



# Analysis of Submissions on MPI Discussion Paper No: 2012/15

Regulations for Infringement Offences and  
Regulations Establishing the NAIT Information System  
Access Panel  
– August 2012

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## 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

**MPI** means the Ministry for Primary Industries

**MPI discussion paper** means Paper No: 2012/15: *Regulations for Infringement Offences and Regulations Establishing the NAIT Information System Access Panel* was released for public consultation on 8 August 2012

**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

**NAIT O&E regulations** means the National Animal Identification and Tracing (Obligations and Exemptions) Regulations 2012

**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

**VADE model** means the MPI-NAIT Limited Compliance Operating Model



# Introduction

The Ministry for Primary Industries (MPI) Discussion Paper No: 2012/15: *Regulations for Infringement Offences and Regulations Establishing the NAIT Information System Access Panel* was released for public consultation on 8 August 2012.

The regulations proposed in the MPI discussion paper are needed to fully implement the National Animal Identification and Tracing (NAIT) scheme and are additional to the NAIT scheme regulations currently in force.

The submission period closed on 5 September 2012. Of the 31 submissions received:

- fifteen were from NAIT scheme participants (known or assumed to be farmers);
- fourteen were from representatives of industry stakeholder organisations (including NAIT Limited); and
- two were from NAIT scheme information providers (accredited by NAIT Limited).

All except one of the 31 submitters commented on the proposed regulations for infringement offences. Of the 19 submitters who commented on the proposed regulations for establishing the NAIT information system access panel:

- five were from individual NAIT scheme participants known or assumed to be farmers;
- twelve were from representatives of industry stakeholder organisations (including NAIT Limited); and
- two were from NAIT scheme information providers (accredited by NAIT Limited).

A table of the submitters is provided on page 45 of this MPI information paper.

The submissions provided the following key themes:

- farmers need time to become familiar with the NAIT scheme requirements;
- registration by a person in charge of NAIT animals (PICA) is a fundamental NAIT scheme requirement;
- supporting guidance is needed so that persons in charge of NAIT animals (PICAs) can understand the infringement offences that will apply when NAIT scheme requirements are not complied with;
- an infringement offence should not apply in a case where a PICA for a NAIT location does not know that a NAIT animal has died or become lost at the location;
- access to aggregate, non-personal NAIT data should be possible to enable a broader range of benefits to be realised;
- individual privacy and commercial sensitivity must be protected in order for farmers to feel safe to fully disclose data to the NAIT organisation and comply with NAIT scheme regulations;
- the NAIT information system access panel's costs of considering applications for access to NAIT data and for providing NAIT data should be recovered from those seeking access; and
- the access panel's reporting should explain the rationale for any restrictions or conditions the panel sets on access to NAIT data.

# Overview

The MPI discussion paper provided questions for submitters to consider in relation to each of the proposed regulations.

The submissions that MPI received on the proposed regulations are analysed in this MPI information paper in the same order and using the same numbering as in the discussion paper. For each proposed regulation set out in sequence in this paper, submission comments specific to the proposed regulation are referenced by the submission number in the table on page 45. An MPI comment for each proposed regulation is followed by a recommendation that, in combination with all the recommendations, formed the basis of MPI's advice to Cabinet on the proposed regulations.

References to “section” in this MPI information paper refer to sections in the National Animal Identification and Tracing Act 2012<sup>1</sup> (NAIT Act). MPI comments and recommendations on the proposed infringement offence regulations also refer to numbered regulations in the National Animal Identification and Tracing (Obligations and Exemptions) Regulations 2012<sup>2</sup> (NAIT O&E regulations). Throughout this paper a NAIT device, which for cattle and deer is a radio frequency identification (RFID) ear tag, is referred to using the term “NAIT tag”.

## Overall level of compliance and NAIT scheme effectiveness

The overall level of compliance by NAIT scheme participants has a direct bearing on the overall operational efficiency and effectiveness of the NAIT scheme. The more complete, accurate, and timely is the process of data provision by persons in charge of NAIT animals on a day-to-day basis (PICAs):

- the more cost-effective the NAIT scheme will be in realising its planned biosecurity and market access benefits; and
- the more readily industry levies will be able to be kept at levels compatible with cost-effective scheme administration.

The MPI discussion paper provided an overview of how all NAIT scheme compliance operations will follow the MPI-NAIT Limited Compliance Operating Model (VADE model). The model comprises four steps which escalate in engagement and seriousness: voluntary, assisted, directed, and enforced. The relevance of the VADE model for structuring NAIT scheme compliance operations is based on understandings gained from operating other compliance regimes.

The VADE model approach involves compliance officers fulfilling an education, information sharing, and guidance to support NAIT scheme participants, explaining what is required of them in terms of the NAIT Act and regulations. This approach is expected to promote high rates of compliance by most participants, although for some participants more instructive and/or directive approaches may be necessary.

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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\\_r\\_c%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_r_c%40rinf%40rnif_an%40bn%40rn_25_a&p=1)

The appendix on page 46 of this MPI information paper provides a table summary of the VADE model to provide greater transparency and understanding. In most cases it is expected that NAIT scheme participants can be encouraged to comply before receiving an infringement offence notice. This expectation is based on:

- the VADE model's emphasis on education, information sharing, and guidance;
- the range of possible interventions available before an infringement offence notice is issued; and
- built-in incentives for participants to comply with NAIT scheme requirements.

Built-in incentives to comply with NAIT scheme requirements derive from participants' appreciation of how the scheme is able to provide direct and indirect benefits by:

- protecting farmers' livelihoods through enhancing MPI's capability to respond rapidly to livestock biosecurity events and product contamination events;
- underpinning official assurances that New Zealand provides for maintaining or increasing access to high-value export markets for New Zealand's high-quality livestock-based food products;
- meeting the official animal identification requirements for both the NAIT scheme and the Animal Health Board's National Bovine Tuberculosis Pest Management Strategy; and
- creating the potential for on-farm co-benefits from farmers utilising farm-management computer programmes to record individual animals' characteristics, such as production, health, and genetic information, against each animal's NAIT RFID tag number.

### MPI is recommending a number of amendments to the proposed regulations

The NAIT legislation applies to a wide range of contexts where PICAs are in charge of NAIT animals. Across these contexts, MPI recognises the importance of establishing an infringement regime that is readily understood and consistent with realistic expectations.

MPI is recommending amending proposed infringement offence regulation B 2.4 in response to submissions. Under the amended proposed regulation, an infringement offence will be committed by a PICA for a NAIT location who, when an animal has lost its NAIT tag, fails to fit a replacement NAIT tag to the animal and reregister it before it is moved from the location.

MPI is recommending amending proposed infringement offence regulation B 2.8 in response to submissions. Under the amended proposed regulation, an infringement offence will not apply to a case where a PICA for a NAIT location fails to provide an animal exit declaration for a NAIT animal after the PICA first knows that the animal is lost. Rather, an infringement offence will only apply to cases where a PICA for a NAIT location fails to provide an animal exit declaration for a NAIT animal after it has either:

- died by slaughter at that location; or
- is found by the PICA to have died at that location other than by slaughter and the animal's carcass is:
  - disposed of at that location; or
  - sent to an animal rendering facility.

MPI is also recommending a proposed infringement offence regulation that will apply to a PICA for a port of export from New Zealand who fails to provide an animal exit declaration for a live NAIT animal that the PICA intends to export from that port.

MPI did not seek public submissions on appropriate infringement fee settings for the proposed infringement offences in the discussion paper. This is because MPI receives guidance from the Ministry of Justice on setting appropriate infringement offence fees in accordance with NAIT Act requirements.

Several submissions on the proposed infringement offence regulations did, however, question the effectiveness of the proposed infringement fee settings in terms of motivating compliance. The submitters provided a range of views on what infringement fee settings would be the most effective for motivating compliance by NAIT scheme participants.

MPI is recommending retaining the proposed infringement fee setting of \$150 for the majority of the proposed infringement offences.

MPI is also recommending that the proposed infringement fee for infringement offence regulation B 2.1 be increased to \$300. This amendment has been made in response to a number of submitters who emphasised that PICA registration is a foundation PICA obligation. Achieving a consistently high level of PICA registration is critical for underpinning and achieving a high level of compliance by PICAs with all their obligations.

#### *Additional infringement offences proposed*

MPI has identified a need for additional infringement offence regulations in response to submissions on proposed NAIT information system access panel regulation C 2.4. High-level criminal offences in the NAIT Act are applicable to a person who breaches conditions set by the NAIT information system access panel, or administrator, for the protection of personal information and/or commercially sensitive information. However, some submitters identified that no penalties are provided in the NAIT Act for breaching any other conditions that may be set by the access panel, or administrator, such as conditions restricting the use the data and/or prohibiting its further disclosure.

MPI is therefore recommending three further proposed infringement offences, each with an infringement fee set at \$1000. The three offences are for breaching conditions imposed on any grant of access to data in the NAIT information system by the NAIT information system access panel, or administrator.

In total, MPI is recommending 16 proposed infringement offences against NAIT legislation:

- 12 offences with a proposed fee of \$150;
- one offence with a proposed fee of \$300; and
- three offences with a proposed fee of \$1000.

In cases of serious offending, the 16 proposed infringement offences may be directly prosecuted as criminal offences rather than being dealt with as infringement offences.

#### *Regulations proposed for cost recovery for applications to access NAIT data*

Proposed regulations for establishing the NAIT information system access panel precipitated several submissions proposing that the NAIT organisation should be able to charge fees to help recover the costs of processing applications. In response to these submissions, MPI is recommending a regulation requiring payment of:

- a fee of \$50, payable to the NAIT organisation, for an application to access data that is processed by the administrator, and
- an application fee of \$150, payable to the NAIT organisation, for an application to access data that is processed by the access panel.

However, it is not intended that the \$50 fee will apply to requests for data needed to carry out any requirements under NAIT legislation. Rather it may be applied to cases such as a PICA requesting large amounts of historical data on their own activities recorded on the NAIT information system.

*Access panel may not include NAIT employees*

Finally, MPI is recommending amending proposed NAIT information system access panel regulation C 2.1 in response to submissions by way of an additional requirement that appointments to the access panel may not include NAIT organisation employees.

## Next Steps

The MPI recommendations on the proposed regulations in this information paper formed the basis of MPI's advice to Cabinet on the policy for making the regulations.

The Government and the NAIT scheme industry partner organisations regard their combined expenditure on implementing the NAIT scheme as being vital for:

- improving the management of potential livestock diseases;
- meeting growing consumer demand for information on the background of animal products; and
- safeguarding New Zealand's share in premium price markets as a trusted supplier of safe and high quality food.

### Implementing compliance operations

NAIT officers employed by MPI and NAIT authorised persons employed by NAIT Limited have been warranted to jointly implement compliance operations under a compliance strategy. Their role has a predominant focus on providing education, information and advice to help NAIT participants meet their NAIT obligations.

Following the 1 March 2013 mandatory start-date for deer, there will be a phase-in period for deer farmers to enable them to become familiar with and fully understand how to comply with their NAIT obligations. This is consistent with the current phase-in period for cattle farmers.

The NAIT scheme regulations for infringement offences are expected to come into effect from early 2013. In most cases it is expected that NAIT scheme participants can be encouraged to comply before receiving an infringement offence notice. Any issuing of infringement offences from that time would be in accordance with the VADE model.

The appendix on page 46 of this MPI information paper provides a table summary of the VADE model to provide greater transparency and understanding.

Supporting information on PICAs' NAIT scheme requirements is available at [www.nait.co.nz](http://www.nait.co.nz)

### Ongoing monitoring, evaluation, and review of compliance operations

MPI compliance management and the NAIT organisation will be responsible for overseeing an ongoing programme of monitoring and evaluation of NAIT scheme compliance operations. This programme will inform a review of the effectiveness of NAIT scheme compliance operations under the VADE model after a period of up to a year that the regulations have been in force. The review will include a review of NAIT scheme infringement offence regulations and infringement fee settings.

