

# FEDERATED FARMERS

SUBMISSION ON:

National Animal Identification and Tracing Bill 2010



# SUBMISSION

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**TO:** Committee Secretariat  
Primary Production  
Parliament Buildings  
Wellington

**SUBMISSION ON:** National Animal Identification and Tracing Bill 2010

**FROM:** Federated Farmers of New Zealand

**DATE:** 10 February 2011

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**Federated Farmers of New Zealand wishes to be heard in support of this submission**

## **SUBMISSION TO PRIMARY PRODUCTION SELECT COMMITTEE: NATIONAL ANIMAL IDENTIFICATION AND TRACING BILL**

### **1. EXECUTIVE SUMMARY**

- 1.1 Federated Farmers of New Zealand submits that it **opposes** the current NAIT scheme and therefore submits that the National Identification and Tracing Bill 2010 should not proceed.
- 1.2 It is the view of the Federation that a national, compulsory NAIT scheme is not needed in New Zealand at this time. The imposition of such a scheme on farmers would simply load more costs, without any commensurate reward, onto an already struggling sector and further erode the competitiveness of New Zealand pastoral industries that are responsible for generating so much of the country's wealth.
- 1.3 The Federation does however support the development of commercial, voluntary traceability systems with price signals from processors (and markets) driving stock procurement.
- 1.4 The Federation does not believe that the economic argument for the NAIT scheme<sup>1</sup> is compelling or even, in a number of respects, valid. The purposes of the Bill (such as enhancing biosecurity capability) will not be able to be achieved given its current [Schedule 1] scope and consequently the introduction of the NAIT scheme – in the guise of the enabling NAIT Bill - smacks of social engineering.
- 1.5 In respect of the NAIT Bill under consideration, the serious deficiencies in the process followed to this point are of great concern to the Federation. In particular, the absence of the regulations (which are yet to be published and which would give practical effect to the provisions of the Bill), prevents the Federation from providing informed comment on behalf of farmers, and does the democratic process grave disservice.
- 1.6 In addition to our principled opposition to the Bill and the subversion of the democratic process due to the absence of critical supporting regulations, the Federation believes that the draconian compliance and enforcement provisions of the NAIT Bill provide a further reason not to proceed with the Bill. Arising from the Search and Surveillance Bill 2009 that is currently before Parliament, many of the provisions are manifestly excessive in relation to the purposes of the NAIT Bill and are also an affront to the freedoms that are an essential part of a democratic New Zealand society.
- 1.7 **Should the NAIT Bill proceed however, then Federated Farmers recommended changes to the Bill are:**

#### Part 1: Purposes of the NAIT Bill

- That the reference to “productivity” is removed from s.40(f).
- That s.3(d) is amended to read “aids the management of risks to human health”.

#### Part 2: Governance:

- That the practical distinction between “delegation” [s.10] and “contracting out” [s.11] be clarified as this is unclear at present.
- That s.14 is amended to include the requirements described in s.12(5).

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<sup>1</sup> “National Identification and Tracing [NAIT] Stage Two Business Case”, [Version 6.2, Final Public Release], April 2010.

- That the wording of s.15(1)(a) and (b) are amended to read “The NAIT organisation may approve ...” [s.15(1)(a)] and “the NAIT organisation must approve any NAIT related functionality in any other...” [s.15(1)(b)]. If the latter change is made, then s.15(1)(b)(i)(B) is not necessary and can be deleted.
- That s.16(1)(b)(ii) is removed from the Bill and also that s.16(5) is amended to state “no person may use a suspended or revoked NAIT ... system” and further, “on or before the date of suspension or revocation ...”.
- That the issue of responsibility for data corruption and the issue of liability of the operator of an identification system around the failure to provide required information [s.17] are both addressed by the Select Committee.
- That s.21(1)(b) is deleted and s.21(1)(a) is reworded as “... fails to meet any of the accreditation conditions or the applicable standard(s) required by NAIT”.
- That s.23(3) is reworded as “The NAIT organisation, must specify to the auditee, in writing, the type and form of the information that must be provided in respect of the audit and the date it is to be provided by.”

### Part 3: Obligations of persons participating in the NAIT scheme

- That the Bill does not proceed further at this stage. Instead, the Bill should be held back until the draft regulations have been published. This will enable the Federation and other stakeholders to have the opportunity to consider the impact (financial and otherwise) and the feasibility of the scheme from a practical perspective. On completion of this process, the NAIT Bill can then be properly examined by the Primary Production Select Committee. However, should the NAIT Bill proceed at this time, then the Federation would note the following as matters that should be addressed in this part of the Bill:
- That subsections 24(2)(e) and s.24(2)(g) be removed from the Bill.
- That the wording of s 26(1) is amended to read “In relation to meeting obligations required by NAIT, a person ...”.
- That the wording of s.30(1) is amended to read “correctly fitted with a NAIT device” and that s.30(2) is also amended, to read “fitted with a prescribed NAIT device”.
- That the phrase “as soon as practicable” is removed from s.33(1) and it is amended to read “A PICA must make a declaration ...”.
- That s.34(1)(b) is removed from the Bill.
- That s.35(2) is reworded as "In respect of animal identification devices, manufacturers ...”.

### Part 4: NAIT Information system

- That s.40(h) and s.40(i) are removed from the Bill.
- That s.40(j) is removed from the Bill.
- That s.45(2)(b) is reworded as “.. about any animal(s) ...”.
- That the word “reasonably” is removed from s.46(10).

- That s.46(16)(a) is amended to read "... express consent from the person whose data it is to the applicant having access and that any constraints on this access are given effect".
- That s. 46(16)(b) and s.46(16)(c) are removed from the Bill.
- That a new section 46(19)(a) is added – the wording as per the proposed s.46(16)(a) above and that the current s.46(19)(a) and s.46(19)(b) are removed from the Bill.
- That a further condition (e) to "prohibit any sale of the data" is added to s.47(5).
- That the reason(s) for the exclusion of the NAIT information system from the OIA [s.51] be provided.

#### Part 5: Compliance and Enforcement.

- That the compliance and enforcement provisions of the Bill as written are removed from the Bill. Once removed these provisions are replaced allowing due regard to the powers granted to NAIT Officers and NAIT Authorised Persons in the context of the purposes of the NAIT Bill.
- That the words "whether or not NAIT animals are involved" are removed from section 52 of the Bill.
- That the offence of "failing to comply with a production order" [s.135] is redundant and is removed from the Bill.
- That the words "a person such as" are removed from the definition of an issuing officer in s.53(1).
- That NAIT officers and authorised persons must be employed by the Director-General under the State Sector Act 1998 and that s.54(3) is amended accordingly.
- That the cost recovery actions provided for in s.61 should be used with discretion having regard to the circumstances of the incident and the costs incurred.
- That s.67(1) is removed from the Bill.
- That that the consequences of a decision by a person in respect of a consent search [s.80] should be explained to the person by the NAIT Officer.
- That s.91(1) is amended to read, "An issuing officer should impose a condition under section 90(3)(b) requiring ...a search warrant report within a specified period". In addition, should such a request not be made, the reason(s) for this should be documented and made available to the Director-General responsible for reporting.
- That s.129 should also be amended to require the number of instances (in which a search warrant was issued) to be reported.
- That the powers conferred by s.104 and s.105 are amended to be subject to a warrant before they can be exercised.

- That the word "knowingly" is removed from s.133 and is replaced with the word "intentionally".
- That a review is undertaken to determine the most cost-effective mechanism possible to manage the processing of infringement fees [s.144].
- That sections 147 and 148 are amended to explicitly include the defence provided for (against such offences) by (e.g.) s.340(2) of the Resource Management Act 1991.
- That the s.149 requirement that both s.149(1)(b)(i) and s.149(1)(b)(ii) be satisfied, be amended to provide for an "and/or" situation being an allowable defense.
- That the option to deliver an order or notice by electronic mail be removed from s.151(1)(b) of the Bill.
- That clause 151(4) is removed from the Bill.

Part 6: Cost recovery and other provisions, such as the inclusion of other species

- That all the off-farm costs of the NAIT scheme should be met by the Crown.
- That s.156(5)(a) is removed from the Bill.
- That the word "primarily:" is removed from s.158(2)(f).
- That s.163(5)(a) is changed to read "(5)(a)(i) be satisfied that ... and the mandate of its members for the addition and that the addition is for a purpose specified in section 3 and"
- That a new s.163(5)(a)(ii) is added: "be satisfied that the mandate conditions meet the acceptance criteria specified in the Commodity Levies Act 1990 or equivalent legislation and"
- That a new sub-clause be added to s.163(6): "163(6)(c) be satisfied that the sector affected supports the proposal".

