

# Departmental Briefing

**In Confidence**

GS ref: 19-B-0035  
DOCCM: 5689065

**To:** Minister of Conservation      **Date:** 15 February 2019

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**Subject:** Options for regulating the domestic elephant ivory market

**Action sought:** Note options for regulating the elephant ivory market in New Zealand and agree to meet with officials to discuss the options and how they fit with your priorities for 2019.

**Time Frame:** By 15 March 2019

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<b>Risk Assessment:</b>	There is increasing public pressure for the government to regulate the domestic elephant ivory trade in New Zealand following other international examples.	<b>Department's Priority:</b>	Normal
		<b>Level of Risk:</b>	Medium

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## Contacts

Name and position	Cellphone	First contact	Principal author
Peter Brunt, Director Policy	9(2)(a)	✓	
Jeanne Barnard, Policy Advisor, Tourism and Economic Development			✓

## Executive summary – Whakarāpopoto ā Kaiwhakahaere

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1. This briefing asks you to note a range of possible options for regulating the sale of elephant ivory in New Zealand. It also asks you agree to meet with officials to discuss the options and how this issue fits into your priorities for 2019. Briefing 18-B-1374 (concerning the legislative bids) advised that we would provide you advice on options for regulating the domestic ivory market in early 2019. You have also previously requested advice on whether the recent UK regulation banning the domestic sale of ivory could be applied in New Zealand.
2. In 2016, Parties to the Convention on the International Trade of Wild Fauna and Flora (CITES) adopted a Decision recommending that countries in “whose jurisdiction 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 urgency”. While Convention Decisions are not binding, there is an expectation from the Parties to CITES that individual member states will implement Decisions. As a result, there has been increasing pressure on the New Zealand Government to ban the domestic trade of elephant ivory.
3. Some countries have banned the domestic trade in elephant ivory since 2016, including China, the USA, Taiwan, Hong Kong and France. The UK passed legislation in December 2018 to ban its domestic market for ivory, as well as the import and export of ivory, with exemptions. An Australian Parliamentary Inquiry has also recommended that Australia ban its domestic market for ivory, however there is no current indication that the Australian Government will implement a ban.
4. New Zealand’s market for ivory is relatively small, with the majority of items entering the country as personal household effects. Items are usually brought into the country when people relocate to New Zealand.
5. Options to regulate trade in elephant ivory in New Zealand are on a spectrum from low intervention (non-regulatory options) through to high intervention requiring new legislation:
  - Option 1 – Strategy to raise awareness and reduce demand for elephant ivory products
  - Option 2 – Work with ivory sellers to voluntarily stop selling elephant ivory items
  - Option 3 – Require provenance documentation for elephant ivory
  - Option 4 – Implement a total ban on domestic ivory trading
  - Option 5 – Ban domestic ivory trade with exemptions similar to the UK
  - Option 6 – Ban all import and export of elephant ivory
  - Option 7 – Ban the import and export of post-Convention ivory
6. The options are also summarised at **Appendix 1**. DOC’s initial recommendation is a combination of Options 1, 3 and 7 to progress work in this area. These options would not address calls for a domestic ban, but we consider that it would improve compliance, and better regulate the elephant ivory already being sold in New Zealand and ensure the ivory entering the country is pre-Convention. Other agencies would need to be consulted before these options could be implemented.
7. If the elephant ivory market is banned in New Zealand, DOC may not be the best government department to administer and implement the ban. As elephant ivory is only imported and is not linked to the conservation of our native species, it might be more appropriately monitored and enforced by another government agency. Extra funding would be required to implement any of the options.

8. It is likely the Government will face criticism regardless of which options are pursued, as any one of the options is likely to be seen as negatively affecting certain stakeholders interested in this issue. The Government will also continue to receive pressure to ban the domestic market. Clear messaging from the Government of its intent around this issue would be useful to mitigate this. Other risks include that the cost of regulation may outweigh any conservation benefit, and that banning the domestic market for elephant ivory could drive it underground.

**We recommend that you (Nga Tohutohu) –**

	Decision
(a) <u>Note</u> there is increasing pressure internationally and domestically to regulate the domestic elephant ivory market in New Zealand.	Note
(b) <u>Note</u> the options to regulate elephant ivory outlined in this briefing and at Appendix 1	Note
(c) <u>Note</u> DOC's initial recommendation is to progress Options 1, 3 and 7	Note
(d) <u>Note</u> all options would require additional resources to be implemented	Note
(e) <u>Agree</u> to meet with officials to discuss the options and how it fits into your priorities for 2019	Yes / No

9(2)(a)

Peter Brunt  
Director Policy

Hon. Eugenie Sage  
Minister of Conservation

## **Purpose – Te Pūtake**

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1. This briefing asks you to note a range of possible options for regulating the sale of elephant ivory (referred to as ivory for the remainder of this briefing). It also asks you agree to meet with officials to discuss the options and how this work fits into your priorities for 2019.
2. Briefing 18-B-1374 (concerning the legislative bids) advised that we would provide you advice on options for regulating the domestic ivory market in early 2019. You have also previously requested advice on whether the recent UK regulation banning the domestic sale of ivory could be applied in New Zealand. This is addressed in the options provided.

