

Coversheet: NAIT Information Access & Use

Advising agencies	Ministry for Primary Industries (MPI)
Decision sought	Approval to progress proposed legislative changes to the National Animal Identification and Tracing (NAIT) Act 2012 that protect NAIT data for all users and secure continuity of access to the information system in the event of a change in NAIT organisation
Proposing Ministers	Hon Damien O'Connor Minister for Biosecurity

Summary: Problem and proposed approach

Problem Definition

To maintain an animal identification and tracing system that enables an effective biosecurity response in the event of an animal disease outbreak, the government needs to ensure continuous access to timely, comprehensive and accurate information on the location and movement history of individual or groups of NAIT animals.

In certain circumstances (set out in the Act) the Minister for Biosecurity currently has the power to revoke the designation of a NAIT organisation and appoint another in its place.

The NAIT Act is, however, silent on arrangements for the transfer of the ownership and operation of the NAIT information system in the event that the Minister for Biosecurity determines that the appointment of a NAIT organisation needs to be revoked and transferred to another entity. The Act also does not state who owns the data held in the information system.

This situation poses risks to the protection of, and continued access to, NAIT information during any transition to a new organisation, and acts as a practical constraint on the Minister's ability to intervene if it became necessary.

Proposed approach

To:

- protect the data on behalf of the farmers who provided it, wider industry, and for the general public interest, and
- secure the NAIT information system and ensure continuity of access to timely, comprehensive and accurate NAIT information during any transition to a new NAIT organisation

it is proposed to amend the NAIT Act to:

- confirm Crown ownership of the NAIT data;
- require a NAIT organisation to provide a full copy of the NAIT dataset to MPI periodically upon request at no cost to the Crown; and
- make it a function of a NAIT organisation to ensure continuity of access to, and use of, NAIT data and the information system by whomever is the designated NAIT organisation.

Section B: Summary Impacts: benefits and costs

Who are the main expected beneficiaries and what is the nature of the expected benefit?

Ensuring continuity of access to NAIT data in the event of a change in the NAIT organisation is critical to the delivery of the NAIT scheme that benefits all participants in the dairy, beef, and deer industries as well as the broader primary sector and the general public.

NAIT supports New Zealand's biosecurity system, which manages the risks posed by biosecurity incursions or contamination scares. Effective animal tracing helps reduce the breadth and length of outbreaks by identifying in a timely manner where at-risk livestock are located, and enabling clear identification of stock movements and potential avenues of disease spread.

NAIT also helps maintain access to international markets for animal products where credible lifetime (birth to slaughter) traceability is required to support assurances that the food products are safe to eat. It can also provide assurance to domestic consumers.

Protecting NAIT data and ensuring continuity of access to it during any transition between NAIT organisations will help maintain the integrity of the NAIT scheme. Having a robust scheme in which a range of stakeholders have confidence is also essential.

Beneficiaries	Benefits
Persons in Charge of NAIT Animals (PICAs) and the wider primary sector	<ul style="list-style-type: none"> <i>Reduction in lost sales:</i> A robust animal tracing system reduces the risk to farmer livelihoods and income from a disease incursion by providing information that helps to reduce the scale and duration of the biosecurity response. <i>Price premiums:</i> Lifetime traceability contributes to achieving premium prices for livestock (price per kilo not discounted for untagged animals or animals without full traceability). <i>Improved stock protection:</i> Maintaining access to NAIT data is necessary to provide assurance of the provenance of stock at time of purchase. <i>Reduced stock losses:</i> Ensuring ongoing access and use of data enables earlier return of wandering or stolen stock. <i>Wellbeing:</i> A robust NAIT scheme supports PICA/farmer and family well-being by reducing stress as a result of maintaining timely continuously available traceability that helps reduce the scale and duration of disease outbreaks.
NAIT Limited	<ul style="list-style-type: none"> <i>Efficient Administration:</i> Agreement around transfer of NAIT information system assets to a new NAIT organisation will be more straightforward and efficient, given the intended binding contingency agreement with the Crown on the approach. <i>Clear accountability:</i> Making it a function of a NAIT organisation to ensure continuity of data access clarifies NAIT Limited's accountability and minimises the risk of dispute with the Crown.

	<ul style="list-style-type: none"> • <i>Ownership of asset recognised:</i> Requiring an agreement between NAIT Limited and MPI on transfer arrangements recognises NAIT Limited's ownership of the information system and its right to manage its assets within existing legislative parameters.
MPI (as regulatory steward)	<ul style="list-style-type: none"> • <i>Reduces risk to efficient & effective delivery of biosecurity services:</i> Ensuring continuity of access to NAIT information removes a risk to the NAIT scheme and to the efficient and effective delivery of MPI's biosecurity responsibilities. • <i>More efficient & effective regulatory stewardship:</i> Clarifying a NAIT organisation's responsibility for enabling the smooth transfer of NAIT information in and the information system the event the Minister revokes their NAIT designation clarifies accountabilities and enables more effective regulatory stewardship.
Meat processors	<ul style="list-style-type: none"> • <i>Efficient Processing:</i> Continuity of access to NAIT information minimises disruption to processing operations in the event of a disease outbreak.
Meat exporters	<ul style="list-style-type: none"> • <i>Reduction in lost sales:</i> Maintaining continuous access to NAIT information is key to an effective animal tracing system that in turn supports an effective biosecurity response. An effective response reduces the time access to export markets may be denied as a result of an adverse biosecurity or food safety event.
Local Government	<ul style="list-style-type: none"> • <i>Efficient management of wandering stock:</i> Time and cost savings from maintaining access to NAIT data to assist in the return of wandering stock.
Police	<ul style="list-style-type: none"> • <i>Efficient policing of stock theft:</i> Time and cost savings from maintaining access to NAIT data when dealing with stolen or wandering stock.

Where do the costs fall?

Confirming Crown ownership of the data and ongoing access to it for the purposes for which it is being gathered does not involve any additional costs to any of the parties.

