

# Changes to the National Animal Identification and Tracing Act

## Additional information

### General information about NAIT

#### 1. What is NAIT?

The NAIT scheme, or NAIT, is our national animal identification and tracing system. Currently, cattle and deer are included in the scheme.

NAIT records the location and movement of individual animals and the contact details for the person in charge of an animal.

Anyone in charge of cattle or deer must comply with the NAIT Act and regulations. The rules apply whether you have one animal or 1000.

You can find more information about the scheme on [the NAIT website](#).

#### 2. Who runs and funds NAIT?

NAIT is run by a private company called NAIT Limited, on behalf of industry and the government. NAIT Limited is a subsidiary of OSPRI Limited.

NAIT is funded by levies on ear tags and money from the government.

#### 3. Is NAIT part of MPI?

No. NAIT is run by a private company called NAIT Limited, on behalf of industry and the government. The responsibilities of the organisation running NAIT are set out in the NAIT Act.

#### 4. What is the NAIT Act?

It is the National Animal Identification and Tracing Act. It established the NAIT scheme in 2012.

#### 5. Why do we have NAIT?

Animal traceability is important for tracking animal movements in the event of a biosecurity response. It is also important for farmers to understand the history of cattle when they are looking to purchase new stock.

NAIT helps MPI to respond quickly when there is a natural disaster or biosecurity outbreak, especially when it is a cattle or deer disease.

#### 6. Who was involved in the OSPRI-led NAIT Review?

The 2016-18 NAIT Review was overseen by a steering group chaired by an independent Chairman. This group included representatives from Beef+Lamb NZ, DairyNZ, Deer Industry NZ, Dairy Companies Association NZ, the Meat Industry Association and MPI, as well other industry and supply chain stakeholders.

A technical committee supported the steering group. It included representatives from across the supply chain: farmers, stock and station agents, dairy companies, meat industry and processor representatives, NAIT shareholders, NAIT Limited, and MPI.

#### 7. Have you fixed NAIT yet?

Good progress is being made on improving NAIT. Everyone, including farmers, must play their part in getting the scheme to work better.

The NAIT scheme is fundamentally sound. However, actions are being taken on a number of fronts to improve NAIT and ensure it is fit for the future as it evolves. These changes to the law are one of the actions that are being taken to improve the scheme.

## Overview of the proposed legislation changes

### 8. What changes are being made to NAIT?

The Minister for Biosecurity, Damien O'Connor, has announced proposed law changes. You can find more information about these changes on [the MPI website](#).

Some of these changes came from the NAIT Review and some have come from the *Mycoplasma bovis* response.

NAIT Limited is also working on operational and business process changes to improve the NAIT scheme.

### 9. Why are changes being made to NAIT?

An OPSRI-led review of NAIT between 2016 and 2018 made several recommendations to improve NAIT. Most of these are operational changes that NAIT Limited is doing. But some require a law change and those are the proposals that Minister O'Connor has announced.

The outbreak of *Mycoplasma bovis* has also provided valuable lessons about the scheme's effectiveness and how it can be improved.

The government and industry are committed to ensuring NAIT works well for everyone, and some changes are needed to make that happen.

### 10. What else are you doing?

Both MPI and NAIT Limited have significantly stepped up their compliance activity, and will continue to focus on activity from education through to enforcement.

### 11. Do farmers have to do anything differently yet?

Farmers don't need to do anything differently yet. MPI and NAIT Limited will both work with the rural sector ahead of the changes being implemented. Before that the changes need to be voted on by Parliament and be passed into law.

### 12. Does this mean the scheme will be expanded to include other species, like sheep?

The key priority right now is getting NAIT working properly.

MPI asked some questions in the public consultation last year to understand whether other species (for example sheep or pigs) should be included in the scheme, and if so when, and what information should be collected.

The Minister for Biosecurity has decided that other animal species will be brought into the scheme in the future, once more detailed policy work has been done to determine the most effective way to do it. That work will start once the current proposed changes are passed into law.

### 13. Is the NAIT Review recommendation to use ASDs to record NAIT animal movements included in the changes?

The NAIT Review recommended no change to the current system for ASDs. The existing tracing system needs to be working properly before any integration with the food safety quality assurance system can be done.

## **Process queries**

### **14. What happens now?**

Minister for Biosecurity Hon Damien O'Connor has announced that the legislation package has been drafted and will be considered by the Primary Production Select Committee. The package includes changes to the NAIT Act and associated regulations, to improve the NAIT scheme.. As with any law change, once the select committee reports back to Parliament a majority of Parliament will need to vote in favour before the law is changed.

### **15. Why is the Government not making all of the changes that were consulted on?**

The consultation was important in understanding how the proposed changes would be put into practice. Many of the proposals changed as a result of information gathered through the consultation. One proposal (segregating untagged animals at saleyards) isn't going ahead at all, because farmers and others told MPI that it wouldn't work well.

### **16. When will the changes be made to the NAIT Act?**

The legislation package has been drafted and will be considered by the Primary Production Select Committee. The Parliamentary process to change legislation takes time. The select committee will examine all the proposed changes and consult further with stakeholders.

