



NATURE NEEDS MORE

THE NEW WAY OF WILDLIFE CONSERVATION

Committee Secretary
Parliamentary Committee on Law Enforcement
P.O. Box 6100
Parliament House
Canberra, ACT 2600

Wednesday, 6 June 2018

Regarding: (Domestic) Trade in Elephant Ivory and Rhinoceros Horn

Dear Committee Secretary,

In order to make a determination regarding the continuation of the currently legal domestic trade in elephant ivory and rhino horn, I believe that it is necessary look at a broad context, both within the country and beyond Australia's borders. As our domestic trade situation is assessed, it is critical to consider the global system of legal and illegal trade in endangered wildlife. This includes, but is not limited to, the fact that Australia is a signatory to the Convention on International Trade in Endangered Species (CITES) and has, on paper at least, strong domestic laws to implement the requirements and resolutions of CITES.

This submission outlines several concerns:

1. The usefulness of the CITES trade monitoring and permit system
2. As a CITES signatory, the gap between Australia's commitment on paper to tackle the illegal wildlife trade compared to domestic actions taken to fulfil these obligations
3. Local businesses trading in elephant ivory and rhino horn and their willingness, or lack of, to pay the full cost of maintaining this domestic trade in wild animal body parts, a trade that is only beneficial to their industry, businesses and clients
4. Evidence that Australia's banking system is nowhere near up-to-scratch in its willingness or ability to monitor the illegal funds and laundering of funds associated with wildlife and timber crime
5. The desire to supply wild animal parts, which results in driving up the demand, the prices and poaching activity

Before going into detail, I highlight the statistics from a recent report covered by The Guardian¹ showing **of all the mammals on earth, 96% are livestock and humans, and only 4% are wild mammals.** The animals covered by this enquiry are the last few of their species and just a small part of this 4%.

The CITES Trade Permit System

Given the people and businesses that want to maintain an Australian domestic trade in wildlife, including elephant ivory and rhino horn, consistently use the statement that they ‘comply’ with all the CITES trade permit rules, it is imperative to take in to account the ability of this system to comprehensively monitor trade and the movement of these animal body parts.

There is a growing body of evidence that the CITES trade permit system is not fit for purpose and, in many instances, held in contempt by representatives of agencies who use it. For the CITES (or any) system to be relevant in preventing illegal trade, the legal trade monitoring system needs to be completely transparent and provide the ability to track individual items from origin to destination, without any loopholes, gaps or opportunities to launder illegal items into the legal market. Such systems readily exist; for example, spare parts in the aviation industry are tracked with this level of diligence.

In reality, CITES has a trade database and permit system that is completely useless in reconciling even the most basic import and export data. Items are not identifiable, not tracked and even quantities recorded are completely ambiguous (such as ‘10 units’ of ivory, which is less than meaningless). Many countries do not require import permits, making reconciliation and auditing impossible. Examples highlighting just how flawed the CITES trade and permit system is are outlined in the submission by Hayley Vella, Director, For the Love of Wildlife Ltd².

For the purposes of this section, I highlight just one example: Analysis of trade in Elephantidae specimens between Australia and UK from 2010 to 2016 using the CITES Trade Database. At the most recent date of exporting data from the CITES database on 30 May 2018:

- The number of Elephantidae ‘specimens’ exported from the UK to Australia amounted to 2,953 ‘units’
- In the same timeframe the number of Elephantidae ‘specimens’ recorded as imported in to Australia from the UK equalled 3 ‘units’
- A mismatch of 2,950 ‘units’.

How are we supposed to reconcile and monitor trade with flawed data like this?

Any permit system that is this useless is actually counterproductive – it creates the illusion of trackability and control, whilst offering nothing. In fact, it lulls the concerned public into a false sense of security. As a result, I like many others, believe that ‘adhering to the paperwork’ of the CITES Trade Permit system cannot be used as a basis for justifying the continuation of the domestic trade in elephant ivory and rhino horn.

CITES has had over 40 years, as the key agency and facilitator of trade in fauna and flora, to evolve and perfect a system critical to conserving wildlife. Instead the system appears antiquated, not transparent, not consistent and not fit for purpose. Similarly, there is little evidence the signatories to CITES have been willing to invest in improving the system over this extended timeframe, and importantly in the last decade, as the current industrial-scale poaching crisis has developed.

