

# Departmental Disclosure Statement

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National Animal Identification and Tracing Amendment Bill (No 2)
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The departmental disclosure statement for a government Bill seeks to bring together in one place a range of information to support and enhance the Parliamentary and public scrutiny of that Bill.

It identifies:

- the general policy intent of the Bill and other background policy material;
- some of the key quality assurance products and processes used to develop and test the content of the Bill;
- the presence of certain significant powers or features in the Bill that might be of particular Parliamentary or public interest and warrant an explanation.

This disclosure statement was prepared by the Ministry for Primary Industries.

The Ministry for Primary Industries certifies that, to the best of its knowledge and understanding, the information provided is complete and accurate at the date of finalisation below.

21 June 2019

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## Part One: General Policy Statement

This Bill deals with changes to the National Animal Identification and Tracing (NAIT) Act 2012. It makes improvements to the framework governing the national animal identification and tracing system, to provide for the rapid and accurate tracing of animals and their movements that enables biosecurity management and manages risks to human health.

The Bill addresses the recommendations of the OSPRI-led NAIT Review 2016-18 that need statute change to implement. Most of the NAIT Review's recommendations have been able to be implemented through operational means. The Bill also addresses issues identified during the biosecurity response to the cattle disease *Mycoplasma bovis*, to enhance traceability and ensure the legislation is fit for the future.

The fundamental model of the current system is not being changed. Persons in charge of NAIT animals (PICAs) are responsible for tagging and registering their animal and recording all their movements off-farm.

To improve traceability, tags will only be able to be used at the location for which they were issued. A transition period of 12 months is provided, to enable PICAs to use up existing tag stockpiles. The 'impracticable to tag' exemption has been tightened up to focus on risks to the PICA's safety rather than inconvenience', and this exemption will be removed five years after the enactment. In the meantime, 'unsafe to tag' animals will have to be clearly marked.

To incentivise compliance with the scheme, the Bill provides for location history of an animal to be available to a purchaser. It also brings the penalty regime into line with the related Biosecurity Act and Animal Products Act penalty caps and infringement fees. It will also become an offence to transport an untagged animal that does not have an exemption.

The Bill clarifies that NAIT responsibilities apply to everyone in charge of NAIT animals. To assist biosecurity responses it also requires PICAs to estimate and declare annually the farmed non-NAIT animals on their property.

The Bill ensures that access to, and use of, NAIT data (for the purposes of the Act) is enhanced so that agencies that need it to do their jobs can get it in an efficient and effective manner. The Bill confirms that the Crown owns NAIT data on behalf of all PICAs, the wider sector, industry and the public interest.

The purposes of holding core data will include responding to stock theft and wandering stock. All defined public sector agencies will be able to apply to NAIT Limited for access to data. In addition, the Director-General of the Ministry for Primary Industries (MPI) will be able to make decisions on access to NAIT data for MPI staff as long as the purposes of the Act are met, and in urgent situations will be able to facilitate speedy access by other legitimate authorities.

To future-proof the regime, the Bill provides that a function of a NAIT organisation is to ensure continuity of access to NAIT data and the information system by whomever is the designated NAIT organisation.

The opportunity is taken to fill gaps in the performance framework for a NAIT organisation, to ensure the legislation is fit for the future. The threshold that must be met for a Minister to intervene in a NAIT organisation is made clearer, and reporting requirements are strengthened to align with normal practice for regulatory agencies. A Minister will be able, if they choose, to appoint a representative to assist the NAIT Board. A Minister will also be able to set out their priorities and expectations of a NAIT organisation, and to issue a direction to the Board in relation to its statutory functions and duties.