## **2. GENERAL COMMENTS**

2.1 Federated Farmers welcomes the opportunity to submit on the National Animal Identification and Tracing (NAIT) Bill.

2.2 A strong agricultural sector is recognised as being essential to the performance of the New Zealand economy. A critical factor in achieving this is to ensure that that New Zealand farm businesses are economically viable, have the ability to farm for future generations, and have strong leadership. The Federation is a very strong supporter of having:

- i. Adequate biosecurity protocols;
- ii. Robust border security systems;
- iii. Realistic, practical and timely incursion response;
- iv. Mechanisms that facilitate trade access;
- v. Safe food that meets consumer expectation; and
- vi. Efficiency, productivity and innovation on farms.

- 2.3 New Zealand has a well established and hard-earned reputation for producing high quality meat and dairy products that are safe to eat. This is due to the very high standards that our farmers and processors implement. In addition, the geographical isolation that being an island nation provides, together with existing biosecurity measures in place delivers further protection from (especially zoonotic) animal health risks that are present in many of our markets.
- 2.4 **The value that Federated Farmers perspective provides on the NAIT Bill**
- 2.4.1 The Federation's farmer members will be the group most affected by the legislation and their support will be critical to ensure that the purposes of the Bill will be met by the implementation of the NAIT scheme.
- 2.4.2 Federated Farmers has been involved in the development of both policy and process around national animal identification and traceability for a number of years.
- 2.4.3 The Federation submitted to Biosecurity New Zealand on the discussion paper *National Animal Identification and Tracing – Enhancing New Zealand's Animal Identification and Tracing Systems* (Biosecurity Discussion Paper No: 01/08). In our submission we identified a number of concerns with the proposed scheme.
- 2.4.4 **While some of the issues raised by the Federation have been addressed, the Federation still has concerns with the NAIT scheme and the impacts of these on the farming sector.**
- 2.5 A flawed biosecurity driver for NAIT
- 2.5.1 The Federation believes that the biosecurity risk driver for NAIT has been exaggerated for political purposes. For a NAIT scheme to prove effective as a biosecurity control measure, it would need to include all at risk animals which, with the restriction of the NAIT scheme initially to cattle and farmed deer [Schedule 1 of the Bill], it does not.
- 2.5.2 In biosecurity terms, the biggest risk that New Zealand faces is Foot and Mouth Disease (FMD), an outbreak of which could be catastrophic for both the farming sector and the New Zealand economy. With the restriction of the scheme to include only some species of farmed cloven hoofed animals - and the further exclusion of wild goats, pigs and deer - a NAIT scheme would, however, be of very limited effectiveness in the event of an FMD outbreak.
- 2.5.3 The Federation does not support the extension of the scheme to include other species (e.g. sheep) as the economic impact on the struggling sheep industry would be severe. The Federation highlights this omission simply to demonstrate that the Bill will add very little to reducing the biosecurity risks faced by the agricultural sector.
- 2.6 No customer demand for NAIT
- 2.6.1 The Federation is on record as stating our support for a voluntary, market-led NAIT scheme that would see farmers rewarded by their processors for providing increased value to customers. In reality however, the Federation has not seen any evidence that our overseas customers are demanding that a NAIT scheme operate in New Zealand as a condition of market access for our animal products.
- 2.6.2 The Federation is aware of a school of thought that believes that a NAIT scheme is required for continued, future access to overseas markets and that the absence of a NAIT scheme will see New Zealand excluded from some major markets in future.

- 2.6.3 Supporters of this way of thinking must believe that businesses are somehow able to operate indefinitely while (1) providing customers with increased value and (2) also absorbing increased costs, all without any financial reward from their customers/markets. While this may well be true for Government Departments, it is certainly not true for the New Zealand pastoral sector.
- 2.6.4 In addition, the Federation would draw to the Select Committees attention, a recent study in Australia that concluded that the introduction of RFID tracing technology in cattle there had not resulted in any sustainable competitive advantage to their beef industry. Rather, it found, that, “other major beef supplying countries that do not have lifetime traceability, but have experienced exotic disease outbreaks in recent years, are regaining lost market access at Australia’s expense”.<sup>2</sup>
- 2.6.5 We would also note that The United States of America, following strong resistance from farmers concerned at the cost and other concerns involved has recently abandoned the National Animal Identification System<sup>3</sup>. The replacement - Animal Disease Traceability system - empowers States and producers to “find and use the most effective traceability approaches to animals moving ... nationally”<sup>4</sup>
- 2.6.6 The Federation sees no reason for market access to be used as a reason to introduce, via the NAIT Bill, a NAIT scheme into New Zealand.
- 2.7 Data security concerns
- 2.7.1 The Federation has real concerns with regard to protection of data collected from farmers under the guise of animal identification and tracing. Farmers will be obliged to provide information (as “core data”) to NAIT that will unequivocally link them and the location(s) of their business operations with the number of NAIT animals farmed.
- 2.7.2 It is essential that the information they provide to NAIT is well protected, both to prevent any use for commercial gain by any other parties and also to prevent the data being linked, by other regulatory or legislative mechanisms, to further imposts such as those likely to be imposed by the Emissions Trading Scheme or local (or regional) environmental and other plans.
- 2.7.3 The Federation remains to be convinced that the controls over the use of personal information provided for in the Bill are adequate.
- 2.8 Data accuracy concerns
- 2.8.1 To be effective, a NAIT system will require extremely high levels of data integrity and accuracy. New Zealand farming conditions present considerable challenges to the achievement of this; for example, animals are farmed outdoors and (for a variety of reasons), significant levels of stock losses are common, the effectiveness of telecommunication systems are limited in many rural areas and many farm operations have labour constraints. These and other difficulties will make it problematic to transfer the required data to NAIT in a timely fashion and risk putting farmers in a

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<sup>2</sup> ABA Report into the Efficacy of NLIS by the Australian Beef Association.  
<http://www.austbeef.co.au/Content.asp?regID=15403&id=85625>

<sup>3</sup> “National Animal Identification System” Wikipedia.  
[http://en.wikipedia.org/wiki/National\\_Livestock\\_Identification\\_System](http://en.wikipedia.org/wiki/National_Livestock_Identification_System) Downloaded 13/01/2011

<sup>4</sup> Animal Disease Traceability PRELIMINARY – Comprehensive Report & Implementation Plan. USDA. September 28, 2010.

position where they are not able to comply with NAIT requirements for reasons outside their control. These are operational matters, but Federated Farmers is not convinced that the NAIT system is able to effectively manage such challenges.

- 2.8.2 In addition, research on comparable systems shows unacceptably high error rates and commensurate lack of confidence; both by farmers and by markets. In one example, an analysis, in Australia showed that at least 20% of cattle do not have lifetime traceability.<sup>2</sup> Should similar problems occur in New Zealand, the effectiveness of the NAIT will, rightly, be called into question.
- 2.8.3 The Federation also remains concerned at the limitations of the technology – and in particular the use of low frequency (LF) - RFID that NAIT has currently mandated. The extension of NAIT approval to include ultra-high frequency (UHF) - RFID devices would provide farmers with a number of on-farm practical advantages and would be in line with the use of UHF technology worldwide in tracking and identification systems.
- 2.8.4 The Federation believes that the difficulties that farmers will have in managing the above and other practical challenges will pose a significant risk to the implementation of a NAIT scheme in New Zealand.

## 2.9 The cost to farmers.

- 2.9.1 As noted elsewhere in this submission, an accurate assessment of the costs to be imposed on farmers by the NAIT scheme awaits the development of the draft NAIT regulations. Even in the absence of this information, it is noted that the operating cost of the NAIT system will likely be primarily funded, either directly or indirectly, by farmers.
- 2.9.2 In their haste to impose a NAIT scheme on farmers, its architects seem to have lost touch with the commercial realities of farming in New Zealand today. To provide some balance, it is necessary to state here the value of agriculture to the economy and the effect that NAIT may have on farm income.
- 2.9.3 That the agricultural sector is vital to the New Zealand economy is beyond doubt. According to MAF's 2010 Situation and Outlook for New Zealand Agriculture and Forestry report, production and processing of agriculture and forestry comprised around 12% of GDP<sup>5</sup>. In terms of export earnings, agricultural and forestry commodities account for 64% of goods exported.
- 2.9.4 However, despite farming's huge contribution to the economy and boasting a superior productivity performance, farmers increasingly feel that they are not receiving adequate reward for their efforts, with only 15.5 cents in each export dollar being retained on farm.<sup>6</sup> It should be recognised that there is still some debate about the level of uncertainty associated with this figure and consequently the data may be an overestimation. In any event, this figure is a relatively small margin considering the level of investment in farming businesses and the inherent risks that being a pastoral farmer entails. Indeed, over recent years there has been an insidious margin squeeze with farmers caught between remorselessly high inflation for their farm inputs and incomes that are at the mercy of fluctuations in commodity prices, the exchange rate and the weather.