The costs associated with transferring the information system from NAIT Limited to another entity will need to be agreed between NAIT Limited and the Crown. Those costs could range from:

s 9(2)(b)(ii)

[REDACTED]

[REDACTED]

[REDACTED]

In addition, it is anticipated NAIT Limited, MPI and any entity being appointed as the NAIT organisation, would incur some operating costs in enabling the transition.

What are the likely risks and unintended impacts, how significant are they and how will they be minimised or mitigated?

Unintended consequence – data misuse and consequent non-compliance by PICAs:
Some PICAs may be reluctant to comply with all their regulatory requirements if they think there is an increased risk that Crown ownership will result in the data being used for purposes other than those permitted by the NAIT Act. For example, PICAs may be concerned that information could be used by Inland Revenue for tax assessment purposes, or by regional councils to assess compliance with Resource Management Act requirements.

The likelihood of the data being misused as a result of Crown ownership is assessed as low and is unchanged from the status quo. Access to NAIT data will continue to be overseen by NAIT Limited's Data Management Advisory Panel. Government agencies, including IRD and regional councils, are unable to access and use NAIT data for purposes other than those set out in the Act, and it is a prosecutable offence to misuse NAIT data. Moreover, we anticipate NAIT Limited and MPI will ensure their data management arrangements will have appropriate checks and balances in place to manage the release of NAIT data.

The risk of PICA non-compliance as a result of concerns about data misuse by government agencies as a result of Crown ownership is assessed as low to moderate, if not mitigated. The communication programmes implemented by NAIT Limited and MPI to support the implementation of the legislative changes, will need to highlight the checks and controls - including legislative protections - that are in place, to allay stakeholder concerns.

Risk that no agreement is reached between NAIT and MPI on transfer arrangements:
There is an implementation risk that NAIT and MPI are unable to agree appropriate transfer arrangements that provide sufficient comfort that continuity of access to NAIT data will be protected in the event that a change in NAIT organisation is determined. The likelihood of the parties failing to reach agreement is assessed as moderate. It is mitigated in part through the Minister of Biosecurity's power to issue a direction to NAIT Limited in relation to a NAIT organisation's functions.

Risk - Failure to give effect to the agreed transfer arrangements:
There is a risk that after an agreement between the Crown and NAIT Limited is established, the smooth transfer of the data and information system may not occur as intended. The transfer depends on the goodwill of the existing NAIT organisation at a time when there is a risk that its relationship with the Crown may be strained and/or its capability to give effect to the agreement's requirements is limited or constrained in some way. The likelihood of this failure occurring is assessed as low to moderate. As the proposed agreement will be legally binding the Crown may have legal remedies if NAIT Limited breaches that agreement. Further practical and technological measures for mitigating this risk will need to be addressed in the development of the agreement between MPI and NAIT Limited.

Identify any significant incompatibility with the Government's 'Expectations for the design of regulatory systems'.

MPI's approach is aligned with the guidance provided in *Government Expectations for Good Regulatory Practice* (April 2017).

Section C: Evidence certainty and quality assurance

Agency rating of evidence certainty

MPI considers there is an adequate evidence base for the proposed changes to the NAIT legislative framework for securing ongoing access to and use of NAIT information in the event of a change in the designated NAIT organisation.

Alongside an OSPRI-led industry review of the NAIT system, MPI undertook further policy work as part of the response to the *Mycoplasma bovis* outbreak. It is this second stream of MPI-led policy work that addressed performance management issues for a NAIT organisation and identified the gap in the current legislation relating to continuity of access to NAIT information during any transition to a new NAIT organisation.

Alongside public consultation on a broad range of proposals for improvements to the NAIT scheme¹ the Minister for Biosecurity instituted a targeted engagement process with NAIT Limited's shareholders and governance bodies on an enhanced performance management framework for a NAIT organisation.

Following feedback on its performance management proposals, MPI has undertaken further policy development work on options for securing continuity of access to NAIT information in the event that a change in NAIT organisation is required. This has involved further targeted engagement with NAIT Limited, NAIT Limited's Board, its shareholders, and key government agencies.

The proposals outlined in this regulatory impact assessment take account of stakeholder feedback.

To be completed by quality assurers:

Quality assurance reviewing agency:

MPI

Quality Assurance Assessment:

A Quality Assurance Panel from MPI reviewed the regulatory impact assessment *NAIT Information Access and Use* produced by the Ministry for Primary Industries. The Panel considers that it meets the quality assurance criteria. MPI's analysis of costs, benefits and other impacts is sound and the regulatory analysis assessment criteria have been met.

¹ Further information on the public consultation process is available at: <https://www.mpi.govt.nz/news-and-resources/consultations/proposed-changes-to-the-national-animal-identification-and-tracing-act-and-regulations/>
A summary of the submissions received is available at: <https://www.mpi.govt.nz/dmsdocument/33963/direct>

Impact Statement:

NAIT Information Access and Use

Section 1: General information

Purpose
<p>MPI is solely responsible for the analysis and advice set out in this regulatory impact assessment (RIA) except as otherwise explicitly indicated. This analysis and advice has been produced for the purpose of informing key policy decisions to be taken by Cabinet.</p> <p>This RIA provides an analysis of options involving changes to the National Animal Identification and Tracing Act 2012 to:</p> <ul style="list-style-type: none"> • protect the data on behalf of the farmers who provided it, wider industry, and for the general public interest • secure the NAIT information system and ensure continuity of access to timely, comprehensive and accurate NAIT information during any transition to a new NAIT organisation.
Key limitations or constraints on analysis
<p><i>Scope:</i> The policy development process that underpins the proposals considered in this RIA focused on options for ensuring continuity of access to NAIT information in the event that a change in NAIT organisation is required in the future.</p> <p>It did not include consideration of:</p> <ul style="list-style-type: none"> • changes that affect the ownership, organisational form or governance of the existing NAIT organisation • changes to related statutes including: The Biosecurity Act; The Animal Products Act; or the Animal Welfare Act. <p>Addressing issues relating to the ownership and governance of a NAIT organisation, including NAIT Limited, were ruled out of scope in favour of a focus on improving the performance management framework for a NAIT organisation.</p> <p>A separate review of the Biosecurity Act is being progressed by MPI, which will address wider biosecurity issues.</p> <p><i>Constraints:</i> MPI considers it has adequate information to complete an assessment of the regulatory impact of the proposed changes to the NAIT Act.</p> <p>Given the initial assessment that the overall impact of these changes on regulated parties is relatively small and is solely intended to enable continuity of access and use of NAIT data and information system in the event that the Minister of Biosecurity determines in the future to appoint a different NAIT organisation, the assessment process has not involved a cost-benefit analysis that fully quantifies the additional costs and benefits of the preferred approach.</p> <p>Where necessary the RIA has relied on a qualitative assessment by MPI and industry subject matter experts on the impact of the proposed changes, including feedback received during the consultation process with NAIT Limited, OSPRI's shareholders, and central agencies.</p>