The CITES Signatory System

It has been pointed out on a number of occasions that CITES is effectively a ‘toothless regulator’³, putting all the pressure of combating the illegal trade on national governments in origin, transit and destination countries.

Australia is both a transit and destination country for elephant ivory and rhino horn, as evidenced by the number of seizures of suspected items in the last 7 years⁴. This context needs to be considered when examining the question of the domestic trade in ivory and rhino horn. The position of the Federal Government is that our border protections are strong, on a number of fronts. In addition, the Federal Minister for Environment and Energy points to the heavy penalties available to sentence traffickers, as shown in an extract of a letter to Donalea Patman, founder of For the Love of Wildlife, included in her submission⁴ to this enquiry.

Dear Ms Patman

I refer to your email concerning domestic trade in elephant ivory and rhino horn. Thank you for acknowledging Australia’s support for measures to increase protection of rhino and elephants at the recent *Convention on International Trade in Endangered Species of Wild Fauna and Flora* (CITES) 17th Conference of the Parties. At that meeting, Australia also successfully introduced further measures to combat illegal wildlife trade including stronger penalties for transnational organised crime and money laundering, and improvements in forensic testing of wildlife specimens.

Australia implements some of the world’s strictest rules for international trade in ivory and rhino horn. This includes a measure to treat all elephants as if they are listed on Appendix I to CITES and a ban on trade in rhino hunting trophies. These measures go beyond CITES requirements, restricting imports and exports of elephant and rhino specimens to vintage items pre-dating 1975 or for non-commercial purposes such as education or research. Australia also implements strong border controls and detailed descriptions are required on all export documentation for ivory and rhino horn to prevent laundering of illegal specimens.

The reality is quite different, with ex-customs employees stating “*optimistically, only 4% of seaport cargo are being checked*”. Even at this low rate parliamentary library records show that between 2010 and 2016 there were:

1. 411 seizures of (suspected) ivory and
2. 25 seizures of (suspected) rhino horn

If “*optimistically, only 4% of seaport cargo being checked*” **this would mean that to true scale of illegal imports via seaport cargo would need to be multiplied by 25.**

In addition, the parliamentary library paperwork uses the word ‘suspected’ throughout the documentation and no evidence could be found, or was offered, that the first step in building a case to prosecute those carrying these confiscated items was undertaken, namely DNA testing and radiocarbon dating of the confiscated items.

Were any of the items, from 411 seizures of (suspected) ivory or 25 seizures of (suspected) rhino horn, tested?

In speaking to individuals who could administer such DNA testing and radiocarbon dating we were told that “We can test what is seized, but no government wants to pay for testing”. There is no provision for administrative, on-the-spot fines in the Environmental Protection and Biodiversity Conservation (EPBC) Act 1999, which could help cover the cost of testing. If on top of this, the relevant government departments will not pay for the DNA testing and radiocarbon dating of seized items, it makes it impossible to know what exactly is being brought into the country and seized. This lack of testing, effectively the first step to enable prosecuting to occur, also explains the lack of convictions over the years.

The Federal Minister talks about Australia’s strong laws to combat illegal wildlife crime, which are:

1. Sentences of up to 10 years in prison or
2. 1,000 penalty units, which translate to a \$180K fine.

The reality is strong written laws mean very little without monitoring and enforcement. The fact is that **no prosecutions for importing illegal elephant ivory or rhino horn have taken place since 2010**. Despite the large numbers of items seized, the criminals have walked free and Australia’s performance in enforcing the provisions of the Act in relation to CITES listed species is frankly abysmal.

All of this translates into a complete absence of a credible deterrent to wildlife traffickers. They can simply assume that about 5% of illegal shipments will get seized and add that to their cost of business. Given the huge prices that ivory and rhino horn fetch per kilogram (for example, rhino horn has been quoted as selling at US\$65,000 per kilogram), this is an easy choice to make for them. If customs understand the strategies of the traffickers, we can surely assume that the traffickers know our customs system and how to minimise their ‘losses’.

