



National Animal Identification and Tracing Act 2012

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Commencement see section 2

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The Parliament of New Zealand enacts as follows:**1 Title**

This Act is the National Animal Identification and Tracing Act 2012.

2 Commencement

- (1) Sections 26, 29, 30(1)(b), 31, 32, and 33 come into force on the earlier of the following:
 - (a) a date to be fixed by the Governor-General by Order in Council; and 1 or more Orders in Council may be made bringing these provisions into force on different dates:
 - (b) 1 November 2012.
- (2) Section 30(1)(a) comes into force on 1 July 2012.
- (3) Schedule 1, in relation to a species listed in that schedule, comes into force on the earlier of the following:
 - (a) the date to be fixed by the Governor-General by Order in Council made under section 67(1) in relation to the species:
 - (b) 1 March 2013.
- (4) The rest of this Act comes into force on the day after the date on which it receives the Royal assent.

Part 1**Preliminary provisions****3 Purpose**

The purpose of this Act is to establish an animal identification and tracing system that—

- (a) provides for the rapid and accurate tracing of individual, or groups of, NAIT animals from birth to death or live export; and

- (b) provides information on the current location and movement history of individual, or groups of, NAIT animals; and
- (c) improves biosecurity management; and
- (d) manages risks to human health arising from residues in food, food-borne diseases, and diseases that are transmissible between animals and humans; and
- (e) supports improved animal productivity, market assurances, and trading requirements.

4 Interpretation

In this Act, unless the context otherwise requires,—

animal exit declaration means a declaration to the NAIT organisation that an animal has—

- (a) been slaughtered; or
- (b) died or is lost; or
- (c) been exported live from New Zealand

animal identification device means an ear tag, apparatus, or other mechanism that—

- (a) is attached or applied to, or implanted or located within, an animal; and
- (b) contains the animal identifier and other information

animal identifier means the unique identifier that applies to an individual NAIT animal or a single identifier that commonly applies to all NAIT animals within a herd, flock, or other grouping of animals and is unique to that grouping

animal movement means the movement of 1 or more NAIT animals between 2 NAIT locations

animal movement declaration means the declaration provided to the NAIT organisation by a PICA about an animal movement containing prescribed information

biosecurity database has the same meaning as in section 2(1) of the Biosecurity Act 1993

body corporate, except in Part 4, means a company whether incorporated in New Zealand or elsewhere

contiguous, in relation to rating units, means rating units that share a boundary even if separated by roads, paper roads, streams with esplanade reserves, or other narrow zones of

separation, provided that these features do not separate the rating units into separate management entities

conveyance has the meaning given in section 2(1) of the Biosecurity Act 1993

core data means information required to be provided under this Act, or regulations made under this Act, to the NAIT organisation

Director-General means the Director-General of the Ministry

entity dealing with NAIT animals means an individual or organisation that trades or processes NAIT animals

information provider means a natural person or a body corporate—

- (a) that is accredited by the NAIT organisation under section 20 to link up with the NAIT scheme for the purpose of submitting information required to be submitted under this Act, or regulations made under this Act, on behalf of PICAs or PICA delegates; and
- (b) that, in the case of a body corporate, either—
 - (i) is incorporated in New Zealand; or
 - (ii) has a place of business in New Zealand, although incorporated outside New Zealand

livestock means animals kept as part of an agricultural operation, whether for commercial purposes or for private use

meat processing facility means a place where NAIT animals are slaughtered and dressed for reward or trade

Minister means the Minister of the Crown who, under the authority of any warrant or with the authority of the Prime Minister, is for the time being responsible for the administration of this Act

Ministry means the department of State that, with the authority of the Prime Minister, is for the time being responsible for the administration of this Act

NAIT means national animal identification and tracing

NAIT animal means an animal that belongs to a species or sub-group of species listed in Schedule 1

NAIT authorised person means a person appointed under section 52

NAIT device means an animal identification device manufactured or supplied in accordance with standards issued under section 14 or regulations made under this Act

NAIT identification system means an identification system approved by the NAIT organisation under section 15

NAIT information system means the information technology system established to receive and retain core data and non-core data