Responsible Manager (signature and date):



Grant Bryden
Director, Policy & Trade Branch
Ministry for Primary Industries

15 / 05 / 2019

Section 2: Problem definition and objectives

2.1 What is the context within which action is proposed?

Animal tracing and biosecurity

Animal identification and tracing is a key component in New Zealand's wider national biosecurity system. Effective biosecurity is critical to the protection of New Zealand's primary industries, which are a key contributor to New Zealand's overall economic and social prosperity. Dairy, meat, and wool exports earned \$26.2 billion in the year to 30 June 2018.²

The risk

The risks to the New Zealand economy posed by biosecurity incursions or contamination scares are significant. A wide range of diseases have the potential to impact adversely on the livestock industry, with foot and mouth disease an example of one that would have the most significant impact on the New Zealand economy.

While the likelihood of an outbreak of foot and mouth disease is considered very low, its economic impact under some scenarios has been estimated as being more than \$16 billion.³ Outbreaks of other diseases affecting animals – such as chronic wasting disease, brucellosis or *Mycoplasma bovis* – have a higher probability of occurring and have the potential to have significant adverse economic impacts. For example, MPI estimated that the recent outbreak of *Mycoplasma bovis*, if not eradicated, would cost \$1,382 million in lost production.⁴ The cost of phased eradication over a ten year period has been estimated by MPI at \$781-886 million (50th-90th confidence percentile).⁵

Valuing a national response

A national animal identification and tracing scheme does not reduce the likelihood of an initial disease outbreak. It should, however, reduce the impact of an outbreak. The regulatory impact assessment undertaken by MAF during the establishment of New Zealand's current scheme estimated that it would reduce the economic impact of a foot and mouth disease-like outbreak by 4-10 percent.⁶ That could represent a reduction in the adverse economic impact of a foot and mouth disease outbreak in the order of between \$640 million and \$1.6 billion under some scenarios.⁷

Ensuring continuity of access to, and use of, NAIT information and the related information system during any transition to a new NAIT organisation removes a risk to the effective operation of the scheme and the contribution it makes to helping manage the risk posed by biosecurity incursions or contamination scares.

Effective animal tracing helps reduce the breadth and length of outbreaks by identifying where at-risk livestock are in a timely manner, and enabling stock movements to be traced to reduce the disease spreading. NAIT also helps support New Zealand to maintain its access to international markets for animal products, where credible lifetime (birth to slaughter) traceability is required to support assurances that the final food product is of good quality and safe to eat.

² MPI, Situation and Outlook for Primary Industries – March 2019

³ Foot-and-Mouth Disease Economic Impact Assessment: What it means for New Zealand MPI Technical Paper No: 2014/18

⁴ Cabinet Paper, Mycoplasma Bovis Response Options, Funding, and the Resilience of the Agricultural System (CAB-18-SUB-0130)

⁵ Cabinet Paper, Mycoplasma Bovis response options (CAB-18-SUB-0245))

⁶ MPI, *Approval of National Animal Identification System: Regulatory Impact Statement*, 30 November 2009. p 3.

⁷ Assumes a 4-10 percent reduction in the economic cost of a foot and mouth outbreak which has been estimated to have an economic impact of \$16 billion under some scenarios in *Foot-and-Mouth Disease Economic Impact Assessment: What it means for New Zealand MPI Technical Paper No: 2014/18*

2.2 What regulatory system, or systems, are already in place?

Key features

New Zealand's animal identification and tracing scheme was established by legislation in 2012 and currently covers cattle and deer. The NAIT Act 2012 establishes a scheme to:

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

The scheme provides information on individual animals, the persons in charge of those animals (PICAs), the current location of NAIT animals, and their movement between locations. This information is intended to ensure NAIT animals can be quickly located and traced in an animal disease outbreak.

We estimate the total cost of the current scheme to be in the order of \$38 million per annum. Approximately 81% of the estimated total cost (\$31 million) is met by PICAs, while 19% (\$7 million) is met by the Crown.⁸

The scheme is currently operated by NAIT Limited, (the designated NAIT organisation). Under the NAIT Act [section 39] the NAIT organisation is charged with maintaining the NAIT information system and appointing an administrator to manage access to the system. NAIT Limited owns, maintains, and manages the NAIT information system. The NAIT information system is expected to have a depreciated book value of s 9(2)(b)(ii) at 30 June 2019.

NAIT Limited is a private not for profit company that is a wholly owned subsidiary of OSPRI Limited. The OSPRI shareholders are DairyNZ, Beef+Lamb New Zealand, and Deer Industry New Zealand. NAIT Limited's activities are primarily funded through animal tag and slaughter levies and an annual Crown appropriation.⁹

Fitness for Purpose

The *Mycoplasma bovis* response highlighted some ambiguity around the Minister's powers to intervene in the operations of NAIT Limited.

As a consequence, the proposed legislation package already agreed by Cabinet includes enhanced performance management arrangements to improve monitoring and reporting, and clarify the Minister's powers of intervention to deal with poor performance by a NAIT organisation. The intent is to enable earlier and more graduated responses by the Minister, when required.

These proposed changes have not, however, addressed the issues that arise from NAIT Limited's ownership of the information system and the lack of clarity around the ownership of, and the Crown's access to, NAIT data. This situation constrains Ministerial ability to revoke a NAIT organisation's appointment and designate another entity as the NAIT organisation, should that ever be required.