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<sup>5</sup> Situation and Outlook for New Zealand Agriculture and Forestry, Ministry of Agriculture and Forestry, June 2010.

<sup>6</sup> <http://www.maf.govt.nz/news-resources/statistics-forecasting/statistical-publications/gross-agricultural-revenue-and-expenditure.aspx> (for the 2009 year)

- 2.9.5 The most recent data from MAF farm monitoring reports<sup>7</sup> shows meagre returns for many farmers. Rates of return on equity - the economic farm surplus (less interest and lease) as a percentage of equity - for the sheep and beef national model farms and dairy national model farms to be -0.1% and 3.4% respectively for the 2010/11 year. For sheep and beef farmers, this is just a continuation of poor returns over recent years; -0.2% in both the 2008/09 and 2009/10 years.
- 2.9.6 For an average sheep and beef farm, this translates, in dollar terms to an estimated farm profit before tax of \$67,600 for the 2010/11 year (at a NZD/USD exchange rate of 0.76)<sup>8</sup>. This figure is required to cover personal drawings, taxation payments, debt repayments and the purchase of capital items.
- 2.9.7 Section 5.4.4.2 of the NAIT Stage Two Business Case states indicative on-farm costs for drystock farmers to be in the order of \$3,000 as a “one-off” cost (including a reader) and additional, on-going costs of ~\$1,500<sup>[1]</sup>. Using Beef+ Lamb New Zealand figures as a guideline, the “one-off” and “on-going” NAIT related costs could be of the order 2% and 1% respectively, for a total of ~3% of farm before tax profits needed to pay for NAIT alone. Even if these figures are accepted as a conservative cost estimate, they are significant in relation to farm profitability, particularly since there is no evidence to suggest that the market will enable farmers to recover the additional costs involved
- 2.9.8 In reality, Federated Farmers believes that the on-farm cost data provided by NAIT significantly underestimates the true costs to farmers. Farmers will have to cover higher costs than predicted in areas such as the purchase of more expensive tags, the initial requirement to double tag NAIT animals and the cost of time lost around registering animals and their movements.
- 2.9.9 In total, the cost of the scheme being imposed on farmers is going to be substantial and is one that they have no means of offsetting or recouping – unlike the other stakeholders (processors, the NAIT organisation) who simply sheet home their NAIT costs to farmers, the price takers in the so-called pastoral agriculture value chain.
- 2.10 **In summary, Federated Farmers does not believe that a national, compulsory NAIT scheme is needed in New Zealand at this time.** *[In a recent survey undertaken by the Federation, members were asked whether or not they supported the introduction of a NAIT system in New Zealand: 35% of respondents answered Yes and 65% answered No. Further, they were asked, if a NAIT scheme is to operate, should participation be compulsory or should it be voluntary: 31% of respondents favoured a compulsory system and 67% favoured a voluntary system].* The Federation does however support the development of commercial, voluntary traceability systems with price signals from processors (and markets) driving stock procurement.
- 2.11 In addition, the Federation wishes to express its disappointment at a severely compromised consultation process on the NAIT Bill:
- 2.11.1 The implementation of the NAIT scheme will require not only the passage of the enabling legislation under consideration here, but also the promulgation of the regulations that will give practical effect to the framework that the NAIT Bill provides.

<sup>7</sup> Farm Monitoring Review, Ministry of Agriculture and Forestry, October 2009.

<sup>8</sup> Sheep and Beef New Season Outlook 2010 – 11. Beef + Lamb New Zealand, February 2011.

- 2.11.2 In the current economic climate many farmers are struggling to achieve the financial returns necessary to ensure the sustainability of their businesses. In such circumstances, the imposition of additional costs arising from NAIT – with no commensurate return from the market – is naturally of huge concern to the Federation.
- 2.11.3 Unfortunately for farmers (and the democratic process) the financial impacts of the NAIT Bill on farming businesses will not be able to be adequately and properly assessed until the draft regulations are available for examination and comment.
- 2.11.4 Consequently, the Federation is faced with the unenviable task of submitting on this issue without much of the information needed to advocate effectively on behalf of our members and for farmers generally.
- 2.11.5 That these regulations are not available for the Federation to comment on – and for the Primary Production Select Committee to adequately scrutinise – at this time, is extremely disappointing to the Federation and reflects very poorly on those responsible for this state of affairs.
- 2.11.6 In the circumstances, the Federation strongly recommends that the Bill does not proceed further at this stage. Instead, the Bill should be held back until the draft regulations have been published and the Federation and other stakeholders have had a chance to consider the impact and feasibility of the scheme and to submit on these issues. This would permit the NAIT Bill to be properly examined by the Primary Production Select Committee.

### **3. SPECIFIC COMMENTS**

#### **3.1 Part 1: Purpose of the NAIT Bill**

- 3.1.1 The purposes of the Bill are provided, in general terms in s.3. [“Purpose”] and are expanded in s.40 [“Purposes of holding core data”].
- 3.1.2 The Federation notes that the purpose(s) described are relatively broad and, with the inclusion of matters such as “manages risks to human health ...” [s.3(d)] and supporting “improved animal productivity” [s.3(e)] the scope has moved well beyond what the core (animal identification) driver should require of this legislation. The Federation has two concerns with the purpose(s) of the Bill:
- 3.1.3 Firstly, the implications around the scope of “core data”.
- 3.1.3.1 While information about the location and movement of NAIT animals is integral to the Bill, and it is accepted that there may well be collateral benefits in other, well defined, areas, such as market assurances. Notwithstanding this, the scope of the Bill is very wide, including [s.40] to facilitate the Animal Products, Commodity Levies and Biosecurity Acts; to provide data to support productivity and to enable the NAIT organisation to publish general agricultural statistics.
- 3.1.3.2 Of particular concern to the Federation (and discussed further in point 3.4.1) is the very wide scope of the “core data” provisions – information that must be supplied to NAIT. The purposes of this [s.40] reflect the Bill’s purposes and include (f) “to provide data supporting productivity, market assurances and trading requirements”.

3.1.3.3 The requirement to provide “data supporting productivity” is of particular concern, especially when it is learnt, in s.14 [“NAIT organisation may issue, amend or revoke NAIT animal identification standards”] that under s.14(2) “ ... a NAIT animal identification standard may specify requirements for – “ (d) “ the registration of animal attributes including (but not limited to) genetic information”. While the Federation would not object to such a requirement being one that the farmers could select, the potential that farmers may have to provide such information to NAIT is opposed.

3.1.3.4 The Federation submits that “productivity related data” has inherent commercial value and does not belong within the scope of core data that must be provided. The Federation would however, have no objection to farmers supplying this as non-core data by agreement, to NAIT

**3.1.3.5 The Federation recommends that the reference to “productivity” is removed from s.40(f).**

3.1.4 Secondly, the extent to which the purposes of the Bill are achievable.

3.1.4.1 As highlighted prior, the NAIT scheme will have significant costs and the establishment of an animal identification and tracing scheme [s.3(a), (b)] per se has no inherent value. There must be some attendant benefits in order to justify the investment required and these are postulated in s.3(c) – (e).

3.1.4.2 The Federation believes that the extent to which the Bill will improve biosecurity management [s.3(c)] in particular, has been very much “oversold”. The reality is that, with the current [Schedule 1 (cattle and farmed deer)] scope of the Bill the only biosecurity incursion that could possibly justify the expenditure that NAIT will incur is BSE, a disease that has never been found in New Zealand. Given the geographical advantages that New Zealand has as an island nation and the biosecurity measures already in place, the Federation submits that the risk of a BSE incursion are remote to say the least. This is supported by the OIE, which recognises New Zealand’s BSE risk as negligible.

3.1.4.3 In biosecurity terms, the biggest risk that New Zealand faces is Foot and Mouth Disease (FMD), an outbreak of which could be catastrophic for both the farming sector and the New Zealand economy. With the exclusion from the scheme of sheep and other cloven hoofed animals, a NAIT scheme would, however, be of very limited effectiveness in the event of an FMD outbreak.

3.1.4.4 It is important to note that the Federation is not supportive of the extension of the NAIT scheme to include other species such as sheep, as this sector in particular, is unable to support the costs that would be involved in participation in the NAIT scheme, especially as markets are offering no reward or recompense for the costs incurred – presumably because they see no value in the scheme. The Federation is merely pointing out here the flawed nature of the biosecurity driver being used to promote the NAIT Bill.

3.1.4.5 The Bill will not, of itself “manage risks to human health ...” [s.3(d)], though it may do so in conjunction with other legislation, such as the Animal Products Act 1999.