### **17. How will farmers know what they need to do differently, if anything?**

Both MPI and NAIT Limited will make sure that any final changes are communicated well in advance to farmers and any other stakeholders that may be affected.

### **18. Did MPI actually listen to our feedback on these changes?**

MPI listened carefully to all feedback and ensured the views it received during consultation were taken into account before developing the final proposals for the government to consider. Many of the proposals changed to reflect the feedback MPI received.

### **19. What are you doing about people who aren't complying with the existing NAIT obligations?**

Both MPI and NAIT Limited have both stepped up their compliance activity. They will continue to focus on education activity as well as enforcement.

### **20. I thought you made changes to the NAIT Act last year. How do these proposed changes fit in with that?**

A few small technical corrections were made to the Act in August 2018 to ensure MPI could do their compliance job. Those changes were urgent. The changes being made to the Act and regulations now are not as urgent, but are an essential part of improving the scheme.

### **21. Will the NAIT levy be changed because of this?**

NAIT Limited sets the levy. It's too early to know whether there would need to be a levy adjustment in the future.

### **22. Why isn't NAIT Limited doing this work?**

NAIT Limited runs the scheme. MPI has responsibility for administering the legislation that underpins the scheme.

## More detail on each of the legislative change proposals

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| 1 | Require that PICAs must only use NAIT tags at the specific location they were issued for, with a 12 month transition period and an associated offence provision |
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### **Why is this change needed?**

The current system allows a NAIT tag to be purchased by a PICA to be used for one location, and then used at another location. This breaks the traceability chain for NAIT animals.

In a biosecurity incident this slows the tracing of individual animals and hampers the response. Instances have also been reported where animals have been re-tagged with another number to mask their original location. Best practice in other schemes internationally is to limit the use of tags to the location for which they are bought.

### **What will this change achieve?**

PICAs will only be able to use tags for a specified NAIT location. This means that all NAIT animals will be linked to their birthplace, which will give more complete information about where animals have been and what contact they have had with others.

### **How will this change be implemented?**

A transitional provision of 12 months will be included to ensure there is time for PICAs to use up any existing stock of tags.

NAIT Limited will need to make some changes to their systems, for instance to collect the information on tag allocations, and updating their Standards to make sure that tag manufacturers and distributors know the new rules.

A corresponding infringement offence will be enacted and enforced by NAIT officers.

### **How will this change impact on system users?**

PICAs who move properties will need to use up any existing stock of tags with visual location identifiers before the new rules apply. Once the 12-month transition period is over, PICAs will need to make sure they do not stockpile tags applying to a certain location. When moving locations, PICAs will be able to ask NAIT Limited to transfer any unused tags to the new location, as long as those tags do not have a NIAT number printed on them.

Tag manufacturers and distributors will incur a small cost from updating their systems to enable tags sold to be allocated to specific locations.

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| 2 | Rename the 'impracticable to tag' exemption as "unsafe to tag", make the sole criterion that the safety of the PICA is at risk, and remove the exemption five years after the amendment bill is enacted |
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### **Why is this change needed?**

When the NAIT scheme was first established, a small number of exemptions were included to help with the transition to the new system. One of the most commonly used is the 'impracticable to tag' (ITT) exemption. This can be used for some cattle and deer that may be too large or so unused to being handled that tagging them presents a risk to a PICA's safety. The ITT exemption only applies for animals going to meatworks. It can't be used for animals moving to saleyards or to another farm.

All NAIT animals should be tagged at birth, so this exemption should be used very rarely – for example, only where a large or unruly animal has lost a tag.

Currently, around 3% of cattle and between 1% and 4% of deer are being sent to the meatworks without tags. Anecdotally, people have told us the exemption is often used for convenience, rather than because the animals are actually dangerous.

### **What will this change achieve?**

Renaming the exemption as only applying to unsafe, rather than 'impracticable', to tag animals will help send the message that the exemption can be used only where the PICA's safety is directly at risk. We want PICAs to change their behaviour. Animals that are tagged very young, with the tag applied in the correct way and to the right area of the ear, are less likely to lose tags.

However, this change is temporary. Once the amendment bill is enacted PICAs will have five years to ensure that they are meeting their NAIT obligations to tag all NAIT animals, before the exemption is removed. At that time, PICAs will need to make sure that they either have the correct safety equipment to re-tag large animals, or arrange for a vet to assist them.

### **How will this change be implemented?**

Once the amendment bill becomes law, NAIT participants will be told about the change and reminded about the rules for tagging animals. NAIT officers and authorised persons will start to look for breaches of the new law through their compliance and enforcement activity.

Communications over the transitional five years will remind PICAs that the exemption will be removed, and help them to identify ways they can meet their obligations. Once the exemption has been removed, PICAs found with untagged animals will be subject to infringement fees.

The public consultation MPI conducted found a connected issue around fallow deer (which don't need to be tagged, but are recorded at consignment level). If the ITT exemption changes to 'unsafe to tag', a technical amendment will be made to the law to make sure fallow deer will still not need to be tagged.