⁸ The detailed assumptions underpinning this estimate are included in the original RIA for the NAIT legislation package, NAIT Bill Package 2019 p 9, footnote 8, which is available here:

<https://www.mpi.govt.nz/dmsdocument/33960-national-animal-identification-and-tracing-na-it-legislative-amendments-policy-approvals-regulatory-impact-statement>

⁹ In the year ending 30 June 2018 NAIT Limited's operating income totalled \$7.99*million which comprised \$2.14M from the Crown, \$2.213M from slaughter levies, \$3.539 from tag levies, \$0.093M from industry funding and \$0.013 in other income. For further information on the financial position of NAIT Limited and OSPRI see OSPRI, Consolidated Financial Statements 2017/18:

<https://ospri.co.nz/assets/Uploads/Documents/OSPRI-Consolidated-Financial-Statements-201718.pdf>

2.3 What is the policy problem or opportunity?

Problem definition

To maintain an animal identification and tracing system that enables an effective biosecurity response in the event of an animal disease outbreak, the government needs to ensure continuous access to timely, comprehensive and accurate information on the location and movement history of individual or groups of NAIT animals.

The Minister for Biosecurity currently has the power to revoke the designation of a NAIT organisation and appoint another in its place if the threshold for intervention in the Act is met.

The NAIT Act is silent on arrangements for transferring the ownership and operation of the NAIT information system in the event that the Minister determines that the designation of the NAIT organisation needs to be revoked and another entity appointed. The Act also does not state who owns the data held in the information system. This situation poses risks to the protection of, and continued access to, NAIT information during any transition to a new NAIT organisation.

The proposed approach is intended to:

- protect the data on behalf of the farmers who provided it, wider industry, and for the general public interest
- secure the NAIT information system and ensure continuity of access to timely, comprehensive and accurate NAIT information during any transition to a new NAIT organisation.

The evidence base

Alongside an OSPRI-led industry review of the NAIT system, MPI undertook further policy work as part of the response to the *Mycoplasma bovis* outbreak. It is this second stream of MPI led policy work that addressed performance management issues and identified the gap in the current legislation relating to continuity of access to NAIT information during any transition to a new NAIT organisation.

In addition to the general public consultation around the broader suite of proposals designed to improve the NAIT scheme that took place between October – December 2019, the Minister for Biosecurity instituted a targeted engagement process with NAIT Limited's shareholders and governance bodies on the performance management framework for a NAIT organisation. Following feedback on these proposals, MPI has undertaken further policy development work on options for securing continuity of access to NAIT information in the event of a change in NAIT organisation. This process has involved further targeted engagement with NAIT Limited, its shareholders and key government agencies.

The proposals in this regulatory impact assessment take account of stakeholder feedback.

2.4 Are there any constraints on the scope for decision making?

Scope:

The policy development process that underpins the proposals considered in this RIA are focused on changes to the current NAIT Act. It did not include consideration of:

- legislative changes that affect the ownership or organisational form of NAIT Limited or a NAIT organisation and ensure the protection of NAIT data.
- changes to related legislation including:
 - The Biosecurity Act - keeping harmful organisms out of New Zealand and respond to any incursions that do occur, under the Biosecurity Act
 - The Animal Products Act - minimising and managing risks to human or animal health and trade, under the Animal Products Act
 - Animal Welfare Act - establishing minimum standards for the treatment of animals and how we ensure compliance with them.

Addressing issues relating to the ownership and governance of a NAIT organisation (currently NAIT Limited) were ruled out of scope in favour of a focus on improving the legislated performance management framework.

A separate review of the Biosecurity Act is being progressed by MPI which will address wider biosecurity issues.

Constraints

MPI considers it has adequate information to complete an assessment of the regulatory impact of proposed changes to the NAIT Act.

Given the initial assessment that the overall impact of these changes on regulated parties is relatively small and is largely intended to encourage compliance with the Act's existing objectives, the assessment process has not included an economic cost-benefit analysis that fully quantifies the additional costs and benefits of the proposed changes.

Where necessary the RIA has relied upon a qualitative assessment by MPI and industry subject matter experts, including the feedback received during the consultation process with central agencies, NAIT Limited, and NAIT Limited shareholders.

2.5 What do stakeholders think?

The key stakeholders in the NAIT system include:

- the wider livestock industry and the primary sector
- regulated parties: PICA and, information providers including transport operators, stock agents, saleyards
- regulatory agencies: (NAIT Limited & MPI)
- meat processors (who may also be PICAs and meat exporters)
- meat exporters (who may be meat processors)
- NAIT Limited shareholders, the NAIT Board, the Stakeholder Council
- other Government agencies with an interest in animal welfare and biosecurity

The Minister for Biosecurity and MPI engaged the NAIT Limited Board, NAIT shareholders and the NAIT Stakeholder Council on proposals for improving the NAIT performance management framework. This included the proposal that MPI hold a NAIT organisation's assets in trust until they were transferred to a new NAIT organisation, if required.

Further options were developed after stakeholders raised concerns about MPI's original 'hold in trust' proposal.'

These further options have been discussed with NAIT Limited. The Chair of NAIT Limited's Board and the Chair of the NAIT Stakeholder Council have been informed and its shareholders were consulted on MPI's proposed approach.

NAIT Limited, its Board, and shareholders support the proposal that a NAIT organisation has a new function requiring it to ensure continuity of access to, and use of, NAIT data and the information system. NAIT Limited and its Board Chair are also comfortable with the proposal that the Crown owns the data. (The Stakeholder Council Chair had not stated a view at the time this RIA was prepared).

At the time this RIA was prepared NAIT Limited's shareholders did not agree that NAIT data should be owned by the Crown and suggested the Crown's interest in continuity of access to it can be achieved through a licensing agreement. They consider the data is owned by PICAs and managed by the incumbent NAIT organisation. They believe Crown ownership would diminish NAIT Limited's ability – if it were no longer carrying out the traceability function – to use the data in other ways for the benefit of farmers, provided its use is consistent with the original purposes for which the data was supplied.