## **Background and context – Te Horopaki**

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3. New Zealand is a Party to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). CITES is implemented in New Zealand through the Trade in Endangered Species Act 1989 (TIES Act).
4. In recognition that they are threatened with extinction, the African Elephant (except for certain populations) and the Asian Elephant are listed on CITES Appendix I, which affords a species the highest level of protection under CITES.
5. The TIES Act protects CITES Appendix I species by listing them in its “Schedule 1”. Schedule 1 of the TIES Act provides for strict permitting measures, aimed at reducing the risk of international trade threatening their survival in the wild.
6. Under the current compliance regime, ivory can be sold within New Zealand. The import and export of ivory for personal use is possible with CITES permits/certificates. This includes hunting trophies and registered raw ivory listed under Appendix II from four countries – Namibia, Botswana, South Africa and Zimbabwe. Export and import for commercial purposes (except for pre-Convention specimens) is not allowed.
7. The TIES Act has not been amended since its enactment. There are some issues with the TIES Act, including internal inconsistencies, unclear processes and errors. There are also inconsistencies with CITES and with modern practice. These issues risk operational inefficiency, inability to implement our obligations under CITES and unfair outcomes. A legislative bid for the TIES Act was submitted in November 2018 as Category 5 (drafting instructions to be given to Parliamentary Counsel within the year).

### ***Increased elephant poaching has resulted in mounting pressure to regulate domestic ivory markets***

8. Despite the measures outlined in CITES, trade in ivory and elephant poaching has increased, with some African elephants being poached at a higher rate than the population is growing. For example, the population of savannah elephants have declined by an estimated 144,000 from 2007 to 2014, with the rate of decline reaching 8% per year<sup>1</sup>.
9. There is no requirement under CITES to regulate domestic trade in ivory. However, in 2016, CITES Parties adopted a Decision recommending that countries in “whose jurisdiction 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 urgency”<sup>2</sup>. This Decision reflects growing recognition of the role that domestic commercial trade plays in the poaching and decimation of elephant populations.

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<sup>1</sup>Chase MJ, Schlossberg S, Griffin CR, Bouché PJC, Djene SW, Elkan PW, Ferreira S, Grossman F, Kohi EM, Landen K, Omondi P, Peltier A, Selier SAJ, Sutcliffe R. 2016. Continent-wide survey reveals massive decline in African savannah elephants. <https://doi.org/10.7717/peerj.23541>

<sup>2</sup> The Decision concerning the regulation of domestic ivory is Resolution Conf. 10.10 (Rev.CoP17)

10. While Convention Decisions are not binding on Parties, there is an expectation that Parties will implement Decisions. As a result, there has been increasing pressure on the New Zealand Government to ban the domestic trade of ivory. Fiona Gordon has written to you on this subject a number of times and met with you in February 2018 [brief 18-B-0100 refers]. On 4 October 2018 Fiona Gordon wrote an open letter to the Government from the Jane Goodall Foundation requesting a ban on the domestic sale of ivory. The letter was co-signed by the Right Honourable Helen Clark and Sir Stephen Tindall and had the support of numerous conservation organisations, including Greenpeace, Forest and Bird NZ, Humane Society International, International Fund for Animal Welfare, Save the Elephants and the SPCA. [18-A-0493 refers].
11. Calls to regulate domestic ivory markets were reiterated at the London Conference on Illegal Wildlife Trade in October last year. This issue is likely to be raised again at the CITES Conference of the Parties 18 being held in Sri Lanka from 23 May to 3 June 2019. The meeting agenda includes an item on implementing the CITES Decision on the closure of domestic markets for ivory.

***New Zealand's ivory market is relatively small***

12. The majority of ivory items legally entering and leaving New Zealand are classified as personal or household effects and are pre-Convention, which means the ivory was acquired, taken from the wild or born in captivity prior to the species being listed as protected under the Convention in 1975. Common examples of these items are pianos, bagpipes, chess sets, mahjong sets and small carvings. Pre-Convention items require a pre-Convention certificate, rather than a permit under the TIES Act and CITES.
13. Since New Zealand became a party to CITES, there has only been two known cases of illegal ivory smuggled for commercial purposes. In both cases convictions were made under the TIES Act. However, the Department acknowledges that it is relatively easy for items to be smuggled across the border undetected.
14. Between 2008 and 2017, there were 239 instances i.e. permits issued for the legal importation of ivory into New Zealand. The vast majority of items imported were pre-Convention. The number of ivory imports increased over the last decade as shown in Table 1 below.