Evidence of the lack of seriousness placed on wildlife crime in Australia can be seen in two recent cases:

1. Terry Dalkos fined just \$4,000 for exotic animal collection of leopard, bear, lion, wolf, cheetah, orang-utan and deer pig body parts. Dalkos faced a maximum sentence of 10 years’ jail and a fine of up to \$210,000⁵
2. Ex-NRL player Martin Kennedy pleads guilty over his role in a wildlife smuggling ring. From the article “He said Australian penalties were lax.”⁶

The above demonstrates Australia’s contribution to perpetuating the low-risk, high-reward perception of wildlife crime for traffickers.

As this inquiry is looking at the role that Federal Government is playing and can take in legislating domestic trade, reference must be made about any counter argument that it is the responsibility of the States and Territories to monitor the domestic trade in ivory and rhino horn. There certainly appears to be confusion about this at Federal and State Government levels, which required Donalea Patman of For the Love of Wildlife to write to each and every State and Territory Minister responsible for environmental matters. The upshot of all this is:

- Commonwealth of Australia Constitution Act – Section 92 – Trade within the Commonwealth to be free - On the imposition of uniform duties of customs, trade, commerce, and intercourse among the States, whether by means of internal carriage or ocean navigation, shall be absolutely free.

- There is an over-riding principle of free trade between the jurisdictions unless there is a biosecurity or other risk to be addressed

Regulating or monitoring domestic trade of elephant ivory and rhino horn is not a State Government responsibility. It should also be acknowledged, in this regard that the Australian Constitution prohibits the States from restricting domestic trade, so even trying to push the responsibility for monitoring and enforcement onto the States and Territories might not survive a challenge to the High Court.

Finally, in stark contrast to Australia, an incredibly wealthy country that has a poor record of prosecuting wildlife traffickers and providing a meaningful deterrent, the submission from the SAVE African Rhino Foundation⁷ highlights the commitment an impoverished country such as Zimbabwe is making to deterring traffickers; and the success it is having in the process.

Local Retailers and Sellers

I acknowledge that shutting down the domestic trade in ivory and rhino horn creates ‘losers’, in this case antiques retailers, auction houses, collectables retailers etc. In discussions with business owners, none have stated that their business viability or profitability would be materially impacted by a total domestic trade ban of elephant ivory or rhino horn. In discussions, their general arguments to maintain the trade in these items have been along the lines of:

1. We follow all the CITES rules on these items
2. We have always sold these items and they are beautiful
3. Why should anyone tell me what I can and can’t sell in my business
4. Customers should be able to sell/buy what they want, and I don’t want to upset them

Elephant ivory and rhino horn only make up a tiny amount of total turnover. In addition, when a prominent auction house, Leonard Joel, stopped selling ivory and rhino horn they stated it did not impact their customer relationships or business.

When considering the arguments put forward by the antiques retailers and auction houses to keep the domestic trade open, it should be taken in to account that many make no attempt to identify or report illegal items^{2,4}, a behaviour that we would never be accepted in other industries (consider all the rules and regulations applied to dispensing legal drugs in pharmacies).

We need to acknowledge that despite ongoing pressures from activists and the concerned public, no auction houses have volunteered to routinely DNA test and radiocarbon date elephant ivory and rhino horn items to establish provenance without any doubt. In fact, most continue to sell items without any provenance documentation⁸. This behaviour is unacceptable given our obligations under CITES.

We further need to take into account that many of these auction houses and antiques dealers demonstrate little interest about who the customers for these products are and if they are being bought for export. Shutting down the domestic trade does not affect private citizens who currently keep ivory or rhino horn for sentimental purposes. It does not affect the emotional or cultural value of these items, it only removes the monetary value. I support the advice Leonard Joel gives to customers about these items, namely:

1. Pledge to keep it in the family
2. If it is museum quality, donate it to a museum, or
3. Destroy it

If the Australian antiques/auction house industry wants to maintain the current system or partial trade and the Australian Federal Government enables this, then let's remind them that 86% of Australian tax payers surveyed thought it should be banned, which points to 86% of Australian tax payers wanting the antiques/auction house industry to pay its own costs⁹.

I know this is a complex argument. Many people around the world are understandably questioning why tax payers are paying the bills of some industries, such as bailing-out the financial industry during the Global Financial Crisis. While we may not like these bail-outs, the finance industry is currently 'too big to fail', without taking down national and global economies. The antiques industry is NOT too big to fail; tax payers don't need to pay part of its costs and prop it up. As a result, if the antiques industry doesn't want regulation or the trade in elephant ivory and rhino horn to be stopped, then just agree to pay for the monitoring, policing and prosecution costs associated with maintaining the status quo or enacting a partial trade in elephant ivory and rhino horn. These costs are incurred solely for their, and their clients, benefit.