## Part Two: Background material and policy information

### Published reviews or evaluations

<b>2.1. Are there any publicly available inquiry, review or evaluation reports that have informed, or are relevant to, the policy to be given effect by this Bill?</b>	<b>YES</b>
<i>NAIT Review: Final report for Government on Recommendations</i> [OSPRI, 29 March 2018] Available at: <a href="https://ospri.co.nz/assets/Uploads/Documents/NAIT-Review-Final-Report.pdf">https://ospri.co.nz/assets/Uploads/Documents/NAIT-Review-Final-Report.pdf</a>	

### Relevant international treaties

<b>2.2. Does this Bill seek to give effect to New Zealand action in relation to an international treaty?</b>	<b>NO</b>
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### Regulatory impact analysis

<b>2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill?</b>	<b>YES</b>
<i>Approval to progress proposed legislation changes to the National Animal Identification and Tracing (NAIT) Act 2012</i> [MPI, 29 February 2019] <i>Approval to progress legislative changes to the NAIT Act 2012 that protect NAIT data for all users and secure continuity of access to the information system in the event of a change in NAIT organisation</i> [MPI, 15 March 2019] Available at: <a href="https://www.mpi.govt.nz/dmsdocument/33960-national-animal-identification-and-tracing-nait-legislative-amendments-policy-approvals-regulatory-impact-statement">https://www.mpi.govt.nz/dmsdocument/33960-national-animal-identification-and-tracing-nait-legislative-amendments-policy-approvals-regulatory-impact-statement</a> <a href="https://www.mpi.govt.nz/dmsdocument/34908-coversheet-nait-information-access-and-use">https://www.mpi.govt.nz/dmsdocument/34908-coversheet-nait-information-access-and-use</a>	

<b>2.3.1. If so, did the RIA Team in the Treasury provide an independent opinion on the quality of any of these regulatory impact statements?</b>	<b>NO</b>
The RIAs identified above did not meet the threshold for requiring independent opinion on the quality of the RIA from the Team based in the Treasury.	

<b>2.3.2. Are there aspects of the policy to be given effect by this Bill that were not addressed by, or that now vary materially from, the policy options analysed in these regulatory impact statements?</b>	<b>NO</b>
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### Extent of impact analysis available

<b>2.4. Has further impact analysis become available for any aspects of the policy to be given effect by this Bill?</b>	<b>NO</b>
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<b>2.5. For the policy to be given effect by this Bill, is there analysis available on:</b>	
<b>(a) the size of the potential costs and benefits?</b>	<b>YES</b>
<b>(b) the potential for any group of persons to suffer a substantial unavoidable loss of income or wealth?</b>	<b>NO</b>
Regulatory impact assessments set out (links provided) in section 2.3 above	

<b>2.6. For the policy to be given effect by this Bill, are the potential costs or benefits likely to be impacted by:</b>	
<b>(a) the level of effective compliance or non-compliance with applicable obligations or standards?</b>	<b>YES</b>
<b>(b) the nature and level of regulator effort put into encouraging or securing compliance?</b>	<b>YES</b>
<p>Many changes being made aim to improve PICA compliance levels, which were previously poor in some areas.</p> <p>The Ministry for Primary Industries (MPI) has already stepped up its compliance and enforcement activity in relation to PICAs' NAIT obligations, which will assist the effectiveness of these changes. 30 new NAIT officer FTEs have been employed.</p> <p>NAIT Limited (the organisation that runs the scheme) is also undertaking scaled up compliance activity to identify and warn serious and repeat offenders, with the ability to escalate these to MPI if corrective action is not taken by the relevant PICA.</p> <p>Both agencies have also increased their education programmes and the provision of information and guidance to help PICAs comply.</p>	

## Part Three: Testing of legislative content

### Consistency with New Zealand's international obligations

**3.1. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with New Zealand's international obligations?**

MPI's assessment is that the policy is consistent with New Zealand's international obligations.

### Consistency with the government's Treaty of Waitangi obligations

**3.2. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with the principles of the Treaty of Waitangi?**

MPI's assessment is that the policy is consistent with the principles of Te Tiriti o Waitangi. MPI consulted Te Puni Kōkiri during the development of the proposals and on the Bill.