MPI considers clarifying the Crown's ownership of, and access to, the data avoids any doubt about the government's right to transfer the data to another entity charged with managing the NAIT Information system and reduces the risk of dispute between the parties. It reflects a proven approach in a successful analogous regulatory model¹⁰ and helps ensure NAIT Limited remains focused on its statutory functions. It provides reassurance to the farmers that supply the data, and the wider industry, that the data is protected during any foreseeable change, and provides certainty to all parties involved.

The Minister for Biosecurity intends engaging with the shareholders on the matter of Crown ownership of the data, with the aim of obtaining their support before the Select Committee process begins.

¹⁰ See Clauses 6 and 7 of the Fisheries (Transfer of Functions, Duties and Powers to Commercial Fisheries Services Limited) Order 2013.

Section 3: Options identification

3.1 What options are available to address the problem?

MPI has considered a range of proposals to ensure continuity of access to, and use of, NAIT information in the event that the Minister for Biosecurity determines there is a need to revoke a NAIT organisation's designation and appoint another organisation in its place.

The options are as follows:

- Option 1 Retain the legislative status quo (Act remains silent)
- Option 2: Amend the NAIT Act to: confirm Crown ownership of the NAIT data; require a NAIT organisation to provide a full copy of the NAIT dataset to MPI periodically upon request at no cost to the Crown; and make it a function of a NAIT organisation to ensure continuity of access to, and use of, NAIT data and the information system by whomever is the designated NAIT organisation.
- Option 3: Amend the NAIT Act to confirm Crown ownership of the data and enable immediate buy-back of the information system at fair market value.
- Option 4: Amend the NAIT Act to confirm Crown ownership of the data, enable MPI to receive a full copy of the NAIT dataset periodically upon request at no cost to the Crown, and enable the Crown to immediately negotiate the purchase of a copy of the NAIT information system software (including any future modifications) at fair market value.
- Option 5: Amend the NAIT Act to enable the Crown to hold the NAIT information system and data in trust while arranging its transfer to a new NAIT organisation if the Minister for Biosecurity determines that the designation of the current NAIT organisation needs to be revoked.

How consultation has affected these options

Options 2-4 were included after concerns were raised about Option 5 by NAIT Limited's Board and shareholders.

Significantly changed options

None.

Consideration of relevant experience from other countries

While the policy development process did not review overseas experience, it did consider similar regulatory regimes in New Zealand, including arrangements under the Fisheries Act 1996 for the ownership and management of fisheries registry services data.

Under the FishServe system, industry owns the database but the law expressly states that the data and information received, generated or held in relation to the performance or exercise of the functions, duties or powers is the property of the Crown. The fisheries legislation also states that FishServe must provide to the Crown, at no cost to the Crown, access to the information and data in accordance with the legislation, and that the Crown has full rights to use the information and data.

3.2 What criteria, in addition to monetary costs and benefits, have been used to assess the likely impacts of the options under consideration?

MPI's assessment of the options has used the following criteria, which have been given equal weighting.

Effectiveness: Contribution to policy outcomes and objectives. In particular ensuring the protection of, and continuity of access to NAIT information and the related information system in the event that the Minister determines it is necessary to revoke the designation of a NAIT organisation and appoint another organisation in its place.¹¹

Proportionality: The regulatory burden (cost) is proportional to the benefits that the proposed change is expected to deliver.

Certainty (including accountability):

- a. regulated parties have certainty about their legal obligations and the regulatory system provides predictability over time
- b. legislative requirements are sufficiently clear to be applied consistently and fairly
- c. regulators can justify their decisions and are subject to public scrutiny
- d. all participants in the regulatory system understand their roles, responsibilities and legal obligations.

Durability: The legislative framework enables:

- a. the regulatory system to evolve in response to changing circumstances or new information on system performance.
- b. the regulator (the NAIT organisation) to adapt its approach to the attitudes and needs of different regulated parties (PICAs)
- c. regulated parties have scope to adopt cost effective and innovative approaches to meeting their legal obligations.

Practicality/risk: These criteria includes:

- a. meeting legislative requirements is feasible
- b. the implementation risks are low or within acceptable parameters
- c. implementation can be achieved within reasonable timeframes
- d. the risk of perverse incentives and unintended consequences is low.

3.3 What other options have been ruled out of scope, or not considered, and why?

Options that would require changes to the ownership, organisational form or governance of the existing NAIT organisation have not been considered.

Addressing issues relating to the ownership and governance of a NAIT organisation, including NAIT Limited, were ruled out of scope in favour of a focus on improving the performance management framework for a NAIT organisation.

¹¹ Note the effectiveness definition here differs from that used in the earlier regulatory impact assessment for the NAIT legislation package as it focuses on the specific objectives relating to protection of, and continuity of access to, NAIT information.

Section 4: Impact Analysis

Marginal impact: Summary assessment of how options identified in section 3.1 compare with the status quo using the criteria set out in section 3.2

Key: ++ much better than doing nothing/the status quo; + better than doing nothing/the status quo; 0 about the same as doing nothing/the status quo; - worse than doing nothing/the status quo;