NAIT Limited or **National Animal Identification and Tracing (NAIT) Limited** means the company incorporated under company number 2481213

NAIT location has the meaning set out in section 5

NAIT officer means a person appointed as a NAIT officer under section 52

NAIT organisation means the organisation designated as the NAIT organisation by the Minister under section 8

NAIT scheme means the overall scheme established under this Act to provide for and support the identification and tracing of NAIT animals

non-core data means information held by the NAIT organisation under an agreement made under section 41

other identification system means an animal identification system other than an animal identification system approved under the Biosecurity Act 1993 or Animal Products Act 1999

personal information has the same meaning as in section 2(1) of the Privacy Act 1993

PICA means a natural person in day-to-day charge of a NAIT animal

PICA delegate means a natural person—

- (a) nominated under section 26(2) to undertake specified procedures and obligations under this Act on behalf of a PICA; and
- (b) registered as a PICA delegate in the manner provided for in section 27

place includes any land, building, conveyance, craft, or structure

rating unit has the same meaning as in section 2 of the Rating Valuations Act 1998

saleyard means any place where the core business is the sale of animals, including NAIT animals, by public sale

transit stop means a NAIT location where a NAIT animal is temporarily held during transport or droving between 2 NAIT locations

transition animal means a NAIT animal that was born before the species or sub-group of species to which it belongs was subject to the NAIT scheme

unidentified animal means a NAIT animal that—

- (a) is not correctly identified by a NAIT device; or
- (b) has not been registered with the NAIT organisation.

5 Meaning of NAIT location

- (1) A **NAIT location** is a place—
 - (a) where 1 or more NAIT animals are kept or held; and
 - (b) that has been registered with the NAIT organisation; and
 - (c) that has been issued with a location identifier by the NAIT organisation.
- (2) A NAIT location may comprise—
 - (a) a single rating unit; or
 - (b) 2 or more contiguous rating units; or
 - (c) 2 or more non-contiguous rating units, as long as each rating unit is within, or straddles, the circumference of a circle with a radius prescribed in regulations made under this Act; or
 - (d) a combination of contiguous and non-contiguous rating units each of which—
 - (i) is within the circle; or
 - (ii) straddles the circumference of the circle; or
 - (iii) is part of a group of contiguous rating units at least 1 of which is either within the circle or straddles the circumference of the circle.

6 Act binds the Crown

This Act binds the Crown.

Part 2 Governance

7 NAIT Limited or other entity to act as NAIT organisation for specified period

- (1) NAIT Limited must perform the functions and duties, and exercise the powers, of the NAIT organisation specified in this Act or regulations made under this Act for the period—
 - (a) beginning with the commencement of this section; and
 - (b) ending on the date specified with the designation of an entity as the NAIT organisation under section 8.
- (2) However, the Minister may, by notice in the *Gazette*, appoint another entity to replace NAIT Limited if—
 - (a) NAIT Limited ceases to exist or becomes bankrupt or insolvent; or
 - (b) the Minister believes, on reasonable grounds, that—
 - (i) NAIT Limited has failed, or is unable, to perform the functions and duties of the NAIT organisation; or
 - (ii) the continued involvement of NAIT Limited poses a significant risk to—
 - (A) the integrity and effective operation of the NAIT scheme; or
 - (B) New Zealand's trading reputation or economic interests.
- (3) Before replacing NAIT Limited under subsection (2)(b), the Minister must consult with the persons (or representatives of those persons) that appear to the Minister likely to be substantially affected by the replacement.

8 Process for designating NAIT organisation

- (1) The Minister must, on or before 1 July 2013 and by notice in the *Gazette*,—
 - (a) designate a suitable entity to be the NAIT organisation; and
 - (b) specify the date on which the entity must begin to perform the functions and duties, and exercise the powers, of the NAIT organisation, which date must be no later than 1 July 2013.