Australian Banking System

In informal discussion with representatives of the Australian Banking system I was told that either money laundering associated with the illegal wildlife and timber trade was not considered in company Governance & Risk committee meetings or that it couldn't be confirmed either way. No representative that I spoke to informally could state that money laundering associated with the illegal wildlife and timber trade was consistently monitored for as part of the bank's Governance & Risk policies.

The concern is compounded when considering [From The Guardian article¹⁰]: *The Commonwealth Bank has just agreed to pay \$700m to settle civil proceedings relating to breaches of anti-money laundering and counter-terrorism financing laws...the largest civil penalty in Australia's corporate history....The investigation, undertaken in partnership with federal police, NSW police and Western Australia police, found that the machines were being used to launder the illicit proceeds of crime....In reaching the agreement with Austrac, **CBA has admitted it contravened the Anti-Money Laundering and Counter-Terrorism Financing Act 2006 on 53,750 occasions.***

This is further compounded by the research of Professor Jason Sharman¹¹, whose work was profiled by:

1. ABC radio's Big Ideas program on Global Corruption¹² which stated: ***Australia has been called 'the Cayman Islands of the South Pacific' - a safe haven for money coming into the country through international corruption.***
2. The Australian Institute of International Affairs: **Laundering Money the Easy Way – Through Australia**¹³.

If our banks are in the business of enabling money laundering, then surely wildlife traffickers will know how to take advantage of lax adherence to the rules and the absence of enforcement. International wildlife trafficking relies on the official banking system to move the vast amounts of money involved

across borders. If our banks are enabling this trade, then we need to strengthen the anti-money laundering rules and get this issue on to the banks Governance and Risk committees to make sure that they are willing to support 'following the money' to help stop illegal trade in wildlife and timber.

Desire to Supply Drives Demand

We wouldn't be having this inquiry without the ongoing strong demand for elephant ivory and rhino horn from countries such as China¹⁴ and Viet Nam. It is this demand and the high prices that make trafficking highly profitable. The risks for the traffickers are currently far too low to slow down the trade and the resulting levels of poaching. It is imperative that we significantly increase the risk and costs of trafficking.

If Australia follows the example of countries such as the UK to shut down the domestic trade, we are collectively making it harder for the traffickers not only to exploit the existing demand but also to manufacture new demand. In addition, there are a small but growing number of people pushing for an international trade in rhino horn; there is a desire to supply.

This push is primarily the result of the South African Government allowing private ownership and farming of rhinos, where they are dehorned for trade. For many years this farming and dehorning was undertaken even though there was no channel for trade. In 2017, the South African domestic trade ban was overturned, and rhino horn can now be traded domestically in the country.

While we know that Australia is a transit and destination country, it is important to know where the supply of rhino horn and elephant ivory originates from. In the case of rhino horn, a couple of statements from Izak du Toit, a lawyer representing the pro-trade rhino owners may help to understand how rhino horn can enter the international supply chain:

1. South Africa Just Lifted Its Ban on the Rhino Horn Trade¹⁵ From the article: *Du Toit acknowledges that rhino horn will have to be smuggled from South Africa to Asia in order to find a market, but that smuggling, he says, if it is of horns taken from live rhino, would be a reasonable form of civil disobedience in light of a CITES ban that has failed to protect rhinos. "I've compared it to apartheid," he says. "Black people had to transgress the very law they objected to in order to show it was illegal."*
2. Lifting the ban on rhino horn trade is no victory for rhino owners¹⁶ From the article: *As Izak du Toit, a lawyer for a rhino owner, said: "We would sell to the poachers to prevent them from killing rhinos."*

A handful of individuals in South Africa who own rhinos will continue to push for a legalised international trade and continue to claim that it will help conserve rhinos in the wild, despite evidence that key buyers don't see horn from a farmed rhino as substitute product; it has no status to them^{17,18}.