Year	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017
Instances	9	9	25	2	12	14	55	27	59	27

*Table 1 - Increasing trend in instances of ivory being imported over the last decade*

15. Over the same time period, 69 ivory items were confiscated at the border for not having a permit or a pre-Convention certificate. Out of the 69 instances, 67 related to specimens being imported for personal use. In the majority of these cases, importers were unaware of New Zealand's permit and pre-Convention certificate requirements.
16. The increase in ivory imports between 2008 and 2017 could be linked to the general increase in immigration to New Zealand. As we do not track domestic sales of ivory, we do not know whether an increase in ivory being imported has led to more domestic sales. If a piece of ivory is imported for personal use, it can be sold on the domestic market later.
17. While increasing, the number of ivory items being imported into New Zealand are still comparatively small. Given the low volume, the Department does not consider that New Zealand is significantly contributing to the illegal ivory trade.

***Ivory items are primarily sold through auction houses and online retailers***

18. New Zealand domestic ivory sales are usually through auction houses or online market places. Discussions with some of the bigger auction houses suggest that there is no specific trend in ivory items coming up for sale, but it is common to have ivory items (or items containing ivory) at auctions. Most ivory items in auctions are pre-Convention.

19. The largest market for ivory items is in Auckland, likely due to being the largest population centre in New Zealand. There are a small number of second-hand traders who purchase carvings in Wellington and Dunedin and then resell them at auctions in Auckland due to the larger market.
20. In 2014 Trade Me voluntarily banned the sale of all Appendix I CITES species listed on its website, with the exception of pianos and bagpipes containing elephant ivory which were manufactured before 1975. eBay implemented a global ban on ivory sales on their platform in 2008.

### **Some countries are regulating their domestic ivory markets**

21. A number of countries are regulating domestic ivory trade, including the UK, China, the USA, Taiwan, Hong Kong and France. Regulating trade is seen as making a statement that the poaching of ivory is not condoned and is seen to help remove the financial value of ivory, and many countries consider regulation is justified on moral/ethical grounds.

### ***The UK Ivory Act 2018 bans the domestic sale, import and export of ivory***

22. The UK passed legislation in December 2018 to enact a ban on the sale of ivory in its domestic market, as well as the import and export of elephant ivory. The Ivory Act 2018 will come into force in late 2019.
23. In global terms the UK ivory market is large, and the UK is one of the world's largest exporters of legal ivory. Whilst most of the UK's ivory trade is legal, the UK has featured in several analyses of ivory seizures by CITES since 2002, which suggests that the UK has consistently played a role in the illegal ivory trade globally. The UK has also been listed as a transit destination for ivory going elsewhere.
24. The UK's Ivory Act 2018 is now seen as one of the strictest regimes in the world for regulating trading elephant ivory. The Act bans domestic sales of ivory in the UK with the objective of:
  - removing the financial value from ivory;
  - reducing the opportunity for new ivory to be laundered through legal markets;
  - significantly reducing the flow of ivory from the UK to overseas markets, especially in East Asia, where demand for ivory is strongest;
  - sending a clear message to the rest of the world that the UK no longer considers ivory to be an acceptable commodity; and
  - international leadership, encouraging other countries to take similar actions.
25. There are five categories of exemptions in the Ivory Act:
  - *A de minimis* exemption, which exempts items with a volume of less than 10% ivory and were made prior to 1947.
  - Musical instruments with any ivory content less than 20% which were made prior to 1975. It is argued that this will cover the majority of commonly used and traded instruments and accessories, such as pianos and violin bows.
  - Portrait miniatures produced prior to 1918. These items are in a distinct category, which the British Government argues will not fuel, directly or indirectly, the continued poaching of elephants.
  - The rarest and most important items of their type will be exempt. Items have to be made prior to 1918 and would be assessed by an independent advisory institution to confirm the item is eligible for the exemption. As the items are valued for the artistic, cultural or historical value rather than its ivory content, the Act claims it will not fuel poaching of elephants.

- Sales of ivory items between accredited museums.
26. To reduce compliance costs the UK Ivory Act will introduce a user-pays IT based compliance/enforcement system which requires a seller to register and provide evidence of compliance with the exemptions. Spot checks are to be carried out by enforcement staff.
  27. The Department is happy to seek advice from our counterparts in the UK to further understand processes around the implementation of the Ivory Act 2018.

***An Australian Parliamentary Inquiry has recommended banning domestic ivory trade***

28. A Parliamentary Inquiry by the Australian Government reported back in September 2018, recommending that Australia ban the domestic trade in ivory. The recommendations suggest that by not regulating its domestic market, Australia risks criminal organisations exploiting its weaker control frameworks, and continued facilitations of the illegal trade in ivory through the domestic market. The recommendations also note that a domestic trade ban would ensure Australia takes a leadership role in tackling illegal wildlife trafficking and add significant weight toward shutting down illegal trade in elephant ivory internationally.
29. The Inquiry recommended the following exemptions, largely based on the UK legislation:
  - 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 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.
30. The Inquiry also recommended that as part of the domestic ban, the Government strengthens compliance measures, enforcement, and offences related to the selling of ivory. A transitional period was also recommended where those in possession of ivory items can sell them before the ban comes into force.
31. The Department of the Environment and Energy (DoEE), the designated CITES Management Authority for Australia, advised the Inquiry that the CITES Decision recommending Parties ban their domestic markets does not apply to Australia. The DoEE considers that the small size of Australia's domestic ivory market does not contribute to the illegal poaching of elephants.
32. The Inquiry acknowledged the DoEE's position, however, it considered that 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 of the extent of illegal trade within Australia.
33. Our Australian counterparts have noted that a domestic ban in Australia would be challenging due to its federal and state government structure. We understand that the Australian Federal Government currently has no plans to ban the domestic ivory trade.