- (2) The Minister must, before making the designation,—
- (a) be satisfied that the entity—
 - (i) is a body corporate; and
 - (ii) has agreed in writing to operate as the NAIT organisation on a not-for-profit basis; and
 - (iii) has the capacity to perform the functions and duties, and exercise the powers, of the NAIT organisation from the date specified in the notice given under subsection (1); and
 - (b) must have regard to—
 - (i) whether the members or shareholders of the entity have given approval for the entity to become the NAIT organisation; and
 - (ii) the entity's—
 - (A) familiarity with the New Zealand livestock industry; and
 - (B) demonstrated success in business and service delivery; and
 - (C) existing or planned capacity to perform the functions and duties, and exercise the powers, of the NAIT organisation specified in this Act; and
 - (D) likely cost-efficiency in delivering services; and
 - (E) understanding of biosecurity, food safety, and market assurance objectives; and
 - (F) existing or planned mechanisms for participants in, or other persons with an interest in, the NAIT scheme to provide ongoing input into the organisation's decision making; and
 - (G) experience with databases, identification and tracing systems, and managing regulatory regimes; and
 - (iii) any other matter that the Minister considers relevant.
- (3) Despite subsection (1), if the Minister is unable to designate an entity that meets the criteria specified in subsection (2), NAIT Limited must continue to act as the NAIT organisation until

such time as the Minister is able to designate an entity that meets the criteria.

- (4) To avoid doubt, the Minister may, under subsection (1)(a), designate—
- (a) NAIT Limited as the NAIT organisation; or
 - (b) an entity that NAIT Limited (whether or not dissolved)—
 - (i) has established; or
 - (ii) has become part of, whether by—
 - (A) joining an existing entity;
 - (B) establishing an entity with the participation of other persons.

9 Minister may appoint 1 or more persons to perform functions or duties, or exercise powers, of NAIT organisation

- (1) If the Minister has reasonable grounds to believe that the continued involvement of the NAIT organisation poses a significant risk to the integrity and effective operation of the NAIT scheme or to New Zealand's trading reputation or economic interests, the Minister may—
- (a) appoint, for a specified period, 1 or more suitable persons to—
 - (i) perform any or all of the functions or duties of the NAIT organisation under this Act or regulations made under this Act;
 - (ii) exercise any or all of the powers of the NAIT organisation under this Act or regulations made under this Act; or
 - (b) revoke the designation of the NAIT organisation and appoint 1 or more suitable persons in place of the NAIT organisation to—
 - (i) perform any or all of the functions or duties of the NAIT organisation under this Act or regulations made under this Act;
 - (ii) exercise any or all of the powers of the NAIT organisation under this Act or regulations made under this Act.
- (2) An appointment made under—

- (a) subsection (1)(a) must—
 - (i) be in writing; and
 - (ii) specify—
 - (A) the period of the appointment; and
 - (B) the functions and duties to be performed under this Act or regulations made under this Act; and
 - (C) the powers to be exercised under this Act or regulations made under this Act:
- (b) subsection (1)(b) must be—
 - (i) by notice in the *Gazette*; and
 - (ii) in accordance with the requirements of section 8(2).
- (3) Before making an appointment under subsection (1), the Minister must consult the NAIT organisation and any persons or representatives of persons substantially affected by the proposed appointment.

10 Functions, duties, and powers of NAIT organisation

- (1) The NAIT organisation must—
 - (a) meet its obligations under this Act and any regulations made under this Act, including (but not limited to)—
 - (i) the delivery of any services required to be provided by the NAIT organisation; and
 - (ii) the collection of any levies required to be paid to the NAIT organisation; and
 - (iii) the employment, or contracting, of the staff or services required to administer the NAIT scheme; and
 - (iv) the provision of the appropriate information, educational material, or training to inform parties of their obligations under the NAIT scheme; and
 - (v) the gathering of information about compliance with the NAIT scheme; and
 - (vi) the undertaking of compliance and enforcement functions; and
 - (vii) the establishment of any policies, standards, and rules necessary for the effective operation of the NAIT scheme; and

