable to rhino horn. The committee therefore recommends that the government gives careful consideration to the need for exemptions for items made of or containing rhino horn, and includes them if appropriate.

Recommendation 3

6.25 The committee recommends that the Commonwealth government gives careful consideration to the need for exemptions for items made of or containing rhinoceros horn, and includes them in a domestic trade ban if appropriate.

6.26 As part of a domestic trade ban, the committee urges the government to strengthen compliance measures, enforcement, and offences. Based on the UK model, the committee supports:

- an online system for the registration and identification of exempted ivory and rhino horn items for the purpose of their domestic sale;
- the extension of the existing enforcement provisions under the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) to furnish Commonwealth, state and territory law enforcement and environmental compliance agencies with the powers necessary to enforce the domestic trade ban;
- the application of civil and/or criminal penalties where an individual or corporation is in breach of the domestic trade ban for offences such as:
 - engaging in commercial activities without meeting an exemption;
 - improperly or falsely registering an item for an exemption; and
 - causing or facilitating the sale of an ivory item or other commercial activities.

6.27 The committee believes that the Commonwealth government should consider the applicability of the UK enforcement provisions to an Australian domestic trade ban, and in so doing should consult with relevant law enforcement agencies.

Recommendation 4

6.28 The committee recommends that the Commonwealth government considers the applicability of the enforcement provisions under the proposed United Kingdom ivory ban to an Australian domestic trade ban, and in so doing consults with relevant law enforcement agencies.

6.29 The committee acknowledges the concerns of some submitters and witnesses that a domestic trade ban would ban the personal possession of items containing elephant ivory or rhino horn, and/or would require the destruction of these items.

6.30 The committee does not support such an approach. The committee is of the view that those with elephant ivory or rhino horn items in their personal possession should be entitled to continue to possess those items. The committee does not advocate for the destruction of ivory and rhino horn items, nor does it support measures that would prevent an individual the right to own, gift or bequeath an ivory or rhino horn item in their possession. A domestic trade ban as proposed by the committee will merely place restrictions on the commercial trade in items containing elephant ivory and rhino horn.

6.31 However, across Australia there are those that are currently in possession of ivory and rhino horn items. The committee is mindful of their concerns, and for this reason, the committee recommends a grace period under the domestic trade ban

during which those in possession of elephant ivory and rhino horn may sell these items should they choose.

Recommendation 5

6.32 The committee recommends a grace period under the domestic trade ban during which those in possession of items containing elephant ivory and rhinoceros horn may sell them if they choose.

Industry practice

6.33 Irrespective of the implementation of a domestic trade ban, the committee urges the auction and antiques industries, and online marketplaces, to implement measures to proactively address the sale of elephant ivory and rhino horn, such as those adopted by Leonard Joel.

Antiques industry

6.34 IFAW's investigation into the antiques industry revealed a significant proportion of antiques stores stocked items containing ivory. Worryingly, the majority of the antiques stores investigated either unknowingly and knowingly provided advice that was inconsistent with or contrary to current law, and many suggested ways to avoid customs controls. IFAW also identified instances of false or misleading labelling of ivory items, and antiques dealers offering to write receipts that did not accurately reflect the item's ivory content and age. The investigation found only one antiques dealer provided detailed and correct advice about the legal exportation of ivory from Australia.

6.35 The Australian Antique & Arts Dealers Association (AAADA) refuted these allegations. It declared that its members strictly abide by its code of practice, and any member would be expelled if they were found to not comply. The AAADA also claimed that its members are able to discern between modern and antique ivory, and 'works of art were created from the ivory of elephants who died of natural causes' (mortality ivory).⁶

6.36 It is apparent to the committee that there is a lack of understanding about current CITES trade controls in the antiques industry. Evidence to the committee, specifically IFAW's investigation into the Australian antiques shops selling ivory, substantially demonstrated this problem.

6.37 The committee suggests the AAADA's argument that the majority of items sold by its members have been made from mortality ivory is disingenuous. While the AAADA is correct that it cannot be proven or disproven whether an ivory item was from a poached elephant or an elephant that has died of natural causes, raising this issue seems to the committee a poor defence of what is increasingly viewed as an

6 Australian Antique & Art Dealers Association (AAADA), *Submission 60*, p. [4].

unethical approach to the sale of ivory. There is ample evidence, demonstrated in chapter 2 of this report, that elephant populations are under threat from poaching, driven by demand for their ivory, and claiming the antiques industry simply has no role in addressing this is naïve.