### **What impact will this change have on system users?**

PICAs who currently have untagged animals will have to assess whether their animals are not safe to tag for the next five years and if so ensure they have an exemption.

All PICAs with untagged animals will be impacted when the exemption is removed. Some may choose to invest in safety equipment to ensure they can tag any large animals that lose tags; others may prefer to ask a vet to do this as part of other routine visits.

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| 3 | Change the timeframe for when a PICA must declare the movement of unsafe to tag animals from '48 hours prior' to "before sending", and set a requirement that unsafe to tag animals must be visibly identifiable (that is, clearly marked); and provide an associated offence |
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### **Why is this change needed?**

The NAIT Review found that the rule that PICAs must tell NAIT 48 hours before moving an untagged animal to a meatworks has been hard to put into practice, because many PICAs don't find out that animals have lost tags until just before they are transported.

Under the NAIT Act, PICAs have to declare any untagged animals on their property as soon as possible. The extra rule around declaring untagged animals by getting an exemption before they are moved is meant to help with compliance by confirming that animals are not tagged.

### **What will this change achieve?**

Changing the requirement from 48 hours prior to "before sending" will be easier for PICAs to comply with, as animals are often mustered less than 48 hours before transportation to a meatworks.

With this change, untagged animals will still be recorded but in a way that will be easier for PICAs. It is a temporary fix until the exemption is removed (see previous proposal).

### **How will this change be implemented?**

NAIT Limited will tell PICAs how to get an exemption for unsafe to tag animals, for instance by phoning the NAIT call centre. Call centre staff are trained to process requests for exemptions.

### **What impact will this change have on system users?**

PICAs with an animal that is unsafe to tag will need to notify NAIT (phone the NAIT call centre) before the animal is moved to a meat processor. They will also have to identify the animal visibly in some way (eg, mark with a ruddle; or use a coloured tail tag).

NAIT Limited anticipates a small administrative impact from increased calls to the call centre, although this should reduce as more PICAs tag their animals from birth.

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| 4 | Enable a seller to make the location history of a NAIT animal available to a purchaser of that animal |
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### **Why is this change needed?**

PICAs face costs, like buying tags, from meeting their obligations under the NAIT Act. The main benefits of the scheme to PICAs are less direct, for instance supporting a stronger biosecurity system across New Zealand.

One of the direct benefits to PICAs was meant to be being able to see an animal's history before buying it, to help their buying decision and enable them to manage their own biosecurity risks. Access for purchasers to life time history for NAIT animals was specifically included in the Act as one of the purposes of holding core data.

However, the way 'history' data was interpreted as being 'personal information' meant that getting access to this data was often difficult and not always possible. This weakened the direct benefit of NAIT for PICAs, and could be making it less likely that they will comply with the obligations.

### **What will this change achieve?**

PICAs wishing to sell animals will be able to see the location history for the animals for which they are responsible. They can share this information with potential buyers, to provide reassurance that the animals can be traced.

Names and phone numbers for previous PICAs won't be available, so there won't be a risk that privacy will be breached. Also, the information is the seller's information, and they therefore can confidently share it. However this change will make sure that PICAs buying animals can find out if there is a potential biosecurity risk, for example if an animal has no history recorded, and they can make their purchase decision in light of the full facts.

### **How will this change be implemented?**

The Act will make clear that it is **animal location** history that can be accessed, not the history of the previous owners. This deals with any perceived privacy matters, because animal location is not personal information.

PICAs with NAIT animals can already access the location history for their animals, at a sub-region level (for example "Ruawaro, Huntly"). However, to do so they have to log a call with the NAIT call centre.

NAIT Limited is developing a self-service report that will enable the seller of an animal to view the animal's location history directly and print it out. An education campaign will inform all PICAs about this change, so that buyers know to ask for it. Over time making this information available should become a normal part of the sales and purchase contract.

### **What are the anticipated impacts on system users?**

Buyers of NAIT animals will see a direct benefit from being able to access the location history of animals. This should create an incentive for PICAs to comply with the scheme, as they will see the direct benefit of recording animal movements.

NAIT Limited is already developing the necessary infrastructure to allow self-service reports, and so the marginal cost to them of this change is small. There should be a medium-term benefit to them from having lower numbers of requests for their staff to provide this information.

### **Why is this change needed?**

The NAIT scheme is a key tool in the broader biosecurity system. The importance of all scheme participants obeying the law and meeting their NAIT obligations was reinforced during the response to *Mycoplasma bovis*, which exposed the severe consequences to farmers of others' non-compliance.

The penalty regime in the NAIT Act is currently targeted at small-scale offending. The penalty limits the courts can impose at sentencing are capped at \$10,000 for individuals and \$20,000 for body corporates.

This cap equates to punishment for 10 individual non-compliant animals, when the average dairy herd for example is around 400 animals. For a large-scale farming business, this is a relatively small cost and does not act as a disincentive to offend. In contrast, the penalty caps for most prosecutable offences under the Biosecurity and Animal Products Acts are ten times as large at \$100,000 for individuals and \$200,000 for body corporates.