**Options for regulating the domestic market for elephant ivory**

34. There are different options for regulating the domestic ivory market in New Zealand on a spectrum from low intervention (non-regulatory options) through to high intervention requiring new legislation. These are addressed below and summarised at **Appendix 1**.

DOC would like to meet with you to discuss these options and where this work fits within your priorities for 2019.

### **Status Quo**

35. The domestic trade in ivory is not currently regulated. Imports and exports of ivory are regulated under the TIES Act. To implement the TIES Act, imports into New Zealand are inspected by the Ministry for Primary Industries (MPI) and/or the New Zealand Customs Service (Customs). Any CITES-listed item being imported without a permit is seized and passed to DOC.
36. Requirements for importing ivory are clearly displayed on DOC's website and training is provided to Customs and MPI staff to ensure ivory is identified and processed appropriately. This system has seen two successful prosecutions of New Zealanders illegally importing ivory for on-sale. The passing of the Conservation (Infringement Systems) Act 2018 will also provide an additional tool to respond to the instances where ivory is imported illegally by giving DOC the ability to issue infringement fines.
37. The current regime is comparatively low-cost, in terms of compliance and enforcement resources. It is also relatively easy to understand the restrictions and requirements around importing and exporting ivory, with few exceptions and exclusions in place. Under current regime the sale of ivory is visible, and this makes it easy to track if there are concerns it may have entered NZ illegally.
38. Currently one FTE is dedicated to CITES enforcement work nationally, and four and a half FTE are involved CITES permitting, seizures, training and management. As current staffing for monitoring trade in ivory in New Zealand is relatively small, there is a risk that illegal ivory items may be overlooked. Ivory items are a small part of the unpermitted trade in CITES listed products.

### **Option 1 – Strategy to raise awareness and reduce demand**

39. DOC could implement a strategy to raise awareness of the requirements of CITES and the TIES Act for New Zealanders travelling abroad, as well as people relocating to New Zealand. As different jurisdictions vary in how CITES is implemented through domestic legislation, the importing and exporting permitting requirements for CITES-listed specimens can be confusing.
40. CITES also encourages Parties to develop demand reduction strategies to curb illegal trade. Demand reduction is increasingly seen as a viable strategy to address the illegal trade in wildlife. A demand reduction strategy could also work to decrease demand for domestic ivory sales through auctions and online trading sites. Providing information can discourage people from wanting to buy ivory. Countries like China are implementing demand reduction strategies to try and decrease the demand for ivory items in conjunction with domestic bans.
41. Raising awareness of CITES requirements around ivory could help reduce the number of seizures at the border by educating people on the consequences of buying ivory items and then proceeding to enter New Zealand without CITES permit(s). The majority of illegal ivory imports are associated with household moves where importers are unaware of CITES permitting requirements. International moving companies and their potential clients could be the focus of a demand reduction strategy.
42. The strategy could also deter people travelling to Africa and Asia from bringing ivory souvenirs back, however the importation of ivory souvenirs into New Zealand is not common. Only three cases of ivory souvenirs being imported was referred to DOC's Principal Compliance Officers in 2018.
43. This option would require extra resources to design and implement the strategy, including communications, outreach, marketing and design support. The strategy would also need to engage with international companies and other jurisdictions to ensure



information reaches those travelling or relocating to New Zealand. We consider one further FTE would be required for this work, with a cost of up to \$200,000 in year one (\$100,000 for salary, travel and overheads, and \$100,000 for communications and marketing costs). This would reduce to \$120,000 per annum after the system embeds.

44. Given the numbers of ivory importations to New Zealand are relatively small and we do not know the size of the domestic ivory market, the cost of this option may be greater than the benefits. This option is unlikely to meet the expectations of those stakeholders who are seeking that the Government ban or regulate the domestic ivory market.
45. This option would not implement the Parties to the Convention Decision to ban domestic ivory markets and will not address the expectations of stakeholders seeking that the Government ban or regulate the domestic ivory market.