6.38 The committee encourages the AAADA to better educate and inform its members about the existing international trade control framework (CITES) and their responsibilities under it, and in the event a domestic trade ban is implemented, works to ensure its members understand their new rights and responsibilities under such a framework.

Auction industry

6.39 Unlike the antiques sector, the auction industry has made some headway in addressing its role in the elephant ivory and rhino horn trade. Since IFAW's 2016 investigation into the auction industry, Australia's largest trader in ivory products, Leonard Joel, has implemented a voluntary cessation policy under which it no longer trades in rhino horn (worked or unworked), irrelevant of an item's age, and all unworked elephant ivory. In addition, Leonard Joel only trades in ivory items that meet its *de minimis* principle (items that contain an ivory content of 200 grams or less, and made prior to 1921).

6.40 Further momentum has been made by the industry's peak body, the Auctioneers and Valuers Association of Australia (AVAA). In May 2017, the AVAA board released its position statement in support of both the UK's proposed legislation for ivory, and a complete ban on the trade in rhino material. Although a voluntary measure, the AVAA encourages its members 'to adopt those principles and ethics in their own practices'.⁷

6.41 The committee applauds both Leonard Joel and the AVAA for their engagement and proactive responses to the ivory and rhino horn trade. Their efforts establish a positive precedence for the industry and in Leonard Joel's case, demonstrate that an ethical position can be taken without a financial impact on a business.

Online marketplaces

6.42 Online marketplaces are at risk of facilitating the illegal trade in ivory and rhino horn. As highlighted by IFAW in its 2013 investigation, between 2008 and 2013 there was a 266 per cent increase in the number of endangered wildlife items listed and traded on Australian websites, the majority being ivory items.

6.43 Since that time, online marketplaces have implemented policies that establish bans on the trade in CITES-listed species (including ivory and rhino horn). For

7 Jane Raffan, Auctioneers and Valuers Association of Australia (AVAA), *Proof Hansard*, 3 July 2018, p. 40.

example, the committee heard both eBay and Facebook have implemented policies that ban the sale of elephant ivory and rhino horn on their websites, even in jurisdictions where the trade is legal. In March 2018, online marketplaces around the world established the Global Coalition to End Wildlife Trafficking Online, which aims to reduce wildlife trafficking online by 80 per cent by 2020.

6.44 However, despite these efforts, the legal trade in ivory has hampered efforts to combat the illegal trade because of the difficulty identifying what is legal and what is illegal ivory. The magnitude of this problem was demonstrated by eBay when it advised that it had blocked or removed 45 000 listings that violated its policy on endangered or threatened species. Facebook, however, was unable to provide the number of listings removed from its platform in violation of its policy prohibiting the sale of all animals, including endangered species and their parts.

6.45 The committee congratulates online marketplaces, such as eBay and Facebook, for their co-operative efforts to address the online trade in endangered species, including ivory and rhino horn items. Their decisions to implement blanket bans on the sale of wildlife on their websites, as well their participation in the Global Coalition to End Wildlife Trafficking Online, are important steps forward in addressing the global wildlife trade.

6.46 Despite these steps, the committee is concerned by the ongoing prevalence of this trade on online marketplaces. Despite eBay's efforts, there were still 45 000 listings placed on its platforms that violated its policy in 2017. Facebook was unable to provide data on the number of listings it had removed from its platforms (Facebook Marketplace and Instagram); however, one off searches by the committee revealed, on several occasions, a number of ivory items listed for sale.

6.47 The committee is of the view that the implementation of a domestic trade ban may assist the efforts of online marketplaces, by simplifying the status of elephant ivory and rhino horn items offered for sale in Australia: that is, it will be in all but a few instances be illegal to do so. Online marketplaces, however, will have to better educate their users about a domestic trade ban, enforce the ban and report violations to authorities.

Radiocarbon dating

6.48 One of the most effective ways to determine the provenance of an ivory and rhino horn item the use of radiocarbon dating. Presently, it is a requirement for a rhino horn to be radiocarbon dated in order to receive a pre-CITES certificate from the DoEE. This requirement is not in place for ivory.