	Option 1 Status Quo	Option 2: Confirm Crown ownership of NAIT data, require a NAIT Organisation to provide MPI with the full NAIT dataset periodically at no cost, and make it a function of a NAIT organisation to ensure continuity of access to, and use of, NAIT data and the information system by whomever is the designated NAIT organisation.	Option 3: Confirm Crown ownership of the data and enable the immediate buy-back of the information system at fair market value.
Criterion: Effectiveness	0	++ Much more effective than the status quo in ensuring continuity of access. Slightly less effective than options 3 & 4 which provide greater certainty of access to the system or system software through 'immediate' ownership of the information system (Option 3) and by securing a copy of the NAIT software in advance of it being required.	++ Much more effective than the status quo in ensuring continuity of access as ownership of the data and system are secured. More effective than option 5 and slightly more effective than option 2 because it secures ownership of the information system "immediately."
Criterion: Proportionality	0	++ Any additional costs associated with transfer subject to negotiation and only occur if the need to change NAIT organisations arises. Minimal cost to NAIT Limited associated with providing the full data set periodically.	- Additional cost of purchase incurred upfront and borne by the Crown. While it secures continuity of access, the likelihood of needing a change in NAIT organisation is relatively low. Cost may not be proportionate to benefit.
Criterion: Certainty (incl. Accountability)	0	++ Provides greater certainty than status quo. Clarifies Crown ownership of data and the NAIT organisation's accountability for ensuring continuity of access to, and use of data and the information system by whomever the NAIT organisation is. Roles and responsibilities of the current NAIT organisation and MPI will be further defined in binding agreement between the parties	+ Provides greater certainty than status quo. Clarifies Crown ownership of NAIT data and enables purchase of the NAIT system. Does not address ongoing accountability for development and maintenance of the system, or clarify the NAIT organisation's responsibility for ensuring continuity of access to, and use of data and the information system.
Criterion: Durability	0	++ Ensures continuity of the NAIT scheme in response to changing circumstances. Provides the parties with flexibility to agree the most cost-effective approach to meeting legal obligations.	+ Ensures continuity of the NAIT scheme in response to changing circumstances. Does not provide the flexibility inherent in Option 2.
Practicality/ Risk	0	0/- At the time of this RIA, NAIT Limited shareholders do not support Crown ownership of the data. This could generate wider stakeholder concern if the rationale is not fully understood or the option is not compared with similar regulatory regimes where the Crown has ownership. Implementation risk that the parties do not reach agreement on the approach to transfer.	0/- NAIT Limited shareholders do not support crown ownership which could generate wider stakeholder concern if not compared with similar regulatory regimes where Crown has ownership. Implementation risk that the parties do not reach agreement on fair market value.
Overall assessment	0	+++ Preferred option. Cost effective approach that is of net benefit compared to the status quo. Strikes best balance between cost, benefit and risk compared to other options.	+ Viable option that is of net benefit compared to the status quo. The option is not as cost effective as options 2, 4 or 5

In confidence

	Option 4: Confirm Crown ownership of the NAIT data, enable MPI to receive the NAIT dataset periodically, and enable the Crown to immediately negotiate the purchase of a copy of the NAIT information system software (including any future modifications) at fair market value.	Option 5: Enable the Crown to hold the NAIT information system and data in trust while arranging its transfer to a new NAIT organisation – without financial recompense.
Criterion: Effectiveness	++ Much more effective than the status quo in ensuring continuity of access as ownership of data and a copy of the system software is secured. More effective than option 5 and slightly more effective than option 2. Again because the Crown secures the software in advance of any potential transfer to a new NAIT organisation being required, lowering implementation risks at the time of any transfer.	+ More effective than the status quo in ensuring continuity of access as ownership of data and system secured. Not as effective as options 3 and 4 because these options secure access to the data and system in advance of any change being required.
Criterion: Proportionality	+ Additional cost borne by the Crown is proportionate to the added benefit of securing continuity of access in the event of a change in NAIT organisation.	- Regulatory cost of transfer without financial recompense is borne by NAIT Limited. May not be seen as proportionate to benefit, which is accrued by other NAIT system stakeholders.
Criterion: Certainty (incl. Accountability)	+ Provides greater certainty than status quo. Clarifies Crown ownership of NAIT data and enables purchase of a copy of the software. Does not clarify the NAIT organisation's responsibility for ensuring continuity of access to, and use of, data and the information system if transfer is required.	+ Provides greater certainty than status quo. Does not clarify Crown ownership of NAIT data, but does make clear the responsibilities of MPI and NAIT Limited in the event a transfer of the data and system is required.
Criterion: Durability	+ Ensures continuity of the NAIT scheme in response to changing circumstances. Does not provide the flexibility inherent in Option 2.	+ Ensures continuity of the NAIT scheme in response to changing circumstances. Does not provide the flexibility inherent in Option 2.
Practicality/ Risk	0/- At the time of this analysis, NAIT Limited shareholders do not support Crown ownership. This could generate wider stakeholder concern if the rationale is not fully understood and the proposal is not compared with similar regulatory regimes where Crown has ownership. Implementation risk that the parties do not reach agreement on fair market value.	- Higher risk than status quo or other options. The approach is not supported by NAIT Limited, its shareholders, or the NAIT Stakeholder Council and may generate wider stakeholder concern that makes it challenging to enact. Even if enacted, the approach could be subject to legal challenge.
Overall assessment	++ Viable option that is of net benefit compared to the status quo. Delivers greater certainty than option 2 but at greater cost. More costly than option 5, but lower risk profile.	0/+ Viable option that is of net benefit compared to the status quo. Less financial cost than options 2, 3 and 4 but higher risk profile.

Key:

++ much better than doing nothing/the status quo; + better than doing nothing/the status quo; 0 = about the same as doing nothing/the status quo; - worse than doing nothing/the status quo; - - much worse than doing nothing/the status quo.

Section 5: Conclusions

5.1 What option, or combination of options, is likely best to address the problem, meet the policy objectives and deliver the highest net benefits?

The proposed approach

MPI's recommended approach is to amend the NAIT Act to:

- confirm Crown ownership of the NAIT data, and require a NAIT organisation to provide MPI with the full NAIT dataset periodically upon request at no cost to the Crown, and
- make it a function of a NAIT organisation to ensure continuity of access to, and use of, NAIT data and the information system by whomever is the designated NAIT organisation.

Rationale

Confirming Crown ownership of the NAIT data avoids any doubt about the government's right to transfer the data to another entity charged with managing the NAIT information system and reduces the risk of dispute between the parties. It is consistent with the approach taken in other regulatory systems, for example, the Crown ownership of the data held by the seafood industry in FishServe to meet regulatory requirements under the Fisheries Act 1996.

Ensuring MPI receives copies of the full dataset periodically upon request (that is, if and as needed) is a practical means of safeguarding the data and ensuring continuity of access to it in the event that the responsibility for NAIT information management functions need to be transferred from NAIT Limited to another entity.