#### ***Option 2 – Work with ivory sellers to voluntarily stop selling ivory items***

46. The Government could work with auction houses, antique dealers and second-hand sellers to encourage them to stop selling items made of ivory or containing ivory on a voluntary basis. The Auctioneers Association of New Zealand Inc, the industry body for auction houses, lists 41 auctioneering companies as members. DOC's CITES Enforcement Officer already has a good relationship with some of the bigger auction houses, and we could build on these relationships to work with the sector to implement a voluntary ban. As mentioned earlier, Trade Me has already banned the sale of CITES Appendix I listed species on its website (with some exceptions).
47. The benefit of this option is that it could decrease the number of organisations selling ivory without the need for regulation and associated costs.
48. This option would require dedicated staff to continuously work with and monitor organisations that sell ivory items. Approximately two FTE would be required in year one at a cost of roughly \$200,000(including overheads), dropping to one FTE at a cost of \$120,000 in year three.
49. While some states in Australia have implemented a similar strategy, the Australian Ivory Inquiry did not consider this approach to be adequate and still recommended a regulatory ban. This option is unlikely to meet the expectations of those stakeholders who are seeking that the Government ban or regulate the domestic ivory market. And would not implement the Parties to the Convention Decision to ban domestic ivory markets.

#### ***Option 3 - Require provenance documentation for ivory***

50. The Department could make regulations to enable Warranted Officers to require sellers of ivory items to produce provenance documentation. The Trade in Endangered Species Regulations 1991 already provides for a similar process for some species of parrots.
51. This option would enable Warranted Officers to require documentation for any item of ivory that is being sold. It would also enable them to do spot checks at auction houses and other sellers of ivory to ensure proper documentation is held for items being sold at auctions.
52. Requiring provenance documentation for sales would help ensure that ivory being sold in New Zealand has legally entered the country. It would not necessarily decrease the amount of ivory being put up for sale, but it would make it easier to ensure the legality of ivory being sold in New Zealand.
53. To implement this option the Trade in Endangered Species Regulations 1991 would need to be amended. This would require policy resources at DOC and additional compliance resources to make use of the new power to demand provenance documentation. Up to two further FTEs warranted under the TIES Act would be required to implement this option, with a cost of approximately \$150,000 on an ongoing basis (including overheads), with an additional \$50,000 for communications support.

54. This option would not implement the Parties to the Convention Decision to ban domestic ivory markets and will not address the expectations of stakeholders seeking that the Government ban or regulate the domestic ivory market.

**Option 4 – Implement a total ban on domestic ivory trading**

55. This option would ban the sale of any ivory items or items containing ivory in New Zealand. It is hard to estimate what the impact of a ban would be as we currently do not collect any data on the size of the domestic ivory market. We do know anecdotally that most auctions have ivory items on sale, therefore it is likely that the ban would have a considerable effect on auction houses.
56. A full ban with no exemptions would make the compliance regime simpler, however this could raise issues around people who inherit antiques containing ivory who would like to sell the items. It would also affect museums and galleries which often acquire collections that contain pieces of ivory. It would also have considerable implications for the music industry. Many instruments contain ivory or have ivory inlays, and these items would not be able to be sold under this option.
57. As mentioned earlier, it is unlikely that banning the domestic ivory trade in New Zealand would have a measurable effect on the conservation of elephants due to the small size of the market. The driver for a ban would therefore not be conserving elephants, but rather making a statement that New Zealand considers the sale of ivory to be morally wrong. By banning the domestic ivory market, the Government would be sending a strong message that New Zealand does not consider ivory to be an acceptable commercial object.
58. Banning the domestic trade in ivory would have high resourcing implications. If a ban were to be implemented, new resources would be required to set up a compliance regime. Depending on the design of the system, the ban could be incorporated into existing systems that already monitor the sale of prohibited items. DOC has no such systems in place.
59. If the ban were to be administered by DOC, additional IT resources and compliance officers would be required to implement the ban. Up to four additional FTEs would be required for initial set up of the new compliance system, plus communications and IT costs. After the first two years two FTE would be required as the system embeds. Initial costs could be up to \$700,000 in the first year, which includes \$300,000 for staff, \$100,000 for communications and \$300,000 for IT.
60. Implementing a ban would also require cross-agency work with other agencies such as the Police, Ministry of Culture and Heritage and Ministry of Business, Innovation and Employment.
61. There are no legislative tools under the TIES Act to ban the domestic trade in ivory. Therefore, this option would have to be implemented by:
- amending the TIES Act to provide for the ban; or
  - amending the TIES Act to allow regulations to be promulgated which implement the ban; or
  - passing new legislation.
62. All of these legislative mechanisms will require policy and Parliamentary resources. New legislation is likely to be required should an agency other than DOC implement the ban.
63. A legislative bid for the TIES Act was submitted in November 2018 as Category 5 (drafting instructions to be given to Parliamentary Counsel within the year). One of the proposed changes in the bid was to make amendments to enable regulations to be promulgated which regulate the domestic trade of endangered species. We are yet to be informed about whether the TIES Act is on the legislative programme for 2019.

