



# Regulations under the National Animal Identification and Tracing Act 2012 to implement the NAIT scheme:

## Regulations for Infringement Offences and

## Regulations Establishing the NAIT Information System Access Panel

MPI Discussion Paper No: 2012/15

ISBN No: 978-0-478-40031-1 (online)

ISBN No: 978-0-478-40032-8 (print)

ISSN No: 2253-3907 (online)

ISSN No: 2253-3893 (print)

August 2012



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## INTRODUCING THE MINISTRY FOR PRIMARY INDUSTRIES

The former Ministry of Agriculture and Forestry (MAF) has changed its name to reflect the new functions of the organisation following its merger with the New Zealand Food Safety Authority and the Ministry of Fisheries.

The new name is the Ministry for Primary Industries, Manatū Ahu Matua (MPI). The new name came into effect on 30 April 2012.

The name was chosen because it covers all of the Ministry's work across the agricultural, horticultural, aquaculture, fisheries, forestry and food sectors, and the protection of our primary industries from biological risk.

It reflects that we continue to be the gateway to government for all of New Zealand's primary industries.

## SUBMISSIONS

The Ministry for Primary Industries (MPI) seeks submissions from all interested parties on the design of proposed infringement offence regulations under the National Animal Identification and Tracing Act 2012 to implement the National Animal Identification and Tracing (NAIT) scheme.

Comments on any matters set out in this discussion paper are welcome. MPI is particularly interested in comments regarding:

- if the design of the proposed infringement offence regulations is fit for purpose
- (for example, if you think any component of the proposed requirements would not be effective in terms of supporting and enforcing compliance with NAIT scheme requirements; or if any component is missing from the proposed requirements that would otherwise be effective); and
- the practical impacts of the design of the proposed infringement offence regulations.

The following points may help in preparing submissions:

- comment, wherever possible, on a specific section of this document - all the proposed regulations are numbered and these numbers should be used to link comments to the document;
- supply reasons and data to support comments;
- examples help us to understand your point; and
- use good quality type, or make sure comments are clearly handwritten in black or blue ink.

Please include the following information in your submission:

- the title of this discussion document;
- your name;
- your organisation's name (if you are submitting on behalf of an organisation); and
- your address.

**Please ensure that MPI receives your submission no later than 5:00pm on Wednesday 5 September 2012. Late submissions will not be accepted - MPI reserves the right to waive this requirement at its discretion.**

**Your comments should be sent to:**

Email: [naitconsultation@mpi.govt.nz](mailto:naitconsultation@mpi.govt.nz)

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## REGULATORY IMPACT ANALYSIS

This discussion document provides an analysis of options for regulations needed to fully implement the NAIT scheme. This includes proposing infringement offences and fees, and proposals for establishing a panel to consider applications for access to the NAIT information system.

Cabinet Regulatory Impact Analysis requirements apply to the release of a discussion document that contains options that may lead to legislative or regulatory change. Regulatory Impact Analysis involves assessing one or more policy options against the situation expected to occur in the absence of any further government action or decisions (the status quo).

MPI considers that this discussion document contains the substantive elements of a Regulatory Impact Analysis.



# PART 1: INTRODUCTION AND REGULATORY IMPACT ANALYSIS

## 1.1 EXECUTIVE SUMMARY

The purpose of this discussion paper is to consult with all interested parties on two sets of proposed regulations under the National Animal Identification and Tracing Act 2012 (the NAIT Act)<sup>1</sup>:

- setting infringement offences and fees; and
- establishing a panel to consider applications for access to the NAIT information system.

The regulations will form part of a suite of regulations required to fully implement and support the NAIT scheme. The NAIT regulations passed to date provide the detail on how to meet requirements of the NAIT Act - specifically the obligations and exemptions<sup>2</sup> necessary to enable the scheme to work, levy types (tag, slaughter, and impracticable to tag), and various fees and forms.

### *Infringement offences*

The proposed infringement offences regulations in this paper are designed to:

- address minor breaches of the law;
- provide an efficient way of encouraging compliance with the law;
- reinforce a compliance regime that has a high focus on education, assistance and direction;
- apply to 12 offences, including 8 that are also prosecutable as high-level offences under the NAIT Act, and four which will be infringement offences only;
- have a relatively low infringement fee; and
- come into force by the end of 2012.

Specifically, the proposed infringement offences are for persons in charge of animals (PICAs) when they fail, under NAIT legislation, to meet an obligation to:

- register themselves;
- tag their NAIT animals;
- register their NAIT animals;
- properly deal with untagged NAIT animals received by them;
- replace lost tags from their NAIT animals;
- fit the correct NAIT tag to their animals;
- declare a movement of a NAIT animal;
- declare a death, loss or live export of a NAIT animal;
- update changes to their registration details; and
- provide accurate information.

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<sup>1</sup> The NAIT Act received the Royal assent on 20 February 2012:

[http://www.legislation.govt.nz/act/public/2012/0002/latest/DLM3430220.html?search=ta\\_act\\_N\\_ac%40acur%40anif\\_an%40bn%40rn\\_25\\_a&p=1](http://www.legislation.govt.nz/act/public/2012/0002/latest/DLM3430220.html?search=ta_act_N_ac%40acur%40anif_an%40bn%40rn_25_a&p=1)

<sup>2</sup> The National Animal Identification and Tracing (obligations and exemptions) regulations came into force on 1 July 2012:

[http://www.legislation.govt.nz/regulation/public/2012/0116/latest/DLM4479801.html?search=ta\\_regulation\\_N\\_rc%40rinf%40rnif\\_an%40bn%40rn\\_25\\_a&p=1](http://www.legislation.govt.nz/regulation/public/2012/0116/latest/DLM4479801.html?search=ta_regulation_N_rc%40rinf%40rnif_an%40bn%40rn_25_a&p=1)

Other proposed infringements are proposed for:

- an event organiser failing to notify an event or register its location; and
- a transit stop owner failing to register a transit stop as a NAIT location.

### *Data access panel for the NAIT information system*

The NAIT Act sets an expectation for establishing a panel to assess applications to access data held in the NAIT information system. The panel will provide an objective and transparent process to assess applications and decide them on their merits according to provisions in the Act.

The rationale for the panel is that some applications for access to NAIT data may be quite complex in terms of judging and balancing the “industry good” benefit of the application against the possible harm to privacy rights in releasing the data. In such cases, a determination made by a panel will be more appropriate and defensible than a determination made by the administrator of the NAIT information system.

The proposal is that the members of the data access panel will:

- be appointed and publicly notified by the NAIT organisation;
- comprise 3-4 people with specialist knowledge and experience in the pastoral sector and/or experience in privacy law;
- hold a renewable three-year term of office;
- be able to resign at any time;
- be able to be removed by a vote of the NAIT Board; and
- be paid for their services, at the discretion of the NAIT organisation.

The proposed regulations will also clarify and specify a number of other aspects of the panel, namely:

- its function to decide applications for access to NAIT data, and its power to consider applications without restriction;
- that it will have full control over its own procedures and operation in assessing applications; and
- that it will provide an annual report to the Minister, through the Director-General of MPI, on the numbers of: applications received and assessed, meetings and decisions of the panel.

MPI is seeking comments on the proposed regulations described in this discussion paper, in particular:

- if the design of the proposed regulations is fit for purpose; and
- the practical impacts of the proposed regulations.

## **1.2 STATUS QUO AND PROBLEM**

### *The purpose of the NAIT scheme*

The NAIT scheme is an industry-government partnership providing a national framework for animal identification and tracing, starting with cattle. The key industry parties involved in developing the NAIT scheme have been DairyNZ, Dairy Companies Association of New Zealand, Beef + Lamb New Zealand (previously Meat and Wool New Zealand), Meat

Industry Association of New Zealand, Federated Farmers of New Zealand, and Deer Industry New Zealand.