6.49 The Australian National University (ANU) Radiocarbon Dating Laboratory recommended that radiocarbon dating is applied to both ivory and rhino horn. The committee recognises the limitations and reasoning for not having a radiocarbon dating requirement for ivory items, including the cost of the test versus the value of the item, and issues determining an accurate measure for a fragment of a horn or tusk.

6.50 On that basis, the committee is of the view that further consideration should be given to the appropriateness of a compulsory radiocarbon requirement for ivory items. In particular, consideration should be given to the impost of such a requirement in the context of a domestic trade ban, and whether testing facilities have the capacity to meet increased demand for such tests.

Screening for elephant ivory and rhino horn

6.51 Civil society groups expressed concerns about the low percentage of cargo and mail screened for ivory and rhino horn items (and CITES listed specimens more broadly) at Australia's border, and the focus of ABF on other higher profile illicit substances such as drugs.

6.52 The committee is sympathetic to these concerns; however, it is unrealistic and unreasonable to expect that all cargo and mail can be screened as it enters Australia. The committee was made aware of the sheer volume of cargo and mail crossing Australia's border at its site visit to Perth airport. For this reason, it is entirely reasonable and appropriate for the ABF to use an intelligence-led, risk-based approach to screening cargo and mail, which directs their activities towards high-risk consignments.

Data

6.53 The committee recognises that the DoEE and ABF have made improvements to the collection and sharing of data since the ANAO's 2015–16 audit report into the management of compliance with the wildlife trade provisions of the EPBC Act. Specifically, the DoEE in partnership with the Department of Home Affairs has established a new seizure database, and is investigating the potential to share seizure data in real time.

6.54 The absence of quality seizure data undermines the DoEE's ability to adequately determine the extent of the elephant ivory and rhino horn trade in Australia, which subsequently impacts on the ability of the DoEE and ABF to use seizure data for intelligence analysis and risk assessments, and to assess the effectiveness of regulatory measures. Going forward, the committee urges both the DoEE and ABF to ensure accurate and descriptive seizure data is collected as a means of monitoring the movement of illegal ivory and rhino horn across Australia's border and measuring the effectiveness of government intervention.

6.55 Some submitters and witnesses raised concerns about the time it takes the DoEE to provide data to CITES. In response, the committee urges the DoEE to submit CITES trade data to the CITES Secretariat as expeditiously as possible.

Education

6.56 As discussed in chapter 5, education and information currently available to traders and consumers (including travellers) about the CITES requirements applicable to elephant ivory and rhino horn items crossing Australia's border appear to be

lacking, and improvements should be made. The success of a domestic trade ban on elephant ivory and rhino horn will also rely in part on the education of sellers and purchasers of ivory and rhino horn items about their rights and responsibilities.

6.57 The committee is concerned about the lack of awareness on the part of the antiques and auction industries in relation to CITES requirements and their obligations under them, including the wildlife statutory declaration and how this fits within the CITES control framework.

6.58 The DoEE must ensure initiatives aimed at strengthening the CITES trade control framework are communicated to and understood by the relevant industries. Failure to do so undermines efforts by both government and industry to implement effective trade controls pursuant to Australia's CITES obligations. The committee recommends that the DoEE reviews its education and information initiatives in consultation with the antiques and auction industries; implements changes necessary to improve knowledge and understanding of CITES requirements in these industries; and informs businesses to ensure they are aware of their obligations and compliant with them.

Recommendation 6

6.59 The committee recommends that the Department of the Environment and Energy:

- **reviews its education and information initiatives, in consultation with the antiques and auction industries;**
- **implements changes identified during the course of the review to improve knowledge and understanding of CITES requirements; and**
- **regularly informs businesses in the antiques and auction industries to ensure they are aware of their obligations and compliant with them.**

6.60 The committee is of the view that legal, publicly visible trade in ivory and rhino horn, or a partial legalisation of trade in ivory and rhino horn, undermines attempts to change public attitudes and stigmatise ownership of ivory and rhino horn products. The committee therefore recommends that Australia supports international public campaigns designed to make it socially unacceptable to, and create stigma around the purchase and ownership of items containing elephant ivory and rhino horn.

Recommendation 7

6.61 The committee recommends that the Commonwealth government supports international public campaigns designed to make it socially unacceptable to, and create stigma around the purchase and ownership of items containing elephant ivory and rhino horn in an attempt to reduce demand.