64. As the TIES Act regulates the international trade of species, it may be considered inappropriate for the Act to be used to regulate the domestic market. Other consumer and trade related legislation would also be explored to determine how a ban would best be implemented.
65. This option would be costly, however, it would implement the Decision by the Parties to Convention to close domestic markets for ivory. It would address the expectations of stakeholders seeking that the Government ban or regulate the domestic ivory market. It would not affect the import regime.

**Option 5 - Ban domestic ivory trade with exemptions**

66. The domestic trade in ivory could be banned with exemptions along the lines of the UK Ivory Act 2018. The exemptions listed in the UK's legislation are regarded as best practice internationally. If New Zealand were to have exemptions, we could use the UK model. There may be some exemptions that do not apply to New Zealand, for example portrait miniatures (UK exemptions are listed at paragraph 23). Any exemptions would be put to the public through a discussion document.
67. The benefit of having exemptions similar to the UK's is that it would allow the continued sale of items that are valued for attributes other than that it contains ivory, such as musical instruments, ornaments and furniture with ivory inlays. Museums and galleries are particularly in favour of exemptions, as cultural and antique items that museums acquire for exhibitions can contain ivory. This model could however also increase the value of ivory in a counter-productive way by increasing illegal trade.
68. Following the UK model for exemptions would increase the complexity of the compliance regime and cost more than Option four, at roughly \$1 million per annum. Those involved in implementing the ban would need to receive training to ensure exemptions are being applied consistently. This would raise compliance costs.
69. The UK will be setting up a database of registered sellers of ivory. It will operate on a cost recovery basis by charging sellers a fee. The number of UK organisations interested in continuing to sell items containing ivory is much larger than New Zealand's, so it would be unlikely that New Zealand could entirely fund its own compliance system through a fee charging cost-recovery system.
70. As for Option Four, legislative changes would need to be considered for this option, i.e. amending the TIES Act to enable the ban, amending the TIES Act to allow for the creation of regulations that enable the ban, or passing new legislation. The new legislation option may be needed should an agency other than DOC administer the regime.
71. This option would be costly but would address the expectations of stakeholders seeking that the Government ban or regulate the domestic ivory market and would implement the Parties to the Convention Decision to ban domestic ivory markets. It would not affect the import regime.

**Option 6 - Ban import and export of elephant ivory with exemptions**

72. The UK Ivory Act 2018 also bans the import and export of ivory items with the same exemptions applied as for domestic sales. This option could be implemented alongside a domestic ban in New Zealand or as a stand-alone option.
73. Banning the import of ivory could have the desired effect of shrinking the domestic market for ivory, as no new items would enter. However, this could also inflate prices and lead to growth in the domestic illegal market if the demand for ivory remains.
74. Issues around importing and exporting items for museum exhibitions would need to be considered, as well as people who are relocating to and from New Zealand who have personal household effects made of or containing ivory. To address this, similar exemptions to the UK may need to be put in place.

75. The import and export of ivory is already monitored through a compliance regime under the TIES Act. The TIES Act would have to be amended to give effect to any new regime for ivory.
76. Depending on the complexities of the exemptions, specialist training of MPI and Customs officials would be required to implement any bans on import and export of ivory. This would cost approximately \$60,000 per annum. It is also likely that additional Customs FTEs would be required on the border to implement the exemptions regime and ensure they are applied consistently. Communications to support the changes would cost approximately \$100,000 per annum for three years.
77. DOC would also need to consult with Customs, MPI and the Ministry of Foreign Affairs and Trade (MFAT) on any proposed changes to the import and export of goods to and from New Zealand.
78. This option would not implement the Parties to the Convention Decision to ban domestic ivory markets and will not address the expectations of stakeholders seeking that the Government ban or regulate the domestic ivory market.

***Option 7 – Ban the import and export of post-Convention ivory***

79. This option would ban the import and export of any ivory that is post-Convention. As the majority of ivory imported and exporting from New Zealand is pre-Convention, the option would mainly affect hunting trophies. Since 1985, there have been 73 instances of hunting trophies being legally imported into New Zealand. Hunting trophies are primarily imported from South Africa, Namibia, Botswana and Zimbabwe, where it is legal to hunt elephants and the elephants are listed on Appendix II of CITES. One instance of ivory being imported as hunting trophies included 108kg of raw tusks.
80. Post-Convention ivory items are made from ivory harvested after the species was listed on CITES Appendices, i.e. 1975 for African elephants and 1976 for Asian Elephants. By banning the importation of post-Convention ivory, the government would be making a clear statement that it does not support the hunting of elephants to create new ivory items.
81. This option would require an amendment to the TIES Act to ban the import of post-Convention ivory, as currently post-Convention ivory can be imported if accompanied by a permit. Banning post-Convention ivory could be incorporated at little cost into the existing compliance regime at the border, with initial communication costs of approximately \$75,000 per annum for three years. Australia currently has a ban on the importation of post-Convention ivory.
82. This option would require discussions with the Ministry of Foreign Affairs and Trade as it has implications for relationships with other countries and involves changes to imports. It would not implement the Parties to the Convention Decision to ban domestic ivory markets and will not address the expectations of stakeholders seeking that the Government ban or regulate the domestic ivory market.