The NAIT scheme aims to establish an animal identification and tracing system that:

- provides for the rapid and accurate tracing of individual or groups of NAIT animals from birth to death or live export;
- provides information on the current location and movement history of individual, or groups of, NAIT animals;
- improves biosecurity management;
- manages risks to human health arising from residues in food, food-borne diseases, and diseases that are transmissible between animals and humans; and
- supports improved animal productivity, market assurances, and trading requirements.

The NAIT scheme will provide a tool for New Zealand to quickly and efficiently establish the health status of our livestock population. It will provide a national framework that will enable animals to be traced quickly and reliably from birth to death or live export. This information can help in limiting the consequences of an outbreak of an animal disease or a problem with food residues, as well as supporting New Zealand's market share in premium markets.

### *Legislation passed to implement the NAIT scheme*

The legislation supporting the NAIT scheme comprises three elements: the NAIT Act, regulations, and policy or standards. The Act sets out the basic requirements that people must follow, and regulations describe in more detail how the requirements of the Act are to be met (for example, the information that must be supplied when someone registers as a person in charge of animals).

Standards will in turn set out more detailed requirements as needed, for example standards detailing the technical specifications for NAIT identification devices.

The NAIT Act and regulations on obligations and exemptions, levies, and fees and forms came into force on 1 July 2012 to coincide with the start-date for cattle requirements under the NAIT scheme. Requirements for deer under the scheme will start from 1 March 2013.

The regulations proposed in this discussion document apply primarily to people in charge of NAIT animals (PICAs), who can include farmers, farm managers, sharemilkers, staff members of livestock companies operating at saleyards, and staff members of meat processing facilities. The regulations will also apply to organisers of events such as agricultural shows and rodeos, and owners of transit stops where animals may be temporarily held during transport of droving between two NAIT locations.

The five main obligations for a PICA under the NAIT Act are to:

- register as the PICA at a NAIT location;
- identify and register the NAIT animals they are in charge of at the location;
- report when a NAIT animal is moved off the location, or received onto the location;
- report when a NAIT animal exits from the scheme – either slaughtered, dead on the farm, lost, or exported live; and
- provide information that is accurate, up to date, and within set time limits.

### *Further regulations required*

When the NAIT Act was passed, it included provisions under section 69 of the Act for its full implementation through further sets of regulations. These regulations may be recommended by the Minister for Primary Industries, and include:

- setting infringement offences against the Act and its regulations; and
- regulating data protection and access to the NAIT information system through a data access panel.

In the overall development of the NAIT scheme, making these two sets of regulations under the NAIT Act was identified as being less urgent than the priority for making the regulations for obligations and exemptions, levies, and fees and forms. As a result, proposals for making the regulations for infringements and data access were left for later consideration.

### *Infringement offences*

The Ministry of Justice's *Guidelines for New Infringement Schemes* state that infringement offence schemes are suitable for addressing comparatively minor breaches of the law, which warrant more than a warning, but less than the full sanctions of the criminal law. Infringement offences and fees provide an administratively efficient way of encouraging compliance with the law and also ensuring that the court system is not clogged up.

A person who is issued an infringement notice may challenge their liability for the infringement offence and/or the amount of the infringement fee.

Section 69 of the NAIT Act allows regulations to be set prescribing:

- infringement offences for not complying with regulations made under the Act; and
- an infringement fee no greater than \$1000 for each infringement offence.

### *Data access panel*

The NAIT Act establishes purposes for holding data in the NAIT information system, and provides for the establishment of a data administrator or panel to make decisions on access to data, depending on the significance of the data requested. The data administrator provides access to data that people need to carry out their day-to-day roles and responsibilities under the Act, such as reporting an animal movement. The panel becomes involved on issues of significance to industry. The administrator may receive an application that does not appear consistent with the purposes for which data may be used under section 40 of the Act, or has an industry or commercial focus for use of the data.

At present there are no administrative rules to guide the operation of the panel. Section 69 of the NAIT Act provides that regulations can be made under the Act to provide for:

- the establishment of the NAIT information system access panel;
- the appointment and removal of members of the panel; and
- the panel's remuneration, functions, duties, powers, procedures, employees, administration, operation, and reporting requirements.

## 1.3 OBJECTIVE

The objective of these proposed regulations is to fully implement the NAIT Act by:

- setting infringement offences and fees to provide an incentive to comply with the NAIT legislation, deal effectively with low-level offending, and provide an integrated approach to compliance; and
- establishing a panel with the expertise to consider the implications of non-standard applications for access to data in the NAIT information system of significance to the livestock industry.

## 1.4 OPTIONS

### *Infringement offences*

#### *Maintain status quo*

It was not an option to “do nothing” because the NAIT Act does not in itself provide the means to deal effectively with low-level offending. Without regulations to create infringement offences, the Act provides only for prosecutions to be sought for specified high-level offences. The Act prescribes maximum penalties for the specified offences across a range of levels. Several of the maximum penalties are \$10,000 for an individual and \$20,000 for a body corporate. The other maximum penalties are prescribed at higher and lower levels.

As the NAIT information system is an electronic database, there is a high likelihood of detecting non-compliance. The key to ensuring high levels of compliance with the law is to have an integrated compliance strategy aiming to change the behaviour of low-level offenders rather than directly seeking criminal prosecutions, unless the offending becomes entrenched.

#### *Postpone setting infringement offences*

Any postponement to setting infringement offences would have a similar effect as maintaining the status quo, in perpetuating the difficulty of responding effectively to low-level offending. A postponement would therefore risk entrenching non-compliant behaviour among participants in the NAIT scheme, which may take some time to turn around.

The effectiveness of individual animal tracing schemes relies on accurate, timely information. The inability to achieve a high level of compliance would call the basis of the NAIT scheme into question, jeopardise its cost-effectiveness and risk negative reaction from trade partners.

#### *Introduce higher-level infringement offences*

The introduction of higher-level infringement offences was not considered suitable, because the NAIT scheme compliance strategy has been designed as an escalating series of interventions from education and guidance to issuing low-level infringement notices. Should a person receive one or more low-level infringement notices, then the person can be issued with a formal direction under the NAIT Act to comply with his or her responsibilities.

Setting higher-level infringement offences would leave a gap following the first intervention steps of education and assistance and double up on mid-level options for more actively directing behaviour and enforcing compliance.

### *Preferred option - Create regulations for infringement offences with low-level penalties*

The preferred option is to set a range of infringement offences aimed at low-level offending against the NAIT Act and its regulations, with a correspondingly low infringement fee in the region of \$150.

### *Data access panel*

#### *Maintain status quo*

It was not an option to “do nothing” because under the NAIT Act, an important part of the NAIT organisation’s responsibilities as a data custodian is to ensure that the data is accessed and used solely for the purposes specified in the Act. The Act provides for the establishment of an expert panel with industry knowledge to assess such applications and make a decision.

Protection of data has been a focus of discussions around the development of the NAIT Act. Without formal establishment of the panel and requiring it to report on its activities and decisions, the operation of the NAIT scheme will not meet the participants’ concerns for transparency in how sensitive applications are dealt with.

#### *Delay regulations establishing the data access panel*

While the day-to-day access to the NAIT information system would be provided as a matter of course by the administrator, if no data access panel existed then data access applications of potentially most importance to the industry sectors are likely to go unaddressed.