### Consistency with the New Zealand Bill of Rights Act 1990

**3.3. Has advice been provided to the Attorney-General on whether any provisions of this Bill appear to limit any of the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990?**

YES

Advice provided to the Attorney-General by the Ministry of Justice is generally expected to be available on the Ministry of Justice's website upon introduction of a Bill. Such advice will be accessible on the Ministry's website at: <http://www.justice.govt.nz/policy/constitutional-law-and-human-rights/human-rights/bill-of-rights>

### Offences, penalties and court jurisdictions

**3.4. Does this Bill create, amend, or remove:**

**(a) offences or penalties (including infringement offences or penalties and civil pecuniary penalty regimes)?**

YES

**(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?**

NO

See Appendix One

**3.4.1. Was the Ministry of Justice consulted about these provisions?**

YES

The Ministry of Justice was consulted on the policy proposals and the Bill.

### Privacy issues

**3.5. Does this Bill create, amend or remove any provisions relating to the collection, storage, access to, correction of, use or disclosure of personal information?**

YES

<b>3.5.1. Was the Privacy Commissioner consulted about these provisions?</b>	<b>YES</b>
MPI consulted with the Office of the Privacy Commissioner on the policy proposals before they were considered by Cabinet, and on the draft Bill. The Office identified that there are no issues of concern from a privacy perspective.	

## External consultation

<b>3.6. Has there been any external consultation on the policy to be given effect by this Bill, or on a draft of this Bill?</b>	<b>YES</b>
<p>Public consultation on proposals for inclusion in the Bill was undertaken.</p> <p>The following relevant documents are available at: <a href="http://www.mpi.govt.nz/news-and-resources/consultations/proposals-for-policies-under-the-food-safety-law-reform-bill/">http://www.mpi.govt.nz/news-and-resources/consultations/proposals-for-policies-under-the-food-safety-law-reform-bill/</a></p> <p><b>Consultation document</b> [<i>Proposed Act and regulation changes to improve NAIT Policy</i>, October 2018]</p> <p><b>Summary of submissions</b> [<i>Proposed Act and regulation changes to improve NAIT - Summary of submissions</i>, April 2019].</p> <p>The Minister for Primary Industries conducted separate engagement with the NAIT Board, shareholders, and stakeholder council on the performance management measures. MPI further engaged with NAIT shareholders and the stakeholder council Chair on the performance management proposals and on the additional data proposals.</p> <p>The <b>DEV Cabinet papers</b> [<i>National Animal Identification and Tracing (NAIT) legislative amendments: policy approvals</i> 10 April 2019; <i>National Animal Identification and Tracing (NAIT) legislation changes: additional policy to protect, and secure access to, NAIT information</i> 15 May 2019].</p> <p>The <b>regulatory impact assessments</b> (links in section 2.3) also describe the consultation undertaken.</p> <p>Government departments were consulted on the policy Cabinet papers before they were considered by Cabinet Economic Development Committee, and on a draft Bill before its finalisation and consideration by Cabinet Legislation Committee.</p>	

## Other testing of proposals

<b>3.7. Have the policy details to be given effect by this Bill been otherwise tested or assessed in any way to ensure the Bill's provisions are workable and complete?</b>	<b>YES</b>
<p>The proposals and Bill have been consulted within MPI on the areas involved with the implementation and administration of the legislation.</p> <p>NAIT Limited has also been consulted throughout the legislative development process and in particular on the implementation implications.</p>	

## Part Four: Significant legislative features

### Compulsory acquisition of private property

<b>4.1. Does this Bill contain any provisions that could result in the compulsory acquisition of private property?</b>	<b>NO</b>
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### Charges in the nature of a tax

<b>4.2. Does this Bill create or amend a power to impose a fee, levy or charge in the nature of a tax?</b>	<b>NO</b>
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### Retrospective effect

<b>4.3. Does this Bill affect rights, freedoms, or impose obligations, retrospectively?</b>	<b>NO</b>
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### Strict liability or reversal of the usual burden of proof for offences

<b>4.4. Does this Bill:</b>	
<b>(a) create or amend a strict or absolute liability offence?</b>	<b>YES</b>
<b>(b) reverse or modify the usual burden of proof for an offence or a civil pecuniary penalty proceeding?</b>	<b>YES</b>

There are 4 existing strict liability and reverse onus offences. These allow that it is a defence if the defendant proves that they took all reasonable steps to avoid committing the offence or that the act or omission constituting the offence took place in circumstances of an adverse event or an emergency and was necessary for the preservation, protection or maintenance for animal or human life or for animal welfare purposes. These remain in Schedule 2 to the Act and 2 new offences at clauses 16 and 18 are also specified.