### **What will this change achieve?**

The courts will have a greater range to ensure any penalty matches the seriousness of offending.

Aligning penalty limits with those in the Biosecurity and Animal Products Acts will send a clear signal that animal traceability is vital for New Zealand's biosecurity system. Allowing large-scale offending to be punished with higher penalties will act as a greater incentive to comply with the scheme.

### **How will this change be implemented?**

PICAs, and officers involved in enforcement and prosecution, will be told about the change. If a PICA is prosecuted, judges will have a greater range of potential penalties to apply.

### **What are the anticipated impacts on system users?**

This change would only impact on people who are not complying with the NAIT scheme to a degree where they are prosecuted in a court.

Scheme participants who are fulfilling their obligations would see no change, and if the threat of a high penalty encourages more PICAs to do what they should then the overall scheme will benefit.

**Why is this change needed?**

Infringement fees for small-scale offending are currently \$300 for failing to register as a PICA, and \$150 for other offences. This is considerably lower than for equivalent offending under the Biosecurity and Animal Products Acts, and sends a confusing message about the level of importance of NAIT compliance.

**What will this change achieve?**

Aligning the infringement fees with those for similar offending under the Biosecurity and Animal Products Acts would set the fee for failing to register as a PICA at \$800 and at \$400 for other offences.

This change would send a clear message about the importance of NAIT as a biosecurity tool, and would act as a stronger incentive for PICAs and others to meet their obligations.

This proposal strengthens the incentive to make sure all animals are tagged and registered.

**How will this change be implemented?**

This change will be communicated to PICAs and those involved in compliance and enforcement activity. The way the infringement regime is currently applied will not alter: PICAs will be notified of their non-compliance, issued a warning, and given time to rectify the problem before receiving an infringement notice. Accidental non-compliance is not normally penalised unless it has an unusually severe impact.

**What are the anticipated impacts on system users?**

This change will have no impact on scheme participants who are meeting their obligations. Increasing compliance with the scheme will have a positive impact on all PICAs as it will make the data more robust as a biosecurity tool.

### **Why is this change needed?**

All PICAs have to tag their NAIT animals, unless they are deemed to be unsafe to tag. Untagged animals can only be transported to a meat processor.

In practice, we know that PICAs are sending untagged animals to saleyards and farms. In the event of a disease outbreak, it would be almost impossible to tell where these animals had been and which other animals they have mixed with. This creates a biosecurity risk and will seriously hamper any response to a disease incursion.

PICAs are ultimately responsible for meeting their NAIT obligations. However, pressure from other key participants in the system can prompt people to obey the rules.

### **What will this change achieve?**

Anyone transporting an untagged animal that does not have an exemption will risk being fined. The aim is to help truck drivers (both professional transporters and farmer drivers) to leave untagged animals behind. This offence will increase the incentive for PICAs to tag all their animals, or seek the necessary exemption. Combined with the proposal to remove the 'unsafe to tag' exemption after five years, this change will make it harder for PICAs to flout their obligations.

### **How will this change be implemented?**

PICAs transporting animals, transport operators, and others involved in the movement of animals between locations will be required to satisfy themselves that the animals they are moving are either tagged or have an exemption.

MPI and NAIT Limited compliance activity would expand to include policing animals being transported without tags. All stakeholders will be informed when the law changes.

MPI and NAIT Limited will work with industry and transport operators to develop best practice guidance for drivers and clarify what will constitute an offence.

### **What are the anticipated impacts on system users?**

PICAs who are obeying the law and meeting their NAIT obligations will see no impact.

Transport operators and others who are not PICAs but are transporting NAIT animals will have a new obligation, and will be required to satisfy themselves that all animals they move are tagged or have an exemption to go to the works.

How a driver can ensure they have a defence if caught with untagged animals will not be prescribed in law but guidance on methods they can use will be provided. It is possible they will want a written assurance from the farmer that the animals are NAIT compliant, or sight any exemption, or may choose to read the tags themselves as the animals are loaded.

Clarify the use of and access to NAIT core data, to:

- 8 amend the Act's purposes of holding core data to include responding to stock theft and wandering stock
- 9 enable all public sector organisations may apply for access to NAIT core data for the purposes of the Act

### **Why is this change needed?**

Core NAIT data may allow the identification of individuals. The Act therefore clearly specifies what it can be used for. However, the current arrangements for accessing it have led to some difficulties in ensuring NAIT information can be used to best effect.

Common situations such as stock theft or wandering stock are not expressly covered under the purposes for holding data set out in the Act, so information on where animals belong is not easily accessible to those who need it to respond to those incidents. The New Zealand Transport Agency has noted that, due to their size, wandering cattle are the greatest road safety risk involving animals. With 599 incidents involving cows in 2017/18 and 587 incidents in 2018/19, any actions to help identify these animals will be beneficial.

Furthermore, the current definition of public sector agencies that are able to request this data is unnecessarily restrictive, and excludes agencies such as local fire services or Councils, who are often the first responders to calls about wandering stock.