**3.1.4.6 The Federation recommends that s.3(d) is amended to read “aids the management of risks to human health”.**

## 3.2 **Part 2: Governance**

Federated Farmers concerns with this part of the Bill are:

### 3.2.1 **Functions, duties and powers of NAIT organisation [s.10] and the extent to which they can be delegated [s.11]**

3.2.1.1 Section 10(1) (a) describes what NAIT must do to meet its obligations. Sections 10(3)(a) and 10(3)(b) identify which of its functions, duties and powers can ["3(a)"] and can't ["3(b)"] be contracted out.

**3.2.1.2** Further, s.11(1)(a) provides that NAIT may delegate "any or all of its functions duties or powers ... to any suitable person". **Federated Farmers recommends that the practical distinction between "delegation" [s.10] and "contracting out" [s.11] be clarified as this is unclear at present.**

### 3.2.2 **NAIT organisation may issue ... animal identification standards [s.14]**

3.2.2.1 Section 12 describes the actions that the Minister must take around issuing, amending and revoking policies and standards and these include the requirement that the notice must [s.12(5)] "give a general indication of the nature of the policy or standard" and "specify where a copy ... can be obtained from".

3.2.2.2 In contrast, the requirements around the NAIT organisation's process for issuing/revoking/amending standards [s.14] do not include these [s.12(5)] requirements.

**3.2.2.3** **The Federation recommends that s.14 is amended to include the requirements described in s.12(5).**

### 3.2.3 **NAIT organisation to approve identification systems [s.15]**

3.2.3.1 Section 15(1) states that the "NAIT organisation may approve [s.15(1)(b)] any other identification system ..."

**3.2.3.2** **The Federation recommends that the wording of s.15(1)(a) and s.15(1)(b) are amended to read "The NAIT organisation may approve ..." [s.15(1)(a)] and "the NAIT organisation must approve any NAIT related functionality in any other ..." [s.15(1)(b)]. If this latter change is made, then s.15(1)(b)(i)(B) is not necessary and can be deleted.**

### 3.2.4 **NAIT organisation may suspend/revoke approval of ... identification system [s.16]**

3.2.4.1 One example of where this is permitted is in the event that [s.16(1)(b)(ii)] "a significant proportion of persons who are using the identification system are not complying with the ... system".

3.2.4.2 This action, in respect of a NAIT approved system, is inappropriate as it does not address the cause of the problem and could have a severe financial impact on both the business(es) concerned and farmer clients – it is akin to the NZFSA suspending the Risk Management Programme system because people are not complying. Further, the term "a significant proportion" used is vague and is a relative term.

3.2.4.3 Section 16(5) states that "no person may use a suspended NAIT... system", when other parts of section 16 refer to "suspending or revoking" such a system.

**3.2.4.4 The Federation recommends (1) that s.16(1)(b)(ii) is removed from the Bill and (2) that s.16(5) is amended to state “no person may use a suspended or revoked NAIT ... system” and further, “... on or before the date of suspension or revocation ...”.**

3.2.5 NAIT ... may review identification systems [s.17]

3.2.5.1 Section 17 allows NAIT to review and subsequently to amend an identification system. There appears to be no provision to address, in s.16, s.17 or elsewhere, the issue of liability of the operator of an identification system for either failure to provide authorised and required information to NAIT, the question of loss to a client as a result, or the effect of such an action on the liability of a PICA in such circumstances. The Federation believes that this is a concern that needs to be addressed. This is because, while a PICA may delegate (to a PICA delegate or an information provider) duties to be carried out on their behalf [s.25(2)], under s.25(3) “... the PICA remains responsible for compliance with this Act in respect of the action or duty.”

3.2.5.2 Similarly, the issue of responsibility for data corruption issues appears undetermined.

**3.2.5.3 The Federation recommends that these issues are addressed by the Select Committee.**

3.2.6 NAIT organisation may suspend or revoke accreditation ... [s.21]

3.2.6.1 The text of s.21(1)(a) is overly complex, viz “*NAIT ... may suspend or revoke ... if the ... person (as the case may be) fails to meet any conditions that the information provider or person must meet before operating as an information provider or an accredited person dealing with NAIT animals*”.

3.2.6.2 The *italicised* text could more simply be written as “fails to meet any of the accreditation conditions required by NAIT”.

3.2.6.3 In a similar vein, the text in s.21(1)(b), in large part, duplicates s.21(1)(a).

**3.2.6.4 The Federation recommends that s.21(1)(b) is deleted and s.21(1)(a) is reworded as “... fails to meet any of the accreditation conditions or the applicable standard(s) required by NAIT”.**

3.2.7 NAIT organisation to assess performance ... [s.23]

3.2.7.1 Section 23(1)(a) states that NAIT “*must audit each year ... the quality of the information gathered ...*” and “... the information gathering and information handling practices by an information provider”.

3.2.7.2 This implies that all information providers and accredited persons will be subject an audit by NAIT each year. Such a process would appear to be unnecessary resource intensive and expensive. A more standard practice would be to audit an appropriate sample of such persons/entities.

**3.2.7.3 The wording of s.23(3) is unnecessarily verbose. The Federation recommends that it is reworded as “The NAIT organisation, must specify to the auditee, in writing, the type and form of the information that must be provided in respect of the audit and the date it is to be provided by.”**

### **3.3 Part 3: Obligations of persons participating in the NAIT scheme**

#### **3.3.1 Overview**

3.3.1.1 The key obligations of farmers (as PICA's) are described in s.24. The (draft) regulations that would provide critical information around the processes and time-frames in respect of the obligations have not yet been published. [This matter is further commented on elsewhere in our submission.]

3.3.1.2 In the absence of this information, the Federation is unable to comment with any degree of confidence, about what impact or otherwise, the provisions of the Bill will have on farmers, their businesses and the feasibility of the NAIT scheme in general.

**3.3.1.3 In such circumstances, the Federation recommends that the Bill does not proceed further at this stage. Instead, the Bill should be held back until the draft regulations have been published and the Federation and other stakeholders have had a chance to consider the impact (financial and otherwise) and the feasibility of the scheme from a practical perspective. Once this process is complete, the NAIT Bill can be properly examined by the Primary Production Select Committee. [In a recent survey undertaken by the Federation, members were asked whether or not they considered the key obligations on farmers (s.24 of the Bill) to be reasonable: 71% of respondents thought the obligations were not reasonable and 25% thought that they were.] However, should the NAIT Bill proceed at this time, then the Federation would note the following as matters that should be addressed in this part of the Bill:**

#### **3.3.2 Key obligations [s.24]**

**3.3.2.1** It is unclear what the two requirements s.24(2)(e) and s.24(2)(g) add to the process as the other listed obligations would appear to be adequately encompass these two requirements, particularly given that they should be able to be covered within the scope of the (yet to be written) NAIT regulations. **The Federation recommends that s.24(2)(e) and s.24(2)(g) should be removed from the Bill.**

3.3.2.2 Limitations and exemptions on the scope of the application of the obligations on PICA's are provided for in s.24(3) and s.25(1). The detail around these will be critical to balance the effectiveness of the NAIT scheme against its feasibility. As noted elsewhere in the Federation's submission, it is unfortunate, to say the least, that this level of detail is not available for examination and comment. As with the introduction of any complex piece of legislation, an ancillary matter that must be addressed by MAF and others, is the effective communication of the issues – including responsibilities and exemptions – to, in this case, farmers and other PICA's. As part of the provision of this material it is suggested that those responsible for the dissemination of such material may wish to consider the use of “flow charts” or similar, visual aids to increase the uptake of knowledge in this area.

#### **3.3.3. Obligation to register as a PICA [s.26]**

3.3.3.1 A person is required to register as a PICA with the NAIT organisation [s.27] who is [s.26] in day-to-day charge of animals, whether continuously or intermittently. The wording of this section is misleading as it implies that anyone who is, even intermittently, in day-to-day charge of NAIT animals must register as a PICA, when this is not always the case. If a person in charge of animals at a given time, or times, has no responsibilities or duties in respect of the NAIT organisation/system, then they are not required to register.

**3.3.3.2 The Federation recommends that the wording of s.26(1) is amended to read “In relation to meeting obligations required by NAIT, a person ...”**

**3.3.4 Obligations to identify and register NAIT animals [s.30]**

3.3.4.1 Section 30(1)(a) requires that NAIT animals are “correctly fitted at all times with the NAIT device ...”. As written, this is overly onerous and any loss of a fitted tag or NAIT device at any time would see a PICA in contravention of this requirement.

3.3.4.2 It is noted that the “at all times” requirement is not carried through to the penalty provisions [s.138(1)(b)] where it is only necessary to replace a tag on NAIT animal before the animal is moved from a location.

3.3.4.3 In addition, the wording “the NAIT device” [s.30(1)(a) and “... the prescribed NAIT device” [s.30(2)] implies that only one such device is acceptable. The wording would be better as “a” rather than “the” if more than one NAIT device is to be acceptable.