6.62 Information currently available from the Department of Home Affairs is out of date: the *Importing Antiques* information sheet was created some years ago and now contains redundant contact information.

6.63 The committee reminds the Department of Home Affairs that it ought to provide the public with accurate and up-to-date information, and recommends that the 2012 *Importing Antiques* information sheet currently available on its website be updated, to ensure the accuracy and relevance of this information.

Recommendation 8

6.64 The committee recommends that the Department of Home Affairs updates the *Importing Antiques* information sheet available on its website, to ensure the accuracy and relevance of this information.

6.65 In addition to updating the *Importing Antiques* information sheet, the committee is of the view that more information should be provided to travellers about the movement of wildlife items across Australia's border. Current efforts appear ad hoc, and largely reliant on online material. Information made specifically for passengers departing from or arriving in Australia seems limited, especially in relation to elephant ivory and rhino horn.

6.66 Co-ordinated and targeted information about the trade in wildlife products should be available to travellers departing from and arriving in Australia. The committee recommends that the DoEE and the Department of Home Affairs develop and distribute higher profile educational material that promotes awareness about the wildlife trade, including information about elephant ivory and rhino horn, and the obligations on travellers with these items. Such information should be available at sea- and airports, and with the agreement of the relevant industries, provided to passengers on craft bound for Australia.

Recommendation 9

6.67 The committee recommends that the Department of the Environment and Energy and the Department of Home Affairs develop and distribute higher profile educational material that promotes awareness about the wildlife trade, including information about elephant ivory and rhinoceros horn, and the obligations on travellers with these items.

6.68 Finally, the implementation of a domestic trade ban will require the DoEE to inform and educate traders and consumers about their responsibilities under the new regulatory framework. The committee is of the view that a multi-agency approach to stakeholder education, at the Commonwealth and state and territory levels, is needed. The committee welcomes the willingness of New South Wales Fair Trading and Consumer Affairs Victoria to assist in the event a domestic trade ban is implemented.

6.69 The committee therefore recommends that the DoEE consults with Commonwealth, state and territory environment and consumer affairs agencies to develop and implement an education strategy to inform stakeholders about their obligations under a domestic trade ban.

Recommendation 10

6.70 The committee recommends that the Department of the Environment and Energy consults with Commonwealth, state and territory environment and consumer affairs agencies to develop and implement an education strategy to inform stakeholders about their obligations under a domestic trade ban.

Mr Craig Kelly MP
Chair

Appendix 1

Public submissions

- 1 Mr Jaison Basil
- 2 Mr Luke Bond
- 3 Dr Sylvia Loh
- 4 Mr Benjamin Parker
- 5 Ms Collette Dinnigan AO
- 6 Action for Elephants UK
- 7 H-ELP
- 8 Federation of Indian Animal Protection Organisations
- 9 Elephant Protection Initiative (EPI)
- 10 Minor International Pcl
- 11 International Wildlife Bond
- 12 Two Million Tusks UK
- 13 National Whistleblower Center
- 14 Ms Tanya Korigan
- 15 Ms Joan Huddleston
- 16 Mr Chas Dolphin
- 17 People of the Ethical Treatment of Animals (PETA)
- 18 Zoos Victoria
- 19 SAVE African Rhino Foundation
- 20 World Animal Day
- 21 Ms Dianne Drake
- 22 Mr Stefan Gabrynowicz
- 23 Ms Sarah Gunn
- 24 Whistleblowers Australia Inc.
- 25 Mr Ron Thomson, The True Green Alliance
- 26 Alex W Grant Violins
- 27 Mr Emmanuel Koro
- 28 Dr Tammie Matson