Postponing consideration of important data access applications could also delay the realisation of benefits expected from the NAIT scheme. The NAIT information system was set up in the expectation that it could provide up-to-date aggregated data for research, agricultural statistics and potential for industry-good productivity benefits.

Both the Crown and industry contribute to the operational funding of the NAIT scheme on the basis of identified benefits. Postponing those benefits will undercut the undertakings given to participants about the NAIT scheme in its development, and call its cost-effectiveness into question.

### *Preferred option - Create regulations establishing the data access panel and setting administrative rules*

The preferred option was therefore to create regulations as soon as possible after the NAIT information system was established, formally establishing the membership of the data access panel, setting requirements for its administration and requiring it to report publicly on its activities for transparency.

## **1.5 IMPACTS AND BENEFITS**

### *Impacts of the proposed regulations for infringement offences and fees*

The proposed regulations for infringement offences and fees are not expected to have a high impact on participants in the NAIT scheme, as they will affect only people who offend against the NAIT Act and its regulations. The regulations will be administered through a compliance



strategy which will focus initially on education and guidance, and the potential to issue a warning notice before an infringement notice is issued.

Experience has shown that, in general, people fail to comply during the initial implementation of a new scheme because they are unfamiliar with their new obligations. It is expected that in most cases people can be encouraged to comply before receiving an infringement notice, given the emphasis on education and guidance for NAIT scheme participants, the expectation of a high detection rate for non-compliance, and the range of possible interventions available before an infringement offence notice is issued.

### *Cost impacts*

The amount of money to be received from the issuing of infringement notices is likely to be negligible given that the notices are not expected to be issued frequently. Although the infringement notices are to be issued by NAIT officers and NAIT authorised persons, the fees are to be paid to MPI and from there into the Crown accounts. The NAIT organisation will not receive funding through the collection of infringement fees.

There will be a small, not quantified, cost impact on the operations of the NAIT scheme to prepare for managing the issuing of infringement notices. Funding of \$388,000 per year has been estimated for MPI to accommodate issuing infringement notices and collecting infringement fees.

There may also be a cost to the Crown if infringement notices are challenged in a district court. Few challenges are expected, however, given that the proposed infringement fee setting in the region of \$150 is relatively low.

### *Benefits of the proposed regulations for infringement offences and fees*

The benefits of the proposed regulations will relate primarily to the effective implementation of the NAIT scheme, and help to achieve its identified benefits:

- improved customer and consumer confidence, with verifiable animal tracing to international standards;
- greater accuracy and reliability, and faster response in case of a biosecurity or food safety event, or natural disaster; and
- faster resumption of market access following any adverse biosecurity or food safety event.

### *Cost impacts of the proposed regulations for establishing the NAIT information system access panel*

There will be a cost impact on the operations of the NAIT organisation following the establishment of the NAIT information system access panel, primarily for remuneration of the panel members, travel and any administrative costs. It is expected this may cost in the region of \$8,000 to \$11,000 per year if three meetings are held.

For comparison, the Dairy Core Database Access panel carries out a similar role to that proposed for the NAIT scheme data access panel in relation to the information held from dairy herd testing. Operations of the Dairy Core Database Access panel cost some \$16,000 for three meetings per year, of which some \$11,000 relates to independent fees (legal, audit and accountancy) and administrative overheads. While audit and accountancy fees are relevant to the Dairy Core Database Access panel because a levy funds its activities requiring financial reporting, such fees are not expected to be relevant to the NAIT panel.

The NAIT data access panel is expected to include a member or Chair experienced in privacy issues, meaning that independent legal advice will not be necessary. Administration and overheads for the panel also should not require a separate category, considering the NAIT information system administrator is established to carry out the same functions.

The estimated costs for running the NAIT information system access panel each financial year will be identified as a line item in the annual budget prepared by the NAIT organisation (currently NAIT Ltd) when setting annual levies for cost recovery from industry under the National Animal Identification and Tracing (Levies) Regulations 2012.

### *Benefits of the proposed regulations for establishing the NAIT information system access panel*

The benefits of the proposed data access panel regulations are expected to be the same as those identified for the infringement offences, in terms of the effective implementation of the NAIT scheme, and helping to achieve its identified benefits.

### *Other costs and benefits*

It is not expected that the proposed regulations for infringements and data access will have significant costs or benefits in terms of social, environmental and cultural values.

## **1.6 MONITORING, EVALUATION, AND REVIEW**

Once the NAIT infringement regulations come into effect, MPI compliance management and the NAIT Board will be responsible for overseeing an ongoing programme of monitoring feedback, evaluation and a review of the regulations. The programme will ensure that the regulations continue to be pragmatic, fit for purpose, supportive of current farming practice and effective management of the NAIT scheme, and can be adapted to take account of biosecurity and other risks.

## **PART B: PROPOSED REGULATIONS FOR INFRINGEMENT OFFENCES**

### **B 1.1 BACKGROUND TO THE PROPOSED INFRINGEMENT REGULATIONS**

The policy options proposed in this discussion paper for regulations for infringement offences and fees have been developed in consultation between MPI and NAIT Ltd. The Ministry of Justice has also been consulted on the proposals.

There are a range of obligations in the NAIT scheme that are essential to its working effectively, such as the requirement to fit animals with the correct NAIT device, and register the animal on the NAIT information system.

Twelve infringement offences are proposed in this discussion document. All relate to comparatively minor breaches of the law where someone fails to comply with their obligations as set out in the NAIT Act or regulations. A modest infringement fee in the region of \$150 is proposed to be issued to a person, via an infringement notice, for each instance of an infringement offence. It is also proposed that each subsequent instance of the person committing the same infringement offence would incur the same infringement fee.

Four of the 12 proposed infringement offences relate solely to breaches of NAIT regulations. The remaining 8 proposed infringement offences are “hybrid” offences that are also prosecutable as high-level offences under the NAIT Act. Each individual case may only be treated as an infringement or a prosecution, not both at the same time.

In these proposals, an infringement offence by a person may incorporate multiple breaches, e.g. in the case of a person failing to declare the movement of a group of 30 cows, only one infringement notice with one infringement fee would be issued, rather than 30 notices.

