

Chair  
Cabinet Economic Committee

**National Animal Identification and Tracing (NAIT) legislation changes: additional policy to protect, and secure future access to, NAIT information**

**Proposal**

1. I propose amendments to the National Animal Identification and Tracing (NAIT) Act to secure and protect NAIT data for farmers, wider industry and the public interest, and to provide a smooth transition for the information management system should a different NAIT organisation be appointed in the future.
2. These amendments would be included in the NAIT legislation amendment package approved by Cabinet in April 2019.

**Background**

3. On 15 April 2019 Cabinet approved changes to the legislation governing the NAIT scheme, to address gaps and make sure it is fit for the future [DEV-19-MIN-0081 refers]. This legislation package follows Cabinet's \$472 million appropriation to the eradication programme for the *Mycoplasma bovis* cattle disease incursion, and the two-year OSPRI-led<sup>1</sup> review of NAIT.
4. At the time, Cabinet noted that the Minister for Biosecurity had asked officials to do further work on the best ways to ensure the NAIT data and database are protected and secured for farmers, industry and the public good, and to advise Cabinet on this matter in time for changes to be included in the legislation package.
5. NAIT Limited, a fully owned subsidiary of OSPRI Limited, is the designated NAIT organisation. It owns, maintains and manages the NAIT information system.
6. The NAIT Act requires Persons in Charge of Animals (PICAs) to supply data to the NAIT organisation on the animals they are responsible for. This information is held in the NAIT system for the good of the wider sector and industry, and in the public interest to assist biosecurity responses and for food safety purposes.

**Issue**

7. To maintain an animal identification and tracing scheme that enables an effective biosecurity response to an animal disease outbreak, the government needs to ensure continuous access to timely, comprehensive, and accurate information on the location and movement history of individual or groups of NAIT animals.
8. The Minister for Biosecurity currently has the power to (in the circumstances prescribed in the Act) revoke the designation of a NAIT organisation and appoint another in its place.

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<sup>1</sup> Operational Solutions for Primary Industries (OSPRI) is a not-for-profit limited liability company with charitable status that is owned by Dairy NZ, Beef+Lamb NZ, and Deer Industry NZ

9. However, the NAIT Act is silent on arrangements for the transfer of the NAIT data and information system if a Minister wishes to do this. Unlike the most similar business model, FishServe<sup>2</sup>, NAIT legislation does not state who owns the data currently held in the information system.
10. This situation poses risks to the protection of, and continued access to, NAIT information during any transition to a new organisation, and acts as a practical constraint on the Minister's ability to revoke an organisation's NAIT designation.
11. It is less likely that a Minister will need to replace a NAIT organisation once the enhanced performance management measures that Cabinet has already agreed are included in the NAIT Act. Nevertheless, it is prudent to include additional provisions that enable continuity of access to the NAIT data and make the Act fit for the future should the decision to change NAIT organisations eventuate.

## **Policy proposals**

### ***A: Crown ownership of, and access to, NAIT data***

12. I propose amending the NAIT Act to:
  - a make clear that the Crown owns the NAIT data received and held in relation to the performance or exercise of the functions, duties and powers of a NAIT organisation under the Act;
  - b require a NAIT organisation to provide a full dataset to the Crown [in practice, the Ministry for Primary Industries] periodically on request.
13. NAIT data is collected compulsorily on behalf of the Crown from people in charge of NAIT animals, to allow animal tracing for biosecurity responses and food safety purposes. It is an industry and public good. Its protection and transferability must be assured on behalf of farmers, the wider sector and the public, no matter which agency is the current appointed data manager.
14. Crown ownership avoids any doubt about the government's right to transfer the data to any entity charged with managing the NAIT information system, and reduces the risk of future dispute between the parties if there is a change in NAIT organisation.
15. Ensuring NAIT Limited provides copies of the full dataset periodically to MPI upon request is a practical means of protecting the data and ensuring future continuity of access to it.
16. This approach is similar to that used for the FishServe system, where industry owns the database but the law<sup>3</sup> expressly states that the data and information received, generated or held in relation to the performance or exercise of the functions, duties or powers is the property of the Crown. The legislation also states that FishServe must provide to the Crown, at no cost to the Crown, access to the information and data in accordance with the legislation, and that the Crown has full rights to use the information and data.

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<sup>2</sup> FishServe is the fisheries database owned by the seafood industry

<sup>3</sup> Fisheries (Transfer of Functions, Duties, and Powers to Commercial Fisheries Services Limited) Order 2013