### **What will this change achieve?**

The circumstances in which NAIT core data can be accessed will be clearer. The focus will be on the legitimate use of the data and whether the legal purposes for holding it are met, rather than on who is requesting it. All public sector organisations will be able to request access to the data for the purposes set out in the Act.

If stock are found in an unexpected location, responders who are called to deal with them will be able to access the data quickly and easily.

### **How will this change be implemented?**

The Act's purposes for holding the data will be amended to explicitly include stock theft and wandering stock.

NAIT Limited and MPI will offer training for people in public sector organisations who apply for ongoing access to NAIT data. For example, local fire service officers or animal control officers in regional councils could – if they wish – be trained in how to access the data they need to undertake their emergency roles. Those not wishing to have direct access to the database would continue to go via NAIT Limited when they need the information, or (subject to the following proposal) could go through MPI if the request is urgent and out of office hours. Note that this information can only be used for the specific purposes in the Act. The Data Access Panel can also impose conditions on the use of the data, and a breach of such conditions is a prosecutable offence.

### **What are the anticipated impacts on system users**

PICAs will see a positive impact when their stolen or wandering stock are able to be identified more swiftly and returned to them.

Public sector organisations may see a small transitional administrative impact from the need to have some training, and then time and cost savings from being able to access the data to enable them to carry out their roles more effectively.

MPI and NAIT Limited will incur an upfront cost from training more users of the system, which should reduce over time and also be balanced to some extent by a reduction in the number of individual requests for data.

10 Confirm that the Crown owns NAIT data on behalf of PICAs, all farmers, the wider sector, and the public interest; and ensure NAIT Limited provides copies of the dataset periodically to MPI, if requested.

### **Why is this change needed?**

To maintain an animal identification and tracing scheme that enables an effective biosecurity response to an animal disease outbreak, the government needs to ensure continuous access to timely, comprehensive, and accurate information on the location and movement history of individual or groups of NAIT animals.

NAIT data is collected compulsorily on behalf of the Crown from people in charge of NAIT animals, to allow animal tracing for biosecurity responses and food safety purposes. It is an industry and public good. Its protection and transferability must be assured on behalf of farmers, the wider sector and the public, no matter which agency is the current appointed data manager.

But NAIT legislation does not state who owns the data currently held in the information system.

### **What will this change achieve?**

This change will confirm the Crown owns the data, in line with the law that governs other compulsorily-acquired data, such as the FishServe legislation. In that (similar) system, industry owns the database but the law expressly states that the data and information received or held is the property of the Crown.

The FishServe legislation also states that it must provide to the Crown access to the information and data at no cost, and that the Crown has full rights to use the information and data.

Confirming ownership avoids any doubt about the government's right to transfer the data to any entity charged with managing the NAIT information system, and reduces the risk of future dispute between the parties if there were ever a change in NAIT organisation.

This change is about ensuring the scheme is fit for any future scenarios.

### **How will this change be implemented?**

The NAIT Act will confirm that the Crown owns the data. It will also mirror the FishServe provisions (above) on access to the full dataset, if requested.

### **What are the anticipated impacts on system users?**

There will be no impacts on PICAs or farmers. The wider public interest in the biosecurity system is protected.

NAIT Limited can already provide a full dataset within an hour, if it is needed, so the impact on them is negligible.

11 Improve access to NAIT information by MPI staff designated by the Director-General, and facilitate its use by other authorities

### **Why is this change needed?**

MPI is the primary user of NAIT data. It helps MPI to fulfil its duties under legislation other than the NAIT Act, including the Animal Products Act, the Biosecurity Act, and the Animal Welfare Act, as well as doing research and developing general policy advice on the primary sector. MPI has found it difficult and lengthy to access NAIT data, particularly when needed in a non-emergency context.

MPI should also be able to, via its emergency 24/7 phone line, facilitate the use of core information by other authorities such as councils, NZ Transport Agency, or rural Fire Services or Police who need the data immediately for the purposes of the Act. The NAIT contact centre is not open 24/7 hours.

NAIT Limited supports data being made more readily available to those people that need it to perform their functions under legislation.

### **What will this change achieve?**

Improved data access for MPI will mean that information can be accessed more efficiently, to benefit New Zealand's primary sector more broadly.

NAIT Limited will also have to deal with fewer routine requests for data from MPI, which will free up time to deal with making sure the scheme is working effectively.

MPI being able to provide core data for other authorities that need it urgently or out of hours will also help those authorities.

### **How will this change be implemented?**

A tailored log-in portal for the NAIT database will be created for MPI. The Director-General for MPI will authorise access requests from MPI staff, rather than the NAIT data access panel.

Education for authorities such as councils, NZTA and rural Fire Services and Police, will be part of the implementation.

There will be an agreed process for such information sharing in line with privacy principles.

### **What are the anticipated impacts on system users?**

PICAs will see a positive impact when MPI is able to respond more effectively and efficiently to biosecurity incidents and in developing policy and programmes for the primary sector. They will also benefit from faster return of their stolen or wandering stock.