# ANALYSIS OF SUBMISSIONS

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

The main points covered by submitters who commented on proposed infringement offence regulation B 2.1 in the MPI discussion paper were about the importance of PICA registration for NAIT scheme implementation. A number of submitters emphasised that registration is a foundation PICA obligation that is critical for underpinning a high level of compliance by PICAs with all their obligations.

Specific comments from submitters:

- Beef + Lamb New Zealand further recommends that the fine payable for failure to register with NAIT as a PICA at a location be set at ~\$500. (29)
- Deer Industry New Zealand suggests that the offence should be drafted as “A person who is in day-to-day charge of animals fails to register as a PICA contrary to section 26 of the Act”. (30)
- Deer Industry New Zealand considers that breaching section 26 should be treated as a serious offence for the purpose of setting the penalty for breach. (30)
- The discussion paper is silent on the treatment of saleyard and meat processing plant owners failing to register as a PICA. Deer Industry New Zealand considers that breach of section 28 is a separate offence to breach of section 26 should be treated distinctly to breach of section 26. (30)
- Section 29 requires a PICA to register each NAIT location for which he or she is responsible. This obligation is quite different to the section 26 obligation to register as a PICA. Deer Industry New Zealand considers that breach of this obligation should be an infringement offence and is the same gravity as a person failing to register as a PICA (i.e. it is a serious offence). (30)
- We see this as one of the more important infringements which warrants a higher infringement fine. We presume that the drafting of this infringement also captures the question of registering all locations (i.e. that registration is complete). (31)

Other comments from submitters:

- It has been stated many times that the initial approach to gain compliance is via education and guidance, particularly during the first year. Yet it is noted that the intended regulations will come into force by the end of 2012. I hope that does not mean they will be used from January 2013, and that the full year of education will run until July 2013 for cattle and March 2014 for deer. (12)
- I have a concern that the 48 hour period (this is two days) within to register as a PICA is too short. As generally if people are moving properties it is an extremely busy time in their lives. Also as far as I am aware the NAIT office is closed from 5pm Friday to 9am Monday. Thus people will be unable to register as a PICA over the phone for the 63 hour period over the weekend. Unfair to give an infringement if the time period to update is too short. (23)

## MPI Comment

The matter of NAIT Contact Centre availability during evenings and the weekends has been raised by several submitters and this matter has been passed on to the NAIT organisation as the administrator of the Contact Centre.

Under section 4 of the NAIT Act, a PICA is a person who is in day-to-day charge of one or more NAIT animals. Such a person is designated a PICA by virtue of the NAIT Act, whether or not they have completed the process of registered themselves with the NAIT organisation. Under sections 26 and 27 of the Act, a PICA must complete the process of registering with the NAIT organisation. The information that a PICA must provide to complete their registration is specified in regulation 5 of the NAIT obligations and exemptions (O&E) regulations.

Regulation 5(3) of the NAIT O&E regulations requires that a PICA's registration session with the NAIT organisation cannot be completed until they have also registered a NAIT location where the animals they are in charge of are held. A PICA will be able to register one or more locations where they are in charge of NAIT animals during a single registration session.

Once a PICA has provided all the registration information required, they will be assigned a NAIT number by the NAIT organisation and this completes their registration. The PICA's NAIT number uniquely identifies them at a specific NAIT location. A PICA who registers as the PICA for more than one NAIT location will be allocated a different NAIT number for each NAIT location.

A registered PICA for a NAIT location must, as and when required by the NAIT O&E regulations, tag and register the NAIT animals they are in charge of at that location. The PICA must, unless exempted under the regulations, provide animal movement declarations for NAIT animals leaving or arriving at that location and must also provide animal exit declarations when NAIT animals die or become lost at that location. A PICA for a port-of-export NAIT location must provide animal exit declarations when NAIT animals are exported live from that port.

Registration by a person as a PICA is a fundamental obligation under the NAIT scheme, without which compliance by the PICA with their obligations cannot be readily monitored. Therefore a higher infringement fee, relative to the other infringement fees for PICA non-compliance, is justified for the proposed infringement offence of failing to register as a PICA.

Section 28 of the NAIT Act is for the purpose of requiring the owner of a saleyard facility or a meat processing facility to register themselves or their nominated representative as a PICA. This means that in the event of a biosecurity emergency, there will be a registered representative for the facility that MPI can contact to convey urgent messages such as when instituting and directing movement controls for any NAIT animals currently at the facility.

## MPI Recommendation

An offence committed against clause 82(1), Schedule 2 of the NAIT Act, is proposed to be prescribed as an infringement offence regulation under the Act, as follows:

**A person commits an offence who is a PICA, or has been determined to be a PICA by a NAIT officer, and who fails to register as a PICA in accordance with the Act.**

The proposed infringement fee for this proposed infringement offence is \$300.

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

The main points covered by submitters who commented on proposed infringement offence regulation B 2.2 in the MPI discussion paper were about practicalities involved in PICAs meeting the NAIT scheme requirements for when animals must be tagged.

Specific comments from submitters:

- “correctly fitted at all times” makes no allowance for loss of tags while the animal is on farm. Under normal farming practice for beef cattle and deer it may be some time before an animal is handled, so a lost tag may not be detected immediately. (07)
- Failure to fit a NAIT tag to an animal at any other time than when it leaves the property is the only reasonable rule. The reality of farming on some times very big blocks with hundreds of animals – it is unrealistic to have to have a tag in every animal all the time. (22)
- Deer Industry New Zealand agrees that breach of section 30 should be an infringement offence. However, section 30 contains several obligations, each of which, in Deer Industry New Zealand’s view, should be treated as infringement offences when breached.(30)
- The section 30(1)(a) obligation to ensure that animals are correctly fitted with a NAIT tag applies “at all times” with no reference to alternative or prescribed time limits. (30)

Other comments from submitters:

- By introducing an infringement and fine system to the existing system will only result in more calves going straight to the slaughter house and less beef cattle being raised, less meat available to be sold and less money for the country. (23)
- We cannot see any reason for cattle to be registered before the leave the NAIT location of birth. Whilst it is common and logical to tag animals at the time of calf marking or weaning, to *have* to tag them within 180 days of age (and then register them) serves no purpose with respect to the traceability of the animals or the overall effectiveness of the NAIT scheme. Whilst most farmers will tag when they muster the calves into the yard for marking or weaning, the requirement to tag and register should not be enforceable until the cattle leaves the NAIT location of birth. (27, 28).
- Deer Industry New Zealand submits that it is important that breach of the obligation to fit the device correctly be an infringement offence, since the tags have not been assessed for longevity when affixed to places other than ears. As such, wrong affixation could lead to greater tag losses. It could also prevent the tag being picked up by the tag reader and the animal’s movement not being recorded, undermining the accuracy of the NAIT database. (30)

### MPI Comment

The NAIT Act section 30(1)(a) requires a PICA to ensure that the NAIT animals she or he is in charge of are correctly fitted at all times with a NAIT tag.

Under regulation 19 of the NAIT O&E regulations, a PICA for a NAIT animal born in a normal farming situation will be exempt for up to 180 days after the animal’s birth from the requirement to fit a NAIT tag to the animal. This exemption is designed to accommodate the different animal husbandry practices for new season’s calves and fawns in terms of what is a reasonable time requirement within which they must be fitted with NAIT tags.

Requiring PICAs to fit NAIT tags to animals within 180 days of birth, while they are still young, is aimed at ensuring that the animals can be handled safely while keeping their stress and discomfort to a minimum. However, if a new season's calf and fawn is to be moved from its NAIT location of birth it must be fitted with a NAIT tag before it is moved.

The NAIT RFID tag is the key tool that enables PICAs to:

- identify the NAIT animals they are in charge of; and
- meet their requirements to provide animal identification and tracing information to the NAIT organisation.

The NAIT RFID tag has been designed to stay fitted to an animal throughout its lifetime to ensure the animal can be accurately identified and all of its PICA-to-PICA movements traced successively.

The issue of a live NAIT animal losing its NAIT tag some time after it has been fitted to the animal is discussed later in this paper in relation to proposed regulation B 2.4.

NAIT Limited has provided guidelines for the correct fitting of NAIT tags to animals (see [www.nait.co.nz](http://www.nait.co.nz)). Guidelines and application tools for the correct fitting of NAIT tags to animals are also available from tag manufacturers.

#### MPI Recommendation

An offence committed against Clause 83(1)(a), Schedule 2 of the NAIT Act, is proposed to be prescribed as an infringement offence regulation under the Act, as follows:

**A PICA for a NAIT location commits an offence who, contrary to the requirements prescribed by regulations made under the Act and without an exemption, 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 made under the Act, whichever is the sooner.**

The proposed infringement fee for this proposed infringement offence is \$150.

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

The main points covered by submitters who commented on proposed infringement offence regulation B 2.3 in the MPI discussion paper were about practicalities involved in PICAs meeting the NAIT scheme requirements for dealing with NAIT animals that arrive without NAIT tags.

Specific comments from submitters:

- Submission that NAIT needs to also operate for a time on Saturday. Many farmers run operations that require their input on the farm during the hours of 8am to 5pm Monday to Friday. To make contact with NAIT during these hours is sometimes just not practical. Saturday would be a time when farmers could speak directly to NAIT and will notify NAIT of any re-registration details or other changes that may have occurred. (19)
- Deer Industry New Zealand disagrees that failing to notify NAIT of receipt of an untagged animal (required by regulation 6(2) of the NAIT O&E regulations) should be an infringement offence, since the only benefit to NAIT of knowing that a PICA received an untagged animal is in compiling statistics as to overall compliance with section 30(1)(a) of the NAIT Act. (30)
- Deer Industry New Zealand submits that the two obligations are quite separate and that breach of regulation 6(3) should be an infringement offence irrespective of whether regulation 6(2) is breached. (30)
- If the infringement is not self-explanatory, then supporting guidance should be provided so that PICAs understand the whole obligation as it relates to them. (31)

Other comments from submitters:

- A robust infringement regime is central to the effective implementation of the scheme and helps lift the credibility of the market access assurances that lifetime traceability allows. We agree that by encouraging compliance, an infringement regime also contributes to the biosecurity insurance outcomes that NAIT is supposed to provide. (31)

### MPI Comment

As noted in the MPI comment for proposed regulation B 2.1, the matter of NAIT Contact Centre availability in evenings and during the weekend has been raised by several submitters and this matter has been passed on to NAIT Limited as the administrator of the Contact Centre.

A destination PICA who receives a NAIT animal without a NAIT tag fitted is required to notify the NAIT organisation under regulation 6(2) of the NAIT O&E regulations. The rationale for this requirement is to uphold NAIT information system integrity by notifying the NAIT organisation that there is potentially some missing information about animal's identity and/or its movement history.

Under regulation 6(3) of the NAIT O&E regulations, a destination PICA (who is not a PICA for a meat processing facility) who receives a NAIT animal without a NAIT tag fitted is

required to either fit a NAIT tag to the animal, or return the animal to the point of origin PICA, on the basis that:

- a PICA who receives a NAIT animal without a NAIT tag and decides to fit a NAIT tag to the animal will be exempt from needing to fit the tag and register the animal for 48 hours after the end of the day the animal was received, under regulation 20(1) of the NAIT O&E regulations; and
- a PICA who decides to return an animal will be exempt from needing to fit a NAIT tag to the animal before returning it, under regulation 20(2) of the NAIT O&E regulations.