**3.3.4.4 The Federation recommends that the wording of s.30(1)(a) is amended to read “correctly fitted with a NAIT device” and that s.30(2) is also amended, to read “fitted with a prescribed NAIT device”**

**3.3.5 Obligation to declare death, loss or export [s.33]**

3.3.5.1 Section 33(1) requires a PICA to “as soon as practicable, make a declaration to the NAIT organisation if a NAIT animal dies or is lost”. The inclusion of “as soon as practicable” is vague and risks a PICA inadvertently and unnecessarily being exposed to the penalty provisions of s.137(2)(d) which describes that it is an offence to fail to comply with section 33.

**3.3.5.2 The Federation recommends that the phrase “as soon as practicable” is removed and s.33(1) is amended to read “A PICA must make a declaration ..”**

**3.3.6 Provision of information [s.34]**

3.3.6.1 Section 34(1)(b) requires that a PICA must ensure that the information provided to NAIT is “kept up to date”.

3.3.6.2 This requirement is redundant, given the requirement of s.32(1)(c) that the information is “provided in accordance with time and any other requirements prescribed by regulations..”

**3.3.6.3 The Federation recommends the removal of s.34(1)(b) from the Bill.**

**3.3.7 Obligation on manufacturers of ... devices [s.35]**

3.3.7.1 Section 35(2)(a) states that “Manufacturers ... may supply NAIT devices only”. If the meaning of “may” in this context is “are able to”, then this would mean that manufacturers etc are not able to undertake any other types of business.

**3.3.7.2 The Federation recommends that s.35(2) is reworded as "In respect of animal identification devices, manufacturers ...”**

**3.4 Part 4: NAIT Information system**

This topic is also discussed in point 3.1.3 above. In addition, Federated Farmers other concerns with this part of the Bill are:

### 3.4.1 Purposes of holding core data [s.40]

3.4.1.1 The defined purposes for holding (and subsequently using) core data [s.40(a) – s.40(j)] are extremely wide ranging.

- Firstly, the Bill provides for data to be collected for purposes that are clearly integral to the Bill – such as enabling the NAIT organisation to function [s.40(a)(b)].
- Secondly, the Bill provides for ancillary purposes that can reasonably be seen to be relevant – such as to facilitate the purpose of the Commodity Levies [s.40(c)], Animal Products and Biosecurity Acts [s.40(d)].
- The remaining purposes of s.40 in the Bill however [s.40 (e) – (j)] are more difficult to understand in the context of an animal identification and tracing Bill core data requirements.

3.4.1.2 In particular, the Federation does not understand how the provision of statistical data [s.40(h)] and the publication of agricultural statistics [s.40(i)] can be justified as these areas are not included in the purpose of the Bill [s.3].

#### **3.4.1.3 The Federation recommends that s.40 (h) and s.40(i) are removed from the Bill.**

3.4.1.4 Section 40(j) describes a purpose for holding core data as “to provide data to enable a purchaser of a NAIT animal to trace the history of the animal”. While the Federation accepts that selected “animal health” matters are relevant to the Bill (e.g. around Bovine Tb status), the Federation believes that such areas can be covered under the market assurance core purpose [s.40(f)]. The Federation opposes the extension of the NAIT Bill “core data” set to include “*data to enable a purchaser of a NAIT animal to trace the history of the animal*” since, of necessity, the set could expand to include all animal health related information.

#### **3.4.1.5 The Federation recommends that s.40(j) is removed from the Bill.**

### 3.4.2 The need for strong protections around the use of personal information [s.45 – s.47]

3.4.2.1 It is very important that strong protections are afforded the control of personal information – i.e. information about an “identifiable individual” [as defined in s.2(1) of the Privacy Act 1993].

**3.4.2.2** Section 45(2)(b) states that an applicant may apply for information about *an animal ...*. **The Federation recommends that s.45(2)(b) is reworded as “... about any animal(s) ...”.**

3.4.2.3 It would appear that almost anyone can apply for access to core data (not personal information) under s.46(5) and they will be granted it if it is “reasonably necessary to achieve a purpose in section 40” [s.46(7)]. As s.40 includes “supporting productivity” amongst its purposes [s.40(f)] it seems likely that core data will be readily available to all and sundry. As noted above [Point 3.1.3], the Federation submits that s.40(f) should be amended to remove “productivity” from the Bill. It is appropriate to note, here – as elsewhere in our submission (e.g. Point 2.7) – that the Federation believes that the controls over the use of personal information (either to provide commercial advantage to other parties, to provide linkages to other levy/impost imposing schemes, or for other purposes) provided for in the Bill are inadequate and should be strengthened. To not do so would, from an individual farmer’s perspective, act as a disincentive to fully engage with NAIT and from a wider, societal view, would further weaken the right of individuals to control the use of their personal information.

- 3.4.2.4** The provision for the supply of core data, including personal information, to a department or other Crown agency [s.46(8)] is eclectic given the very wide scope of s.40. **The Federation recommends** that this should be subject to tighter control and that this would be achieved by **changing s.46(10) from “reasonably necessary” to “necessary.”**
- 3.4.2.5** NAIT is able, by agreement with an individual, to hold non-core data [s.41]. This is a commercial transaction, to be paid for by the person who enters into the arrangement with NAIT. Given that the information will have some value to the individual, it is not acceptable that “non-core data, personal information” may be accessed by almost anyone [s.46(14)] if the information is deemed to be “in the interests of the industry” [s.46(16)(b)] or “access is consistent with the public good” [s.46(16)(c)]. The Federation supports the requirement that the release of such information should require the applicant to have “express consent of the person whose data it is [s.46(16)(a)], but believes that if this is granted then s.46(16)(b) and s.46(16)(c) are redundant. **The Federation recommends (1) that s.46(16)(a) is amended to read “... express consent from the person whose data it is to the applicant having access and that any constraints on this access are given effect “ and (2) that s.46(16)(b) and s.46(16)(c) are removed from the Bill.**
- 3.4.2.6** In a similar vein, s.46(17),(19) permits widespread access to non-core data that is not personal information – the Federation believes that access to the information should only be made available with the express permission of the person whose data it is. **The Federation recommends that a new section 46(19)(a) is added – the wording as per s.46(16)(a) above and that the current s.46(19)(a) and s.46(19)(b) are removed from the Bill.**
- 3.4.2.7** The Federation supports information providers linking with the NAIT system, but wishes to note that the mechanisms by which this would occur should be carefully managed to control or prohibit the indirect use of information provided by this interaction for any commercial advantage – for example information providers could abuse their access to personal information to identify potential customers.
- 3.4.2.8** Section 47 provides for conditions on access to information. **The Federation** believes that this should be strengthened and **recommends adding, to s.47(5) a further condition (e) to “prohibit any sale of the data”** [*In a recent survey undertaken by the Federation, members were asked whether or not they supported the sale or trade of data by NAIT: 90% of respondents to the question answered No and 10% of respondents to the question answered Yes*].
- 3.4.2.9** Section 51(1) exempts data in the NAIT information system from the Official Information Act. **The Federation recommends that, while personal information must be protected, the performance of the NAIT organisation should be open to scrutiny and requests that the reason(s) for this exclusion from the OIA be justified.** As a comparison, the Animal Health Board and Fish and Game are open to OIA requests. Both these entities have a similar scope to the prospective NAIT organisation.

### **3.5 Part 5: Compliance and Enforcement.**

The Federation has major concerns with this part of the Bill.

- 3.5.1** **The Federation submits that much of Part 5 of the NAIT Bill is totally unnecessary to achieve the purposes of the Bill. The Federation therefore**

**recommends that the compliance and enforcement provisions of the Bill are removed from the Bill.** *[In a recent survey undertaken by the Federation, members were provided with some examples of the powers that would be granted to NAIT officers and authorised persons and asked how they felt about this: 87% of respondents felt that the powers were excessive and 10% of respondents were comfortable with the provisions.]*

**3.5.2 This part of the Bill must be rewritten having due regard to the powers granted to NAIT Officers and NAIT Authorised Persons in the context of the purposes of the NAIT Bill. It must also consider what purposes of the Bill are able to be met by the existing legislative framework (e.g. the Biosecurity Act 1993 and the Animal Products Act 1999).**

3.5.3 The Federation further submits that the inclusion of draconian and unneeded powers in the NAIT Bill just because of the way that the Search and Surveillance Bill was written is not good government, but lazy (and intrusive) government.

3.5.4 The Federation's concerns with this part of the Bill are numerous and include:

- The inclusion of non-NAIT animals
- The draconian nature of some of the compliance and enforcement provisions.
- There is no need for Production Orders
- A lack of control on the people who are able to become "issuing officers"
- Inadequate definitions around the differences between "NAIT officers" and "NAIT authorised persons" and the potential lack of accountability in relation to the exercise of their powers.
- Unnecessary powers granted to NAIT officers with respect to all livestock
- Lack of control around the reporting of search powers
- The power of entry without a warrant and the power to stop and search vehicles
- The excessive penalty provisions of the Bill

These points are discussed below.