Two new offences are specified as coming within this category. They are

- A PICA commits an offence who fails to provide the declaration required under section 32A (which relates to the declaring before 31 July each year the non NAIT animals under a PICA's charge)
- A person commits an offence who moves from a location any NAIT animal that is not fitted with a prescribed NAIT device, unless an exemption applies.

Both of these offences are specified as infringement offences.

### Civil or criminal immunity

<b>4.5. Does this Bill create or amend a civil or criminal immunity for any person?</b>	<b>YES</b>
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There is currently civil and criminal immunity under s 56 of the Act. This remains unchanged. However, because the Act is being aligned with the Search and Surveillance Act 2012, the standard immunity sections at ss 164 to 168 of the Search and Surveillance Act 2012 will also apply.



### Significant decision-making powers

<b>4.6. Does this Bill create or amend a decision-making power to make a determination about a person's rights, obligations, or interests protected or recognised by law, and that could have a significant impact on those rights, obligations, or interests?</b>	<b>NO</b>
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### Powers to make delegated legislation

<b>4.7. Does this Bill create or amend a power to make delegated legislation that could amend an Act, define the meaning of a term in an Act, or grant an exemption from an Act or delegated legislation?</b>	<b>NO</b>
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<b>4.8. Does this Bill create or amend any other powers to make delegated legislation?</b>	<b>NO</b>
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### Any other unusual provisions or features

<b>4.9. Does this Bill contain any provisions (other than those noted above) that are unusual or call for special comment?</b>	<b>NO</b>
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## Appendix One: Further information relating to Part Three

### Offences, penalties and court jurisdictions – question 3.4

#### National Animal Identification and Tracing Act 2012

**Clause 23** deletes and replaces Schedule 2 of the National Animal Identification and Tracing Act 2012, which contains the offence provisions under the Act.

*Offences amended:*

**Offences relating to the exercise of powers** – increasing the monetary aspect of the penalty from \$25,000 to \$100,000 for an individual and from \$50,000 to \$200,000 for a body corporate.

**Offences relating to information required by, or held under, this Act** – by increasing the monetary aspect of the penalty from \$25,000 to \$100,000 for an individual and from \$50,000 to \$200,000 for a body corporate.

**Obligation to maintain confidentiality** – by specifying a monetary aspect to the penalty of \$100,000 for an individual and increasing the penalty from \$100,000 to \$200,000 for a body corporate.

**Offences relating to registration and declarations** – Four offences relating to registration and declarations have been amended by including “other locations” as well as currently NAIT locations into the offence provision and by increasing the penalty for an individual from a fine not exceeding \$10,000 or not exceeding \$1,000 for each animal to which the offence relates up to a maximum of \$10,000 to a fine not exceeding \$100,000 or not exceeding \$10,000 for each animal to which the offence relates up to a maximum of \$100,000. In the case of a body corporate the penalty is increased from a fine not exceeding \$20,000 or not exceeding \$2,000 for each animal to which the offence relates up to a maximum of \$20,000 to a fine not exceeding \$200,000 or not exceeding \$20,000 for each animal to which the offence relates up to a maximum of \$200,000. These are currently and remain specified as infringement offences.

**Offences relating to fitting NAIT devices** – by including “other locations” as well as NAIT locations into the offence provision and by increasing the penalty for an individual from a fine not exceeding \$10,000 or not exceeding \$1,000 for each animal to which the offence relates up to a maximum of \$10,000 to a fine not exceeding \$100,000 or not exceeding \$10,000 for each animal to which the offence relates up to a maximum of \$100,000. In the case of a body corporate the penalty is increased from a fine not exceeding \$20,000 or not exceeding \$2,000 for each animal to which the offence relates up to a maximum of \$20,000 to a fine not exceeding \$200,000 or not exceeding \$20,000 for each animal to which the offence relates up to a maximum of \$200,000.

