

IVORY & RHINO HORN TRADE IN AUSTRALIA

This Factsheet is for general information purposes and is not legal advice. It provides a brief overview only of this area of the law. If you require legal advice relating to your particular circumstances you should contact the ADO or another solicitor.

This fact sheet is dedicated to Scott Dempsey, ADO volunteer 2017–2022

In 2018 many Australians were shocked when pictures emerged of a prominent Canberra businessman posing proudly next to ivory horns and animals killed on hunting trips to Africa, including elephants and baboons [1]. This followed news that the last known male Northern White Rhino, named Sudan, had died in a sanctuary in Kenya, leaving two females as the last of their species, living under round-the-clock armed guard [2].

Headlines such as these have forced a rethink on what the Australian legal system is doing to discourage the trade in ivory and rhino horn within our own borders.

ELEPHANTS AND RHINOS IN THE WILD

The International Fund for Animal Welfare ("IFAW") reports that dozens of elephants and rhinos are poached every day for their ivory and horn [3].

Several elephant and rhinoceros species are classified as 'Critically Endangered' and 'Endangered' on the International Union for Conservation of Nature's Red List of Threatened Species [4].



INTERNATIONAL TRADE CONVENTION ('CITES')

The *Convention on the International Trade of Endangered Species of Wild Fauna and Flora (CITES)*, to which Australia is a party, governs the international trade of endangered animal and plant species [5]. In its three appendices, *CITES* lists around 5,000 animal species according to their conservation status. Those listed in Appendix I are at the highest risk of extinction. International trade is generally prohibited for specimens from these animals acquired after their listing in the Appendix [6]. For example, Asian elephants were listed in Appendix I in 1975, so only ivory from those elephants acquired *before* this date can be traded internationally. Most African elephant populations are also listed in Appendix I (some populations in Africa are listed in Appendix II).

WHAT'S THE LAW IN AUSTRALIA?

Australia meets its obligations under *CITES* through the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) ("EPBC Act"). Australia has also introduced stricter measures than required by *CITES* in some regards: for example, all elephant species are treated as if they were in Appendix I [7], which means that trade for commercial or personal purposes in *any* elephant product is only allowed for specimens older than 1975. However, these measures address the *importation* of these animal products into the country from overseas. They do not regulate the *domestic trade* within Australia in ivory or rhino horn. Though it is illegal to possess a specimen that was illegally imported into the country (ie is a specimen more recent than 1975), there is no requirement for domestic sellers to provide records of the products' origins or age, and there are no strict requirements for determining the age of important elephant material.

THERE'S NO IVORY OR HORN TRADE HERE... IS THERE?



A report published in 2016 by IFAW found that around 400 elephant and 24 rhino imports and exports have been confiscated by Australian authorities in the previous decade, indicating there is a demand for ivory items in Australia [8]. The report also details the findings of an investigation conducted by IFAW over a nine-month period in which it was found that 2,772 ivory items were for sale in 21 auction houses across Australia, with only 8% of items accompanied by documentation about their age and origin.

MOVING FORWARD

Organisations such as IFAW and WWF have called for domestic bans on the trade of ivory [3,8,9]. On 28 March 2018 the Australian Parliament launched an inquiry into the trade in elephant ivory and rhino horn [10]. The ADO made a written submission (#55), authored by Scott Dempsey who then gave evidence at the public hearing on 9 July 2018. In its report published in September 2018, the Inquiry Committee unanimously adopted the ADO's principal recommendation (p5):

"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."

At the time of writing, no government in Australia has taken steps towards initiating a ban. The Australian Labor Party ("ALP") committed to a ban in its 2022 election policy. As the ALP is now in Government, the ADO hopes steps will be taken towards implementing a ban.

DISCLAIMER

While all care has been taken in preparing the information on this fact sheet, it is not a substitute for legal advice. For any specific questions we recommend you seek legal advice. The Animal Defenders Office accepts no responsibility for any loss or damage suffered by people relying on the information on this fact sheet.

[1] Groch, S 2018 "Appalling": Photos emerge of Canberra developer posing trophy kill!, *Canberra Times*, 27 February, <<https://tinyurl.com/ye2359k5>>.

[2] BBC 2018, 'Northern white rhino: Last male Sudan dies in Kenya' at <https://www.bbc.com/news/world-africa-43468066>.

[3] <https://action.ifaw.org/page/39821/action/1?locale=en-AU>.

[4] IUCN 2021. *The IUCN Red List of Threatened Species*. Version 2021-3. <https://www.iucnredlist.org>; and <https://www.iucn.org/news/species/202103/african-elephant-species-now-endangered-and-critically-endangered-iucn-red-list>.

[5] <https://cites.org/eng>.

[6] CITES n.d. 'How CITES works', <<https://www.cites.org/eng/disc/how.php>>.

[7] *List of CITES Species - Declaration of a stricter domestic measure in accordance with section 303CB - Loxodonta Africana (African elephant)*, 20 March 2017; and <https://www.awe.gov.au/biosecurity-trade/wildlife-trade/cites/ivory-rhino-elephant-products>.

[8] IFAW 2016, 'Under the Hammer', Surrey Hills, NSW; <https://www.ifaw.org/au/projects/australia-wildlife-crime-prevention>.

[9] <https://www.worldwildlife.org/initiatives/stopping-elephant-ivory-demand>.

[10] https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Law_Enforcement/ElephantIvoryRhinoHorn.