

Chair, Cabinet Legislation Committee

National Animal Identification and Tracing (NAIT) legislation package: Approval for introduction

Proposal

1. I propose that the National Animal Identification and Tracing (NAIT) Amendment Bill and amendments to associated regulations 2019 (the legislation package) be approved for introduction to the House of Representatives. The package addresses gaps in the NAIT scheme and ensures the scheme is fit for the future.

Policy

2. Following the *Mycoplasma bovis* animal disease incursion and a two-year review of NAIT, on 15 April 2019 Cabinet approved changes to the legislation governing the scheme, to address gaps and make sure it is fit for the future [DEV-19-MIN-0081 refers]. Two further policy amendments were approved on 29 May 2019 [DEV-19-MIN-0137 refers] and these are included in the package.
3. *Mycoplasma bovis* has had a major impact on New Zealand dairy and beef farmers, costing an expected total of \$890 million to eradicate, \$472 million of which has come from Government over the 2018/2020 fiscal period [CAB-18-MIN-0274 refers]. The NAIT scheme underpins the eradication programme and the disease response showed it was not working as intended.
4. The OSPRI¹-led NAIT Review 2016-2018² recommended some improvements to the scheme to fill gaps and deal with failings in the system. Most of the Review's recommendations are able to be implemented through operational means.
5. The legislation package is the vehicle to implement the Review recommendations that require statutory change, and to address the lessons identified during the *Mycoplasma bovis* biosecurity response. It will improve the legislative framework underpinning the NAIT scheme.

Objectives

6. The legislation package amends the NAIT Act 2012, the NAIT (Infringement Offences) Regulations, the NAIT (Obligations and Exemptions) Regulations, and the Animal Products Regulations.

1

Operational Solutions for Primary Industries, the parent of NAIT Limited which is the private company that runs the NAIT scheme

2

NAIT Review: Final report on the recommendations OSPRI 29 March 2018

7. The policy objectives of the NAIT legislation package are to:
 - improve traceability of NAIT animals;
 - incentivise compliance with the NAIT scheme;
 - encourage the effective and efficient use of NAIT data;
 - ensure the NAIT framework is fit for the future [DEV-19-MIN-0081 refers].
8. Where appropriate, infringement fee and penalty provisions are aligned with those under the Biosecurity Act 1993 and the Animal Products Act 1999 to ensure consistent signals are sent on the importance of compliance.

The amendments

9. The NAIT legislation package amends the NAIT Act 2012 and the regulations cited in paragraph 6 above, to:
 - ensure NAIT tags can only be used at the specific location they were issued for, with an associated offence for failing to do so, with a transition period of 12 months to allow farmers to use up existing tags;
 - rename the 'impracticable to tag' exemption as "unsafe to tag" to better signal the purpose of this exemption, and provide for the removal of this exemption to occur five years after enactment of the Bill;
 - allow flexibility on the timeframe within which an 'unsafe to tag' animal must be declared, set a requirement that 'unsafe to tag' animals must be visibly identifiable, and make failure to declare an offence;
 - enable a seller to, on request, make the location history of a NAIT animal available to a potential purchaser of that animal;
 - align penalty limits with those in the Biosecurity and Animal Products Acts so that in a court prosecution the judge can give a penalty appropriate to the level of offending;
 - align infringement fees with those for similar offences under the Biosecurity and Animal Products Acts to send a clear signal about the importance of compliance with NAIT obligations;
 - make it an offence to transport untagged animals that do not have an exemption;
 - amend the purposes of holding core data to include dealing with stock theft and wandering stock;
 - allow any public sector organisation to request access to core NAIT data as long as the Act's purposes for holding this data are met;
 - confirm that the Crown owns NAIT data, on behalf of all farmers, the wider primary sector, and the public interest;
 - improve access to NAIT core data by MPI staff designated by the Director-General, and provide that MPI may facilitate access for authorities that need core data information quickly for the purposes of the Act.
 - make it a function of a NAIT organisation to ensure continuity of access to the NAIT data and information system by whomever is the designated NAIT organisation;

- clarify that the NAIT responsibilities in the Act apply to everyone in charge of NAIT animals;
- require Persons in Charge of Animals (PICAs) to report annually to NAIT Limited the presence and estimated numbers of farmed non-NAIT animals (such as sheep, goats, pigs) at a NAIT location, to assist biosecurity responses;
- allow the Minister to, from time to time, formally inform the NAIT Board of her/his priorities and expectations;
- set the expectation that a NAIT organisation will keep the Minister informed on its performance, and set requirements for activity measurement, audit and reporting;
- amend the threshold for ministerial intervention to include the non performance of one or more statutory duties and functions that impact the integrity or effective operation of the scheme, and to allow earlier and graduated actions by the Minister when needed;
- permit the Minister to issue, amend and revoke 'directions' in relation to the performance of a statutory function or duty or the exercise of a power, with the commensurate safeguards of a requirement to consult the NAIT Board and to table the direction in Parliament;
- allow the Minister to appoint a representative for a specified term whose functions are to observe the decision-making processes and decisions of the Board, help the Board in understanding the policies and priorities of the Government, and advise the Minister on any matters relating to the Board or its performance, and ensure this representative may attend any meeting of the Board and will be provided with copies of all information that is supplied to Board members.