***The Department recommends a combination of Options One, Three and Seven.***

83. Due to the relatively small size of New Zealand's ivory market, the Department considers the costs outweigh the benefits of banning the domestic sale of ivory. DOC does not consider that the domestic ivory market in New Zealand is driving the poaching or illegal trade in ivory.
84. DOC's initial recommendation would be to implement a combination of Options 1, 3 and 7. Ensuring people are aware of the permitting requirements for bringing CITES listed species into New Zealand would lead to more compliance and fewer items being seized at the border.
85. Combining a demand reduction strategy with the requirement to provide provenance documentation and banning the import and export of post-Convention ivory into New

Zealand provide assurance that ivory that is being sold in New Zealand was imported legally and ensures that no ivory entering New Zealand was harvested from an elephant that was killed after 1975.

86. The combined cost of implementing these three options is approximately \$475,000 in the first year, with costs decreasing over time as the system embeds. This combination of options would need to be consulted on with other agencies including Customs, MFAT, Ministry of Business, Innovation and Employment (MBIE) and other appropriate agencies.
87. This combination of options will not address the calls to ban the domestic ivory market, but we consider the combination is an appropriate and measured response based on the data available.

#### **Other government departments may be better placed to implement a ban**

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88. If the ivory market is banned in New Zealand, DOC may not be the best government department to administer and implement the ban. As elephant ivory can only be imported and is not linked to the conservation of our native species, it might be more appropriately monitored and enforced by another government agency.
89. Other government departments, such as Consumer Protection within MBIE or MPI may be better set up to implement a ban on the domestic sale of a product. Both departments already have systems and processes in place to monitor the domestic sales market for other items. The Department awaits your guidance before consulting with other agencies.

#### **Treaty principles (section 4) – Nga mātāpono o te Tiriti (section 4)**

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90. As these options only relate to elephant ivory, we consider there to be no Treaty implications.

#### **Financial implications**

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91. All the options would require additional funding and resources to implement, whether by DOC or another agency.

#### **Risk assessment – Nga Whakatūpatō**

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92. It is likely the Government will face criticism regardless of which options are pursued, as any one of the options is likely to be seen as negatively affecting certain stakeholders interested in this issue. The Government will also continue to receive pressure to ban the domestic market. Clear messaging from the Government of its intent around this issue would be useful to mitigate this.
93. Given the domestic ivory market is relatively small the cost of regulation is likely to outweigh the real conservation benefit. It is useful to recognise, however, that other countries have seen this in part as an ethical and geopolitical issue and the international conservation movement.
94. There is also a risk that regulating the domestic ivory market in New Zealand could drive it underground. Considering the size of the New Zealand market, domestic regulation could result in a highly expensive and complex regulatory system without any impact on the conservation of elephants.

#### **Consultation – Kōrero whakawhiti**

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95. No consultation with the public or stakeholders has taken place. Once a preferred option or combination of options has been identified, we will consult on options as appropriate.

96. Any changes to compliance regimes would need to be discussed with other agencies, particularly with Customs, MPI, and MBIE. MFAT would need to be consulted on any changes to the import/export of goods.

**Next steps – Nga Tāwhaitanga**

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97. You are asked to agree to meet with DOC to discuss these options and how the work fits within your priorities for 2019.

**Attachments – Nga Tāpiritanga**

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98. A table outlining impacts of each option is attached at **Appendix 1**.