- 29 Ms Jenny Evans
- 30 Department of the Environment and Energy
- 31 Ms Lael Heasman
- 32 Australian Music Association Inc.
- 33 Environmental Investigation Agency, UK (EIA)
- 34 Mrs Camilla Coffey
- 35 Department of Home Affairs
- 36 Rhino Revolution UK
- 37 Humane Society International Australia
- 38 Jane Goodall Institute Australia
- 39 Centre for Environmental Law (CLE)
- 40 Artemis Grey
- 41 Elephant Activists
- 42 New Zealanders for Endangered Wildlife
- 43 Rainforest Rescue
- 44 Barsby Auctions
- 45 Mrs Judy Marshall
- 46 Animal Law Institute (ALI)
- 47 UK Government
- 48 Ms Fiona Gordon
- 49 Auctioneers and Valuers Association of Australia (AVAA)
- 50 Gillie and Marc Pty Ltd
- 51 Leonard Joel Auction House
- 52 Nature Needs More
- 53 Ms Hayley Vella, For the Love of Wildlife
- 54 Ms Donalea Patman, For the Love of Wildlife
- 55 Animal Defenders Office
- 56 Ms Michele McCamley
- 57 The Thin Green Line Foundation
- 58 Australian National Audit Office
- 59 Mr Andrew Holt
- 60 Australian Antique and Art Dealers Association

- 61 Animal Defenders International
- 62 Born Free Foundation (BFF)
- 63 Tusk and Horn Wildlife Trust
- 64 Professor Lorraine Elliott
- 65 International Fund for Animal Welfare (IFAW)
- 66 RSPCA
- 67 NSW Young Lawyers Animal Law Committee
- 68 Wildlife Intelligence Exposed
- 69 Alibaba Group (Australia and New Zealand)
- 70 eBay
- 71 United Nations Office on Drugs and Crime (UNODC)
- 72 Dr Stewart Fallon & Dr Rachel Wood, Radiocarbon Laboratory, The Australian National University
- 73 Facebook
- 74 Wildlife Justice Commission (WJC)
- 75 Mr George Hannah
- 76 Pipe Bands Australia
- 77 Professor Deborah Cao
- 78 The Australia Institute
- 79 Mrs Jeanne Kataoka
- 80 Ms Karen Pomeranz
- 81 Pianos Recycled
- 82 Associate Professor Grant Pink
- 83 Celtic Piping Club
- 84 Confidential
- 85 Consumer Affairs Victoria, Department of Justice and Regulation

Appendix 2

Public hearings and witnesses

Tuesday, 3 July 2018—Sydney

ALBRECHT, JOHN CHARLES ROBERT, Chief Executive Officer and Proprietor, Leonard Joel

BARSBY, Mr David, Director, Barsby Auctions Pty Ltd

BENDING, Ms Zara, Associate Member, Centre for Environmental Law

BENDING, Ms Zara, Board Director and Chair, Roots & Shoots Australia Committee, Jane Goodall Institute Australia

DAFT, Dr Shireen, Deputy Director, Centre for Environmental Law

FAVA, Mr Gabriel, Associate Director, Asia and Oceania, Born Free Foundation

GE GABRIEL, Ms Grace, Asia Regional Director, International Fund for Animal Welfare

KEEBLE, Ms Rebecca Regional Director, Oceania, International Fund for Animal Welfare

MURPHY, Mr Paul, Assistant Secretary, Wildlife, Trade and Biosecurity Branch, Department of the Environment and Energy

RAFFAN, Jane, Vice-President, Auctioneers and Valuers Association of Australia

SHARRAD, Miss Josey, Campaign Consultant, International Fund for Animal Welfare

Wednesday, 4 July 2018—Melbourne

BANKS, Mr Chris, Manager of Conservation Partnerships, Zoos Victoria

BOND, Mr Luke, Director, EcoEnforce

DAVIS, Dawn, President, Australian Antique & Art Dealers Association

DINNIGAN, Ms Collette, Private capacity

GORDON, Ms Fiona, Director, Gordon Consulting

GRANT, Mr Alex, Managing Director, Alex W Grant Violins

JOHNSON, Dr Lynn, Director, Nature Needs More

LEWIS, Mrs Keren, General Manager, Australian Antique & Art Dealers Association

LOH, Dr Sylvia, Director, EcoEnforce

MOSS, Mr Dominic, Life Science Manager, Zoos Victoria

OTTLEY, Mr Brent, Private capacity

OVERY, Ms Clair, Chief Operations Officer, The Thin Green Line Foundation

PARKER, Mr Benjamin, Private capacity

PATMAN, Ms Donalea, Founding Director, For the Love of Wildlife

SHADE, Mr Michael, General Manager, Music Products and Education, Yamaha Music Australia