Technical amendments

10. The NAIT legislation package includes technical amendments agreed to by Cabinet that add the NAIT Act to the Schedule of the Search and Surveillance Act 2012, capture locations not registered as NAIT locations, and make other minor clarifications, corrections and enhancements.

Impact analysis

- 11 Regulatory impact assessments (RIA) were prepared in accordance with the necessary requirements and were considered by Cabinet when it approved the policy changes that the legislation package gives effect to. The first RIA was published on 16 April 2019 following the main Cabinet decisions. The subsequent RIA covering the proposals for continuity of access to the NAIT information system was published on 12 June 2019.

Compliance

12. The Bill complies with each of the following:
 - principles of the Treaty of Waitangi;
 - principles and guidelines set out in the Privacy Act 1993;
 - relevant international standards and obligations;

- LDAC Guidelines on process and content of legislation.
 - rights and freedoms contained in the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993.
13. A departmental disclosure statement has been prepared and a link to the statement is provided within the legislation package attached to this paper. Links to the RIAs are also provided.

Consultation

14. There is good general support for the package of changes. However, the transport sector was not in favour of the proposed offence for transporting an untagged animal. This proposed change may therefore stimulate some debate. The movements of animals are a critical control point for biosecurity and there is currently a clear gap in the traceability chain. The aim is that transporters will leave untagged animals behind, thereby providing an incentive for PICAs to ensure their animals are tagged (as is currently required).
15. The NAIT shareholders (Beef+Lamb NZ; DairyNZ; Deer Industry NZ) did not support confirming Crown ownership of NAIT data on behalf of PICAs, the sector, and the public interest, but the NAIT Board and organisation are comfortable with this change.

Public consultation

16. Public consultation on proposals for inclusion in the legislation package was undertaken from October to December 2018. The proposals in the package takes account of feedback received. A summary of the submissions made and the subsequent Cabinet decision papers are publicly available on the Ministry for Primary Industries' website.

Other consultation

17. Officials discussed the policy proposals with the NAIT shareholders, Stakeholder Council and NAIT Board before the package was initially considered by Cabinet. In addition, I initiated separate targeted consultation with these bodies on the proposed performance management amendments.

Government departments

18. The following departments and agencies have been consulted on this paper and their views are reflected: the Ministry of Business, Innovation and Employment; Department of Conservation; Government Chief Privacy Office within the Department of Internal Affairs; Ministry of Justice; NZ Police; Office of the Privacy Commissioner; State Services Commission; Te Puni Kōkiri; The Treasury. The Department of the Prime Minister and Cabinet and the Parliamentary Counsel Office were informed.

Caucus consultation

19. I will consult with caucus and the Government's support parties before the legislation package is introduced into the House.

Binding on the Crown

20. The NAIT Amendment Bill 2019 will bind the Crown.

Creating new agencies or amending law relating to existing agencies

21. No new agencies or amendments to law relating to existing agencies are required.

Allocation of decision-making powers

22. No changes to the current allocation of decision-making powers are proposed

Associated regulations

23. Amendments to regulations that are required to implement the policy proposals are included in the package. The select committee will be able to consider these as part of their consultation process and deliberations.

Other instruments

24. No new instruments are proposed or required.

Definition of Minister/department

25. No changes to the current definition of Minister/department are proposed.

Commencement of legislation

26. The legislation package will come into force on the day after Royal Assent to the NAIT Amendment Bill.

27. One clause relating to a Person in Charge of an Animal being restricted to using NAIT devices only at the location they are specified for does not come into force for 12 months.

Parliamentary stages

28. The Amendment Bill has a priority 2 on the 2019 Legislation Programme (to be passed within the year). The Bill should be introduced in July 2019 and be passed by December 2019. I propose that the legislation package is referred to the Primary Production Committee.

Publicity

29. I have instructed the Ministry for Primary Industries to notify key stakeholders once the legislation package is ready for introduction, and I will issue a media release when the package is introduced to the House.

Recommendations

30. The Minister for Biosecurity recommends that the Committee:

- 1 **note** that on 10 April 2019 Cabinet agreed to a package of proposed changes to improve the legislative framework underpinning the National Animal Identification and Tracing (NAIT) scheme and ensure it is fit for the future [DEV-19-MIN-0081 refers];
- 2 **note** that on 29 May 2019 Cabinet agreed to two further proposed changes related to NAIT data and the information system, which have been included in the legislation package [DEV-19-MIN-0137 refers].
- 3 **note** that the legislation package amends the NAIT Act 2012, the NAIT (Infringement Offences) Regulations, the NAIT (Obligations and Exemptions) Regulations, and the Animal Products Regulations
- 4 **note** that the package has a priority 2 on the 2019 Legislation Programme (to be passed within the year);
- 5 **approve** the legislative package for introduction, subject to the final approval of the Government caucus and sufficient support in the House of Representatives;
- 6 **agree** that the NAIT legislation package be introduced in July 2019;
- 7 **agree** that the Government proposes the package be:
 - 7.1 referred to the Primary Production Committee for consideration; and
 - 7.2 enacted by December 2019.

Authorised for lodgement

Hon Damien O'Connor
Minister for Biosecurity