Making continuity of access a function would enable contingency arrangements for the smooth transfer of NAIT data and the information system between organisations to be established in a binding legal agreement between MPI and NAIT Limited.

The Act would not need to specify how the security and continuity of access to NAIT data must be achieved but this approach provides a formal way forward. This option enables MPI and NAIT Limited to consider a range of options for ensuring continuity of access to NAIT information and reach agreement on the most cost-effective approach in a measured way (including the others canvassed in this paper). It should ensure practical contingency arrangements are in place well in advance of them being required.

If MPI and NAIT Limited are unable to reach agreement on arrangements for ensuring continuity of access to NAIT information, the Minister for Biosecurity has the power to issue a direction relating to a NAIT organisation's functions.

The costs associated with any future transfer of the information system to another NAIT organisation are unknown at this time and present a potential future financial risk to the Crown. That financial risk is, however, also present under the current legislation and is arguably greater given no provision has been made for the assets owned by NAIT Limited to be transferred to another organisation.

There is also a practical operational risk that even once contingency arrangements are agreed, when needed to be used they may not be implemented as intended. This approach relies on the goodwill of the current NAIT organisation to enable the transfer of the information management function to a new organisation at a time when there is a risk that the relationship with the Crown may have broken down or NAIT Limited's performance is sub-optimal. That risk is, however, lower than that presented by the status quo.

Option 3 – which includes the immediate buy-back of the information system (with lease back to NAIT Limited) mitigates the risk of a future transfer not taking place as intended.

It would, however, involve an immediate financial investment to mitigate what is anticipated to be a relatively unlikely risk given the enhanced performance management arrangements that the Crown intends to establish.

It may also raise expectations around ongoing Crown investment in the development of the system and reduce the incentives for NAIT Limited to further develop the system.

Option 4, which includes the Crown receiving a copy of the dataset periodically and the Crown purchase now of a copy of the relevant information system software at fair market value, provides greater certainty that continuity of access to NAIT information will be protected in the event of a change in NAIT organisation. It recognises and maintains NAIT Limited's ownership of the software and information system and enables the organisation to continue to maintain and develop the information system as required under the NAIT Act (and mitigates any risk that the Crown is assuming responsibility for the maintenance and development of the asset). It would be more cost-effective than the Crown purchasing the information system outright either now or in the future. It would, however, involve an upfront investment to purchase a copy of the software and ongoing operating costs to ensure system integrity.

Option 5 - enabling the Crown to receive the system from NAIT Limited and hold it in trust before transferring it to another organisation (possibly without financial recompense) is not inconsistent with the requirement under NAIT Limited's constitution as a charitable organisation to transfer its assets to a like organization in the event of liquidation, or OSPRI's constitution that requires its assets to be held in trust by the Crown in the event of liquidation. This option is, however, still likely to be viewed as being 'unfair', would generate significant opposition from key stakeholders, and poses a risk to the consensus built up around the rest of the legislative change package.

On balance, we consider Option 2 offers the best cost-risk trade off. Crown ownership of, and access to, the NAIT data is secured. It also enables the agreement of binding contingency arrangements that can be used in the unlikely event that all other performance management interventions have failed and the Minister for Biosecurity deems it necessary to revoke NAIT Limited's designation and appoint another organisation in its place.

Confidence in assumptions and the evidence base

MPI considers there is an adequate evidence base for the proposed changes to the NAIT Act.

The proposals address shortcomings in the current system identified through MPI policy work undertaken as part of the response to the *Mycoplasma bovis* outbreak, and the need to ensure the legislation is future-proofed.

Further options were developed after stakeholders raised concerns about MPI's original proposal that it hold a NAIT organisation's assets in trust during any transition to a different organisation. The preferred option has been discussed with NAIT Limited, its shareholders, and its Board Chair.

Stakeholder support

NAIT Limited's Board and shareholders support the proposal that a NAIT organisation have a new function requiring it to ensure continuity of access to, and use of NAIT data and the information system. NAIT Limited and its Board Chair are also comfortable with Crown ownership of NAIT data.

At the time of this analysis, NAIT Limited's shareholders do not agree that NAIT data should be owned by the Crown and consider the Crown's interest in continuity of access to it can be achieved through a licensing agreement. MPI considers clarifying the ownership of, and access to, the data in the NAIT Act avoids any doubt about the government's right to transfer the data to another entity charged with managing the NAIT information system and reduces the risk of dispute between the parties.

5.2 Summary table of the margin costs and benefits of the preferred approach

Affected parties	Comment	Impact	Evidence certainty
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Additional costs of proposed approach, compared to taking no action

Regulated parties: - PICA	No additional costs	None	High
Regulated parties: - Transport operators	No additional costs	None	High
Regulator - NAIT Limited	No or low additional costs. NAIT Ltd has confirmed providing periodic download of full dataset will have no cost to NAIT Ltd. Any costs associated with transfer of information system to be determined, attribution to be agreed between MPI & NAIT Ltd.	Low	Med
Regulatory steward: - MPI	Possible cost around receipt and storage of a download of the full dataset. Unquantified costs of enabling transition if transfer of data and system ever required (cost subject to arrangements still to be agreed between NAIT Ltd and MPI).	Med	Low-Med
Wider government: - Local Gov't - Police	No additional costs	None None	High High
Meat processors	No additional costs	None	High
Meat exporters	No additional costs	None	High
Total Monetised Cost		Low-Medium	Medium
Non-monetised costs		Low-Medium	Medium