- (viii) the establishment and maintenance of the appropriate financial management systems; and
 - (ix) the establishment and maintenance of the appropriate systems that ensure that persons who are participants in, or have an interest in, the NAIT scheme are able to provide ongoing input into the NAIT organisation's decision-making; and
 - (x) the development and implementation of a national operations plan that—
 - (A) sets strategic and operational goals; and
 - (B) sets objectives and priorities for the NAIT organisation and the NAIT scheme; and
 - (C) identifies the expectations of those persons who have an interest in the NAIT scheme; and
 - (b) modify its constitution or rules to—
 - (i) indicate that it is the NAIT organisation designated under this Act; and
 - (ii) indicate that its purpose or object includes meeting its obligations under this Act or any regulations made under this Act on a not-for-profit basis; and
 - (iii) reflect its obligations under this Act or any regulations made under this Act; and
 - (iv) enable it to meet its obligations under this Act or any regulations made under this Act; and
 - (c) perform any function or duty that the Minister directs under subsection (2).
- (2) The Minister may, after consulting the NAIT organisation and any other persons that the Minister considers appropriate, direct the NAIT organisation in writing to perform a function or duty, other than a function or duty specified in subsection (1), provided the function or duty is consistent with the NAIT organisation's obligations under this Act or any regulations made under this Act.
- (3) The NAIT organisation—
- (a) may contract out the functions, duties, and powers specified in subsection (1)(a)(i) to (v) and (vii) to (x), but remains responsible and accountable for the perform-

- ance of those functions and duties and the exercise of those powers; and
- (b) may not contract out the compliance and enforcement functions specified in subsection (1)(a)(vi) apart from any compliance functions that relate to the provision of information and training.
- (4) To avoid doubt, any compliance or enforcement function undertaken by the NAIT organisation under subsection (1)(a)(vi) does not displace or limit the compliance or enforcement functions of the Crown under this Act or any other enactment.
- (5) The NAIT organisation—
- (a) must, on an annual basis, review any national operations plan that is implemented under subsection (1)(a)(x); and
 - (b) must amend the plan if the NAIT organisation considers an amendment necessary or desirable in the light of the purpose of this Act.
- (6) Despite subsection (1)(a)(x) or (5), the Minister—
- (a) may, at any time, review any national operations plan that is implemented under subsection (1)(a)(x); and
 - (b) may, after consulting the NAIT organisation, amend the plan if the Minister considers an amendment necessary or desirable in the light of the purpose of this Act.
- (7) The NAIT organisation must, when performing its functions or duties or exercising its powers,—
- (a) have regard to any policies that the Minister issues under section 12; and
 - (b) comply with any standards that the Minister issues under section 12.
- (8) In the case of an inconsistency between this Act and any enactment under which the entity that became the NAIT organisation was established, this Act prevails.

11 Board or governing body of NAIT organisation may delegate functions, duties, and powers

- (1) The board or governing body of the NAIT organisation—

- (a) may, by notice in writing and on any terms and conditions that the board or governing body of the NAIT organisation considers appropriate, delegate—
 - (i) any or all of its functions, duties, or powers (other than its power of delegation) to any suitable person;
 - (ii) any or all of the functions, duties, or powers of the NAIT organisation to any suitable person; but
 - (b) remains responsible for the performance of any delegated function or duty and the exercise of any delegated power.
- (2) The board or governing body of the NAIT organisation may, by notice in writing, revoke any delegation at any time.
 - (3) A suitable person to whom a function, duty, or power is delegated may, subject to any terms and conditions imposed by the board or governing body of the NAIT organisation, perform the function or duty, or exercise the power, as if the person were the NAIT organisation or the board or governing body of the NAIT organisation (as the case may be).
 - (4) In the absence of proof to the contrary, a suitable person who acts under a delegation is presumed to act in accordance with the delegation.
 - (5) For the purposes of this section, **suitable person** means—
 - (a) the chief executive of the NAIT organisation;
 - (b) an employee or office holder of the NAIT organisation;
 - (c) any other person approved by the Minister.

12 Minister may issue, amend, or revoke policies and standards

- (1) The Minister may issue, amend, or revoke policies and standards in relation to the performance of a function or duty, or the exercise of a power, under this Act or any regulations made under this Act.
- (2) Before issuing, amending, or revoking a policy or standard, the Minister must consult the persons or class of persons who, in the opinion of the Minister, have an interest in the policy or standard.