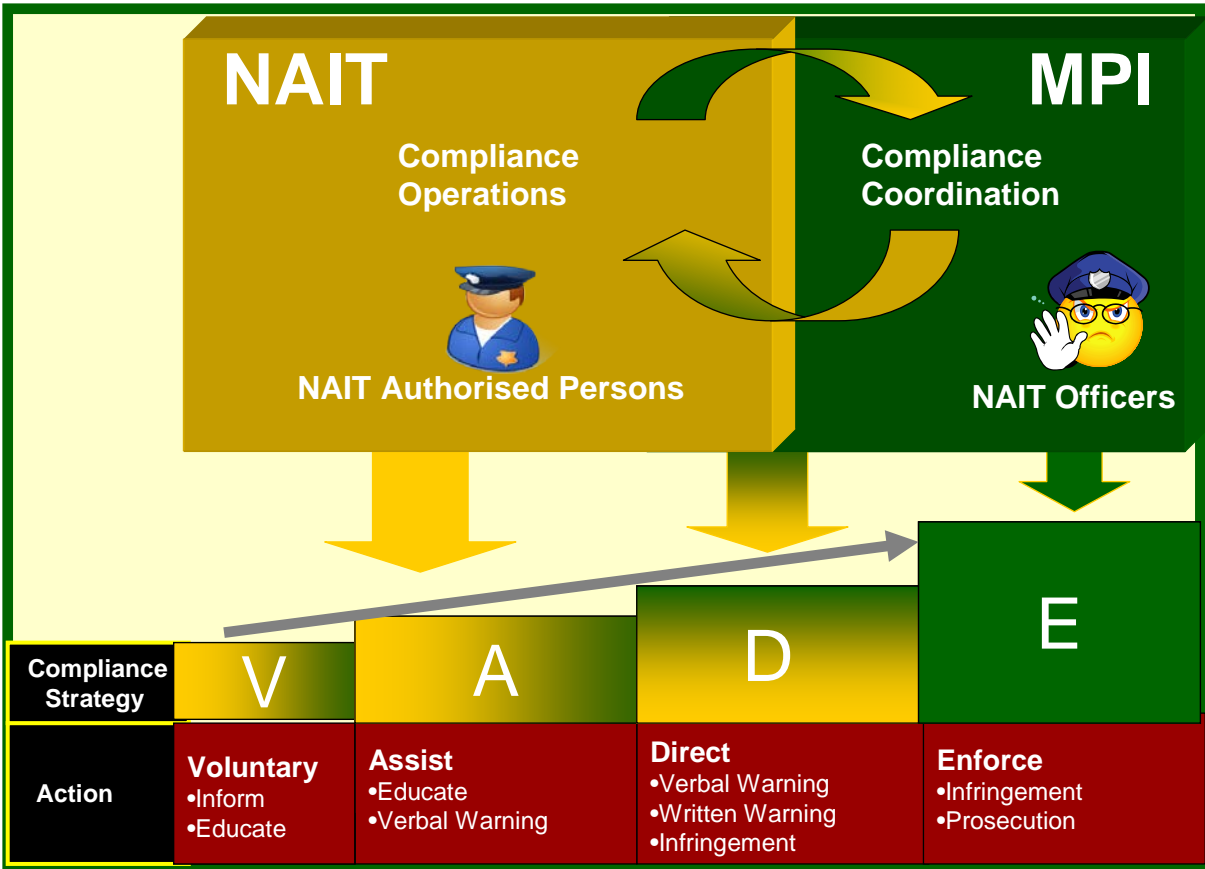
### **B 1.2 MPI AND NAIT LIMITED WILL MANAGE INFRINGEMENT OPERATIONS**

All MPI and NAIT Ltd compliance operations will follow the “VADE” model, which comprises four steps which escalate in engagement and seriousness: Voluntary, Assisted, Directed, and Enforced. Table One below provides a diagram to explain.

The relevance of the VADE model for NAIT scheme compliance operations is based on the experience that the most effective way of changing people’s behaviour is to help them to understand new requirements and encourage them to comply.

The initial approach under the VADE model will involve education and an information sharing and guidance role to support NAIT scheme participants, explaining what is required of them in terms of the NAIT Act and regulations.

Table 1: MPI-NAIT Limited Compliance Operating Model



Beyond the initial approach, NAIT officers and NAIT authorised persons will have discretion in proceeding to the next step, which could involve:

- providing further education, information and guidance; or
- issuing a written warning; or
- recommending that MPI issues an infringement notice; or
- (only in the most serious cases of offending for one of the 8 proposed “hybrid” offences) referring the offence to MPI for a decision on whether to proceed directly to seek a prosecution for the high-level offence rather than issue an infringement notice.

The NAIT information system is an electronic database, which records the details of animal location and movement information that is entered. The system is able to generate automatic reports to identify when information provided by NAIT scheme participants does not meet legislative requirements, or does not match up with earlier records.

As a result, a very high detection rate for noncompliance is expected. This has lead to the development of the model for managing compliance within the NAIT scheme, that proposes:

- a clear focus on education and guidance by NAIT officers, particularly during the first year of the scheme’s implementation;
- discretion for compliance officers to issue written warnings; and
- an infringement scheme for relatively low-level offences, with a modest fee for an infringement offence in the region of \$150, with second and subsequent offences each resulting in the same fee.

After the initial phase-in period, noncompliance will be progressively managed down to a low level as NAIT scheme participants become more familiar with their requirements, to ensure that the scheme delivers the long-term biosecurity management and market access benefits it is designed to provide.

The infringement regulations are intended to come into force by the end of 2012. Once all the elements of the proposed compliance strategy are in place, the staged process of successively more serious interventions can be explained to NAIT scheme participants. The effectiveness of the infringement regulations in ensuring compliance can be monitored as part of monitoring the overall effectiveness of the compliance strategy.

*Repeat offenders may be given formal directions to comply with the law*

If a person has been served with one or more infringement notices for the same offence, then under the VADE model, MPI may decide that more serious involvement is needed. The person may be given formal directions by a NAIT officer or NAIT authorised person, under the NAIT Act, to comply with the NAIT legislation. The directions will clearly set out what the person is required to do to comply with the relevant part of the legislation.

If the person receiving the directions fails to comply as directed by a NAIT officer or NAIT authorised person, MPI will seek to prosecute the person for the high-level criminal offence under the NAIT Act of failing to comply with directions.

## GLOSSARY

**Administrator** means the NAIT information system administrator appointed under section 39(2) of the NAIT Act

**Animal movement declaration** means a declaration provided to the NAIT organisation by a PICA about a movement of a NAIT animal, containing prescribed information

**Destination PICA** means the PICA at the NAIT location to which NAIT animals are moved

**Entity dealing with NAIT animals** means an individual or organisation that trades or processes NAIT animals

**Event** means an event involving NAIT animals, such as an agricultural show or rodeo

**Event location** means a location where an event is held involving NAIT animals, such as an agricultural show or rodeo, and which is registered under section 29(3)(b) of the NAIT Act

**Information provider** means a natural person or a body corporate that is accredited by the NAIT organisation, under section 20 of the NAIT Act, to provide information to the NAIT organisation on behalf of PICAs or PICA delegates as required under the Act or regulations

**NAIT animal** means an animal listed in Schedule 1 of the NAIT Act (currently cattle and deer)

**NAIT device** means an animal identification device manufactured or supplied in accordance with NAIT legislation, that for cattle and deer is a radio frequency identification device (RFID) ear tag.

**NAIT location** has the meaning set out in section 5 of the NAIT Act and is a place—

- (a) where 1 or more NAIT animals are kept or held; and
- (b) that has been registered with the NAIT organisation; and
- (c) that has been issued with a location identifier by the NAIT organisation

**NAIT number** means the number assigned to a PICA by the NAIT organisation under regulation 5(6) of the NAIT obligations and exemptions regulations

**Panel** means the NAIT information system access panel established by regulations made under section 69 of the NAIT Act

**PICA** means a natural person in day-to-day charge of a NAIT animal

**Point of origin PICA** means the PICA at the NAIT location from which NAIT animals are moved

**Transit stop** means a NAIT location where a NAIT animal is temporarily held during transport or droving between 2 NAIT locations

**Transition animal** means a NAIT animal that was born before the species or sub-group of species to which it belongs was subject to the NAIT scheme

## B 2 REQUIREMENTS UNDER THE NAIT ACT FOR PROPOSED REGULATIONS FOR INFRINGEMENT OFFENCES

References to sections refer to sections in the NAIT Act.

Note that the time requirement for a person to provide information to the NAIT organisation, under NAIT legislation, is within 48 hours after the end of the day on which the person's obligation to provide information commenced, unless otherwise specified.