Other authorities will benefit from streamlined access to the data they need.

MPI and NAIT Limited will incur an upfront cost, including developing a special portal for MPI and training staff in how to access and use the data correctly. This cost should reduce over time and will also be balanced to some extent by a reduction in the number of individual requests for data. These costs will be met from within baseline funding.

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| 12 Amend the definition of PICA to clarify that the responsibilities apply to everyone in charge of NAIT animals |
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**Why is this change needed?**

The NAIT Act already contains penalties that apply to body corporates. However, the NAIT Act currently classifies a PICA as a 'natural person'. This limits the responsibility for complying with obligations under the Act to an individual.

There are some instances, for example at a saleyard or meat processor, where it may not be appropriate for an individual to bear the full responsibility for an organisation's non-compliance with the law; for example, an individual PICA being held to account for systemic non-compliance that just happens to be identified while that individual is on duty.

**What will this change achieve?**

The Act will be clear that where there is evidence that a PICA is being directed to act in a particular way, for example not tagging NAIT animals, the person or body giving them that instruction can be penalised as a party to the offence. This will ensure that in cases of systemic non-compliance, corporate responsibility is taken rather than punishment being linked solely to an individual PICA. This approach aligns with the Crimes Act provisions.

**How will this change be implemented?**

NAIT Limited may need to make some operational changes to make sure that information on the responsible corporate body for NAIT animals can be recorded. These would be rolled in with wider database system changes currently underway. If a PICA commits an offence at the direction of their employer, for example, that employer could be prosecuted as a party to the offence.

**What are the anticipated impacts on system users**

Most PICAs won't be affected by this change. Individuals who are registered as PICAs on behalf of a company may be asked to name the employer company when updating their details. In the event of non-compliance, a company may be found liable instead of, or as well as, an individual PICA.

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| 13 | Require PICAs to report annually the presence and estimated numbers of farmed non-NAIT animal species (such as goats, pigs or sheep) at a NAIT location, to assist biosecurity responses |
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### **Why is this change needed?**

Although the NAIT scheme currently applies only to cattle and deer, PICAs are asked for information on other farmed animal species held at their NAIT location. Around 55% of PICAs already choose to provide this information voluntarily when registering a NAIT location.

In a biosecurity response to a disease that affects multiple species, this information would be extremely useful in assessing the risks and taking action. We have investigated whether we could use the information collected under the Agricultural Production Survey by Statistics New Zealand for NAIT purposes, but the Statistics Act 1975 prohibits the use of this data for biosecurity purposes.

### **What will this change achieve?**

MPI and NAIT Limited will be able to use the high level estimates to support the response to a cross-species biosecurity incursion, for example foot and mouth disease. This information will help to identify the locations at highest risk for spreading a disease between species.

### **How will this change be implemented?**

The existing data fields in the NAIT database that relate to the presence and estimated number of farmed non-NAIT animal species would be switched from voluntary to mandatory fields, and PICAs would be asked to declare the information annually.

### **What are the anticipated impacts on system users?**

PICAs will have to declare this information once a year. The administrative burden is expected to be minimal as the information will be requested at the end of the farming financial year when PICAs are already providing this information for tax purposes. The information requested will be an estimate only, not a precise or auditable figure.

The impact on NAIT Limited will be minimal - they will build in the change to mandatory fields for the annual declaration as part of ongoing updates of the database.

14 Make it a function of a NAIT organisation to ensure continuity of access to NAIT data and the information system by whomever is the designated NAIT organisation

### **Why is this change needed?**

No-one knows whether there may need to be a different NAIT organisation in the future. We want to be clear on what the arrangements are for continuity of access to the information system and the data, in advance of this ever being needed.

This is part of the ensuring the Act is fit for the future.

### **What will this change achieve?**

The amendment will give certainty to NAIT Limited and to the Crown (on behalf of all users of the data system) that access arrangements are in place if they should ever be needed.

### **How will this change be implemented?**

The Act will not specify how the security and continuity of access to NAIT data must be achieved.

NAIT Limited will need to negotiate a binding legal agreement with MPI, setting out the contingency arrangements for the smooth transfer of NAIT data and the information system between organisations

This approach would enable MPI and NAIT Limited to consider the options in a measured way and reach agreement on the best approach, once the amendments become law. It should ensure practical contingency arrangements are in place well in advance of them being required.

### **What are the anticipated impacts on system users?**

There should be no impacts on users. This change increases the certainty of what will happen if in the future the NAIT scheme needs to transition to a different NAIT organisation.

## Future-proof the performance management framework

- |    |  |
|----|--|
| 15 | Allow the Minister to, from time to time, formally inform the Board of government priorities and expectations  |
| 16 | Set the expectation and a requirement for a NAIT organisation to keep the Minister informed on its performance in delivering its statutory duties and functions (as is normal business practice) |

### Why is this change needed?

The Act does not explicitly allow a Minister to formally inform the NAIT Board about government priorities and expectations.