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ENDS

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Option	Description	Cost*	Benefit	Regulations/Legislation required	Social implications
Status Quo	Ivory can be sold within NZ. Import and export of ivory for personal use is possible with CITES permits/certificates. This includes hunting trophies and registered raw ivory listed under Appendix II from four countries – Namibia, Botswana, South Africa and Zimbabwe. Export and import for commercial purposes (with the exception of export of pre-Convention specimens) is <u>not</u> allowed.	Currently three and a half permanent FTEs are working on CITES. There is also one FTE (contract) CITES officer; one FTE Principal Compliance Officer, and 0.5 of a Manager.	Allows personal and household effects to be imported and exported.	None	Ivory would still be entering New Zealand, and may be on-sold, which contributes to the domestic market. As current staffing for monitoring trade in ivory in New Zealand is relatively small, there is a risk that illegal elephant ivory items may be overlooked.  Under current regime the sale of ivory is visible, and this makes it easy to track if there are concerns it may have entered NZ illegally.  Continued public pressure if no further action is taken in this space.
1 – Demand reduction strategy	Demand reduction strategy to raise awareness of NZ CITES requirements, reducing demand for ivory products being imported and sold domestically	One additional FTE to set up set up and maintain outreach, plus a budget for outsourcing design and marketing support in year one. Up to \$200,000, \$120,000 thereafter.	Would raise awareness of NZ permit requirements for importing and exporting ivory, and aim to reduce the demand for ivory products and shrink the NZ market	None	Increased awareness about NZ permit requirements  Unlikely to address the expectations of stakeholders seeking a ban on domestic ivory sales
2 – Work with auction houses, antique dealers and second-hand dealers	Work with auction houses, antique dealers and second-hand sellers in NZ to encourage a voluntary end to ivory sales	Would require approximately two extra FTEs in year one to work with and monitor sellers on an ongoing basis with a cost of up to \$200,000, dropping to \$120,000 in year three. Could also lead to inflating prices of ivory if only a few auction houses still sell them	It could decrease the amount of ivory being sold on the NZ domestic market. It would also make auction houses take the lead on devaluing the ivory market in NZ.	None	Would provide consumers a choice to purchase items only from auction houses, antique dealers and second-hand sellers that no longer sell ivory.  Unlikely to address the expectations of stakeholders seeking a ban on domestic ivory sales
3 – Requirement to provide provenance documentation	Enable warranted officers to require provenance documentation for any ivory being sold in NZ	Would potentially require one to two additional CITES warranted officers (approx. \$150,000) to make use of the ability to demand provenance documentation, plus \$50,000 in communication costs per annum. There would be a cost to sellers to ensure they have provenance documentation available for items they are selling	Would provide an avenue to ensure that ivory being sold in NZ has been imported legally	Amendment to the Trade in Endangered Species Regulations 1991	Assurance that ivory that is being sold has legally entered the country  Unlikely to address expectations of stakeholders seeking a ban on domestic ivory sales
4 – Total ban on domestic ivory market	Ban the sale of any ivory item or items containing ivory, regardless of age	This would have high cost implications (\$700,000 in year one) as a new compliance system would need to be set up to administer the regime. Up to four additional FTE would be required for initial set up of the regime, plus communications and new IT systems. After the first two years, two FTE would be required as the system embeds. Alternatively, the ban could be incorporated into regimes administered by other agencies that police the sale of prohibited items.	A complete ban would be simpler to administer, and best devalue ivory as a commercial commodity in NZ  Would implement Parties to Convention Decision  Would not affect the import regime	Amendment to the Trade and Endangered Species Act 1989 or new legislation or regulations	Would affect the sale of antique items and art between museums and galleries. Family antiques would no longer be able to be sold. It would also provide assurance that items made from an endangered species is not being sold in NZ, addressing the ethical issue  This would also have a substantial effect on the music industry as many instruments contain ivory. Under this option, selling these instruments would be banned.

5 – Ban domestic ivory market with exemptions (preferred option if a ban is agreed)	Ban the domestic sale of ivory items and items containing ivory, but with exemptions similar to those implemented in the UK legislation	High in cost at approximately \$1 million per annum. Costs are similar to option 4, but with a more complicated compliance regime due to the addition of exemptions. Would require a database of registered sellers to ensure only items that fall within the exemptions are sold.	Would still devalue ivory item and ban any items that are solely made of ivory. Would allow items such as musical instruments or furniture with ivory inlays to still be sold. Would be supported by the museums and antiques sector. Would not effect import regime.  Would implement Parties to Convention Decision	Amendment to the Trade and Endangered Species Act 1989 or new legislation or regulations	It would provide assurance that items made from an endangered species are not being sold in NZ, except for very specific cases where the item is not valued for its ivory content
6 – Ban import and export of ivory with exemptions	Similar to the UK, would ban the import and export of any ivory items, with exemptions	A ban on import/export could be incorporated into current border control regimes. If exemptions are put in place, extra training for border staff would be required to ensure exemptions are being applied consistently. Initial communications costs to DOC of \$100,000 per annum for three years. Costs of \$60,000 once ban embeds.	Would mean no new ivory would be entering NZ, except for items exempted, which would mean less to no growth in the ivory market in NZ. Banning exporting would also mean NZ is not contributing to the growth in other domestic ivory markets	Amendment to the Trade and Endangered Species Act 1989	Could have an impact on people moving to or from NZ who want to take their ivory antiques/family heirlooms with them  Does not address the call for banning the domestic ivory market  International implications possible and would need to consult with MFAT.
7 – Ban import and export of post-Convention ivory	Ban the import and export of post-convention ivory. This would mainly affect hunting trophies, as the majority of ivory items imported and exported from NZ are pre-Convention.	A ban on importing/exporting post-Convention ivory could be incorporated into existing border control regimes. Communication costs of \$75,000 per annum for three years.	A clear statement that the government does not support the trade in ivory that led to the recent killing of an elephant after 1975 (as per CITES convention).	Amendment to the Trade and Endangered Species Act 1989	No ivory harvested from an elephant killed after 1975 could enter NZ  Does not address the call for banning the domestic ivory market  International implications possible and would need to consult with MFAT.

\*Please note costs are only estimations at this time, and more detailed costings will be done depending on preferred options.

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