Table 2: Summary of proposed infringement offences – expanded on following pages

	Requirements	Details of proposed infringement offence
B 2.1	A person who is in day-to-day charge of NAIT animals at a NAIT location must register as a Person In Charge of Animals (PICA).	A person who is, or has been determined to be, a PICA for a NAIT location by a NAIT officer, fails to register as a PICA, to comply with sections 26, 27, 29 and 33.
B 2.2	A PICA must ensure that a NAIT animal he or she is in charge of is fitted with a NAIT device (tag) before it is moved off the NAIT location or within 180 days of birth, whichever is sooner. Some exemptions apply for capital stock animals (transition animals) or animals that are not safe (impractical) to tag in the first three years of the animals being subject to the NAIT scheme.	A PICA for a NAIT location fails to fit a NAIT device to a NAIT animal born in that location before the animal is first moved from the location or within the time specified in regulations, whichever is the sooner, to comply with sections 30 and 33.
B 2.3	A PICA receiving a NAIT animal without a NAIT device (tag) fitted must, unless an exemption applies (e.g. impractical to tag exemption), either return the animal to the sending PICA or fit a replacement tag and register the animal.	A PICA for a NAIT location who, when an animal arrives at that location without a NAIT device, fails to: <ul style="list-style-type: none"> <li>• notify the NAIT organisation; and</li> <li>• return the animal to the PICA who consigned the animal to the location; or</li> <li>• fit a replacement device on the animal and reregister it as specified in regulations;</li> </ul> to comply with sections 30 and 33.
B 2.4	If a NAIT animal loses its NAIT device (tag), then it must be fitted with a replacement tag, to fulfil the requirement that all NAIT animals are fitted with a NAIT tag.	A PICA who, when a NAIT device is lost from an animal in a location under his or her control, fails to: <ul style="list-style-type: none"> <li>• apply a replacement device; and</li> <li>• reregister the animal;</li> </ul> to comply with sections 30 and 33.
B 2.5	A PICA must ensure that a NAIT animal she or he is in charge of is registered with the NAIT organisation: <ul style="list-style-type: none"> <li>• before moving the animal to another NAIT location; or</li> <li>• if the animal is not moved to another location;</li> <li>• within 7 days after fitting a NAIT device (tag) to the animal, whichever is sooner.</li> </ul>	A PICA for a NAIT location fails to register a NAIT animal at that location, to comply with sections 30 and 33.
B 2.6	A NAIT animal must be correctly fitted with the correct NAIT device (tag) prescribed for that animal. When deer enter the NAIT scheme in March 2013 they will use a different device to cattle. The two tags will be different colours: white tags for cattle and orange tags for deer.	A PICA for a NAIT location fits a NAIT device prescribed for one species or sub group of species to an animal of another species or sub group of species.
B 2.7	Every PICA must declare every movement of NAIT animals between 2 NAIT locations to the NAIT organisation. Exemptions apply if: <ul style="list-style-type: none"> <li>• the 2 NAIT locations are controlled by the same PICA - in which case the PICA may make only one declaration for recording the overall movement; or</li> <li>• a PICA sends an animal to an entity accredited by the NAIT organisation (such as a meat processor or livestock company operating at a saleyard) - in which case the PICA for the entity will be responsible for making one declaration for the overall movement on behalf of both parties.</li> </ul>	A PICA for a NAIT location fails to declare a movement of a NAIT animal from that location, to comply with sections 31 and 33.

	<b>Requirements</b>	<b>Details of proposed infringement offence</b>
B 2.8	A PICA must make a declaration to the NAIT organisation if a NAIT animal dies, is lost, or is exported live.	A PICA for a NAIT location fails to declare death, loss or live export of a NAIT animal, to comply with sections 32 and 33.
B 2.9	NAIT scheme information must be up to date to support a quick and efficient response to a biosecurity or food safety issue. For this reason a PICA must inform the NAIT organisation of any changes to their required NAIT information within 30 days.	A PICA fails to inform the NAIT organisation of any change to the required information within 30 days after the change occurs, to comply with section 33.
B 2.10	An organiser of an event involving NAIT animals (such as an agricultural show or rodeo) must inform the NAIT organisation and register the location.	The organiser for an event involving NAIT animals who before the event, to comply with section 29, fails to: <ul style="list-style-type: none"> <li>• notify the event to the NAIT organisation; or</li> <li>• register the location of the event as a NAIT location.</li> </ul>
B 2.11	The NAIT organisation needs to be able to identify (whenever necessary) when animals where have been temporarily held at a transit stop.	The owner of a transit stop, as defined in section 4, fails to register the transit stop as a NAIT location, to comply with section 29.
B 2.12	A person must provide the NAIT organisation with accurate information so that the organisation has accurate records and is able to support a quick and efficient response in the event of a biosecurity or food safety issue.	A person commits an offence who fails to provide the NAIT organisation with information that is accurate, to comply with section 33.

## QUESTIONS TO CONSIDER FOR SUBMISSIONS ON PROPOSED REGULATIONS FOR INFRINGEMENT OFFENCES

### **Questions to consider for each proposed regulation: B 2.1 through B 2.12**

**Q 1 Is the status quo an accurate reflection of your experience?**

**Q2 Are there any additional or different problems that should be addressed?**

**Q3 Are there any alternative options that need to be considered in part 1.4?**

**Q4 Have the key features of each option been accurately set out?**

**Q5 Is it clear why the preferred option is favoured over other options?**

**Q6 Have all the impacts and benefits in part 1.5 been identified and accurately described?**

**Q7 Are there any other comments you would like to make about one or more of the 12 proposed regulations for infringement offences?**



## B 2.1 PROPOSED INFRINGEMENT OFFENCE: PERSON FAILS TO REGISTER AS PICA

Under **section 26** of the NAIT Act, a person who is in day-to-day charge of NAIT animals, whether continuously or intermittently,—

- (a) must be registered as a PICA; and
- (b) if not registered at the time of taking charge of NAIT animals, must register within the time specified in regulations made under the Act.

**Section 27** of the NAIT Act sets out that to register, a person must provide information to the NAIT organisation. That information is detailed in **regulation 5** of the NAIT obligations and exemptions regulations. An information provider<sup>3</sup> who registers a PICA must also provide this information on the PICA's behalf.

Under **Schedule 2 clause 4** of the NAIT Act, if there is no PICA registered for a NAIT location, then a NAIT officer must determine who the PICA is for that location.

**Regulation 5** of the NAIT obligations and exemptions regulations sets out the detailed requirements for registration as a PICA or PICA delegate.

Under **section 33** of the NAIT Act and **regulation 10** of the NAIT obligations and exemptions regulations, a person must register as a PICA within 48 hours of becoming a PICA or PICA delegate. Registration cannot be completed until the PICA has also registered each NAIT location where he or she is in charge of NAIT animals, under **section 29** of the NAIT Act.

Once a PICA's registration is completed, he or she will be assigned a NAIT number. If the PICA is registered for more than one NAIT location, then he or she will be allocated separate NAIT numbers corresponding to each location.

The proposed infringement offence for non-compliance with **sections 26, 27, 29 and 33** of the NAIT Act, and **regulations 5 and 10** of the NAIT obligations and exemptions regulations is:

- **A person in day-to-day charge of NAIT animals fails to register as a PICA within the time limit prescribed.**

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<sup>3</sup> See Glossary of this discussion paper.

## B 2.2 PROPOSED INFRINGEMENT OFFENCE: PICA FAILS TO FIT NAIT DEVICE

Under **section 30(1)(a)** of the NAIT Act, a PICA must ensure that the NAIT animals in his or her charge are correctly fitted at all times with the NAIT device specified for those animals.

Under **section 30(2)** of the NAIT Act, a PICA must ensure that NAIT animals are fitted with the prescribed NAIT device before they are moved from the location which that PICA controls.

**Regulation 19** of the NAIT obligations and exemptions regulations applies to animals born in a normal farming situation (i.e. not at a game estate, safari park, or zoo). Under that regulation the device must be fitted to the animal within 180 days after its birth.