There is also no clearly articulated requirement in the Act for the NAIT organisation to report to the Minister on a regular basis (for example, annually), nor for the independent audit of performance against key measures.

NAIT Limited currently produces an annual report that is published on the organisation's website.

Although reporting requirements could be set through the Minister issuing *ad hoc* policies under existing powers, that approach risks the NAIT organisation or government losing sight of them over time.

### What will this change achieve?

The public signals of government's and the public interest in the NAIT organisation's performance would be more explicit and transparent if the Act specified the Minister's ability to relay priorities and the reporting requirements.

Regular reporting will allow monitoring of progress against the organisation's stated objectives.

### How will this change be implemented?

A specific provision allowing a Minister to, at appropriate intervals, inform the NAIT Board of her/his priorities and expectations of the organisation will be inserted into the Act.

The Act will also require a NAIT organisation to:

- include in its National Operating Plan the details of how it will measure and independently audit its activities in relation to the performance of its statutory duties and functions
- report to the Minister the independently audited results of its performance against the measures specified in the National Operating Plan, at an agreed frequency
- provide the Minister with results of the annual review of the National Operating Plan before the new plan is finalised
- report to the Minister how government appropriations and industry levies have been spent.

17 Amend the threshold for Ministerial intervention in a NAIT organisation to include non-performance of a statutory function or duty that impacts the integrity or effective operation of the scheme

### **Why is this change needed?**

Currently, the Minister's powers to intervene directly in the NAIT organisation can only be used where there is a "significant risk to the integrity and effective operation of the scheme as a whole".

This is a very high threshold. It does not encourage or support more-graduated interventions being considered.

There may be circumstances where only parts of the scheme are not operating effectively. It should be possible to intervene if necessary, without having to demonstrate that the integrity of the whole scheme is being compromised.

The change will increase transparency about when a Minister may intervene, by also focusing on the non-performance by the organisation of a statutory duty or function.

### **What will this change achieve?**

The proposed change will allow any intervention or needed action to be proportional to the particular level of non-performance by a future NAIT organisation.

There will be no ambiguity about the threshold at which the Minister may exercise the powers.

Such a change will enable the full range of responses already anticipated in the Act to be considered. These range from appointing a person to perform a single function temporarily, right through to the replacement of a NAIT organisation.

### **How will this change be implemented?**

Section 9 of the Act specifies when and how intervention by the Minister can occur. Section 9 would be amended to include that intervention could occur when only a part of the scheme is affected and to support a graduated intervention when appropriate.

18 Include a specific power for the Minister to issue, amend or revoke 'directions' in relation to the performance of a function or duty or the exercise of a power, and include standard safeguards for directing entities, such as requiring the Minister to consult the Board before issuing a direction and directions must be tabled in Parliament

### **Why is this change needed?**

The Act allows the Minister to issue policies that the NAIT organisation must 'have regard to', and standards that it must 'comply with'. The original intention was that these policies and standards would provide a Minister the ability to adjust how the NAIT organisation carries out its operations and strategic planning.

However, it is not entirely clear what might reasonably be included in a policy or a standard, and how each of these might be applied to achieve the desired outcomes. Also, these tools work indirectly, so there is no way for the Minister to unequivocally direct a NAIT organisation to carry out a specific task or activity. The power for a Minister to direct an organisation that exists to fulfil a statutory role is very common in legislation and provides surety that the public interest can be prioritised as necessary.

The use of the term 'standard' in these provisions also creates confusion with the standards OSPRI issues and has responsibility for.

### **What will this change achieve?**

The change will provide a specific mechanism for a Minister to use in appropriate circumstances.

### **How will this change be implemented?**

Section 12 of the Act outlines the Minister's ability to issue, amend or revoke policies and standards. This section would be amended to refer to 'directions' and to clarify that these are different to the standards issued by OSPRI.

- 19 Provide that, informed by an assessment of the MPI Director-General, the Minister may appoint a ministerial representative to assist the NAIT Board. The functions of this appointee will be specified, as will the ability for the person to receive Board papers and attend Board meetings.

### **Why is this change needed?**

It is inappropriate for the government to take a formal shareholding (including voting rights) in a fully private company. However, the current delivery model for the NAIT scheme, where a wholly independent private company has such significant statutory powers, duties and functions and no contract for services, is highly unusual.

There may be future circumstances where a Minister needs an ability to have direct input to the NAIT Board, to ensure the outcomes of the NAIT Act are delivered.

The current informal arrangement where a MPI staff member attends Board meetings has worked to some extent for both parties. However, the observer role is limited because an observer can be excluded from some Board discussions. This means that the interests of the government and the public in NAIT may be overridden, which is problematic when trying to understand and have a view on the organisation as a whole.

### **What will this change achieve?**

This proposal aims to ensure that a Minister may, if desired, appoint a suitable person to assist the Board who can represent government interests and appropriately feed information back to the Minister 'as of right'. This would not be a voting position, and the person would not be a Director.

The aim of the role is to give insight into how the NAIT organisation is working, relay government interests, concerns, and trends to the Board, and allows for early identification of issues. This way, early action can be taken if necessary.