- (3) However, the Minister is not required to consult if the Minister is satisfied that—
 - (a) the policy or standard needs to be issued, amended, or revoked urgently; or
 - (b) the amendment to the policy or standard is minor and will not adversely affect the substantial interests of any person.
- (4) If the Minister issues, amends, or revokes a policy or standard, the Minister must give notice of the issue, amendment, or revocation—
 - (a) in the *Gazette*; and
 - (b) anywhere else that the Minister considers appropriate, including on (but not limited to) an Internet site maintained by or on behalf of the Ministry.
- (5) The notice must—
 - (a) give a general indication of the nature of the policy or standard; and
 - (b) specify where a copy of the policy or standard may be obtained.

13 NAIT organisation must provide Minister with requested information

- (1) The Minister may request the NAIT organisation to provide to the Minister, in a form the Minister specifies, any information relating to the performance of any of its functions or duties or the exercise of any of its powers under this Act or regulations made under this Act—
 - (a) that the Minister reasonably requires; and
 - (b) that is—
 - (i) in the possession of the NAIT organisation; or
 - (ii) capable of being obtained by the NAIT organisation without unreasonable difficulty or expense.
- (2) The NAIT organisation must provide the requested information to the Minister as soon as is reasonably practicable.
- (3) This section is subject to Part 4.

14 NAIT organisation may issue, amend, or revoke NAIT animal identification standards

- (1) The NAIT organisation may issue, amend, or revoke a NAIT animal identification standard for any NAIT identification system.
- (2) Without limiting the power of the NAIT organisation to issue, amend, or revoke a NAIT animal identification standard, a NAIT animal identification standard may specify requirements for—
 - (a) any identification device that forms part of any NAIT identification system:
 - (b) the operation of any NAIT identification system, including (but not limited to) any flock, mob, or herd identification system:
 - (c) the manufacture, supply, and importation of any animal identification device that forms part of any NAIT identification system:
 - (d) the registration of animal attributes, including (but not limited to) genetic information.
- (3) Before issuing an animal identification standard, the NAIT organisation must—
 - (a) have regard to—
 - (i) the need to provide unique, clear, and lasting animal identification; and
 - (ii) any relevant international standards relating to animal identification; and
 - (iii) the need to avoid confusion with any other generally used system of identification; and
 - (b) consult those persons that the NAIT organisation reasonably considers to be representative of the interests of persons or classes of persons likely to be substantially affected by the NAIT animal identification standard; and
 - (c) be satisfied that the standard, in the context of the NAIT scheme, is efficient, effective, and appropriate.
- (4) However, the NAIT organisation is not required to consult under subsection (3)(b) if the NAIT organisation is satisfied that—

- (a) the NAIT animal identification standard needs to be issued, amended, or revoked urgently; or
 - (b) an amendment to the NAIT animal identification standard is minor and will not adversely affect the substantial interests of any person.
- (5) Any consultation undertaken by NAIT Limited before the commencement of subsection (3)(b) in respect of a NAIT animal identification standard is to be treated as consultation by the NAIT organisation for the purposes of subsection (3)(b).
- (6) If the NAIT organisation issues, amends, or revokes a NAIT animal identification standard, the NAIT organisation must give notice of the issue, amendment, or revocation—
- (a) in the *Gazette*; and
 - (b) anywhere else that the NAIT organisation considers appropriate, including on (but not limited to) an Internet site maintained by or on behalf of the NAIT organisation.

15 NAIT organisation to approve identification systems

- (1) The NAIT organisation may approve—
- (a) an identification system of its own design that complies with the standards that the NAIT organisation has issued for a NAIT identification system:
 - (b) any other identification system—
 - (i) whose operators wish to link with the NAIT information system if the NAIT organisation is satisfied that—
 - (A) an identification device that forms part of the other identification system does not cause confusion with an identification device that forms part of the NAIT identification system; and
 - (B) the other identification system is capable of providing the information required by the NAIT information system, including (but not limited to) its form, content, and quality:

- (ii) whose operators do not wish to link with the NAIT information system, provided the NAIT organisation is satisfied that an identification device that forms part of the other identification system does not cause confusion with an identification device that forms part of the NAIT identification system.
- (2) An application for approval of an identification system must—
 - (a) be made in writing to the NAIT organisation; and
 - (b) be in the prescribed form; and
 - (c) be accompanied by the prescribed fee (if any).
- (3) For the purpose of assessing an application for approval of an identification system, the NAIT organisation may require the applicant to supply information additional to that contained in the application.
- (4) The NAIT organisation must, within 20 working days of the date on which the application was submitted,—
 - (a) determine the application; and
 - (b) inform the applicant of the determination in writing.
- (5) The NAIT organisation may, in relation to any NAIT identification system, impose any conditions that the NAIT organisation considers appropriate to ensure that—
 - (a) an identification device that forms part of an identification system does not cause confusion with an identification device that forms part of a system specified in subsection (1)(a); and
 - (b) the identification system is capable of providing the information required by the NAIT information system, including (but not limited to) its form, content, and quality.
- (6) Subsections (2) to (5) do not apply to any identification system of the NAIT organisation's own design that complies with the standards that the NAIT organisation has issued for a NAIT identification system.
- (7) The NAIT organisation must give notice of any identification system that it approves—
 - (a) in the *Gazette*; and

- (b) anywhere else that the NAIT organisation considers appropriate, including on (but not limited to) an Internet site maintained by or on behalf of the NAIT organisation.

16 NAIT organisation may suspend or revoke approval of NAIT identification system

- (1) The NAIT organisation may—
 - (a) suspend or revoke the approval of any NAIT identification system if the applicant fails to meet any conditions that the applicant must meet before the identification system may commence;
 - (b) suspend or revoke the approval of any NAIT identification system if—
 - (i) the identification system fails to comply with an applicable standard; or
 - (ii) a significant proportion of persons who are using the identification system are not complying with the identification system.
- (2) A suspension of the approval of a NAIT identification system may be indefinite or for a specified period.
- (3) Before suspending or revoking the approval of a NAIT identification system, the NAIT organisation must—
 - (a) give written notice of the proposal to suspend or revoke the approval to the person who operates the NAIT identification system; and
 - (b) provide the person who operates the NAIT identification system with an opportunity to make written submission on the proposal.
- (4) If the approval of a NAIT identification system is suspended or revoked, the NAIT organisation must give notice of the suspension or revocation of the approval—
 - (a) in the *Gazette*; and
 - (b) anywhere else that the NAIT organisation considers appropriate, including on (but not limited to) an Internet site maintained by or on behalf of the NAIT organisation.
- (5) No person may use a suspended or revoked NAIT identification system unless the person owns or is in charge of an animal

or a herd that, on or before the date of suspension or revocation, was identified by the identification system, in which case the person may continue to use the identification system for the animal or the herd.

17 NAIT organisation may review NAIT identification systems

- (1) The NAIT organisation may,—
- (a) at any time, review any NAIT identification system; and
 - (b) on the basis of the review,—
 - (i) amend or revoke any conditions that the NAIT organisation has imposed on the operation of the identification system (as the case may be);
 - (ii) in relation to any NAIT identification system, impose any additional conditions that the NAIT organisation considers appropriate to ensure that—
 - (A) an identification device that forms part of an identification system does not cause confusion with an identification device that forms part of a system specified in section 15(1)(a); and
 - (B) the identification system is capable of providing the information required by the NAIT information system, including (but not limited to) its form, content, and quality.
- (2) Before amending, revoking, or imposing any conditions in relation to any NAIT identification system, the NAIT organisation must—
- (a) give written notice of the proposal to amend, revoke, or impose any conditions to the person (other than the NAIT organisation) who operates the identification system; and
 - (b) provide the person (other than the NAIT organisation) who operates the identification system with an opportunity to make a written submission on the proposal.

18 Functions and duties of information providers

An information provider may, on behalf of a PICA, perform 1 or more of the following functions or duties of the PICA:

- (a) carrying out animal registration obligations of the PICA; and
- (b) providing animal movement declarations; and
- (c) providing information to the NAIT organisation; and
- (d) providing notification when NAIT animals die, are lost, or are exported live; and
- (e) registering a person as a PICA or a PICA delegate.