Note that a three-year exemption from fitting a NAIT device to a transition animal<sup>4</sup> applies subject to the condition that the animal remains at the PICA's NAIT location. If the animal is about to be moved from the location during the period of the exemption, then the exemption no longer applies and the animal must be fitted with a NAIT device before it is moved. However, if it is impractical to fit a NAIT device to the animal, an exemption is available to move the animal direct to a meat processing facility without a NAIT device fitted.

The proposed infringement offence for non-compliance with **sections 30 and 33** of the NAIT Act and **regulation 19** of the NAIT obligations and exemptions regulations is:

- **A PICA fails to fit a NAIT device to a NAIT animal in his or her charge within the time limit prescribed.**

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<sup>4</sup> See Glossary of this discussion paper.

## B 2.3 PROPOSED INFRINGEMENT OFFENCE: PICA WHO RECEIVES A NAIT ANIMAL NOT FITTED WITH A NAIT DEVICE FAILS TO CARRY OUT THE ACTIONS PRESCRIBED

Although **section 30** of the NAIT Act requires animals to be correctly fitted at all times with the required NAIT device, it is possible that a person may receive a NAIT animal whose device is missing.

In that case, under **regulation 6** of the NAIT obligations and exemptions regulations, the PICA who receives the animal must notify the NAIT organisation.

Unless the PICA who receives the animal is a PICA for a meat processing facility, she or he must also comply with **sections 30 and 33** of the NAIT Act and **regulations 6 and 10** of the NAIT obligations and exemptions regulations by:

### **EITHER**

- fitting the animal with the required NAIT device within 48 hours; and
- reregistering the animal with the NAIT information organisation before it is moved to another NAIT location or within 7 days of fitting the device, whichever is sooner;

### **OR**

- arranging with the PICA who sent the animal (point of origin PICA) to have it returned there.

If, after the NAIT organisation has been informed, arrangements are made to have the animal returned to the point of origin PICA, then under **regulation 20** of the NAIT obligations and exemptions regulations, the animal can be returned without the normal requirement to have a NAIT device fitted during its return journey.

The proposed infringement offence for non-compliance with **sections 30 and 33** of the NAIT Act and **regulations 6 and 10** of the NAIT obligations and exemptions regulations is:

- **A PICA who receives an animal without a NAIT device fails to carry out the actions prescribed.**

## B 2.4 PROPOSED INFRINGEMENT OFFENCE: PICA FAILS TO FIT REPLACEMENT NAIT DEVICE TO ANIMAL THAT HAS LOST ITS DEVICE

Under **section 30** of the NAIT Act, a PICA must ensure that a NAIT animal is correctly fitted at all times with the required NAIT device.

If an animal loses its NAIT device, then the PICA must fit a replacement device to the animal and reregister the animal, to comply with **section 30** of the NAIT Act.

Under **section 33** of the NAIT Act and **regulation 10** of the NAIT obligations and exemptions regulations, a PICA registering a NAIT animal must do so before the animal is moved to another NAIT location or within 7 days after fitting the NAIT device to the animal, whichever is sooner.

The proposed infringement offence for non-compliance with **sections 30 and 33** of the NAIT Act and **regulation 10** of the NAIT obligations and exemptions regulations is:

- **A PICA who, when a NAIT device is lost from a NAIT animal in a location under his or her control, fails to carry out the actions prescribed.**

## B 2.5 PROPOSED INFRINGEMENT OFFENCE: PICA FAILS TO REGISTER NAIT ANIMAL

Under **section 30** of the NAIT Act, a PICA must ensure that the NAIT animals in his or her charge are registered with the NAIT organisation.

**Regulation 7** of the NAIT obligations and exemptions regulations sets out the detailed requirements for animal registration.

**Regulation 10** of the NAIT obligations and exemptions regulations states that the PICA must register the animal:

- before the animal is moved to another NAIT location;
- **or** if the animal is not moved to another location -  
within 7 days after the end of the day a NAIT device is fitted to the animal.

The proposed infringement offence for non-compliance with **sections 30 and 33** of the NAIT Act and **regulations 7 and 10** of the NAIT obligations and exemptions regulations is:

- **A PICA fails to register a NAIT animal at a location under his or her control.**

## B 2.6 PROPOSED INFRINGEMENT OFFENCE: PICA FITS NON-PRESCRIBED NAIT DEVICE

Under **section 30** of the NAIT Act, a PICA must ensure that the NAIT animals in his or her charge are correctly fitted with the required NAIT device.

The NAIT levy regulations impose a tag levy on buyers of NAIT cattle ear tags. Deer will enter the NAIT scheme on 1 March 2013, but cost recovery from the deer industry will be provided through a different levy arrangement, not a tag levy on NAIT deer ear tags.

Although some people might be tempted to fit the cheaper deer ear tags to cattle, each type of ear tag is to be provided in different colours to provide a visual check that the correct tag has been fitted.

Under **Schedule 2 clause 83** of the NAIT Act, it is an offence for a PICA to fit a NAIT device, prescribed for one species or sub-group of species, to an animal of another species or sub-group of species.

The proposed infringement offence for non-compliance with **section 30** of the NAIT Act is:

- **A PICA fits a NAIT device prescribed for one species or sub-group of species to an animal of another species or sub-group of species.**

## B 2.7 PROPOSED INFRINGEMENT OFFENCE: PICA FAILS TO MAKE ANIMAL MOVEMENT DECLARATION

Under **section 31** of the NAIT Act, every PICA must declare every movement of NAIT animals between 2 NAIT locations to the NAIT organisation.

A declaration must be made by both the PICA who sends the animal (point of origin PICA) and the PICA who receives the animal (destination PICA), within 48 hours of the movement.

The detailed requirements for animal movement declarations are prescribed in **regulation 8** of the NAIT obligations and exemptions regulations.

When animals are moved to different locations, there will be occasions when the same person is the PICA in charge of both locations. In this case, under **regulation 21** of the NAIT obligations and exemptions, the PICA may make only one declaration for recording the overall movement.

Also, under **regulation 22** of the NAIT obligations and exemptions regulations, a point of origin PICA who sends an animal to an entity that has been accredited by the NAIT organisation, such as a meat processor or livestock company operating at a saleyard, will be exempt from having to declare the movement. In this case the destination PICA for the accredited entity will be responsible for making one declaration for the overall movement on behalf of both parties.

The proposed infringement offence for non-compliance with **sections 31 and 33** of the NAIT Act and **regulations 8 and 10** of the NAIT obligations and exemptions is:

- **A PICA fails to declare the movement of a NAIT animal.**

## B 2.8 PROPOSED INFRINGEMENT OFFENCE: PICA FAILS TO MAKE ANIMAL EXIT DECLARATION

Under **section 32** of the NAIT Act, and **regulation 10** of the NAIT obligations and exemptions regulations, a PICA must inform the NAIT organisation within 48 hours of when a NAIT animal dies, or when it is first known to be lost. Under **regulation 25** of the NAIT obligations and exemptions regulations, if a NAIT animal is to be exported live, the PICA must inform the NAIT organisation before the animal leaves New Zealand.

The detailed requirements for making these animal exit declarations are prescribed in **regulation 9** of the NAIT obligations and exemptions regulations for death and loss, and **regulation 25** for live export.

The proposed infringement offence for non-compliance with **sections 32 and 33** of the NAIT Act and **regulations 9, 10 or regulation 25** of the NAIT obligations and exemptions regulations is:

- **A PICA fails to declare the death, loss or live export of a NAIT animal.**



## B 2.9 PROPOSED INFRINGEMENT OFFENCE: PICA FAILS TO UPDATE CHANGE TO REGISTRATION DETAILS

Under **section 33** of the NAIT Act, and **regulation 10** of the NAIT obligations and exemptions regulations, every PICA must ensure that information provided to the NAIT organisation is kept up to date by notifying of any relevant change of details within 30 days after the change occurs.