#### MPI Recommendation

An offence committed against Clause 83(1)(d), Schedule 2 of the NAIT Act, is proposed to be prescribed as an infringement offence regulation under the Act, as follows:

**A PICA for a NAIT location commits an offence who, contrary to the requirements prescribed by regulations made under the Act and without an exemption, when a NAIT animal arrives at that location without a NAIT device, fails either to return the animal to the PICA who consigned the animal to the location or to fit a replacement device on the animal and reregister it in the manner, and within the time, specified in regulations made under the Act.**

The proposed infringement fee for this proposed infringement offence is \$150.

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

The main points covered by submitters who commented on proposed infringement offence regulation B 2.4 in the MPI discussion paper were about practicalities involved in PICAs meeting the NAIT scheme requirements for fitting replacement NAIT tags to animals. Different frequencies of managing animals in different farming contexts were emphasised.

Specific comments from submitters:

- The practicality of actually noticing that tags have fallen out coincides with management issues, which involve cattle actually being yarded, and then in turn having the correct tags on hand. Spare tags and their subsequent double levy are an expensive item to have on hand, for.... just in case a tag falls out. (02)
- How many smallholders and lifestylers can retag an adult animal? Most of these folk are not equipped to be able to do this - apart from the difficulty of achieving the required result! (03)
- Under the proposed legislation all the penalty falls on the farmer for the cattle not being tagged or if the tags fail to work. I don't think it is fair that farmers bear the costs of faulty equipment. (14)
- My submission is that:
  1. Replacement NAIT tags should be supplied by the tag companies for the life of the animal free of charge. The farmer is already bearing the cost and danger of actually replacing them and shouldn't have to bear the tag cost as well.
  2. In the case of animals where a tag is present, but fails to read at the freezing works, the company that supplied the tag should bear the cost of any penalties or fines. Farmers are buying and using these expensive tags in good faith that they will work, but this is not always happening. (14)
- What is the explanation of all times? For many cattle within the Gisborne/Wairoa province once they have passed the yearly stage it will be at least 12 months before they come through the yards again. (19)
- Failure to fit a NAIT tag to an animal at any other time than when it leaves the property is the only reasonable rule. The reality of farming on some times very big blocks with hundreds of animals – it is unrealistic to have to have a tag in every animal all the time. (22)
- The NAIT Act, s30(1)(a) requires that the animal is correctly fitted *at all times* with the NAIT tag. This is impossible to comply with on an extensive hill country farm – in practical terms it is nonsense because a hill farm operation cannot operate with this type of requirement. The law needs to be practicable and reasonable. Knowing the identification number of missing tags (or missing/dead animals) will be impossible unless the entire herd is mustered together where we may be able to guarantee 100% identification of all the other cattle in that age group. This is close to impossible on our type of country. A farmer should not be considered to be committing an infringement offence if an animal has lost a tag, provided the animal has a NAIT tag at the time of leaving the NAIT property. (27, 28)
- Deer Industry New Zealand considers that failing to ensure that an animal is correctly fitted with a NAIT tag at all times (as required by section 30) covers both the

circumstance of not fitting a NAIT tag in the first place and not fitting a replacement NAIT tag to an animal that did have a NAIT tag fitted. (30)

Other comments from a submitter:

- We envisage the retention of NAIT tags on our type of country will be an issue, as it has been with AHB tags. Any replacement tags will also be “scrubbed out” – that’s what some cattle do (they typically don’t respond to written warnings). (27, 28)

### MPI Comment

The NAIT Act section 30(1) requires a PICA to ensure that the NAIT animals they are in charge of are correctly fitted at all times with the NAIT tag required for those animals, and that the animals are registered with the NAIT organisation.

As noted earlier in comments on proposed regulation B 2.2, regulation 19 of the NAIT O&E regulations exempts a PICA for a NAIT animal (born at a NAIT location that is not at a game estate, safari park, or zoo) from the requirement to fit a NAIT tag to the animal for up to 180 days after the animal’s birth. Requiring PICAs to fit NAIT tags to animals within 180 days of birth, while they are still young, is aimed at ensuring that the animals can be handled safely while keeping their stress and discomfort to a minimum. However, if a new season’s calf and fawn is to be moved from its NAIT location of birth it must be fitted with a NAIT tag before it is moved.

Some submitters have described how difficult it can be for a PICA for a NAIT location to identify when an animal has lost its NAIT tag after it has previously been fitted to the animal. In response to these submissions, MPI proposes an amendment to proposed regulation B 2.2. An infringement offence will only be applicable, in the case when an animal at a NAIT location has lost its previously-fitted NAIT tag, if the PICA for the animal fails to fit a replacement NAIT tag to the animal and reregister it before it is moved from that location.

### MPI Recommendation

An offence committed against Clause 83(1)(b), Schedule 2 of the NAIT Act, is proposed to be prescribed as an infringement offence regulation under the Act, as follows:

**A PICA for a NAIT location commits an offence who, contrary to the requirements prescribed by regulations made under the Act, in a case where a NAIT device is lost or becomes detached from a NAIT animal in that location, before the animal is moved from that location, fails to apply a replacement device and to reregister that animal.**

The proposed infringement fee for this proposed infringement offence is \$150.

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

The main points covered by submitters who commented on proposed infringement offence regulation B 2.5 in the MPI discussion paper were about practicalities involved in PICAs meeting the NAIT scheme requirements for registering NAIT animals.

Specific comments from submitters:

- The time required to register an animal does not match the timing of registering a movement. This suggests a movement of an animal can be recorded before it is registered. (07)
- We seek clarification around regulation 7 the registration of animals which states the animal type be recorded. (19)

Other comments from submitters:

- Replacement NAIT tags should be supplied by the tag companies for the life of the animal free of charge. The farmer is already bearing the cost and danger of actually replacing them and shouldn't have to bear the tag cost as well. (14)
- In the case of animals where a tag is present, but fails to read at the freezing works, the company that supplied the tag should bear the cost of any penalties or fines. Farmers are buying and using these expensive tags in good faith that they will work, but this is not always happening. (14)

### MPI Comment

Under NAIT Act section 30(1)(b) a PICA must ensure that the NAIT animals in his or her charge are registered with the NAIT organisation.

When a PICA is registering a NAIT animal, the information required to be provided by the PICA on "the animal's type" is simply whether the animal is a cattle or a deer animal.

Under regulation 10 of the NAIT O&E regulations, a PICA registering a NAIT animal must do so within seven days of fitting a NAIT tag to the animal, or before the animal is moved to another NAIT location, whichever is sooner. This time requirement is longer than for most of the other time requirements for providing information to the NAIT organisation. The reason for this is that PICAs may need a few days extra time to complete registrations when they have higher than usual numbers of animals to fit NAIT tags to at certain times of the year - such as during calving and fawning periods.

### MPI Recommendation

An offence committed against Clause 82(2)(a), Schedule 2 of the NAIT Act, is proposed to be prescribed as an infringement offence regulation under the Act, as follows:

**A PICA for a NAIT location commits an offence who, without an exemption, fails to register a NAIT animal at that location in accordance with the Act.**

The proposed infringement fee for this proposed infringement offence is \$150.

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

The main points covered by submitters who commented on proposed infringement offence regulation B 2.6 in the MPI discussion paper were about the importance of PICAs complying with the NAIT scheme's tagging requirements in terms of the prescribed NAIT tags for cattle being different from the prescribed NAIT tags for deer.

Specific comment from a submitter:

- One offence of acting contrary to s30(1)(a) will cover all the different ways of breaching the different obligations within that provision. (30)

### MPI Comment

There is no tag levy on the purchase of NAIT tags for deer. This is because deer farmers' financial contribution for NAIT scheme operational funding is bulk-funded by Deer Industry New Zealand on behalf deer farmers. A consequence of this arrangement is that it creates a potential financial incentive for NAIT tags prescribed for deer to be illegally fitted to cattle.

A PICA for a cattle animal who purchases a NAIT deer tag to illegally fit to the animal will have avoided payment of the tag levy that would have been paid had she or he purchased the correct NAIT cattle tag. The proposed infringement offence will apply to a PICA who avoids payment of a tag levy by fitting a NAIT deer tag to a cattle animal.

### MPI Recommendation

An offence committed against Clause 83(1)(c), Schedule 2 of the NAIT Act, is proposed to be prescribed as an infringement offence regulation under the Act, as follows:

**A PICA for a NAIT location commits an offence who, contrary to the requirements prescribed by regulations made under the Act, fits a NAIT device prescribed for 1 species or sub-group of species to an animal of another species or sub-group of species.**

The proposed infringement fee for this proposed infringement offence is \$150.

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

The main points covered by submitters who commented on proposed infringement offence regulation B 2.7 in the MPI discussion paper were about practicalities involved in PICAs meeting the NAIT scheme requirements for declaring animal movements.

Specific comments from submitters:

- Unfair to give infringements to people that can't meet their NAIT requirements in a timely fashion simply because they are working hard to keep their farms (and the economy) moving forward, or the NAIT office is closed over the weekend. (23)
- Deer Industry New Zealand recommends that for the purpose of specifying the penalty, this offence should be treated as a serious infringement offence. (30)

Other comments from submitters:

- The computer companies/software writers/ and wand manufacturers have still not got to grips with anything other than straight forward movements e.g. when an animal is scanned and then for an unforeseen reason rejected from a mob - it is impossible to wipe that animal from the wand. (22)
- This should be a minimum of 10 days. Also if there is a problem with the transaction or you want to phone the transaction in the NAIT office is closed for the 63 hours over the weekend and also in the evenings when farmers are most likely to be processing there NAIT requirements. Also many older farmers who don't use computers are getting their children (many who don't live at home anymore) or neighbours to do the computer side of things for them. (23)
- Supporting material will need to make clear the relationship between the sending PICA and accredited entities so each understand clearly their legal responsibilities for reporting a movement. (31)

### MPI Comment

As noted in the MPI comment for proposed regulation B 2.1, the matter of NAIT Contact Centre availability in evenings and during the weekend has been raised by several submitters and this matter has been passed on to NAIT Limited as the administrator of the Contact Centre.

Two fundamental design components of the NAIT scheme are the obligations that a PICA for a NAIT location:

- must ensure that the NAIT animals at that location are tagged and registered, and
- must declare every movement of NAIT animals sent from, or received at, that location.

This is because NAIT animal movement recording is fundamental to achieving the end goal of animal traceability, and NAIT animal tagging is a critical means for achieving that end.

Regulation 8 of the NAIT O&E regulations sets out the information required to be contained in an animal movement declaration. For an animal movement between two PICAs (who are not PICAs for accredited entities dealing with NAIT animals), then both the sending and receiving PICAs must each provide an animal movement declaration to the NAIT

organisation. In this case the receiving PICA's animal movement declaration may, as a minimum, simply confirm the sending PICA's animal movement declaration plus include the end date of the animal movement.

When a PICA sends an animal to a PICA for an accredited entity dealing with NAIT animals (such as a NAIT-accredited meat processor or a livestock company operating at a saleyard) the sending PICA will be exempt, under regulation 22 of the NAIT O&E regulations, from having to declare the animal movement to the NAIT organisation. In this case, the receiving PICA for the accredited entity must provide an animal movement declaration containing all the information required to be provided by the sending and receiving PICAs under regulation 8 of the NAIT O&E regulations.

The exemption under regulation 22 will not apply for an animal movement from a PICA for an accredited entity to a PICA for another accredited entity.

### MPI Recommendation

An offence committed against Clause 82(2)(b), Schedule 2 of the NAIT Act, is proposed to be prescribed as an infringement offence regulation under the Act, as follows:

**A PICA for a NAIT location commits an offence who, without an exemption, fails to comply with section 31 of the Act in relation to a NAIT animal consigned for transport or droving from a NAIT location registered by the PICA.**

The proposed infringement fee for this proposed infringement offence is \$150.