19 NAIT organisation may issue, amend, or revoke accreditation standards

- (1) For the purposes of this Part, the NAIT organisation may issue, amend, or revoke an accreditation standard for any matter specified in this Part.
- (2) Without limiting the power of the NAIT organisation to issue, amend, or revoke an accreditation standard, an accreditation standard may specify the competencies required to be accredited to carry out any function.
- (3) Before issuing an accreditation standard, the NAIT organisation must—
 - (a) consult those persons that the NAIT organisation reasonably considers to be representative of the interests of persons or classes of persons likely to be substantially affected by the accreditation standard; and
 - (b) be satisfied that the accreditation standard, in the context of the NAIT scheme, is efficient, effective, and appropriate.
- (4) However, the NAIT organisation is not required to consult under subsection (3)(a) if the NAIT organisation is satisfied that—
 - (a) the accreditation standard needs to be issued, amended, or revoked urgently; or
 - (b) an amendment to the accreditation standard is minor and will not adversely affect the substantial interests of any person.
- (5) Any consultation undertaken by NAIT Limited before the commencement of subsection (3)(a) in respect of an accredit-

ation standard is to be treated as consultation by the NAIT organisation for the purposes of subsection (3)(a).

- (6) If the NAIT organisation issues, amends, or revokes an accreditation standard, the NAIT organisation must give notice of the issue, amendment, or revocation—
- (a) in the *Gazette*; and
 - (b) anywhere else that the NAIT organisation considers appropriate, including on (but not limited to) an Internet site maintained by or on behalf of the NAIT organisation.

20 NAIT organisation may accredit entities as information providers and entities dealing with NAIT animals

- (1) The NAIT organisation may accredit—
- (a) an entity as an information provider, if the entity meets the accreditation standards that the NAIT organisation has issued for entities that apply to be accredited;
 - (b) an entity dealing with NAIT animals, if the entity meets the accreditation standards that the NAIT organisation has issued for entities that apply to be accredited.
- (2) An accreditation under subsection (1)(b) is for the purpose of enabling a PICA sending a NAIT animal to (or receiving a NAIT animal from) a PICA employed by the entity to qualify for any exemptions specified in regulations made under this Act with respect to the obligation to declare movement of the animal.
- (3) An application for an accreditation under subsection (1) must—
- (a) be made in writing to the NAIT organisation; and
 - (b) be in the prescribed form; and
 - (c) be accompanied by the prescribed fee (if any).
- (4) For the purpose of assessing an application, the NAIT organisation may require the applicant to supply information additional to that contained in the application.
- (5) The NAIT organisation must, within 20 working days of the date on which the application was submitted,—
- (a) determine the application; and
 - (b) inform the applicant of the determination in writing.

- (6) The NAIT organisation may, in relation to any entity it accredits under subsection (1),—
 - (a) impose any conditions that the entity must meet before operating or while operating as—
 - (i) an information provider; or
 - (ii) an accredited entity for the purpose of subsection (2):
 - (b) restrict the accreditation to a specified period.
- (7) Before accrediting an entity under subsection (1), the NAIT organisation—
 - (a) must, having regard to the following factors, be satisfied that the entity is able to perform the required functions:
 - (i) the relevant competencies of the persons employed or contracted by the entity; and
 - (ii) the resources available to the entity, including (but not limited to) hardware and software systems; and
 - (iii) the requirements of any regulations and standards made under this Act, including (but not limited to) the applicable accreditation standards issued by the NAIT organisation:
 - (b) must be satisfied that the entity or person has signed a data-sharing agreement with the NAIT organisation that provides for data management, protection of personal privacy, and data security.
- (8) An entity accredited under subsection (1) must—
 - (a) provide any information to the NAIT organisation that the NAIT organisation requests under section 23; and
 - (b) comply with any direction that the NAIT organisation gives under section 23.
- (9) The accreditation of an entity dealing with NAIT animals may relate to—
 - (a) NAIT animals sent to the location operated by the entity:
 - (b) NAIT animals sent from the location operated by the entity.
- (10) To avoid doubt,—

- (a) the accreditation standards for an entity that is an individual and the accreditation standards for an entity that is an organisation may differ:
- (b) the conditions, restrictions, or other requirements for an accredited entity that is an individual and the conditions, restrictions, or other requirements for an accredited entity that is an organisation may differ.