**B: *Requiring a NAIT organisation to ensure continuity of access to the data and information system into the future***

17. I propose that the NAIT Act specifies that a function of a NAIT organisation is to ensure continuity of access to the NAIT data and information system by whomever is appointed as the NAIT organisation.
18. The Act would not specify how the security and continuity of access to NAIT data must be achieved. The amendment would, however, enable contingency arrangements for the smooth transfer of NAIT data and the information system between organisations to be established in a binding legal agreement between MPI and NAIT Limited.
19. This approach would enable MPI and NAIT Limited to consider the options in a measured way and reach agreement on the best approach, once the amendments become law. It should ensure practical contingency arrangements are in place well in advance of them being required.
20. Should MPI and NAIT Limited be unable to reach agreement on arrangements for ensuring continuity of access to NAIT information, the Minister for Biosecurity has the power to issue a direction relating to a NAIT organisation's functions.
21. The costs associated with any future transfer of the information system to another NAIT organisation are unknown at this time and present a potential future financial risk to the Crown. That financial risk is, however, present under the current legislation and is arguably greater at the moment, given that no provision has been made for the information in the system owned by NAIT Limited to be able to be transferred to another organisation.
22. There is also a practical operational risk that even once contingency arrangements are agreed, when activated they may not be implemented as Parliament intends. This approach relies on the goodwill of the current NAIT organisation to enable the transfer of the information management function to a new organisation at a time when the relationship with the Crown may have broken down or NAIT Limited's performance is sub-optimal.
23. On balance, I consider the risks associated with the proposed approach are acceptable and significantly lower than those presented by the status quo. Crown ownership of, and access to, the NAIT data would be secured. The approach also enables the agreement of binding contingency arrangements that can be used in the unlikely event that all other performance management interventions for NAIT Limited have failed, and the Minister for Biosecurity deems it necessary to appoint a different NAIT organisation.

**Consultation**

*Departmental consultation*

24. The following departments and agencies have been consulted on this paper and no issues were raised: the Ministry of Business, Innovation and Employment; Department of Conservation; Department of Internal Affairs; Ministry of Justice; Office of the Privacy Commissioner; NZ Police; State Services Commission; Te Puni Kōkiri; and The Treasury.

25. The Department of the Prime Minister and Cabinet and the Parliamentary Counsel Office have been informed.

#### *Other consultation*

26. NAIT Limited and its Board Chair have been informed of these proposals and are comfortable with them.
27. NAIT shareholders DairyNZ, Beef+LambNZ and Deer Industry NZ, did not agree with the proposal to confirm that the Crown owns the NAIT data, but support the proposed additional NAIT function. I am continuing to engage with the shareholders on the matter of Crown ownership of the data, with the aim of obtaining their support before the Select Committee process begins.

#### **Financial implications**

28. The proposals in this paper do not carry direct fiscal implications. However, any subsequent purchase arrangement would incur costs, which are currently unknown. The intention is that these costs will be funded from within the Departmental appropriation for NAIT Limited.

#### **Impact analysis**

29. A regulatory impact assessment was conducted in accordance with the necessary requirements and is attached to this paper. A quality assurance panel from the Ministry for Primary Industries reviewed the RIA. The Panel considers that it meets the quality assurance criteria. MPI's analysis of costs, benefits, and other impacts is sound and the regulatory assessment criteria have been met.

#### **Legislative implications**

30. Once Cabinet approves the policy, Parliamentary Counsel Office will draft the provisions necessary to implement it as part of the wider legislation package.
31. The NAIT Bill has a priority 2 on the 2019 Legislation Programme (must be passed within the year). Therefore, my intention is to introduce the legislation package at the end of June.

#### **Human rights implications**

32. The proposals in this paper do not appear to be inconsistent with the New Zealand Bill of Rights Act 1990 or the Human Rights Act 1993. The Ministry of Justice has been consulted on the proposals. Formal Bill of Rights vetting will be undertaken as part of the process of developing the amendment bill.

#### **Proactive release**

33. Following Cabinet consideration, I will consider the release of this paper in line with the Official Information Act 1982.

## Recommendations

34. The Minister for Biosecurity recommends that the Cabinet Economic Development Committee:
- 1 **note** that in April 2019 Cabinet agreed to a National Animal Identification and Tracing (NAIT) legislation change package and noted additional policy work was required to ensure NAIT information is secured and protected into the future [DEV-19-MIN-0081 refers];
  - 2 **note** that NAIT data is provided compulsorily under statute for the industry and public good, and the Crown's ownership of it is on behalf of persons in charge of NAIT animals, all other farmers, the wider sector, and the public;
  - 3 **agree** to amend the NAIT Act to:
    - 3.1 provide that the information and data received, held or generated in relation to the performance or exercise of functions, duties and powers under the National Animal Identification and Tracing (NAIT) Act is the property of the Crown;
    - 3.2 require a NAIT organisation to provide a full dataset to the Crown periodically on request, at no cost to the Crown;
  - 4 **agree** to amend the NAIT Act to provide that a function of a NAIT organisation is to ensure continuity of access to, and use of, NAIT data and the information system by whomever is the designated NAIT organisation;
  - 5 **note** that if recommendation 4 is agreed, following the legislation's passage the Ministry for Primary Industries and NAIT Limited will develop a binding agreement setting out the arrangements for any future transfer of the NAIT information system;
  - 6 **invite** the Minister for Biosecurity to issue instructions to the Parliamentary Counsel Office to draft the amendments necessary to implement recommendations 3 and 4 above;
  - 7 **note** that the NAIT legislation package has a priority 2 on the 2019 Legislation Programme (must be passed within the 2019 calendar year);

Authorised for lodgement

Hon Damien O'Connor  
**Minister for Biosecurity**