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

The main points covered by submitters who commented on proposed infringement offence regulation B 2.8 in the MPI discussion paper were about practicalities involved in PICAs meeting the NAIT scheme requirements for declaring that NAIT animals have died or become lost. The importance of the date when a PICA first knows that an animal has died or become lost was emphasised.

Specific comments from submitters:

- This rule also lacks credibility and is completely unworkable. New Zealand has gorges and gullies, steep hills, tomos, bushland creeks and rivers, along with thieves and poachers. Sometimes animals can emerge from bushland after a couple of years missing. (02)
- It is impractical to expect a PICA to report a death if he has no knowledge of the event. (04, 07, 12)
- Proposed offence B2.8 “within 48 hours of when an animal dies” will not be workable because a farmer will probably not know that an animal has died until he brings them in to work on them, which in the case of our farm and for some classes of animals is only once a year. (05)
- In relation to an animal dying –why is it necessary for any information other than the fact that it has died to be needed by NAIT!! If you are wanting to create trust and co-operation between farmers and NAIT – why would you ask them in the middle of a wet spring – when handling large numbers of animals - to enter any other information other than an animal dies. (22)
- In many situations, the PICA may not become aware of the death or loss of an animal until well after 48 hours of the animal having died or gone missing. Further, there are times where a PICA risks their health and safety retrieving the NAIT tag number of an animal found dead in a gully. It is because of situations like these that Federated Farmers of New Zealand would hope that NAIT and MPI would lean more on when it is first known to be dead or lost than within 48 hours of an animal dying or becoming lost. (24)
- The infringement implies that farmers are required to physically conduct a tag specific inventory which is impractical and or implies also that farmers will have to invest in the RFID reading equipment which is not mandatory. New Zealand Deer Farmers' Association is concerned that the reality is that there will be migration in total numbers and specifics of individual deer at each yarding in many situations and defining these animals as missing or dead and reporting that in to be complaint to avoid an infringement is likely at a future date to be shown as inaccurate will create its own issues. New Zealand Deer Farmers' Association would prefer to see the regulation and reporting requirement to be restricted to a verified death or confirmed missing and reporting same as an annual inventory report not a 48 hour specific need. (26)
- If we become aware of animals missing, which is typically only when they are yarded (and haven't been sighted as dead) we have no way of knowing if they are dead, have missed the muster or have wandered off the property. All unaccounted for animals at balance date are accounted for as dead or missing. (27, 28)
- Your discussion document states that section 32 of the NAIT Act and Regulation 10 of the NAIT O&E regulations require farmers to inform the NAIT organisation within 48 hours of an animal dying. In fact, Section 32(1) states death or loss of an animal is to be

reported *as soon as practicable*. It is Regulation 10 that has introduced the 48 hour time limit. This time limit is not practicable, unless the farmer actually knows an animal is dead. The 48 hour limit can't be from when the animal dies, it can only be from when we *know* for certain the animal has died. An animal could be recorded as lost at one muster then found at another – this is a layer of bureaucracy that is of no benefit to anyone and a cost to us. (27, 28)

- Beef + Lamb New Zealand recommends that the NAIT regulations be amended to make it clear that farmers are required to report animal deaths within 48 hours of becoming aware that the animal has died, rather than 48 hours following the event. (29)
- Deer Industry New Zealand agrees that failing to comply with section 32 of the Act by failing to declare death, loss or intended export of a NAIT animal should be an infringement offence. (30)
- Deer Industry New Zealand believes regulations should only make reporting of deaths or missing animals an offence if not done as soon as reasonably practicable after the participant knows or has a reasonable belief that death or loss has occurred. (30)
- As the export of a live animal is a proactive act, then failure to meet NAIT obligations would, on the face of it, appear to be a more deliberate breach than failure to declare a death or loss which might not be known to the PICA. (31)

Other comments from submitters:

- We believe that 48 hours is too short a time period and recommend that the time be 7 days for the following reasons. This will keep this proposed infringement offence in line with the proposed infringement offences in B2.4 and B2.5 and save confusion for farmers around what is the requirements. Also due to the size of farming operations and type of land class combined with bush cover within the province if the time was 7 days that would allow for re-musters and the rechecking of tallies of lost and missing animals. Situations might occur when losses have to be reported with the 48 hours but then subsequent musters in the following days might find the cattle. (19)
- This should be a minimum of 10 days. Also if there is a problem with the transaction or you want to phone the transaction in the NAIT office is closed for the 63 hours over the weekend and also in the evenings when farmers are most likely to be processing there NAIT requirements. Also many older farmers who don't use computers are getting their children (many who don't live at home anymore) or neighbours to do the computer side of things for them. (23)

## MPI Comment

As noted in the MPI comment for proposed regulation B 2.1, the matter of NAIT Contact Centre availability in evenings and during the weekend has been raised by several submitters and this matter has been passed on to NAIT Limited as the administrator of the Contact Centre.

Under NAIT legislative requirements, a PICA for a NAIT location is required to provide an animal exit declaration for a dead or lost NAIT animal.

A number of submitters commented that for some NAIT locations, such as hill-country beef properties, the day it is first known by a PICA that a NAIT animal they are in charge of has died or become lost may not be until during, or after, a periodic mustering of animals under conventional stock management practices. What submitters wanted to be reassured of was

that they would not receive a penalty in a case where they did not know that an animal had died or become lost.

In response to the submissions, MPI is proposing that an infringement offence will not apply to a case where a PICA for a NAIT location fails to provide an animal exit declaration for a NAIT animal after the PICA first knows that the animal is lost. Rather, an infringement offence will only apply to a case where a PICA for a NAIT location fails to provide an animal exit declaration for a NAIT animal after it has:

- died by slaughter at that location; or
- is found by the PICA to have died at that location other than by slaughter and the animal's carcass is:
  - disposed of at that location; or
  - sent to an animal rendering facility.

Note that a PICA must still provide information as required under regulation 9(4) in an animal exit declaration to the NAIT organisation for a NAIT animal after the PICA first knows that the animal is lost. However the proposed infringement offence will not apply if the PICA fails to comply with this requirement.

The requirements for a PICA for a NAIT location when completing an animal exit declaration for a NAIT animal that died by slaughter at that location, or is found by the PICA to have died at that location other than by slaughter, are set out in regulations 9 and 10 of the NAIT O&E regulations.

A separate infringement offence regulation has been proposed for when a PICA for a port-of-export from New Zealand fails to provide an animal exit declaration for a live NAIT animal that the PICA intends to export from that port. The requirements for an animal exit declaration by a PICA for a port-of-export from New Zealand are set out in regulation 25 of the NAIT O&E regulations.

### MPI Recommendation

An offence committed against regulations 9 and 27(1) of the NAIT O&E regulations is proposed to be prescribed as an infringement offence regulation under the NAIT Act as follows:

**A PICA for a NAIT location commits an offence who fails to provide in an animal exit declaration under section 32(1) of the Act that a NAIT animal was slaughtered at that location or that the carcass of a NAIT animal that died at that location was disposed of at that location or sent to an animal rendering facility.**

The proposed infringement fee for this proposed infringement offence is \$150.

An offence committed against regulations 25 and 27(1) of the NAIT O&E regulations is proposed to be prescribed as an infringement offence regulation under the NAIT Act as follows:

**A PICA for a NAIT location that is a port of export from New Zealand commits an offence who, contrary to the requirements prescribed by regulations made under the Act, fails to make an animal exit declaration at that port for a NAIT animal to be exported live from that port before the animal leaves New Zealand.**

The proposed infringement fee for this proposed infringement offence is \$150.

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

The main points covered by submitters who commented on proposed infringement offence regulation B 2.9 in the MPI discussion paper were about practicalities involved in PICAs meeting the NAIT scheme requirement to keep their registration details up-to-date.

Specific comments from submitters:

- What is the reason for a 30 day time frame? Assuming that all NAIT movements have been recorded, then what are the changes referred to in this offence? (05)
- Deer Industry New Zealand agrees that failing to keep required information up-to-date should be an infringement offence. (30)
- Could this infringement be combined with B 2.12? (31)

Other comments from a submitter:

- Again we would recommend that the time be 7 days for the following reasons. This will keep this proposed infringement offence in line with the proposed infringement offences in B2.4, B2.5 and B2.8 and save confusion for farmers around the time frame to meet the requirements. (19)

### MPI Comment

This proposed infringement offence applies to a PICA who continues to be in charge of NAIT animals at the same NAIT location for which he or she has been allocated a NAIT number by the NAIT organisation. Under regulation 10(5) of the NAIT O&E regulations, if some information that the PICA previously provided to the NAIT organisation has since changed in some way, then he or she must inform the NAIT organisation within 30 days after the change occurs.

In the case where a PICA moves NAIT animals to a new NAIT location and that same PICA is also the PICA for NAIT animals at the new location, then he or she must register with the NAIT organisation as the PICA for the new location. However, if the PICA fails to register as the PICA for the new location, then the offence of failing to register as a PICA will apply, as described earlier under proposed regulation B 2.1.

### MPI Recommendation

An offence committed against regulations 10(5) and 27(1) of the NAIT O&E regulations is proposed to be prescribed as an infringement offence regulation under the NAIT Act as follows:

**A PICA for a NAIT location commits an offence who has provided information to the NAIT organisation under section 33(b) of the Act fails to inform the organisation of any change to the information within 30 days after the change occurs.**

The proposed infringement fee for this proposed infringement offence is \$150.

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

The main points covered by submitters who commented on proposed infringement offence regulation B 2.10 in the MPI discussion paper were about practicalities involved in an event organiser meeting the NAIT scheme requirements for notifying the event date and registering the event location with the NAIT organisation.

Specific comments from submitters:

- Deer Industry New Zealand agrees that an event organiser acting contrary to section 29(3) of the Act should be an infringement offence. (30)
- Presuming animals need to be transported to the event, they might arrive at their destination before the event takes place - if a different PICA is required to make an animal movement and needs the NAIT number of the location to do so, then it might be useful to provide some more specific guidance so this is completed in sufficient time? (31)

### MPI Comment

Under section 29(3) of the organiser of an event involving NAIT animals, such as an agricultural show or rodeo, must notify the event with the NAIT organisation and register the location of the event as a NAIT location.

The proposed infringement offence will need to incorporate a time requirement for the event organiser to have:

- notified the event with the NAIT organisation; and
- completed registration of the location of the event as a NAIT location and been allocated an event number by the NAIT organisation.

The event organiser will need to have registered the event location sufficiently in advance of the start of the event to enable PICAs sending animals to the event to obtain the event number that will be needed in order to make animal movement declarations in relation to the event.

Under section 29(5), an event organiser is not required to be a PICA for the event location, and consequently a PICA sending a NAIT animal to an event location must also be the PICA for the animal while it is at the event location.

### MPI Recommendation

An offence committed against Regulations 5(5A) and 27(1) of the NAIT O&E regulations is proposed to be prescribed as an infringement offence regulation under the NAIT Act as follows:

**The organiser of an event involving any NAIT animals who is required to notify the event and to register its location (if it is not currently registered) under section 29(3) of the Act and who fails, at least 72 hours before the event, to notify the NAIT organisation of the date of the event and the address of the location of the event and to register the location of the event with the NAIT organisation.**

The proposed infringement fee for this proposed infringement offence is \$150.

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

The main points covered by submitters who commented on proposed infringement offence regulation B 2.11 in the MPI discussion paper were about practicalities involved in meeting the NAIT scheme requirements for registering as a transit stop a place where NAIT animals are temporarily rested during a movement between two NAIT locations.