### **How will this change be implemented?**

The functions of the ministerial representative will be to observe the Board's decision-making processes and decisions, help the Board understand government policies, and advise the Minister on any matters relating to the Board or the company's performance. The legislation will state that the appointee may attend Board meetings and is to receive information that is provided to Board members.

The appointee will be able to be present when all aspects of the NAIT Board business, the NAIT scheme, or the wider traceability system, are discussed.

The requirement for the DG of MPI to assess the need for a particular appointment and advise the Minister accordingly before any appointment is made, plus specifying the role in legislation, together reduce the risk that such an appointment could become political.

Any ministerial appointee to the NAIT Board will not be a Director nor an advisor to OSPRI as the company.

## Technical amendments

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A number of technical amendments are required to clarify intent or fix drafting omissions. These changes are solely aimed at making the legislation work better, not changing what was originally intended by Parliament.

### Amendment to align with the Search and Surveillance Act 2012

*Why is this change required?*

Many regulatory agencies have inspection and search powers linked to the Search and Surveillance Act (S&S Act). The NAIT Act was enacted and in force before the S&S Act was passed. The Select Committee report at the time the bill was being considered envisaged that the two statutes would be aligned once the S&S Act came into force. While attempts were made at the time to ensure consistency between the two statutes, a number of provisions differ.

It is therefore proposed that the NAIT Act is directly linked to the S&S Act. NAIT Act powers for NAIT Officers and Authorised Persons would be unchanged. The S&S Act contains the procedures and rules for how powers are exercised.

|    | Legislative reference                       | Proposal  |
|----|---|---|
| 1. | Schedule 2, NAIT Act<br>Schedule of S&S Act | Link the NAIT Act to the Search and Surveillance (S&S) Act. The NAIT Act will be listed in the Schedule of the S&S Act and any duplicated legislative references will be removed from the NAIT Act Schedule |

### Amendments to capture locations not registered as NAIT locations

*Why are these changes required?*

A number of provisions inadvertently fail to capture locations that have not been registered as NAIT locations. NAIT obligations and offences should apply regardless of whether or not locations have been registered with NAIT.

|    | Legislative reference   | Proposal  |
|----|---|---|
| 2. | Clause 82(1)(a) Schedule 2 of the Act<br>Consequential amendment to Schedule 1 of the NAIT (Infringement Offences) Regulations  | Amend to capture the obligation to register as a PICA at registered NAIT locations to include also non-NAIT locations.      |
| 3. | Clause 83(1) schedule 2 of the Act<br>Consequential amendment to schedule 1 of the NAIT (Infringement and Offences) Regulations | Amend to capture the obligation on PICAs to tag NAIT animals at registered NAIT locations and also non-NAIT locations.      |
| 4. | Regulation 3 of the NAIT (Obligations and Exemptions) Regulations   | Amend the definitions of destination PICA and point of origin PICA to capture locations not registered as NAIT locations.   |
| 5. | Regulation 19(1) of the NAIT (Obligations and Exemptions) Regulations   | Amend the exemption applying to NAIT animals born at a NAIT location to capture locations not registered as NAIT locations. |

## Other technical amendments

The following are other technical amendments that we have identified through MPI's administration of the NAIT Act.

|     | Legislative reference  | Proposal   |
|-----|--|--|
| 6.  | Section 32 of the Act  | Amend to reflect that exported animals do not go through a transitional facility but via a port of export.   |
| 7.  | Section 40(c) of the Act   | Add the Animal Welfare Act 1999 to the list of applicable Acts. The list currently includes the words "other enactment relating to animals or animal health." The addition of the Animal Welfare Act is to clarify that that Act is included.  |
| 8.  | Section 40(f) of the Act   | Clarify in section 40(f) that the phrase "risks to life and welfare" is in relation to both people and animals.<br>Clarify in section 40 (f) that 'emergency services' is in the broadest sense and includes animal control officers and other similar officers.   |
| 9.  | Clause 3 Schedule 2 of the Act   | To clarify that an audit of core data 'may' be on a cost recovery basis (instead of <i>having</i> to be, as currently drafted) and to clarify that this refers to a formal audit rather than an investigation based audit.   |
| 10. | Schedule 2 Form 1 and Form 2 of the NAIT (Infringement Offences) Regulations<br><br>Animal Products Regulations 2000 | Replace the Infringement Offence Notice (Form 1) and Reminder Infringement Offence Notice (Form 2) with the similar forms specified in the Animal Welfare (Forms) Regulations 1999. Add similar forms to the Animal Products Regulations relating to NAIT animals.<br><br>The current forms are adequate but can be improved. The Animal Welfare forms were updated and replaced on 1 August 2016. They are the most up-to-date, and for consistency reasons should be used as the template. These changes will help ensure consistency across the infringement schemes operated by MPI. |
| 11. | Clause 51 of the Act   | Amend clause 51 to also allow evidence produced by a device (such as a NAIT reader) to be admissible in court and sufficient proof that the device operated in the way asserted by the prosecution.  |