**Offences relating to alteration, removal, reuse, and supply of NAIT devices** – by increasing the penalty for an individual from a fine not exceeding \$10,000 or not exceeding \$1,000 for each device to which the offence relates up to a maximum of \$10,000 to a fine not exceeding \$100,000 or not exceeding \$10,000 for each device to which the offence relates up to a maximum of \$100,000. In the case of a body corporate the penalty is increased from a fine not exceeding \$20,000 or not exceeding \$2,000 for each device to which the offence relates up to a maximum of \$20,000 to a fine not exceeding \$200,000 or not exceeding \$20,000 for each device to which the offence relates up to a maximum of \$200,000.

**Offence of failing to comply with directions** – by increasing the penalty for an individual from a fine not exceeding \$10,000 to a maximum of \$100,000 or in the case of a body corporate from a fine not exceeding \$20,000 to a fine not exceeding \$200,000.

*New offences:*

**Offence relating to declaration required under section 32A.** Section 32A requires a PICA to provide a yearly declaration of the non-NAIT animals under their care. A new offence is created for a PICA who fails to provide the required declaration. The maximum penalty for an individual is a fine not exceeding \$100,000 and for a body corporate \$200,000.

**Offences relating to fitting NAIT devices.** There are currently four offences relating to the fitting of NAIT devices. A new fifth offence is created for a PICA who uses a NAIT device on an animal in a location other than a registered location. The maximum penalty for an individual is a fine not exceeding \$100,000 or not exceeding \$10,000 for each device to which the offence relates up to a maximum of \$100,000 and in the case of a body corporate \$200,000 or not exceeding \$20,000 for each device to a maximum of \$200,000

**Offence relating to transporting NAIT animals which are not fitted with NAIT devices.** A new offence is created for a person who moves from a location any NAIT animal that is not fitted with a prescribed NAIT device unless an exemption applies. The maximum penalty for an individual is a fine not exceeding \$100,000 or not exceeding \$10,000 for each animal to which the offence relates up to a maximum of \$100,000 and in the case of a body corporate \$200,000 or not exceeding \$20,000 for each animal to a maximum of \$200,000

#### *Infringement Offences*

**Clause 24** amends enactments specified in Schedule 3 which replaces Schedule 1 of the National Animal Identification and Tracing (Infringement Offences) Regulations 2012. Schedule 1 specifies certain offences as infringement offence and their relevant Infringement fee. Previously, 12 infringement fees were set at \$150, 1 matter at \$300 and 3 matters at \$1,000. All \$150 infringement fees have been increased to \$400 and the \$300 infringement fee has been increased to \$800.

Four of the current infringement offences relating to the registration and declarations have been amended by including “other locations” as well as currently NAIT locations into the offence and infringement provision.

Three of the new offences have been specified as infringement offences. These are:

- A PICA who fails to provide the declaration required under section 32A of the Act relating to prescribed livestock under the PICA's charge at a NAIT location or other location.
- A PICA for a NAIT location or other location who uses a NAIT device on an animal in a location other than a registered location.
- A person who, without exemption, moves from a location any NAIT animal that is not fitted with a NAIT device.

#### **Search and Surveillance**

The National Animal Identification and Tracing Act 2012 was previously outside of the Search and Surveillance Act 2012. The National Animal Identification and Tracing (NAIT) Act 2012 is being aligned with the Search and Surveillance Act 2012. This means that all of the protections and safeguards in the Search and Surveillance Act 2012 now apply to the NAIT Act.

Some of the offence provisions that were previously in the NAIT Act have been removed, relying on similar offence provisions in the Search and Surveillance Act 2012.

**Clause 23** deletes and replaces Schedule 2 of the National Animal Identification and Tracing Act 2012 that previously contained the search and surveillance related offences.

**Clause 24** applies the Search and Surveillance Act 2012 to the National Animal Identification and Tracing Act 2012.