Specific comments from submitters:

- Transit stop registration is free and is a relatively simple process. Transit stop owners are not required to trace animal movements to or from transit stops. Therefore, we can see no logical reason why a transit stop owner would consciously decide not to register a transit stop. It may be that failure to register a transit stop will be caused by lack of understanding of NAIT regulations. (18)
- It will be necessary to provide a high level of information to participants on NAIT administrator expectations if unnecessary interventions are to be avoided. (18)

Other comments from a submitter:

- Deer Industry New Zealand also notes that the intended drafting would capture innocent bystanders, such as landowners on whose land animals are temporarily held without the landowner's permission. Deer Industry New Zealand considers that the obligations should only attach to parties who explicitly make their land available for the temporary holding of animals. (30)

### MPI Comment

During transport or droving of NAIT animals being moved between two NAIT locations, the animals are sometimes temporarily held at a place to be rested, watered or fed before continuing their journey to the destination NAIT location.

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

Some places, typically livestock saleyards, are often used by transport operators or drovers for holding NAIT animals temporarily when moving NAIT animals between two NAIT locations. In the case where a livestock saleyard is used as a transit stop, the saleyard will have already been registered as a NAIT location by way of the livestock-company PICAs operating at the saleyard registering themselves with the NAIT organisation.

Under section 29(5) of the NAIT Act, a transit stop owner is not required to be a PICA for the transit stop. However, NAIT officers and NAIT authorised persons may, at any time, require transport operators and drovers to provide information about any time when they temporarily held NAIT animals at a transit stop before continuing with moving the animals to the destination NAIT location.

### MPI Recommendation

An offence committed against Regulations 5(5B) and 27(1) of the NAIT O&E regulations is proposed to be prescribed as an infringement offence regulation under the NAIT Act as follows:

**The owner of a place where NAIT animals will be temporarily held during transport or droving between 2 NAIT locations who is required to register the place under section 29(4) of the Act and who fails, at least 24 hours before temporarily holding animals at the place, to register the place as a transit stop NAIT location.**

The proposed infringement fee for this proposed infringement offence is \$150.

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

The main points covered by submitters who commented on proposed infringement offence regulation B 2.11 in the MPI discussion paper were about practicalities involved in PICAs meeting the NAIT scheme requirement to provide accurate information to the NAIT organisation.

Specific comments from submitters:

- The question of accurate information is undefined. Does this mean that every animal with every movement be 100% accurate? With non-readable tags /wand issues / computer issues / lost ear tags as an example we believe that farmers and information providers are being unreasonably targeted. (22)
- Deer Industry New Zealand considers that providing information that is not accurate, whether negligently or deliberately, is a serious matter. However, Deer Industry New Zealand does not agree that there is a need for an infringement offence. First, the proposed drafting, is vague as to whether it captures the non-provision of information, the provision of inaccurate information or both. In Deer Industry New Zealand's view, the non-provision of required information would be adequately captured by other proposed offences. Second, the provision of inaccurate information is an offence, as specified in clause 78(1) of Schedule 2 to the Act and is too serious to be dealt with only as an infringement offence in Deer Industry New Zealand's opinion. (30)

### MPI Comment

Under section 33(a) of the NAIT Act, every PICA has an obligation to ensure that the information required to be provided under the NAIT legislation is accurate at the time it is provided. PICAs who fail to comply with this obligation due to misunderstanding and/or complacency about the importance of information accuracy for effective animal traceability, will compromise the operating efficiency and cost-effectiveness of the NAIT scheme.

A higher than acceptable level of inaccurate information provision by PICAs will mean that the NAIT organisation will be exposed to higher costs from following up and attempting to reconcile multiple data miss-matches in the NAIT information system. This will mean that:

- lifetime traceability for affected animals may not be able to be achieved; and
- the integrity of the NAIT scheme may be undermined in terms of the ability of the scheme to support an effective response during a biosecurity event involving NAIT animals.

### MPI Recommendation

An offence committed against Regulations 10(6) and 27(1) of the NAIT O&E regulations is proposed to be prescribed as an infringement offence regulation under the NAIT Act as follows:

**A PICA for a NAIT location who fails to take all reasonable steps to ensure that information the PICA provides under section 33(a) of the Act to the NAIT organisation electronically or orally by phone is accurate and correct at the time it is provided.**

The proposed infringement fee for this proposed infringement offence is \$150.

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

The main points covered by submitters who commented on proposed infringement offence regulation C 2.1 in the MPI discussion paper were about how an effective NAIT information system access panel membership is established and maintained.

Specific comments from submitters:

- The NAIT information system access panel needs to be independent from NAIT and not include NAIT employees or Board members. Additionally, the NAIT information system access panel members will need to be suitably qualified and cognisant of commercial sensitivities and potential system integrity issues in considering the release and/or sale of any data. (16)
- NAIT Limited agrees with its preliminary stakeholder feedback that appointments to the NAIT information system access panel should not include NAIT Limited staff members and recommends that this is reflected in regulations. The system administrator will however be a NAIT Limited employee. (17)
- New Zealand Deer Farmers' Association supports an ability of the Sector to provide on request a name or names of suitably qualified and experienced persons for consideration on the basis of their knowledge and experience of the sector and wider livestock industry and familiarity and knowledge of privacy law and requirements. (26)
- Beef + Lamb New Zealand recommends that the regulation establishing the NAIT information system access panel does not contain additional provisions on the details of the appointment process or terms of employment. (29)
- Deer Industry New Zealand would prefer that criteria to be collectively met by the NAIT information system access panel are enshrined in the regulations. In terms of relevant criteria, Deer Industry New Zealand considers that the access panel should collectively have specialist knowledge and experience of the livestock industry, food safety, biosecurity response planning, market assurance and animal and animal product trading conditions. Deer Industry New Zealand does not consider that knowledge of privacy law should be a relevant criterion, since the access panel's decisions are factual decisions as to whether an application meets the purpose of section 40. (30)
- Deer Industry New Zealand supports appointments being for renewable three-year terms of office. (30)
- Deer Industry New Zealand prefers an odd number of appointees, so that where decisions are split, a majority view may prevail. (30)
- Deer Industry New Zealand does not see the need to permit by way of regulation members to resign at any time; the right to resign from a post with an appropriate notice period may simply be the matter of employment terms. (30)
- Deer Industry New Zealand is concerned at the proposal that regulations may grant the NAIT Board a bare power to remove a NAIT information system access panel member. It is Deer Industry New Zealand's opinion that any power of appointment or removal from office should be on the basis of the candidate's suitability or non-suitability of the role, respectively. Accordingly, the NAIT Board should only be able to remove a member from office if the member has brought the access panel into disrepute or is no longer competent to discharge the access panel's functions. (30)

- Deer Industry New Zealand agrees that the convening of the NAIT information system access panel when the need arises would be appropriate, as it enables cost-effective administration. However, Deer Industry New Zealand considers that appointments to the access panel must be made in advance, even if it is never called to sit, to avoid particular panellists being appointed for particular cases, which increases the risk of bias. (30)
- We agree with the objectives outlined in this section. Further, the objective and transparent process for the NAIT information system access panel should also apply to the administrator. (31)
- We acknowledge MPI's view that it's unnecessary for the Crown to have a role in appointing the members of the NAIT information system access panel. We do however wish that should the Minister act under section 12 of the Act and issue policies affecting how NAIT administration is to be performed, that the Crown would do this in consultation with key stakeholders and shareholders of NAIT. (31)
- Some clarification around the appointment and removal of a member by the NAIT organisation and by the NAIT Board might be required given NAIT is shortly to merge with the Animal Health Board. (31)

Other comments from submitters:

- As presented, New Zealand Deer Farmers' Association supports the scope and intent of the regulations around establishing a NAIT information system access panel to assess applications to access data held in the NAIT information system. (26)
- Deer Industry New Zealand considers that the administration of the NAIT information system access panel should be straightforward and cost-effective. In terms of cost-effectiveness, NAIT shareholders should have the opportunity to scrutinise and comment on the NAIT organisation's budget and proposed fees for NAIT information system access panel members. (30)
- We encourage the development of policies and guidelines around the establishment and operation of the NAIT information system access panel in consultation with NAIT shareholders and stakeholders. (31)

## MPI Comment

A range of worthy but more detailed suggestions have also been made by some stakeholders. These are aimed at fleshing out proposals for the NAIT information system access panel's:

- powers;
- stakeholder involvement in nominations;
- reporting to stakeholders; and
- appointments to the access panel where should not include NAIT organisation employees.

The issue of cost recovery by way of possibly imposing fees for making applications to access NAIT information system data, to contribute towards the cost of convening of the NAIT information system access panel, is dealt with under proposed regulation C 2.2.

## MPI Recommendation

The following requirements are proposed to be prescribed by regulations under the NAIT Act:

**The access panel will comprised of a chairperson and three to four other members, all appointed by the NAIT organisation on the basis of their specialist knowledge and experience in the livestock industry or knowledge of privacy law:**

- **appointments to the panel may not include NAIT organisation employees;**
- **the appointments will be for a term of office of up to three-years;**
- **a person may be appointed by the NAIT organisation to replace a panel member who has resigned or been removed from office;**
- **the NAIT organisation may reappoint any panel member;**
- **the NAIT organisation must notify every appointment on an Internet site maintained by the organisation;**
- **appointees may resign at any time by notice to the NAIT organisation board; and**
- **an appointee may be removed from office for just cause, by majority decision of the NAIT organisation board.**

A number of submitters commented on the issue of the NAIT information system administrator and the NAIT information system access panel both potentially having a role in approving requests for information under section 46 of the NAIT Act. Some were concerned that the exercise of the administrator's discretion was not clearly laid out, as section 44(3) of the Act refers only to "...having regard to the significance of the application to the industry to whose data access is sought."

Submitters have suggested that the decisions of the administrator could be, variously, reported to the access panel, referred back to the access panel for review, or clarified by a Ministerial direction under section 12 of the Act.

The issue of decision-making roles needs to be looked at first in the context of the categories of information set out in section 46, and the conditions under which access *must* be granted, so long as the administrator or access panel is satisfied that the necessary conditions for approval apply. It seems likely that the majority of the requests for information will fit one of the scenarios set out, and only a few applications may fall outside their scope.

The way the Act has been structured does not present the role of the access panel as sitting in the role reviewing decisions made by the administrator. Both the administrator and the access panel have the power to make decisions and the ability to exercise discretion. However, that should not prevent either the administrator or the access panel consulting or seeking advice, which does not need to be addressed by regulation. MPI recommends that the NAIT organisation and the NAIT Board keep the issue under review. At this stage, before the access panel has begun operating, it is not clear how many requests for information might be thought to be significant to industry.

If the administrator and the access panel wish to set some guidelines for assessing applications, this could be done via an operational understanding. If there is a need to have such an arrangement codified, then as suggested, a Ministerial direction or policy could be issued to clarify and publicly notify the arrangement.

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

The main points covered by submitters who commented on proposed infringement offence regulation C 2.2 in the MPI discussion paper were about the extent of regulatory requirements needed for funding the operating costs of the NAIT information system access panel.