3.5.5 The inclusion of non-NAIT animals [s.52]

3.5.5.1 The Bill Title [s.1] is the "National Animal Identification and Tracing Act" and the Bill defines [s.4] both "NAIT" (as "national identification and tracing") and "NAIT animal" (as "an animal that belongs to a species or sub-group of species listed in Schedule 1").

3.5.5.1 The animal species and sub-species that are listed in Schedule 1 ("Animals subject to the NAIT scheme") as being "all members of the subfamily Bovinae" and "all farmed members of the family Cervidae". Further, the Bill specifically describes [s.163] the processes by which other species or sub-species may be added or removed from Schedule 1.

3.5.5.2 It is therefore extremely concerning to the Federation that the Purpose and scope of (the compliance and enforcement) powers [s.52] is described as "to enable a NAIT Officer or Authorised Person ... to ascertain any breach of a NAIT obligation ... and undertake any necessary enforcement of this Act, whether or not NAIT animals are involved".

3.5.5.3 This statement leads to the inevitable conclusion that the Bill provides for NAIT Officers and Authorised persons to take enforcement and compliance actions with respect to non-NAIT, i.e. any animals.

3.5.5.4 The Federation submits that, should action be necessary with respect to non-NAIT animals (around e.g. biosecurity or food safety) then such measures are already provided for by (e.g.) the Biosecurity Act (1993) or the Animal Products Act (1999).

**3.5.5.5 The Federation therefore recommends that the words “whether or not NAIT animals are involved” are removed from section 52 of the Bill.**

3.5.6 The draconian nature of some of the compliance and enforcement provisions.

3.5.6.1 It is noted that these provisions are, in large part, “consequential” i.e. arising from the introduction, to Parliament, of the Search and Surveillance Bill (2009). It is further acknowledged that, should the Search and Surveillance Bill be enacted before the passage of the NAIT Bill, much of the material currently in the NAIT Bill pertaining to search and surveillance will be removed and will therefore be outside the scope of matters to be considered by the Primary Production Select Committee. Nevertheless, the Federation believes that these provisions should not be included in the NAIT Bill as many of them are totally unnecessary to achieve the purpose of the Bill.

3.5.6.1 As one example of what would be permitted under the Bill, the search and related provisions of the NAIT Bill would appear to allow a NAIT Officer to:

unannounced [s.112(2)(b)(iii)] and in their absence

- forcibly enter a farmer’s home [s.95(c)] and
- remove (e.g.) a computer [ s.95(h)] and
- (on the successful application by the Director General to a District court judge to do so) leave without providing any information about what has taken place on the grounds that to do so would endanger the safety of a person or prejudice ongoing investigations [s.115(1)(a)(b); s.116(1)].

3.5.6.2 The occupier, upon returning home, might reasonably assume that the place had been burgled and report this to the police. The Federation would be keen to understand the role of the police under such circumstances and what information they would provide to the person who had laid the complaint of burglary. If questioned, would the police (e.g.) lie to the complainant about what had happened or their knowledge of the circumstances relating to such an event?

3.5.6.3 It is difficult to envisage circumstances under which these powers would need to be used in relation to animal identification and tracing operations. That being the case, the Federation would respectfully refer, to the Committee, the words of the great British philosopher, John Stuart Mill, who said “*The most cogent reason for restricting the interference of government is the great evil of adding unnecessarily to its power.*”

3.5.7 The need for Production Orders

3.5.7.1 Under the NAIT Bill, a NAIT Officer, subject certain conditions [s.69 - 70] would be able to apply to an issuing officer for a production order. This would require a person to provide information or documents relating to a specific offence (and which the person is thought to possess or control) to the NAIT Officer. The Ministry of Justice/Law Commission report on the Search and Surveillance Bill (2009) notes<sup>9</sup> [#317] that “Production orders are intended to provide a less intrusive alternative to search warrants where the evidential material sought is in the form of documents that can be identified *and full cooperation from the party subject to the order is anticipated*” and further [#318] “ The ... process reflects a ... practice of Police when executing search warrants against *people who are willing to assist*”.

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<sup>9</sup> “Departmental Report for the Justice and Electoral Committee, Search and Surveillance Bill” by the Crime Prevention and Criminal Justice Group of the Ministry of Justice (August 2010).

3.5.7.2 Given that cooperation with the production order is fundamental to its issuance – otherwise a search warrant or other process would be instituted - the Federation fails to understand why the offence of “failing to comply with a production order” [s.135] exists. In addition, the penalties for this offence are significant – imprisonment for up to a year for an individual [s.135(2)(a)] or a fine of up to \$40,000 for body corporate [s.135(2)(b)].

**3.5.7.3 The offence of “failing to comply with a production order” is redundant and the Federation recommends that this offence is removed from the Bill.**

3.5.8 A lack of control on the people who are able to become “issuing officers”

3.5.8.1 “Issuing officers” are people who are able to authorize instruments, in the form of production orders and warrants in order to [s.52] enable an approved (warranted) NAIT Officer or Authorised Person “... to ascertain any breach of a NAIT obligation ... and undertake any necessary enforcement of this Act ...”.

3.5.8.1 An “issuing officer” is defined [s.53(1)] as meaning “(a) a Judge; (b) a person such as a Justice of the Peace, Community Magistrate, Registrar (of the District Court) or Deputy Registrar (also of the District Court).”

3.5.8.2 The issue the Federation has with this is the inclusion of the term “a person such as”. While the wording arises from the section 106 of the Search and Surveillance Bill and the inclusion of the term (“a person such as”) is no doubt not intended to be broadly enabling in respect of the NAIT Bill, the fact remains that, as it is written, the lack of a closed definition and the phrase as used mean that literally any person (i.e. anyone) could be appointed as an issuing officer. The compliance and enforcement powers granted under the NAIT Bill are substantial to say the least. In such circumstances the cast of people that are entitled to exercise these powers should be circumscribed – this is not the case at present.

**3.5.8.3 The Federation recommends that the words “a person such as” are removed from the definition of an issuing officer in s.53(1).**

3.5.9 Inadequate definitions around the differences between “NAIT officers” and “NAIT authorised persons” and the potential lack of accountability in relation to the exercise of their powers.

3.5.9.1 NAIT officers and NAIT authorised persons are appointed by the Director General [s.54] and their powers are defined by the conditions provided for in their issued warrant of authorisation [s.55 and s.56(3)].

3.5.9.2 While the functions and powers of NAIT officers and authorised persons are discussed in general terms [s.56], the differences between the two ‘classes’ of enforcement officer are nebulous to say the least, given that all the powers of a NAIT officer “for ascertaining or monitoring compliance” may be conferred on a NAIT authorised person under s.56(3). Does this include powers in respect of enforcement?

3.5.9.3 Further, while enforcement officers appointed must have the “appropriate experience, qualifications and technical competence relevant to the functions of a NAIT officer or authorised person” [s.54(1)], these are nowhere explicitly provided for in the Bill. Given the wide-ranging powers that enforcement agents are provided with under the NAIT Bill, this lack of clarity is unacceptable.

3.5.9.4 The Federation believes that the exercise of the powers by NAIT officers or authorised persons must be accountable to the New Zealand public, particularly in

the light of the uncertainty surrounding the organizational form that the “NAIT Ltd” entity and its governance may eventually execute.

3.5.9.5 The Bill notes that persons employed as NAIT officers/authorised persons “may by (but need not be) employed by the Director-General under the State Sector Act 1998” [s.54(3)]. Should NAIT officers or authorised persons be employed (e.g.) by organizations other than the New Zealand government, then the Federation believes that this needed accountability will be lost.

**3.5.9.6 The Federation recommends that NAIT officers and authorised persons must be employed by the Director-General under the State Sector Act 1998 and that s.54(3) is amended accordingly.**

3.5.10 Unnecessary powers granted to NAIT officers with respect to all livestock

Section 67 gives NAIT officer powers in respect of the recovery of straying livestock, but this is extended in s.67(1) to apply to “... all livestock, whether NAIT animals or not”.

3.5.10.1 It is assumed that s.67(1) is a carry-over from Section 9 of the Animal Identification Act (1993) that is to be repealed by the passage of the NAIT Bill [s.167], but nevertheless an extension of powers to NAIT Officers over non-NAIT animals does not belong in the NAIT Bill.