The proposed infringement offence for non-compliance with **section 33** of the NAIT Act and **regulation 10** of the NAIT obligations and exemptions regulations is:

- **A PICA fails to inform the NAIT organisation within 30 days of any change to the information that he or she is required to provide.**

## B 2.10 PROPOSED INFRINGEMENT OFFENCE: EVENT ORGANISER FAILS TO NOTIFY EVENT OR REGISTER LOCATION

Under **sections 29(3) and 33** of the NAIT Act, where events such as agricultural shows and rodeos that involve NAIT animals are to be held, the event organiser must notify the NAIT organisation and register the location before the event.

The proposed infringement offence for non-compliance with **sections 29(3) and 33** of the NAIT Act is:

- **The organiser for an event involving NAIT animals fails to notify the NAIT organisation or fails to register the location, before the event.**

## B 2.11 PROPOSED INFRINGEMENT OFFENCE: TRANSIT STOP OWNER FAILS TO REGISTER LOCATION

Under the NAIT Act, a transit stop means a NAIT location where a NAIT animal is temporarily held during transport or droving between 2 NAIT locations.

Under **sections 29(4) and 33** of the NAIT Act, a person who owns a transit stop must register the place as a NAIT location.

The proposed infringement offence for non-compliance with **sections 29(4) and 33** of the NAIT Act is:

- **The owner of a transit stop fails to register the transit stop as a NAIT location.**

## B 2.12 PROPOSED INFRINGEMENT OFFENCE: PICA FAILS TO PROVIDE ACCURATE INFORMATION

Under **section 33(a)** of the NAIT Act, every person who has to provide information under the Act must ensure the information is accurate.

The proposed infringement offence for non-compliance with **section 33(a)** of the NAIT Act is:

- **A person fails to provide the NAIT organisation with information that is accurate.**

## PART C: PROPOSED REGULATIONS FOR ESTABLISHING THE NAIT INFORMATION SYSTEM ACCESS PANEL

### C 1.1 PURPOSE

Part C of the discussion document seeks your comments on five proposed regulations to be made under the NAIT Act to establish the NAIT information system access panel. Under the Act, decisions regarding applications to access data held in the NAIT information system are decided either by the system administrator or the data access panel.

### C 1.2 THE PURPOSES FOR WHICH DATA IS HELD IN THE NAIT INFORMATION SYSTEM

Section 40 of the NAIT Act sets out a range of purposes for which data is held in the NAIT information system. At their simplest, the purposes at the foundation of the system are allowing people to carry out their duties under the Act, such as recording the location and movement details of animals.

However, over time, the data accumulating in the NAIT information system may provide valuable information for research and development, for industry good or market-oriented commercial products aimed at improving productivity. Section 40 of the NAIT Act provides that collected data may be used to support productivity, market assurance, and trading requirements, statistical data for policy development and industry-good advice, and general agricultural statistics.

The NAIT Act strongly protects access to information held in the NAIT system, especially personal information. An application to access non-personal information may be approved if it is for one of the purposes set out in section 40 of the Act. The Act provides three basic categories, shown in Table 2 below, under which applications for access will be reviewed and determined by the NAIT information system administrator (the administrator) or the access panel, depending on the significance of the request to the industry.

Table 3: Determinations on applications to access data

Category	Discretion available	Decision
1. Administrator must grant	No discretion	Where access is provided for in the NAIT Act – for instance applicant’s own personal information, or animals for which the applicant is registered as the person in charge.  [sections 45(2)(a) and (b) of the NAIT Act]
2. Administrator to determine	Yes; administrator’s discretion – or may refer to data access panel	Access to information authorised under other purposes of section 40 of the NAIT Act e.g. biosecurity or food contamination
3. Panel to determine	Yes; granted at panel’s discretion	Access to information on the system where the administrator considers the importance to the industry requires a decision by the panel [section 44(3) of the NAIT Act]

### *Providing access to data in the NAIT information system*

In Table 2 above, the first category of information involves access to the information people to carry out their day-to-day roles and responsibilities under the NAIT Act; for instance, reporting animal movements. These people need operational access to the NAIT information system so that the system can carry out its functions and run smoothly.

The second category of information in Table 1 above involves non-standard applications which are not part of the day-to-day running of the NAIT system, but which are consistent, in the administrator's opinion, with the purposes listed in section 40 of the NAIT Act.

For instance, these could cover access to contact information for emergency services, or enquiries from a government agency about biosecurity or food contamination. Under section 44(3) of the NAIT Act the administrator must consider how significant the request would be to the industry concerned, and either decide to provide access or refer the application to the data access panel to make a determination.

The third category of information in Table 2 above requests involve non-standard applications which are not part of day-to-day running of the NAIT system, are not obviously consistent with the purposes of section 40 of the NAIT Act, or have an industry or commercial focus for use of the data. It is this category of request that is most likely to be immediately referred to the data access panel to determine.

In Table 3 below provides more detail about how the responsibilities for granting access to different types of data held in the NAIT information system are categorised.

**Table 4: Responsibility for granting access to different types of data**

<b>Type of determination</b>	<b>Decision maker</b>	<b>Authority</b>
Applicant to access their own information	Administrator	Required by section 45 of the NAIT Act
Applicant seeks confirmation that specified person is registered person in charge of a specific animal	Administrator	Required by section 45 of the NAIT Act. Limited to confirm or deny that information is correct
Accredited entity seeking access to an individual's data	Administrator	Provided by consent of person signing up for service provided
Crown seeks access to data for biosecurity or food contamination purposes	Administrator	Specifically authorised by section 40 of the NAIT Act
Information required by a levy-funded body about its members	Administrator	Specifically authorised by section 40 of the NAIT Act
Entity seeks access to core data (not personal information)	Panel – when referred by the administrator because of the importance to industry	At discretion of panel under section 46 of the NAIT Act
Researchers or industry request for aggregate data	Panel	At discretion of panel under section 46 of the NAIT Act
Access to general agricultural statistics	Panel	Specifically authorised by section 40 of the NAIT Act
Industry body requests access in accordance with section 40 of the NAIT Act	Panel	Where significant to the industry and consistent with section 40 of the NAIT Act

## C 1.3 OTHER SECTIONS OF THE NAIT ACT RELATING TO THE DATA ACCESS PANEL

### *Administrator and panel are able to set conditions*

Section 47 of the NAIT Act states that where the administrator or data access panel grants access to data, they:

- must specify the method by which access will be given;
- may impose any conditions including:
  - restricting the use to which the data may be put;
  - prohibiting further disclosure of the data;
  - protecting an individual's privacy; and
  - protecting the commercial sensitivity of the data.

### *Complaints procedure*

Section 50 of the NAIT Act provides that the NAIT organisation must establish and publish a complaints procedure for applicants who are dissatisfied with a determination made by the administrator or panel.

MPI suggests that the procedure could be publicly notified on the NAIT website for information to prospective applicants: [www.nait.co.nz](http://www.nait.co.nz). The procedure should include liaison with an applicant whose application has not been granted to establish the details why, for example the application may have been for information that includes personal information and/or commercially sensitive information that must be protected by the NAIT organisation.