Specific comments from submitters:

- Ruapehu Federated Farmers believes that MPI has misled farmers and farmer associated businesses by now creating a NAIT information system access panel who will be funded from farmer levies at the cost of approximately \$1000.00 per meeting to determine what information will be made available to outside agencies of the NAIT scheme. (04)
- NAIT Limited does not agree that the access panel should be subject to the Cabinet Office Circular CO (09) 5 governing remuneration and expenses. These are public service limits that are inappropriate to impose on a private sector company. There is a risk that these arrangements will impede the NAIT Limited Board's ability to appoint quality candidates and fairly remunerate their time. NAIT Limited submits that remuneration is determined by the Chief Executive of NAIT Limited. (17)
- Through our submission we would like to recommend that if NAIT is to give access to any of the valuable information it would be best to sell it thus reducing the operating costs of NAIT. Furthermore we would like to add it would be unreasonable to levy payers to fund the NAIT information system access panel through levies when some the cost could be covered from the sale of information to the organisations who are seeking to make use of it for commercial gain. (19)
- Access to aggregate, non-personal data should be possible to enable a broader range of benefits to be realised. That said, the costs of considering applications for access to NAIT data and for providing NAIT data should be recovered from those seeking access. Federated Farmers of New Zealand does not have a view on how such costs might be recovered. Our interest is instead on ensuring that the cost burden already borne by farmers does not increase so that others can enjoy access to NAIT data. (24)
- Section C 2.2 (Access Panel's Remuneration) of the discussion document proposes that the regulation should provide that the remuneration of the access panel is to be set by the Chief Executive of the NAIT organisation (having regard to other statutory and Crown remuneration). The Meat Industry Association recommends that as this expenditure is recovered from stakeholders funding that the regulations must provide for the remuneration of the access panel to be approved by the NAIT Board on the recommendation of the Chief Executive of the NAIT organisation. (25)
- Beef + Lamb New Zealand proposes that MPI should include supporting regulations indicating that the NAIT information system access panel may impose a non-refundable fee for the purpose of recovering the costs of the operation of the access panel and for administering the creation of a report from the NAIT database. Beef + Lamb New Zealand also wishes to ensure that NAIT's right to charge whatever fee it considers appropriate for provision of NAIT data to third parties is protected. (29)
- Deer Industry New Zealand seeks that fees to contribute towards the convening of the NAIT information system access panel and the collation of data (on a cost recovery basis) should be set by way of regulation. This is to recognise that data provision is a targeted service provided upon application to interested parties rather than a general service provided to all NAIT shareholders and scheme participants. (30)

- Deer Industry New Zealand disagrees with the proposal that the regulations sub-delegate the issue of remuneration to the Chief Executive of the NAIT organisation who must have regard to the Cabinet Circular on bodies in which the Crown has an interest. (30)
- Deer Industry New Zealand considers that regulations must require NAIT information system access panel members to be remunerated. That remuneration will be provided is a powerful signal to the access panel members that their decision-making must be without fear or favour. Certainty of remuneration upholds their independence. (30)
- Deer Industry New Zealand considers that the appropriate quantum of remuneration must be subject to consultation with the NAIT organisation shareholders since the costs will ultimately be borne by NAIT scheme participants. (30)
- We agree with the proposals for the NAIT information system access panel's remuneration and note that as a shareholder/stakeholder we would have the opportunity to provide input into issues around the access panel's cost through the normal NAIT budgetary process. (31)

### MPI Comment

Most of the submitters who commented on the proposal that the remuneration of the access panel should be linked to Cabinet's guide to fees were opposed to the proposal. Most of those who were opposed to the proposal suggested that remuneration of the access panel should be set by the Chief Executive of the NAIT organisation. Several also submitted that the level should be set in consultation with stakeholders, given that the funding is recovered from stakeholders. That logic is irrefutable, and, given that 35% of the operational funding is provided by the Crown, supports the Crown having input into the levels of remuneration proposed.

Several submitters have proposed that the access panel should be able to charge application fees on a cost-recovery basis, to help cover the costs of assessing applications and compiling any data needed to fulfil the requests.

### MPI Recommendation

The following requirements are proposed to be prescribed by regulations under the NAIT Act:

**The Chief Executive Officer of the NAIT organisation must, from time to time, determine the remuneration by way of fees, salary, or allowances, and travelling allowances and expenses to be paid to the chairperson and other members of the panel, having regard to the fees framework determined by the Government from time to time for the classification and remuneration of statutory and other bodies in which the Crown has an interest.**

MPI recommends that the regulation on remuneration of the access panel provides that the level is set by the Chief Executive of the NAIT organisation following consultation with the industry stakeholders as well as the Cabinet guidelines.

Proposed regulations for establishing the NAIT information system access panel, particularly proposed regulation C 2.2, precipitated several submissions proposing that the access panel should be able to charge fees to help recover the costs of assessing applications and compiling any data needed to fulfil the requests.

The NAIT Act contains a provision under section 43(2) that a fee may be prescribed for applications to the NAIT information system access panel, or administrator, to access data from the NAIT information system. MPI proposes that:

- a fee of \$50, payable to the NAIT organisation, for an application to access data that is processed by the administrator, and
- an application fee of \$150, payable to the NAIT organisation, for an application to access data that is processed by the access panel.

A higher fee than these proposed fees is likely to act as a disincentive to applicants, and act in contradiction to one of the purposes set out in section 40 of the Act “*to provide data supporting productivity, market assurance and trading requirements*”.

In response to the submissions, the following requirements are proposed to be prescribed by regulations under the NAIT Act:

- **In the case where an applicant applies for access to data in the NAIT information system and the application is processed by the NAIT information system administrator, a fee of \$50 is payable to the NAIT organisation by the applicant.**
- **In the case where an applicant applies for access to data in the NAIT information system and the application is processed by the NAIT information system access panel, a fee of \$150 is payable to the NAIT organisation by the applicant.**

However, it is not intended that the \$50 fee will apply to requests for data needed to carry out any requirements under NAIT legislation. Rather it may be applied to cases such as a PICA requesting large amounts of historical data on their own activities recorded on the NAIT information system.

The NAIT Act does not directly provide a power to enable charging for the provision of data from the NAIT information system. Further work will be needed to determine whether it is in the best interests of NAIT scheme’s effective operations to consider charges for the provision of data.

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

The main points covered by submitters who commented on proposed infringement offence regulation C 2.3 in the MPI discussion paper were about the importance of maintaining the protection of farmers' information under proposed regulations for the NAIT information system access panel.

Specific comments from submitters:

- NAIT was established with the sole purpose of reducing the biosecurity risk of a disease spreading throughout the country. Recording stock movements supposedly will aid in this purpose. This is the only reason for which NAIT was promoted and agreed to by farmers therefore it should be the only reason for which gathered information is used. (01)
- Prior to the implementation of the NAIT scheme Ruapehu Federated Farmers members were of the understanding and had assurances from NAIT advisers that the NAIT scheme establishment was strictly for rapid and accurate identification and traceability of cattle and deer from birth to death. Assurances were always given that all data received would be held on a National data base for biosecurity reasons and be confidential. (04)
- The membership of the NAIT information system access panel would have the final say on what information to make available and to whom yet they are appointed and voted off by NAIT board. This means that farmers will have no say in what their information is used for and we believe is contrary to the understanding of many farmers. (05)
- Individual privacy and commercial sensitivity must be protected - these factors are important for individuals to feel safe to fully disclose data to NAIT and comply with NAIT regulations. (07)
- In the absence of clarity on the type of information being provided to the Levy - funded body LIC believes all such access by a levy - funded body about its members should be determined by the access panel not by the administrator. (10)
- I strongly oppose the ability of a third party deciding to grant access to my data in the NAIT data base. (12)
- The information I give you with regard my stock and stocking numbers is commercially sensitive information both to me and to the country not up for the highest bidder if I think for a minute you are giving this information out to say buyers of our products we produce or the people who are going to police the ETS and it is hindering my business I would have grounds for withholding information in the future - there should be no access panel. I don't want anyone giving out information collected under the NAIT rules. (13)
- NAIT Limited notes that it has the power to charge transaction or application fees if it wants to and indeed there may be a duty to its industry stakeholders to do this on occasion. (17)
- Federated Farmers of New Zealand welcomes the establishment of a body that would consider applications for access to NAIT data that fall outside the approved purposes of the National Animal Identification and Tracing Act 2012. Access to aggregate, non-personal NAIT data will enable a broader range of benefits to be realised in a way that should progressively reduce the cost burden on farmers for NAIT operations. (24)
- The potential for NAIT data to be used against farmers, whether directly or indirectly, would only serve to encourage farmers to not provide NAIT with complete, accurate or current data. It needs to be understood that the consequences of non-compliance with

NAIT would be weighed against the very real threat of harsher limits to farm production. Federated Farmers of New Zealand therefore supports the terms of reference of the proposed NAIT information system access panel allowing for certain uses of NAIT data to be prohibited. The process around release of data needs to be robust and should have farmers' best interest at the top. (24)

- The Meat Industry Association submits that the regulations must clearly define the scope in which the NAIT information system access panel may exercise full rights, powers and privileges. (25)
- New Zealand Deer Farmers' Association remains assured from NAIT and MPI that the data collected can only be used for the purposes as described clearly in the NAIT Act and believes the associated regulations and governance around the NAIT information system access panel is sufficient and well structured enough to ensure its role as described is efficient and effective. (26)
- Beef + Lamb New Zealand proposes that the regulation C2.3 (Functions, Duties and Powers of the Access Panel) should merely set out that the purpose of the NAIT information system access panel / NAIT information system administrator is to facilitate the appropriate release of NAIT data. (29)
- In respect of the section 47(5) power for the NAIT information system administrator or access panel to impose conditions on the disclosure of information other than the applicant's personal information, Deer Industry New Zealand notes that the Act does not establish an offence of breaching such conditions and recommends that a regulation be made providing for an enforcement mechanism. (30)
- Deer Industry New Zealand considers that cost-effective use of the access panel should entail the access panel only being used in respect of applications that are of significance to the industry whose data is sought. (30)
- Deer Industry New Zealand notes that the identity of the decision-maker is determined by the administrator by reference to section 44(3). To achieve clarity for potential applicants for NAIT data as to whom this is likely to be (as it is relevant to the timeframes and costs likely to be involved), Deer Industry New Zealand would prefer the administrator's decision to be made in accordance with a policy made by the Minister under section 12 of the Act. (30)
- Deer Industry New Zealand does not agree that a regulation should be made stating that the NAIT information system access panel has and may exercise "full rights, powers and privileges" as this phrase is a comparator and therefore meaningless without identification of the comparison body. (30)
- We agree the NAIT information system access panel should have a broad mandate in terms of its consideration. In the interest of transparency, in setting conditions/restrictions on data use, we think that the access panel should explain in its report the rationale for which any restrictions or conditions have been set. (31)

Other comments from submitters:

- NAIT were very clear with our training that security of information was paramount and yet as an information provider we have had to take additional steps as a result of the NAIT program to protect our databases e.g. clients' information ebbing given to other clients. (22)

- We are also very concerned about the NAIT information system, particularly who is going to be able to access data and for what reasons, and the accountability of the proposed NAIT information system access panel. (27, 28)

#### MPI Comment

Most of the private NAIT participant submitters expressed concerns that:

- their previous understanding was that the NAIT information system data would only be collected for animal identification and tracing;
- the proposal to establish the NAIT information system access panel contradicted the earlier assurances that NAIT information system data would be held confidential; and
- PICAs should be contacted before their data held NAIT information system is released.

Nothing in the proposals affects information which is protected under the NAIT Act. Section 40 of the Act sets out purposes for holding NAIT data that are wider than simply recording stock movements and location. Section 46 of the Act restricts access to personal information.

#### MPI Recommendation

The following requirements are proposed to be prescribed by regulations made under the NAIT Act:

##### **NAIT information system access panel must:**

- **deal with applications to access data in the NAIT information system in accordance with sections 46 and 47 of the Act;**
- **prepare annual reports and perform the other functions and duties conferred or imposed on it by or under the Act; and**

**The NAIT organisation must provide secretariat and systems support to enable the panel to carry out its functions.**

**In performing its functions and exercising its powers, the panel may regulate its own procedure.**

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

The main points covered by submitters who commented on proposed infringement offence regulation C 2.4 in the MPI discussion paper were about enabling the NAIT information system access panel to operate efficiently, impose conditions on grants of access to data, and for penalties to be available for breaches of conditions.