Expected benefits of proposed approach, compared to taking no action

Regulated parties: - PICA	<ul style="list-style-type: none"> - <i>Reduction in lost sales:</i> A robust animal tracing system reduces the risk to farmer livelihoods and income from a disease incursion by providing information that helps to reduce the scale and duration of the biosecurity response. - <i>Price premiums:</i> Lifetime traceability contributes to achieving premium prices for livestock (price per kilo not discounted for untagged animals or animals without full traceability). - <i>Improved stock protection:</i> Maintaining 	Medium	Medium
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	<p>access to NAIT data is necessary to provide assurance of the provenance of stock at time of purchase.</p> <ul style="list-style-type: none"> - <i>Reduced stock losses:</i> Ensuring ongoing access and use of data enables earlier return of wandering or stolen stock. <p><i>Wellbeing:</i> A robust NAIT scheme supports PICA/farmer and family well-being by reducing stress as a result of maintaining timely continuously available traceability that helps reduce the scale and duration of disease outbreaks.</p>		
<p>Regulators:</p> <ul style="list-style-type: none"> - NAIT Limited 	<ul style="list-style-type: none"> - <i>Efficient Administration:</i> Agreement around transfer of NAIT information system assets to a new NAIT organisation will be more straightforward and efficient, given the intended binding contingency agreement with the Crown on the approach. - <i>Clear accountability:</i> Making it a function of a NAIT organisation to ensure continuity of data access clarifies NAIT Limited's accountability and minimises the risk of dispute with the Crown. - <i>Ownership of asset recognised:</i> Requiring an agreement between NAIT Limited and MPI on transfer arrangements recognises NAIT Limited's ownership of the information system and its right to manage its assets within existing legislative parameters. 	Medium	Med-High
<p>Regulatory Steward:</p> <ul style="list-style-type: none"> - MPI 	<ul style="list-style-type: none"> - <i>Reduces risk to efficient & effective delivery of biosecurity services:</i> Ensuring continuity of access to NAIT information removes a risk to the NAIT scheme and to the efficient and effective delivery of MPI's biosecurity responsibilities. - <i>More efficient & effective regulatory stewardship:</i> Clarifying a NAIT organisation's responsibility for enabling the smooth transfer of NAIT information in the event the Minister revokes their NAIT designation clarifies accountabilities and enables more effective regulatory stewardship. 	High	Med-High
<p>Wider government:</p> <ul style="list-style-type: none"> - Local Gov't 	<ul style="list-style-type: none"> - <i>Efficient management of wandering stock:</i> Time and cost savings from maintaining access to NAIT data to assist in the return of wandering stock. 	Low-Medium	High
<p>Wider government:</p> <ul style="list-style-type: none"> - Police 	<ul style="list-style-type: none"> - <i>Efficient policing of stock theft:</i> Time and cost savings from maintaining access to NAIT data when dealing with stolen or wandering stock. 	Low-Medium	High
Meat Processors	<ul style="list-style-type: none"> - <i>Efficient Processing:</i> Continuity of access to NAIT information minimises disruption 	Low	Med-

	to processing operations in the event of a disease outbreak.		High
Meat Exporters	- <i>Reduction in lost sales:</i> Maintaining continuous access to NAIT information is key to an effective animal tracing system that in turn supports an effective biosecurity response. An effective response reduces the time access to export markets may be denied as a result of an adverse biosecurity or food safety event.	Medium	Med-High
Total monetised Benefit		Medium	Medium
Non-monetised benefits		Medium	Medium

5.3 What other impacts is this approach likely to have?

Risks and uncertainties:

The costs associated with any future transfer of the information system to another NAIT organisation are unknown at this time and present a potential future financial risk to the Crown. That financial risk is, however, also present under the current legislation and is arguably greater given no provision has been made for the assets owned by NAIT Limited to be transferred to another organisation.

There is also a practical operational risk that even once contingency arrangements are agreed, they may not be implemented as intended when they need to be used. Outside of the Crown's usual remedies for breach of contract, this approach relies on the goodwill of the current NAIT organisation to enable the transfer of the information management function to a new organisation at a time when there is a risk that the relationship with the Crown may have broken down or NAIT Limited's performance is sub-optimal. That risk is, however, lower than that presented by the status quo.

5.4 Is the preferred option compatible with the Government's 'expectations for the design of regulatory systems'?

MPI's approach is aligned with the guidance provided in *Government Expectations for Good Regulatory Practice* (April 2017)

Section 6: Implementation and operation

6.1 How will the new arrangements work in practice?

An amendment to the NAIT Act will be required to enact the preferred proposal discussed in this RIA. The proposed NAIT Amendment Bill is category 2 on the Government Legislation Programme for 2019 (must be passed within the calendar year).

No additional action will be required in relation to the confirmation of Crown ownership of the data, which will come into effect with the passage of the legislation.

This approach will, however, provide a sound foundation for a binding agreement that will need to be negotiated by NAIT Limited and MPI (on behalf of the Crown) to enable the smooth transfer of the NAIT data and information system if this is ever needed. It is anticipated this agreement will be established within 6-12 months of the change in legislation.

The communications programme for the overall NAIT legislative change package will ensure that all affected parties are aware of the intended approach to any transition requirements associated with a future change of NAIT organisation.

6.2 What are the implementation risks?

The key implementation risk is that NAIT and MPI are unable to reach agreement on appropriate transfer arrangements that provide sufficient comfort that continuity of access to NAIT data will be protected in the event that a change in NAIT organisation is required. This risk is mitigated in part through the Minister of Biosecurity's power to issue a direction to NAIT Limited in relation to NAIT's functions.

There is also a risk that after an agreement between the Crown and NAIT Limited is established, the smooth transfer of the data and information system may not occur as intended. Outside of the Crown's normal legal remedies for breach of contract, the transfer depends on the good will of the current NAIT organisation at a time when there is a risk that its relationship with the Crown may be strained and/or its capability to give effect to the agreement's requirements is limited or constrained in some way. The mitigation of these risk will need to be addressed in the development of the agreement between MPI and NAIT Limited.

Section 7: Monitoring, evaluation and review

7.1 How will the impact of the new arrangements be monitored?

MPI will monitor the implementation and impact of the proposed changes through:

- consideration of feedback received through stakeholder engagement forums
- annual regulatory scanning and planning
- performance management and monitoring arrangements with NAIT Limited
- ongoing monitoring and evaluation of the biosecurity legislation.

7.2 When and how will the new arrangements be reviewed?

It is not anticipated that a further legislative review of the NAIT information ownership and access arrangements will be required.

Any operational issues with the implementation of the new arrangements will be addressed through the performance management framework.