**3.5.10.2 The Federation recommends that s. 67(1) is removed from the Bill.**

3.5.11 Lack of control around the reporting of search powers

3.5.11.1 Subpart 5 of the Bill devotes considerable space [s.77 – s.116] to search and inspection powers including; Consent searches [s.78 – s.83], Search warrants [s.84 - 88], Issuing of search warrants [s.89 – s.94], carrying out search powers [s.95 – s.101], Establishing search scene [s.102], Seizure of items in plain view [s.103], Inspection without warrant [s.104], Powers relating to vehicles [s.105 – s.109], Personal search power [s.110], Computer system searches [s.111], Identification and notice requirements [s. 112 – s.116].

3.5.11.2 As part of this material, s.91 [“Issuing officer may require search warrant report”] addresses the mechanism by which the oversight of the exercise of search powers may be exercised. Section 91(1) states that an issuing office may include, as a condition of issue of a search warrant, that the employer of a person to whom a search warrant is issued to “... provide the issuing officer with a search warrant report within a specified period.” The Federation believes that the mandatory application of this provision, when used in conjunction with the reporting provisions of the Bill, would act as an effective control mechanism to guard against the potential abuse of search powers.

3.5.11.3 The Federation further believes that reporting provisions of the Bill – specifically s.129 [“Annual reporting of search powers”] - should include not only a requirement to report “... the number of occasions on which entry powers ... were exercised without a warrant” but also the number of times that a warrant to search was issued.

**3.5.11.4 The Federation recommends that s.91(1) is amended to read, “An issuing officer should impose a condition under section 90(3)(b) requiring ... a search warrant report within a specified period”. In addition, should such a request not be made, the reason(s) for this should be documented and made available to the Director-General responsible for reporting. Section 129 should also be**

**amended to require the number of instances in which a search warrant was issued to be reported.**

3.5.12 The power of entry without a warrant and the power to stop and search vehicles

3.5.12.1 Under the Bill, a NAIT officer or authorised person would be able to:

- Enter and inspect a place [but not a dwellinghouse, (unless the warrant was issued under s.89)] "... without a warrant for the purposes of determining whether or not a person is complying with this Act, regulations made under it or standards issues under it [s.104] and separately :
- Stop and search a vehicle without a warrant exercising the power conferred by section 104 [s. 105(1)].

3.5.12.2 These powers are again as provided for by the Search and Surveillance Bill and, again, (given the provisions already available under existing legislation such as the Biosecurity Act and the Animal Welfare Act, are uncalled for in the context of animal identification and traceability legislation.

**3.5.12.3 The Federation recommends that these powers are amended to be subject to a warrant before they can be exercised.**

3.5.13 Computer system searches

3.5.13.1 Under s.111(1) a person exercising a search power may require a "specified person" [s.111(2)], to "provide access information and other information or assistance that is reasonable and necessary to allow the person exercising the search power to access data held in (a) a computer system ... and (b) any other data storage device ... at the place or in the vehicle or other thing being searched".

3.5.13.2 As defined, the people obliged to provide this information [s.111(2)] include the owner or lessee of the computer system, their employees or a service provider ...".

3.5.13.3 Failure, without "reasonable excuse" to provide such assistance is an offence punishable by up to three months imprisonment [s.131]. As mentioned above, this is yet another example of what the Federation believes is an inappropriately excessive power in relation to animal identification and traceability.

3.5.14 Service of orders or notices

3.5.14.1 Under s.151(1), an order or notice may be served by delivering in person [s.151(1)(a)] or [s.151(1)(b)], by ... electronic mail".

3.5.14.2 It is unacceptable that delivery by electronic mail is considered to be an acceptable way of delivering something that has legal effect as e-mail may not ever be received by the recipient if it the receiving system classifies it as "spam". In such circumstances a person may have effectively be deemed to have committed an offence without their awareness of the fact.

**3.5.14.3 The Federation recommends that the option to deliver an order or notice by e-mail be removed from s.151(1)(b) of the Bill.**

3.5.14.4 Further, s.151(4) states that "if an order is sent by post, ... (it) is deemed in the absence of proof to the contrary, to have been given on the third day after the day on which it was posted".

3.5.14.5 A notice posted on a Thursday night therefore would be deemed to have been served on Monday. This clause is inappropriate on two grounds:

- The time frame does not allow adequate time for delivery as intended to all rural locations and
- While the onus is on the intended recipient to prove that s/he did not receive the notice, this requires them to prove a negative, which is not possible, (“in the absence of proof to the contrary”).

### 3.5.14.6 The Federation recommends that clause 151(4) is removed from the Bill,

#### 3.5.15 The penalty provisions of the Bill

- 3.5.15.1 The penalty provisions of the Bill are significant and appear well out of kilter with the magnitude of the offences that are described. In this respect, the exemptions granted around the requirements – and the offences for not complying with them - will be critical, but these are unfortunately not able to be discussed here as the draft regulations have not yet been published. *[In a recent survey undertaken by the Federation, members were provided with some examples of the penalty provisions of the Bill and asked about their level of comfort with the provisions: 87% of respondents felt that the penalty provisions were excessive and 8% of respondents felt that the penalty provisions were appropriate.]*
- 3.5.15.2 Section 130 makes it an offence, punishable by a term of imprisonment of up to 3 months, not to stop a vehicle on request by a NAIT Officer. Even presupposing that the practical difficulties of knowing how a NAIT officer can practically carry out his duty with respect to moving vehicle – how would a farmer know while operating a moving vehicle that the person wanting to stop the vehicle is a NAIT Officer for instance? This is a ridiculous penalty compared to the severity of the offence and should be removed.
- 3.5.15.3 Under section 133, it is an offence to “knowingly” provide false information [s.133(1)] or a false declaration [s.133(2)]. **The Federation believes that the threshold for such offences should be set higher and that the wording of this clause should be amended to replace “knowingly” with “intentionally”** - as in s.132(1) - as the latter word is more purposeful.
- 3.5.15.4 Section 133(4)(a) requires that the prior written permission of NAIT is required before using this name in the course of “business or trade”. This suggests that Federated Farmers would need to do this before using the word “NAIT” in a newsletter for instance. [Such publications are part of the Federation’s business of retaining members.] If so, this requirement – and the associated penalties [s.133(5)] – are ridiculous.
- 3.5.15.5 Section 134(3)(b) provides penalties for a body corporate breaking the obligation, by NAIT officers and authorised persons, to maintain confidentiality. The Federation does not see what relevance this has to the stated offence.
- 3.5.15.6 Section 144 requires that all infringement fees be paid to “the Ministry”. If the Ministry concerned is the Ministry of Agriculture and Forestry, the Federation questions whether this path is the most cost effective and efficient. **The Federation recommends that a review is undertaken to determine the most cost-effective mechanism possible to manage the processing of infringement fees.**
- 3.5.15.7 The liabilities of both principals and agents [s.147] and directors/managers of corporate bodies [s.148] provided for in the Bill are substantial. The very low threshold for these offences is concerning to the Federation; A director/manager for instance would be liable if they “could reasonably be expected to know that the

offence was to be or was being committed” [s.148(b)]. The Federation submits that to remove liability around these offences, both principals and directors/managers will be required to personally examine and verify every NAIT related document that is submitted by an employee or agent. This is simply impossible when running a farm business operation.

3.5.15.8 The s.147/s.148 liabilities fail to recognise that the proposed distinctions are inappropriate for an operating farm environment and are yet another example of the unforeseen and draconian consequences of incorporating the Search and Surveillance Bill provisions in the NAIT Bill.

**3.5.15.9 As is noted above (point 3.5.1) the Federation recommends that the compliance and enforcement provisions described in Part 5 of the NAIT Bill are removed. Failing that, the Federation recommends that sections 147 and 148 are amended to explicitly include the defence provided for (against such offences) by (e. g.) s.340(2) in the Resource Management Act 1991.**

**3.5.15.10 Section 149(1) provides for defences against sections 137, 138, 139 and 140 offences. The Federation recommends that the requirement that both 149(1)(b)(i) and 149(1)(b)(ii) be satisfied be amended to provide for an “and/or” situation being an allowable defence.**

3.5.16 The Federation’s other concerns with this Part of the Bill are:

3.5.16.1 The provision for cost recovery around the audit of core data [s.58(2)]. NAIT is able to recover the cost of the audit under this section. The Federation believes that the Bill fails to distinguish between an audit that is a routine part of the NAIT system “quality assurance” programme and one that is an enforcement audit where a possible breach of NAIT obligations is investigated. The Federation believes that the former are part of the organizational costs and should not be directly recoverable from the auditees.

3.5.16.2 Purpose for which consent search may be undertaken [s.79]. Under section 79(b), a consent search may be undertaken to “... prevent harm to persons or property.” As this Bill pertains to “animal identification and tracing”, there is no reason for this clause to be included in legislation about animal identification and traceability. In addition, s.79(d) allows a consent search to be undertaken for “any purpose in respect of which the NAIT officer could exercise a power of search conferred by this Act, if he or she held a particular belief or suspicion specified in this Act.” What issue or issues is this purpose intended to address – does it add anything useful to the Bill?