Specific comments from submitters:

- NAIT Limited submits that the detail concerning the make up of the NAIT information system access panel, the operation of the access panel and how it conducts its business does not need to be contained in regulation. NAIT Limited submits that operational guidelines are sufficient to achieve the same outcome. (17)
- NAIT Limited agrees with an empowered delivery model that enables the NAIT Limited Board to appoint a NAIT information system access panel that is reflective of the stakeholders represented in the NAIT scheme. However, there needs to be an emphasis on access panel members having the appropriate expertise and experience to deal with data access requests. The access panel will then determine its own way of operating, reporting and establishing functions to help ensure independence. (17)
- AHB wishes to clarify that it will have unfettered access to data held in the NAIT information system, where such data is necessary for monitoring the distribution of bovine tuberculosis and the location and movement of cattle or deer. In AHB's view, the NAIT organisation is obliged to provide this information to AHB under clauses 16 (2A), (2B) and (2C) of the Biosecurity (National Bovine Tuberculosis Pest Management Strategy) Order 1998. AHB submits that nothing in the proposed regulations for establishing the NAIT information system access panel should impede its access to information required for the above purposes. (20)
- And in regards to the NAIT information system access panel. I am sure that they can just use a service such as Skype to meet via a video conference. This will be much cheaper and be able to meet more often. In tough economic times we should be looking at cutting costs, not increasing them. (23)
- Beef + Lamb New Zealand recommends that the regulations specifically include a regulation prohibiting misuse of NAIT data, including any breach of the conditions imposed by the NAIT information system administrator or access panel – also, some consideration must also be given to whether the regulations should provide for protection for access panel members in the event of litigation concerning decisions they have reached. (29)
- Deer Industry New Zealand agrees that the regulation should empower the NAIT information system access panel to regulate its own procedures, save that it should be mandatory for the access panel to respond to complaints. (30)
- In respect of conditions, Deer Industry New Zealand considers it imperative that there be a regulatory means of enforcing compliance with conditions imposed by the NAIT information system access panel, so as to mitigate the risk of disclosed NAIT data being used contrary to the purposes for which it was disclosed. In this regard, Deer Industry New Zealand recommends that an offence of using data in a manner contrary to the condition of disclosure be created. (30)
- The NAIT information system access panel is empowered under this proposal to regulate its own procedures and operations in assessing applications for data access. Given the

importance of transparency, disclosure of these procedures and operations or some form of oversight should be necessary. Lines of accountability of the access panel seem very unclear - who does the access panel report to: the Crown or the Board of NAIT or the shareholders? It is unclear how underperformance would be dealt with. (31)

Other comments from a submitter:

- The Meat Industry Association notes that the NAIT Act 2012 (Part 4 section 50) notes that there is a requirement for a complaints procedure for dissatisfied applicants. The Meat Industry Association recommends that there should also be a procedure for complaints from NAIT participants, for example when a NAIT participant believes that information has been disclosed in a form that enables individual NAIT participant's data to be established. (25)

### MPI Comment

High-level criminal offences in the NAIT Act are applicable to a person breaching conditions set by the NAIT information system access panel, or administrator, requiring the protection of personal information and/or commercial sensitive information.

Some submitters identified, however, that no penalties are provided in the NAIT Act for the breaching of any other conditions that may be set by the access panel, or administrator, under section 47(5) of the Act, such as conditions restricting the use the data and/or prohibiting its further disclosure.

Given the care that has been put into the NAIT Act to protect people's personal information, this appears to be a gap in the regulations that should be filled.

### MPI Recommendation

Proposed regulation C 2.3 has addressed the regulatory requirements for procedures and operation of the NAIT information system access panel under the NAIT Act.

The following three infringement offences are proposed for breaching conditions imposed on any grant of access to NAIT information system data, under section 47(5) of the NAIT Act. MPI recommends that an infringement fee of \$1000 be set for each offence. This is the maximum fee available for an infringement fee under section 69(3)(m) of the NAIT Act.

An offence committed against Regulations 26(1) and 27(1) NAIT O&E regulations is proposed to be prescribed as an infringement offence regulation under the NAIT Act as follows:

**A person who is granted access to data in the NAIT information system by the administrator or the panel under section 45 or 46 of the Act and who fails to comply with conditions imposed under section 47(5)(a) of the Act that restrict the use to which the data may be put.**

The proposed infringement fee for this proposed infringement offence is \$1000.

An offence committed against Regulations 26(2) and 27(1) NAIT O&E regulations is proposed to be prescribed as an infringement offence regulation under the NAIT Act as follows:

**A person who is granted access to data in the NAIT information system by the administrator or the panel under section 45 or 46 of the Act and who fails to comply with conditions imposed under section 47(5)(b) that prohibit further disclosure of the data.**

The proposed infringement fee for this proposed infringement offence is \$1000.

An offence committed against Regulations 26(3) and 27(1) NAIT O&E regulations is proposed to be prescribed as an infringement offence regulation under the NAIT Act as follows:

**A person who is granted access to data in the NAIT information system by the administrator or the panel under section 45 or 46 of the Act and who fails to comply with conditions imposed under section 47(5) of the Act other than the conditions referred to in paragraphs (a) to (d) of that provision.**

The proposed infringement fee for this proposed infringement offence is \$1000.

Under NAIT Act Schedule 2 clause 2, a NAIT officer or NAIT authorised person will have the power, acting upon a request from the NAIT information system administrator or the NAIT information system access panel, to direct a person to produce information to determine whether the person has breached any conditions imposed on any grant of access to NAIT data.

Under sections 47(5)(c) and 47(5)(d) of the NAIT Act, the access panel may set conditions, respectively, to protect an individual's data that is personal information and/or commercial sensitive information held in the NAIT information system. Breaches of these conditions are very serious offences and an offender would be liable for prosecution for a criminal offence under NAIT Act Schedule 2 clause 78(3).

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

The main points covered by submitters who commented on proposed infringement offence regulation C 2.5 in the MPI discussion paper were about regulations not being required for employment and administrative matters of the NAIT information system access panel.

Specific comments from submitters:

- Deer Industry New Zealand agrees that regulation is not required to provide the NAIT information system access panel with administrative support; cost-effective administration should be effectively provided by the NAIT organisation in consultation with its shareholders. (30)
- We agree that regulation for these matters is not required. Issues around employment and administration are for the NAIT organisation and its Board, in consultation with shareholders/stakeholders where that is appropriate. (31)

### MPI Comment

There is a general consensus from submitters that there is no need for regulations to prescribe how employment and administrative matters will be dealt with by the NAIT information system access panel.

### MPI Recommendation

MPI recommends no change to the proposal in the discussion paper to not regulate in regard to employees and administration for establishing the NAIT information system access panel.

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

The main points covered by submitters who commented on proposed infringement offence regulation C 2.6 in the MPI discussion paper were about the extent of reporting by the NAIT information system access panel needed to provide sufficient transparency for its operations.

Specific comments from submitters:

- NAIT Limited does support that the NAIT information system access panel's reporting requirements are contained in regulation and that the access panel is subject to full transparency in its operations. (17)
- NAIT Limited also agrees with suggestions that the NAIT information system administrator should formally report his or her decisions back to the NAIT information system access panel for review. NAIT Limited is happy to confirm that we will proceed along these lines and therefore we do not believe regulations concerning this point are necessary. (17)
- NAIT Limited considers that the NAIT information system access panel's annual reporting will provide sufficient transparency and does not consider that any additional oversight or regulation is necessary. (17)
- Deer Industry New Zealand agrees with the proposal to require annual reporting by the NAIT information system access panel of the matters proposed for regulation C 2.6 on page 37 of the discussion paper. However, Deer Industry New Zealand recommends that the report also notify how it dealt with complaints and any breaches of conditions it imposed. (30)
- Deer Industry New Zealand does not understand how the NAIT information system access panel's annual report – which will be purely factual in nature – is capable of being accepted or rejected by the Minister. Deer Industry New Zealand recommends that the regulations require the access panel to provide its report to the NAIT shareholders and the Minister simultaneously and that the NAIT organisation be required to publish it on its website shortly thereafter, e.g. when all those persons have confirmed receipt of it. (30)
- Deer Industry New Zealand also recommends that the NAIT information system administrator's exercise of discretion under section 44(3) should be reported and made publicly available. (30)
- We agree with the proposal to establish a reporting mechanism relating to the work of the NAIT information system access panel. The report of the access panel should ideally also provide some explanation and rationale for when consent was declined and for complaints. (31)
- It is not clear what transparency provisions apply in the event that the Minister does not accept the report of the NAIT information system access panel. (31)

### MPI Comment

A range of submitters have emphasised the importance of the NAIT information system access panel maintaining the confidence of NAIT scheme participants and industry stakeholders. MPI considers this will best be achieved if the reporting requirements of the access panel are prescribed by regulation. To that end, the reporting requirements set out in proposed regulation C 2.6 need to include the following additional reporting requirements:

- number of complaints received, and how each complaint was dealt with; and
- number and types of breaches of conditions imposed by the NAIT information system administrator or access panel on any grant of access to NAIT information system data, and the penalties imposed or sought.

#### MPI Recommendation

The following requirements are proposed to be prescribed by regulations under the NAIT Act:

**The NAIT information system access panel must prepare annual reports in accordance with this regulation. An annual report must include, in relation to the year reported on, information about the following:**

- **the number of applications referred to the panel;**
- **the number of meetings held by the panel;**
- **the nature and purpose of the applications referred to the panel (for example, dairy, beef, deer, research, industry good, or commercial purposes);**
- **the nature of the information sought by applicants (for example, spatial, genetic, or animal management);**
- **in each case, whether the application was granted;**
- **any conditions imposed on the granting of an application;**
- **the number of complaints received by the panel and how each complaint was dealt with; and**
- **the number and types of breaches of conditions imposed on any grant of access and the penalties imposed or sought.**

**The panel's annual report must be forwarded through the Director-General to the Minister, and the NAIT organisation must publish the report on its Internet site.**

## Other Comments

A number of additional comments were made by submitters that fell outside the specific questions in the MPI discussion paper. These are listed here for the sake of completeness.

- MPI and NAIT seem to underestimate the level of computer literacy within the farming community and the lack of educational opportunities to improve this situation. (05)
- Allow a year at least before penalties are made for non-compliance. This will reduce stress and allow NAIT to iron out some of the hiccups. (09)
- A panel I would like to see put in place is one that would be elected by all PICA's. The primary purpose of this panel would be as a watchdog for the PICA's. (12)
- I would also urge that any enforcement of NAIT be extremely light and realistic for now as there is widespread misunderstanding about the NAIT rules. (15)
- Rather than a flat fee of \$150 for all offences, a fee scale is used relative to the severity of the offence. Offences would therefore need to be ranked / scaled as some are likely to have wider effects than others. Similarly, repeat infringements could benefit from a fee scale as opposed to a fixed fee. (16)
- NAIT Limited accepts there is some value in considering a varying infringement fine for a range of offences. However, given the self-correcting nature of the scheme, the focus on education and information sharing and the capacity for NAIT's information systems to detect non-compliant behaviour, on balance NAIT Limited prefers that a uniform infringement fee applies as it is straightforward to understand and simple to administer. (17)
- NAIT Limited firmly believes that the proposed sum for an infringement fine of \$150 is set at the right level. Given the level of expected egregiousness of offending and that the NAIT scheme will have a high rate of positive detection of non compliance we are of the view that a relatively low level fine is appropriate. (17)
- NAIT Limited's communications plan will focus mainly on the Voluntary and Assist of the VADE model and some Direction. It is expected that Enforcement will rarely be used and will be saved for the most serious and deliberate offending. (17)
- There is strong commonality of stakeholder interests in the TB strategy and the NAIT scheme. The Animal Health Board is committed to working constructively with NAIT to maximise benefits and minimise costs to these common stakeholders. (20)
- The Animal Health Board broadly supports proposed regulations to create infringement offences. Many offences under the NAIT Act or regulations are likely to be of a minor nature and infringement offences provide for an appropriately simple and light-handed compliance regime. (20)
- The Animal Health Board notes the proposed infringement fees are in the order of \$150, which must be regarded as modest. Fees at this level are probably appropriate for the early life of the NAIT scheme, but may require revising to heavier penalties following a suitable phase-in and educational period. There should be provision for infringement fees to be escalated over time and for steeper penalties to be available for repeat offences. (20)
- I feel that a fine of \$150 is too high especially in the first year while we are still getting a handle on the system. Also it is unfair if we are going to get fines because of the nature of the environment our industry is based in. Due to no fault of our own tags fall out, or stop working and the equipment that we use will be subject to breakages and data loss. (23)