The rhino horn pro-trade argument has changed over time. After years of talking about 'flooding the market' with legal rhino horn to drive down the price and to stop poaching', the South African pro-trade rhino owners now advocate a 'De Beers like cartel' model that can keep prices high and, in their words 'control the trade'. It doesn't acknowledge that keeping the prices high for a legal supply of rhino horn also means keeping the trade lucrative for poachers and traffickers¹⁹.

A total domestic trade ban will ensure that no elephant ivory or rhino horn can be laundered via an Australian domestic market.

In addition, we should also not get confused by the ongoing support of many large conservation NGOs for the sustainable-use model of wildlife conservation. This support is entirely abstract, they are simply acknowledging the prevailing ideology. In reality, not one pro-trade group or conservation NGO has ever presented a detailed model outlining the ‘ecologically sustainable’ use of elephants and rhinos.

It should not be forgotten in this context that the Constitution of the Republic of South Africa (Chapter 2.24) explicitly talks about ‘ecologically sustainable development and use of natural resources’ and not just ‘sustainable use’. The ‘sustainable use’ mantra is over-valued, over-generalised and over-used by governments and NGOs alike. This is another reason why trade in animal parts such as rhino horn and elephant ivory has been considered acceptable for far too long.

Conclusions

In conclusion, there are a number of interconnected factors that lead me to request a total domestic trade ban of elephant ivory and rhino horn, including but not limited to:

1. Significant and growing evidence that the CITES permit and trade system is not fit for purpose and requires a massive investment overhaul and renew. For the CITES (or any) system to be relevant in preventing illegal trade, the legal trade monitoring system needs to be completely transparent and provide the ability to track individual items from origin to destination, without any loopholes, gaps or opportunities to launder illegal items into the legal market.
2. No evidence that the Australian Federal Government is currently willing to make the necessary investment needed for customs monitoring, and testing of confiscated items to support fines and prosecutions. This brings in to question the usefulness of the CITES signatory process.
3. The retailers and auction houses who want to maintain this trade, and who are the only industry that benefits from it, do not want to pay the 'true' costs of conducting their business.
4. The recent CBA case and current Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry highlights a sector currently willing to cut corners to make a profit, in CBA's case contravening the Anti-Money Laundering and Counter-Terrorism Financing Act 2006 on 53,750 occasions.
5. The continued desire by a small number of people to legally or illegally supply ivory and rhino horn under then guise of 'sustainable use' of 'natural resources', and who don't acknowledge that 'sustainable use' and 'ecologically sustainable use' are two very different things.

If Australia cares about the fate of elephants and rhinos, we have two options:

1. We can create a much tougher customs regime, greatly increase the monitoring of the domestic trade and invest heavily in prosecutions, all of which would cost an enormous amount of money on a recurring basis, or,
2. We can simply shut the domestic trade down completely and simultaneously strengthen border protection measures for wildlife smuggling. This option provides much less ambiguity about what is or isn't legal and can be financed via the introduction of on-the-spot fines, bypassing the need for costly prosecutions in all but major cases.

Based on my research of the supply chain and all the factors associated with the Australian domestic trade in elephant ivory or rhino horn, I certainly believe a total domestic ban is needed.

I appreciate that there may be a desire to put in provisions for musical instruments or trade between museums for items over 100 years old, but these provisions will need to be highly restrictive, so they don't provide loopholes and possibilities to launder illegal items.

A total domestic trade ban in Australia will make a difference. And, at the same time I acknowledge in the medium to long term collective action and fixing broken systems such as the CITES permit and trade system is needed and only global, collective action can make a difference given the forces of unrestrained trade and growth we are up against.

In the run up to the 4th Illegal Wildlife Trade Conference, to be held in London on the 10 and 11 October 2018, I hope the Australian Federal Government builds on a domestic trade ban of elephant ivory and

rhino horn and proposes an agenda item to review the CITES permit and trade system and signatory process. If desired, the total domestic trade ban can be reviewed in 10 years once an:

1. Upgraded CITES database, permit and trade system is put in place and shown to be fit for purpose, and
2. A proper CITES enforcement process and resources are put in place by all signatories, independently monitored and shown to be fit for purpose

If CITES and conservation agencies want to continue to be relevant on this issue they must **Fix The Basics** or step aside, so a ‘conservation’ focused rather than a ‘trade’ focused system is put in place.

Yours faithfully,

Lynn Johnson, PhD

Founder & CEO

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