VELLA, Ms Hayley, Director, For the Love of Wildlife

WALKER, Mr Robert, Executive Director, Australian Music Association

Thursday, 5 July 2018—Perth

DUNCAN, Mr Nicholas, President, SAVE African Rhino Foundation

HOWARD, Ms Therese Mary, Manager, Bloomsbury Antiques

MURRAY, Dr Cameron James, Committee Member, SAVE African Rhino Foundation

Monday, 9 July 2018—Canberra

BROUSSARD, Dr Giovanni, Regional Coordinator of the Global Programme for Combating Wildlife and Forest Crimes, United Nations Office on Drugs and Crime, Regional Office for Southeast Asia and the Pacific

BROWN, Mr Andrew, Consultant, Environmental Investigation Agency, United Kingdom

CAINE, Mr Grant, Senior Director, Australian National Audit Office

COWDREY, Mr David, Head of Policy and Campaigns, International Fund for Animal Welfare

DALE, Ms Erin, Assistant Commissioner, Strategic Border Command, Australian Border Force

DEMPSEY, Mr Scott, Research Assistant, Animal Defenders Office

FALLON, Dr Stewart, Associate Professor, Head, Radiocarbon Laboratory, Australian National University

GIBBON, Mr John, Acting First Assistant Secretary, Trade and Customs Division, Department of Home Affairs

HARRINGTON, Mr Peter, First Secretary, Foreign and Commonwealth Office

JOHNSON Mr Jeremy, Chief of Staff, Australian Criminal Intelligence Commission

JOHNSON, Dr Rebecca, Director, Australian Museum Research Institute, Australian Museum, Museums and Galleries Australia and the Council of Heads of Australian Faunal Collections

McCREA-STEEL, Miss Tania, International Project Manager, International Fund for Animal Welfare

MOORE, Mr Steve, Acting Assistant Secretary, Customs and Border Revenue Branch, Department of Home Affairs

MURPHY, Mr Paul, Assistant Secretary, Wildlife, Trade and Biosecurity Branch, Department of the Environment and Energy

OKORI, Dr Joseph John Lucian, Regional Director, Southern Africa; and Director, Landscape Conservation, International Fund for Animal Welfare

PINK, Associate Professor Grant, Adjunct Associate Professor (Regulation and Enforcement), School of Law, University of New England

RAUTER, Ms Lisa, Group Executive Director, Australian National Audit Office

RAWLINGS, Her Excellency Menna, CMG, British High Commissioner to Australia, Foreign and Commonwealth Office

SIDDANS, Mr Benjamin, Director, Australian National Audit Office

SLATYER, Mr Cameron, Manager, Life and Geo Sciences, Australian Museum, Museums and Galleries Australia and the Council of Heads of Australian Faunal Collections

WARD, Ms Tara, Executive Director, Animal Defenders Office

WOOD, Dr Rachel, Post-Doctoral Research Fellow, Australian National University

Thursday, 16 August 2018—Canberra

CAMPBELL, Mr Roderick, Research Director, The Australia Institute

COLLINS, Mrs Monica, Chief Compliance Officer, Department of the Environment and Energy

DUNPHY, Mr Peter, Executive Director, Specialist Services, New South Wales Fair Trading

GARLICK, Mrs Mia, Director of Policy, Facebook

McCONAGHY, Mr Ben, Policy Communications Manager, Facebook

SLACKMAN, Mr Max, Product Policy Manager, Facebook

WHITTON, Mr Matthew, Director, Specialist Services, New South Wales Fair Trading

Appendix 3

Tabled documents, answers to questions on notice and additional information

Answers to questions on notice

1. British High Commission Canberra - Answers to questions on notice from 9 July 2018 (received 20 July 2018)
2. Centre for Environmental Law - Answers to questions on notice from 9 July 2018 (received 24 July 2018)
3. Department of the Environment and Energy - Answers to questions on notice from 9 July 2018 - Attachment A (received 3 August 2018)
4. Department of the Environment and Energy - Answers to questions on notice from 9 July 2018 - Attachment B (received 3 August 2018)

Additional Information

1. For the Love of Wildlife - Additional information (received 9 July 2018)
2. International Fund for Animal Welfare (UK) - The UK Ivory Bill 2018 (received 9 July 2018)
3. Save the African Rhino Foundation - Additional information (received 10 July 2018)
4. International Fund for Animal Welfare (UK) - Additional information (received 16 July 2018)
5. British High Commission Canberra - Additional information (received 20 July 2018)