**3.5.16.3 Advice that must be given before a consent search undertaken [s.80].** Three requirements are listed that must be met by a NAIT officer who intends to conduct a “consent search”. One of the conditions [s.80(c)] is to “advise the person that he or she may either consent to the search or refuse to consent to the search.” **The Federation recommends that that the consequences of either decision should be reasonably explained by the NAIT Officer to the person.**

3.5.16.4 Power to apply for search warrant [s.84]. Section 84(2) permits a warrant to enable:

- a. entry; or
- b. entry and search; or
- c. entry and inspection; or
- d. entry and examination

The warrant should provide details of which of these options is applicable under each circumstance.

- 3.5.16.5 Application must be verified [s.86]. The Bill states that “An application for a warrant must ... be accompanied by a statement ... confirming the truth and accuracy of the contents of the application”. The truth and accuracy in this context are what are believed to be true – whether they are, in fact, true and accurate is the prerogative of the Court. The wording should be amended to reflect this
- 3.5.16.6 When search warrant executed [s.93]. This is defined by a 4 hour absence from the “... place, vehicle or other thing being searched” [s.93(b)]. It is unclear how this would relate to “remote searches” as the person doing the search is not necessarily in a position to be physically present (or absent) at these sites.
- 3.5.16.7 Power to determine status of person as PICA [s.59]. While the NAIT officer must take into account a number of factors [s.59(1),(2)] in determining who the PICA for allocation is – and the Bill also provides [s.59(3)] for other factors to be taken into account - the Bill does not take address how to proceed where issues of competency may arise.
- 3.5.16.8 Cost recovery actions around the power to act if person defaults [s.61].** Whether this action needs to be taken should be further considered. An analogy would be the powers of (e.g.) the police and search and rescue to recover costs. **The Federation submits that this power should be used with discretion having regard to the circumstances of the incident and the costs incurred.**
- 3.5.16.9 Power of entry without warrant for inspection [s.104]. A NAIT officer or authorised person may not enter or inspect a dwellinghouse or marae or a building associated with a marae, except with consent or if a warrant has been issued. What is the status of a garage or a garage that is an integral part of a dwellinghouse?
- 3.5.16.10 Duty to remain stopped [s.108].  
The Bill provides that “... the officer may require the vehicle to remain stopped for as long as ... necessary for the purposes of stopping or ...”. If the vehicle is already stopped, there is no need for the words underlined above and they should be removed.
- 3.5.16.11 Restitution subsequent to the exercise of search powers causing damage to property. Section 95(c) allows the use of reasonable force for the purposes of carrying out the entry and search and any lawful seizure. There appears to be no obligation however to either make good any property damage caused or to secure the property. The Federation believes that this issue should be considered.

### **3.6 Part 6: Cost recovery and other provisions, such as the inclusion of other species**

Federated Farmers concerns with the part of the bill are:

- 3.6.1 Cost recovery [s.153 – s.162]
- 3.6.1.1 The NAIT scheme costs that will be imposed on farmers are of great concern to the Federation and recovery of costs is a key issue in this regard. Unfortunately, while the Bill provides substantial enabling information around cost recovery, the cost to farmers remains, in large part, unknown, until the relevant regulations are published.

- 3.6.1.2 *In a recent survey undertaken by the Federation, members were asked who they thought should pay for the off-farm administrative costs of the NAIT organisation (farmers/processors/the Crown/levy bodies/a mixture of these): Most respondents (35%) thought that a mixture stakeholders should pay, 29% thought the Crown alone should pay and only 3% thought that farmers alone should pay directly. In contrast, 32% thought that farmers should not pay, 3% thought that the Crown alone should not pay and 29% thought that a mixture of stakeholders should not pay.]*
- 3.6.1.3 As a matter of principle, **the Federation believes that all the off-farm costs of the NAIT scheme should be met by the Crown** as:
- The mandated scheme is being imposed on farmers.
  - There is no opportunity for farmers to recover the off-farm cost.
  - The putative benefits of the Bill – such as improved biosecurity – will accrue to all New Zealanders as a public good through the financial contribution the pastoral sector makes to the economy.
- 3.6.1.4 A number of alternative methods are provided by which costs may be recovered [s.155]. The Federation expects that the choice as to which mechanism(s) are used will be determined primarily by the cost to stakeholders.
- 3.6.2. Consultation [s.156]
- 3.6.2.1 Section 156 requires that NAIT consult with “persons likely to be substantially affected” [s.156(2)(3)] by the regulations that impose fees/charges or levies, [s.157, 158] but also states [s.156(5)(a)] that regulations so made are not invalid on the grounds that subsections (2) to (4) were not complied with. People that are to be substantially affected have the right to be consulted on issues.
- 3.6.2.2 The Federation recommends that s.156(5)(a) is removed from the Bill.**
- 3.6.3 Regulations may impose levies [s.158]
- 3.6.3.1 Section 158(2)(f) states that (the regulations must) specify the persons or class of persons primarily responsible for paying the levy
- 3.6.3.2 Either a person is responsible or they are not. The Federation recommends that the word “primarily:” is removed from s.158(2)(f).**
- 3.6.4 The introduction to or removal from NAIT of other species [s. 163]
- 3.6.4.1 The Federation does not believe that the conditions that the Minister must have regard to before mandating that a species or sub-group of a species is brought into the NAIT scheme [s.163(5) - (7)] are robust enough, whether industry led or not.
- 3.6.4.2 *In a recent survey undertaken by the Federation, members were asked who they thought should be responsible for the entry and exit of species from the NAIT scheme (the Minister only/levy bodies/a farmer referendum/a mixture of these options): 44% of respondents favoured a farmer referendum as the mechanism, 39% favoured a mixture of the options provided, 10% thought the levy bodies should and only 7% favoured the Minister only having this decision. In contrast, looking at who should not have this decision making ability 43% thought that the Minister should not, 34% thought that the levy board should not, 17% thought that a mixture of these options should not be used and only 5% thought that a farmer referendum should not be the mechanism.]*

- 3.6.4.3 It is surprising that an industry led initiative [s.163(5)(a)] does not have to meet a defined [s.3] purpose of the Bill [*“... regardless of whether or not the addition is necessary for a purpose specified in section 3”*]. The Federation believes that if such an initiative does not meet a purpose of the Bill, then the NAIT Bill is not the mechanism that should be used to advance the initiative. The Federation recommends that the words “... for the addition, regardless of whether or not the addition is necessary for a purpose specified in section 3” in s.163(5)(a) are changed to read “... for the addition and that the addition is for a purpose specified in section 3”
- 3.6.4.4** In addition, the phrase “the mandate of its members” in s.163(5)(a) requires clarification. **The Federation therefore recommends several changes to s.163(5)(a) to read:**  
**“(5)(a)(i) be satisfied that ... and the mandate of its members for the addition and that the addition is for a purpose specified in section 3 and”** that a new s. 163(5)(a)(ii) is added:  
**“be satisfied that the mandate conditions meet the acceptance criteria specified in the Commodity Levies Act 1990 or equivalent legislation and”**
- 3.6.4.5 In respect on a “not industry led initiative” [s.163(6)], while the Minister must [s.163(6)(b)] “have regard to” a number of factors [(i) – (viii)], there is no binding requirement on the Minister in respect of any/all such considerations.
- 3.6.4.6 With the exception when urgent action is required (discussed below), the Federation sees no reason why farmers should not also formally vote to add (or not) another species or sub-group of a species under the s.163(6) pathway, as their businesses will be directly affected by the process and they will bear a substantial portion of the costs involved.
- 3.6.4.7 Federated Farmers recommends that a new sub-clause be added to s.163(6):**  
**“163(6)(c) be satisfied that the sector affected supports the proposal”**
- 3.6.4.8 The Federation questions the need for s.163(7) under urgency, given the powers that already exist under legislation such as the Biosecurity Act 1993. It seems nonsensical that situation could arise that the ‘urgent’ identification and tracing of a species could resolve, given the lead time necessary to implement it.

#### **4. ABOUT FEDERATED FARMERS OF NEW ZEALAND**

- 4.1 Federated Farmers welcomes the opportunity to comment on the National Animal Identification and Tracing Bill 2010.
- 4.2 Federated Farmers of New Zealand is a member-based organisation representing farming and other rural businesses. Federated Farmers has a long and proud history of representing the needs and interests of New Zealand farmers.
- 4.3 The Federation aims to add value to its members’ farming business. Our key strategic outcomes include the need for New Zealand to provide an economic and social environment within which:
- Our members may operate their business in a fair and flexible commercial environment;

- Our members' families and their staff have access to services essential to the needs of the rural community; and
- Our members adopt responsible management and environmental practices.