

Statutory Interpretation Exercise

In 1990, the Christchurch Museum arranges with a leading museum in Australia to take on perpetual loan a reconstruction of a moa in the possession of the Australian museum. The bones used to reconstruct the creature are all moa bones. The feather covering is made from feathers from a variety of birds currently living in the wild in Australia. The Christchurch Museum receives the reconstruction from Australia but does not put it on display straight away. As the millennium approaches, the Christchurch Museum decides to make the reconstructed moa the centre-piece of a special exhibition. It announces this in May 1999 and states that the exhibition will start in December 1999. As soon as it makes the announcement, the museum applies to the Minister of Customs for a licence pursuant to the Endangered Species Act 1999. The Minister refuses the licence and, within days of the refusal, Customs officers call at the museum and seize the reconstructed moa. The museum is then prosecuted under s 5 of the Endangered Species Act 1999.

Advise the Christchurch Museum.

Q1 Read the (fictitious) Endangered Species Act 1999 and then answer the questions (a) – (e) which follow it. The government of New Zealand, having become alarmed about the threat of extinction to much of the world's wildlife, passes the Endangered Species Act 1999. The Minister of Customs, on introducing the legislation into Parliament, states the following in Parliament:

“This legislation will help to protect the world's wildlife by controlling the importation of wildlife and wildlife products into New Zealand and by imposing harsh penalties on those who attempt to make profits from this trade in endangered species.”

ENDANGERED SPECIES ACT 1999

An Act to help protect endangered species of wildlife.

1. **Short title and commencement** – (1) This Act may be cited as the Endangered Species Act 1999.
(2) This Act shall come into force on 1st April 1999.
2. **Interpretation** – In this Act, unless the context otherwise requires, -
“Import” means bring in to New Zealand from another state;
“Licence” means a licence granted pursuant to this Act;
“Wildlife” means any animal living in its natural habitat;
“Wildlife products” means:
(a) anything made from any part of the body of any animal defined as wildlife under this Act;
(b) anything made from the body covering of any animal defined as wildlife under this Act including skin, fur, hair and any other kind of body covering whatsoever.
3. **Purpose** – The purpose of this Act is to help protect endangered species of wildlife by prohibiting the trade in such wildlife and in wildlife products.
4. **Importation** – It is an offence to import into New Zealand wildlife and wildlife products without first obtaining from the Minister of Customs a licence for importation issued pursuant to the terms of this Act.
5. **Possession** – It is an offence for any person to be in possession of wildlife or wildlife products in New Zealand unless such person has obtained from the Minister of Customs a licence for possession issued pursuant to the terms of this Act.
6. **Decisions of Minister of Customs not to be questioned** – Other than on the ground of lack of jurisdiction, no order, approval, proceeding or decision of the Minister of Customs under this Act shall be liable to be challenged, reviewed, quashed or called in question in any court.
7. **Search and seizure** – The Minister of Customs is hereby empowered to authorise Customs officers to enter any premises and seize anything found there relevant to the matters dealt with in this Act.

The remaining provisions of the Act set out penalties and the procedure for obtaining licences.

TURN OVER

Answer all questions (a) – (e) which follow and give reasons for your answers.

- (a) Smith purchases a snakeskin belt for his own use by way of mail order from Taiwan. The seller in Taiwan farms snakes specifically for the purpose of using their skins in the manufacture of clothing accessories which are then sold to the general public. The breeding programme at the snake farm has been so successful that the number of snakes has multiplied dramatically. Smith does not have an import licence for the belt under the Endangered Species Act 1999 and is prosecuted under s 4 of the Act. Advise Smith.
- (b) Jones, a well known figure in Australia for her work in promoting the cause of protecting endangered species, arranges to make a tour of New Zealand to rally support in this country. The symbol of her campaign is an antique, carved elephant's tusk which is normally on display in a museum in Australia. The carving was performed nearly two hundred years ago. This symbol has become famous. Jones arrives in New Zealand with the tusk and other equipment on 31st March 1999. Jones leaves the tusk in store at the airport and when she goes to pick it up on 2nd April 1999, she is charged under s 4 Endangered Species Act 1999. Jones does not have an import licence under that Act. Advise Jones.
- (c) Green has in her possession a fan made of peacock feathers. Green is prosecuted under s 5 Endangered Species Act 1999. Green does not have a licence for possession under the Act. Advise Green.
- (d) Atkins applies to the Minister of Customs for a licence in order to import animal bone carvings from Indonesia. The application is refused. Atkins wishes to call in question the refusal of the Minister of Customs in the High Court. Is it possible for Atkins to do this? Advise Atkins.
- (e) Bates owns a shop in which he sells natural medicines. Bates enters into correspondence with a firm in South Korea with a view to importing into New Zealand ingredients for natural medicines from that country. Bates's premises are raided by the Customs Department and the correspondence is seized by the Customs officers. The New Zealand Bill of Rights Act 1990 contains the following provision:

21. Unreasonable search and seizure – Everyone has the right to be secure against unreasonable search or seizure, whether of the person, property, or correspondence or otherwise.

Bates seeks your advice as to whether the Customs officers were entitled to seize the letters. Advise Bates.

[Total – 25 marks]