- Many farmers especially older farmers are not able to cope with the technical skills required to comply with NAIT. This is not their fault. By introducing infringement fine it is likely that there are farmers that will simply give up farming, resulting in a loss of experience farmers from the sector and decrease in productivity in the beef sector. (23)
- Federated Farmers of New Zealand understands the importance of data being kept up to date and for amendments to be registered in a timely manner. Problems of data currency and completeness were seen in some existing databases, necessitating the establishment of a more complete and up to date system that has since become NAIT. The last thing anyone wants is to find at the onset of a major crisis that data held by NAIT is incorrect, incomplete or obsolete. (24)
- The Meat Industry Association of New Zealand submits that given that an inform, assist, educate and warning process is proposed prior to an infringement fee being applied the proposed fee of \$150 is too low to encourage a change in behaviour. (25)
- The Meat Industry Association of New Zealand recommends that the infringement fee be in the order of \$500 as the risk of a fee of this order is more likely to change behaviour. The Meat Industry Association of New Zealand further recommends that to ensure that there are no subsequent offences that there needs to be an increasing fee structure for second and subsequent offences (especially if the fee is set at the proposed \$150). (25)
- New Zealand Deer Farmers' Association supports the VADE model of the compliance strategy as part of the introductory process to encourage compliance and cooperation. (26)
- New Zealand Deer Farmers' Association recommends that the level of infringement fees be maintained at \$150 during the introduction period, except for the specific infringement of a person as required to do so failing to register themselves with NAIT in the first instance. New Zealand Deer Farmers' Association believes that this infringement covers an area that is critical to the success of the uptake and functioning of NAIT and should be associated with a substantial penalty to induce this key behaviour change and would support an infringement offence penalty in the \$400-\$500 range. New Zealand Deer Farmers' Association believes that the penalty at \$150 for all other infringements is a reasonable, but conservative penalty. (26)
- New Zealand Deer Farmers' Association would not be adverse to a review in time and seeing this \$150 increase to \$250-\$300 in the future should there be strong evidence that the proposed level is seen as part of conscious avoidance and poor behaviour. We believe a review of this effectiveness fits well with the VADE compliance approach in general. (26)
- Beef + Lamb New Zealand submits that is essential that industry shareholders are included in the proposed process for 'monitoring, evaluation and review' of the operation of the regulations. (29)
- Beef + Lamb New Zealand recommends that (29):
  - the level of infringement fines remains at \$150;
  - enforcement policy and the package of infringement offences liable for fines be reassessed to determine which ones farmers without access to RFID readers can reasonably be expected to comply with;
  - no more than one NAIT infringement fine should be able to be issued on any one occasion; and
  - the fine payable for failure to register with NAIT as a PICA at a location be set at ~\$500.

- Deer Industry New Zealand considers that a starting penalty of \$250 more properly reflects the seriousness of NAIT information being inaccurate and the offender's unwillingness to respond to advice and assistance. (30)
- Deer Industry New Zealand considers that in serious cases, it would be appropriate to move to a criminal prosecution after one infringement offence dealt with by way of infringement penalty, and that in no circumstance should more than three infringement penalties be imposed for the same type of offence by the same participant. In the case of infringement offences not backed by criminal offences, Deer Industry New Zealand suggests that the penalty increase upon subsequent offences by \$100 until the ceiling of \$1000 is reached. (30).
- Deer Industry New Zealand recommends that each offence should bear penalties in tiers dependent on the number of animals involved. (30)
- Understanding that there are consequences for non-compliant behaviour is an important part of implementing the NAIT regime, and early certainty around the regulatory settings is important for encouraging compliance. (31)

## Table of Submitters

| <b>Submission Number</b> | <b>Submitters</b>             | <b>Occupation/Organisation (where known)</b>         |
|--------------------------|-------------------------------|--|
| <b>01</b>                | Koa Gower                     | Farmer   |
| <b>02</b>                | Ian Blair                     | Farmer   |
| <b>03</b>                | Anthony Opie                  | Farmer   |
| <b>04</b>                | Lyn Neeson & Annie Carmichael | Ruapehu Federated Farmers                            |
| <b>05</b>                | Alex & Lyn Neeson             | Farmers  |
| <b>06</b>                | Alec Milne                    |  |
| <b>07</b>                | Phillip Steele                |  |
| <b>08</b>                | Rob Chrystall                 |  |
| <b>09</b>                | Marian Garrett                | Farmer   |
| <b>10</b>                | Selwyn Tisch                  | Livestock Improvement Corporation                    |
| <b>11</b>                | Tim Hale                      | AgResearch Ltd                                       |
| <b>12</b>                | Neil Henderson                | Farmer (beef cattle & sheep)                         |
| <b>13</b>                | Brent Mackie                  | Farmer   |
| <b>14</b>                | Marianne Lovell               | Farmer   |
| <b>15</b>                | Lyle Dodds                    | Farmer   |
| <b>16</b>                | Andrew Clark                  | New Zealand Stock & Station Agents Association       |
| <b>17</b>                | Russell Burnard               | NAIT Limited   |
| <b>18</b>                | Mark Ngatuere                 | Road Transport Forum of NZ (Inc)                     |
| <b>19</b>                | Hamish Cave                   | Gisborne/Wairoa Federated Farmers                    |
| <b>20</b>                | Nick Hancox                   | Animal Health Board                                  |
| <b>21</b>                | R. W. Smithem                 |  |
| <b>22</b>                | Stephen Drake                 | Drake Livestock (Information provider)               |
| <b>23</b>                | Martin Roest                  | Roest Rural Services (Information provider)          |
| <b>24</b>                | Jacob Haronga                 | Federated Farmers of New Zealand                     |
| <b>25</b>                | Kevin Cresswell               | Meat Industry Association of New Zealand (Inc) (MIA) |
| <b>26</b>                | Tony Pearse                   | New Zealand Deer Farmers' Association (NZDFA)        |
| <b>27</b>                | Owen Neal                     | Farmer (beef cattle & sheep)                         |
| <b>28</b>                | Peter Nicol                   | Farmer (beef cattle & sheep)                         |
| <b>29</b>                | Chris Houston                 | Beef + Lamb New Zealand                              |
| <b>30</b>                | Catharine Byrne               | Deer Industry New Zealand                            |
| <b>31</b>                | Elizabeth Dixon               | DairyNZ  |

## APPENDIX: The VADE Model

| <b>Service Delivery Categories</b>             | <b>Voluntary</b>   | <b>Assisted</b>  | <b>Directed</b>  | <b>Enforced</b>   |
|--|--|--|--|---|
| <b>Behaviours</b>                              | <i>Voluntarily comply and informed</i>   | <i>Attempting to comply and uninformed</i>   | <i>Propensity to offend (opportunistic)</i>  | <i>Criminal intent and illegal activity</i>   |
| <b>Intervention Information</b>                | <ul style="list-style-type: none"> <li>Enabling Legislation</li> <li>Area and ethnicity specific communication plans</li> <li>Brochures, publications and signage that accurately convey legal and technical requirements</li> <li>Organisational information that directly supports decision making</li> </ul>        | <ul style="list-style-type: none"> <li>Targeted communication plans</li> <li>Brochures, publications and signage that highlight areas of specific concern</li> <li>Compliance collection planning</li> <li>Organisational information that directly supports decision making</li> </ul>  | <ul style="list-style-type: none"> <li>Brochures, publications and signage that highlight consequences of non-compliance</li> <li>Compliance collection planning</li> <li>Compliance tactical intelligence reporting</li> <li>Organisational information that directly supports decision making</li> </ul>   | <ul style="list-style-type: none"> <li>Compliance collection planning</li> <li>Compliance tactical intelligence reporting</li> <li>Internal information that directly supports decision making</li> <li>Compliance operational and strategic intelligence reporting</li> </ul>  |
| <b>Intervention Stakeholder Agreements</b>     | <ul style="list-style-type: none"> <li>Compliance rate discussion and agreement of comprehensive measures</li> <li>Inspection focus</li> </ul>   | <ul style="list-style-type: none"> <li>Compliance rate with focus on improvement advice</li> <li>Formal agreement with general standards</li> </ul>  | <ul style="list-style-type: none"> <li>Compliance rate with focus on direction of required activity</li> <li>Formal agreement with performance standards defined</li> </ul>  | <ul style="list-style-type: none"> <li>Enforcement activity with clear understanding that voluntary, assisted and directed states have been breached</li> </ul>   |
| <b>Intervention Action</b>                     | <p><i>Plan and Respond</i></p> <ul style="list-style-type: none"> <li>Engage with stakeholders including international.</li> <li>Support industry organisations</li> <li>Deliver education services</li> <li>Inform services to commercial</li> </ul>  | <p><i>Intelligence and Risk Entities</i></p> <ul style="list-style-type: none"> <li>Identification of risk</li> </ul> <p><i>Plan and Respond</i></p> <ul style="list-style-type: none"> <li>Engage through education and intervention with 'no' and 'low' risk</li> </ul> <p><i>Enforcement</i></p> <ul style="list-style-type: none"> <li>Identified breaches of law will be 'warning' focused</li> </ul> | <p><i>Intelligence and Risk Entities</i></p> <ul style="list-style-type: none"> <li>Identification of risk</li> <li>Target 'medium' risk</li> </ul> <p><i>Plan and Respond</i></p> <ul style="list-style-type: none"> <li>Develop enforcement plans that are principally inspection and audit focused</li> <li>Inter-agency collaboration</li> </ul> <p><i>Enforcement</i></p> <ul style="list-style-type: none"> <li>Identified breaches of law will be 'infringement' and 'summary proceedings' focused</li> </ul> | <p><i>Intelligence and Risk Entities</i></p> <ul style="list-style-type: none"> <li>Identification of risk</li> <li>Target 'high' risk</li> </ul> <p><i>Plan and Respond</i></p> <ul style="list-style-type: none"> <li>Develop enforcement plans that are principally inspection and investigation focused</li> <li>Inter-agency collaboration</li> </ul> <p><i>Enforcement</i></p> <ul style="list-style-type: none"> <li>Identified breaches of law will be 'prosecution' focused</li> </ul> |
| <b>Intervention Assessment and Measurement</b> | <ul style="list-style-type: none"> <li>Define clearly relevant compliance measures and rates across sector dimensions</li> <li>Compliance rate monitoring and reporting (agreed Voluntary measures)</li> <li>Effectiveness of education programmes</li> </ul> <p><i>Review and design compliance best practice</i></p> | <ul style="list-style-type: none"> <li>Compliance rate monitoring and reporting (agreed Assisted measures)</li> <li>Effectiveness of education programmes</li> </ul> <p><i>Review and design compliance best practice</i></p>  | <ul style="list-style-type: none"> <li>Compliance rate monitoring and reporting (agreed Directed measures)</li> <li>Effectiveness of deterrence activities</li> </ul> <p><i>Review and design compliance best practice</i></p>   | <ul style="list-style-type: none"> <li>Compliance rate monitoring and reporting (agreed Enforced measures)</li> <li>Effectiveness of deterrence activities</li> </ul> <p><i>Review and design compliance best practice</i></p>  |