## QUESTIONS TO CONSIDER FOR SUBMISSIONS ON PROPOSED REGULATIONS TO ESTABLISH THE NAIT INFORMATION SYSTEM ACCESS PANEL

**Questions to consider for each proposed regulation: C 2.1 through C 2.6**

**Q 1 Is the status quo an accurate reflection of your experience?**

**Q2 Are there any additional or different problems that should be addressed?**

**Q3 Are there any alternative options that need to be considered in part 1.4?**

**Q4 Have the key features of each option been accurately set out?**

**Q5 Is it clear why the preferred option is favoured over other options?**

**Q6 Have all the impacts and benefits in part 1.5 been identified and accurately described?**

**Q7 Are there any other comments you would like to make about one or more of the 6 proposed regulations for establishing the NAIT information system access panel?**

## C 2.1 PROPOSED REGULATION: ESTABLISHING THE ACCESS PANEL AND ITS MEMBERSHIP

### *Objective of this regulation*

The objective of setting up the data access panel is to provide an objective and transparent process to assess applications to access data held in the NAIT information system, and decide them on their merits according to the provisions of the NAIT Act.

### *Proposed requirements to deliver the objective*

Under the NAIT Act, the NAIT organisation must appoint an administrator to manage access to the database, and has now done so. The Act sets out a series of clauses under which people may access certain categories of data. Applications which fall outside the standard permissions set out in the Act may be decided by the administrator or the data access panel.

The performance of the NAIT organisation's administration of NAIT data is set by statute. Accordingly, MPI does not consider it necessary for the Minister or the Crown to have a role in appointing the members of the NAIT data access panel.

The Minister can, if necessary, exercise significant powers in the area of NAIT governance. Under section 10 of the NAIT Act, the Minister may direct the NAIT organisation to perform an additional duty or function, so long as that is consistent with the Act and its regulations. The Minister may also issue policies under section 12 of the Act affecting how duties under the Act, such as NAIT data administration, are to be performed.

**It is proposed that the data access panel comprise a group of three to four people as members and Chair of the panel, each of whom would be appointed on the basis of their specialist knowledge and experience in the livestock industry and knowledge of privacy law.**

**The regulation should provide that the data access panel is to be appointed by the NAIT organisation, and publicly notified on the NAIT website for information:**

- **the appointments will be subject to standard provisions of a renewable three-year term of office;**
- **members will be allowed to resign at any time; and**
- **a member may be removed from office following a vote of the NAIT Board.**

The NAIT organisation may, at the request of the administrator, convene the panel as the need arises or determine to establish a more permanent standing panel. In the first instance it is most likely that the panel will be convened as needed.

## C 2.2 PROPOSED REGULATION: THE ACCESS PANEL'S REMUNERATION

### *Objective of this regulation*

The objective of the regulation is to provide for the members and Chair of the panel to be paid for their services in assessing applications.

### *Proposed requirements to deliver the objective*

As the Minister or the Crown are not proposed to have a role in appointing the members of the NAIT data access panel, MPI does not consider that the Minister needs to be involved in determining the remuneration of the data access panel.

However, the Crown maintains a governance role and a continuing operational and financial interest in the NAIT scheme. MPI considers that while the CEO should set the remuneration for the panel, she or he should do so having regard to the fees framework for members appointed to bodies in which the Crown has an interest, as set out in Cabinet Office Circular CO (09) 5.

This will provide a basis for judgement in setting fees that will:

- ensure a consistent approach to remuneration across statutory and Crown bodies;
- contain expenditure of public funds within reasonable limits; and
- provide flexibility within clear criteria.

Sufficient transparency can be provided to the NAIT levy payers by including the data access panel as a budget item each financial year, to be reported on in the normal course of annual accounting.

**It is proposed that the regulation should provide that the remuneration of the panel is to be set by the CEO of the NAIT organisation, having regard to the Cabinet Office's circular on the fees framework for members appointed to bodies in which the Crown has an interest.**

## C 2.3 PROPOSED REGULATION: FUNCTIONS, DUTIES, AND POWERS OF THE ACCESS PANEL

### *Objective of this regulation*

The objective of this regulation is to clarify that the function of the data access panel will be to decide applications for access to data in the NAIT information system. The panel will have wide powers to consider applications in the widest view.

### *Proposed requirements to deliver the objective*

As the panel will be considering applications that are significant to industry, it is important that the panel has a wide brief to consider applications and their possible implications, relying on the experience and expertise of its members and Chair.

Section 47 of the NAIT Act sets out that when the panel grants access to data, it must specify the method by which access will be given – i.e. by a print-out or some other method that the panel thinks fit. The panel may impose any conditions including, but not limited to:

- restrict the use to which the data may be put;
- prohibit further disclosure of the data;
- protect an individual's privacy; and
- protect the commercial sensitivity of the data.

These considerations will be part of the data access panel's work in considering applications, but will not need to be stated again in the regulations because they are included in the NAIT Act.

**It is proposed that the regulation setting the functions, duties, and powers of the panel should not restrict the panel in its consideration, but state that the panel has, and may exercise, full rights, powers and privileges.**

## C 2.4 PROPOSED REGULATION: PROCEDURES AND OPERATION OF THE ACCESS PANEL

### *Objective of this regulation*

The objective of this regulation is to set out that the data access panel will have full control over its own procedures and operation in assessing applications for data access.

### *Proposed requirements to deliver the objective*

MPI considers that to be consistent with the approach taken in other proposals for regulation, the panel should be given the widest scope for considering applications.

MPI proposes that the regulation should state that the data access panel is empowered to regulate its own procedures and operations in assessing applications for data access, under the guidance of the Chair.

**It is proposed that the regulation should state that the data access panel is empowered to regulate its own procedures and operations in assessing applications.**

## C 2.5 PROPOSED REGULATION: EMPLOYEES AND ADMINISTRATION OF THE ACCESS PANEL

### *Objective of this regulation*

MPI proposes not to set a regulation for these matters.

### *Explanation*

One of the primary functions of the NAIT organisation is to establish and maintain the NAIT information system and to appoint an administrator to manage access to the system (section 39 of the NAIT Act).

MPI considers that it would be consistent with the approach taken in other proposals for regulation to allow the NAIT organisation and the NAIT data access panel to make the necessary arrangements for its management.

MPI considers that the NAIT organisation's primary responsibility for managing the system and its access will provide sufficient support that the data access panel will not require any employees or separate administrative arrangements to carry out its functions.

**It is proposed not to regulate for the data access panel's employees and administration.**

## C 2.6 PROPOSED REGULATION: REPORTING REQUIREMENTS OF THE ACCESS PANEL

### *Objective of this regulation*

The objective of the regulation is to provide an annual account of the panel's work, consistent with privacy and confidentiality constraints, in assessing and determining applications for access to data.

### *Proposed requirements to deliver the objective*

It will be an important aspect of the data access panel's task to report regularly on the number of applications it has received, how those have been dealt with, the panel's decision in each case, and any conditions it has decided to impose under section 47 of the NAIT Act.

**MPI proposes that the regulation should require that the data access panel should provide a written report to the Minister each year, through the Director-General of MPI, relating to the number of applications received for access, meetings and decisions of the panel.**

**The regulation should also require that once the Minister has accepted the report, it is published by the NAIT organisation on its website - information including:**

- **number of applications referred to the panel during the year;**
- **number of meetings held during the year;**
- **nature and purpose of the applications (e.g. dairy, beef or deer, for research purposes, for industry good or commercial);**
- **nature of the information sought (e.g. spatial, genetic, animal management);**
- **whether consent was granted;**
- **any conditions under which access was granted as in section 47 of the NAIT Act; and**
- **number of complaints received.**

## NEXT STEPS

MPI seeks your comments by **5:00pm on Wednesday 5 September 2012**.

MPI will prepare a summary and analysis of submissions that will describe the points raised. The summary will be sent to submitters and published on the MPI website.

A paper will then be prepared for Cabinet seeking its approval to draft proposed regulations.