21 NAIT organisation may suspend or revoke accreditation of information providers or entities dealing with NAIT animals

- (1) The NAIT organisation may—
 - (a) suspend or revoke the accreditation of an information provider or an accredited entity dealing with NAIT animals if the information provider or the entity (as the case may be) fails to meet any conditions that the information provider or entity must meet before operating as an information provider or an accredited entity dealing with NAIT animals:
 - (b) suspend or revoke the accreditation of an information provider or an accredited entity dealing with NAIT animals if the information provider or entity (as the case may be) fails to comply with an applicable standard:
 - (c) revoke the accreditation of an information provider or an accredited entity dealing with NAIT animals if the information provider or entity (as the case may be) informs the NAIT organisation in writing that the information provider or entity no longer wishes to operate as an information provider or an accredited entity dealing with NAIT animals.
- (2) A suspension—
 - (a) may be indefinite or for a specified period:
 - (b) may, where an information provider or entity dealing with NAIT animals operates at more than 1 location, be restricted to a particular location or locations:
 - (c) may impose conditions that must be met before the suspension may be lifted.

- (3) A revocation may, where an information provider or entity that deals with NAIT animals operates at more than 1 location, be restricted to a particular location or locations.
- (4) Before suspending or revoking the accreditation of an information provider or entity dealing with NAIT animals (as the case may be), the NAIT organisation must—
 - (a) give written notice of the proposal to suspend or revoke the accreditation to the information provider or entity; and
 - (b) provide the information provider or entity with an opportunity to make a written submission on the proposal.

22 NAIT organisation must keep register of information providers and accredited entities dealing with NAIT animals

- (1) The NAIT organisation must keep a register of—
 - (a) all information providers; and
 - (b) all accredited entities dealing with NAIT animals.
- (2) The register may be kept in the manner that the NAIT organisation considers appropriate.
- (3) However, the register—
 - (a) must be accessible to the public, including on (but not limited to) an Internet site maintained by or on behalf of the NAIT organisation; and
 - (b) must, in relation to each information provider and each accredited entity dealing with NAIT animals (as the case may be), specify—
 - (i) the name and principal business address of the information provider or accredited person; and
 - (ii) the conditions (if any) that apply; and
 - (iii) the date and period of any suspension of accreditation; and
 - (iv) the date of any revocation of accreditation.

23 NAIT organisation to assess performance of information providers and accredited entities dealing with NAIT animals

- (1) The NAIT organisation—
 - (a) may audit each year the following information:

- (i) the quality of the information gathered by an information provider or an entity dealing with NAIT animals; and
 - (ii) the information-gathering and information-handling practices of an information provider or an accredited entity dealing with NAIT animals; and
 - (b) may audit each year any other matters concerning the information gathered or handled by an information provider or an accredited entity dealing with NAIT animals.
- (2) The NAIT organisation may require an information provider or an accredited entity dealing with NAIT animals to provide any information reasonably necessary to carry out the audit.
- (3) The NAIT organisation, when requesting information for an audit, must specify in writing—
 - (a) the information that—
 - (i) an information provider must provide to the NAIT organisation; and
 - (ii) an accredited entity dealing with NAIT animals must provide to the NAIT organisation; and
 - (b) the form in which the information must be provided; and
 - (c) the date by which the information must be provided.
- (4) Every information provider and every accredited entity dealing with NAIT animals (as the case may be) must provide, at no cost, the staff necessary to assist the NAIT organisation with its audit of the information that the information provider or accredited entity has provided.
- (5) The Privacy Commissioner may require the NAIT organisation to report on the information-gathering and information-handling practices of information providers and accredited entities dealing with NAIT animals who gather and handle personal information.
- (6) Following an audit under this section, the NAIT organisation may direct an information provider or an accredited entity dealing with NAIT animals to implement changes in relation to the matters audited.

Part 3

Obligations of persons participating in NAIT scheme

Overview

24 Key obligations

- (1) This Part provides for the key obligations of persons in day to day charge of NAIT animals.
- (2) Those obligations are (without limitation) to—
 - (a) register as a PICA with the NAIT organisation; and
 - (b) register with the NAIT organisation, as a NAIT location, any location where NAIT animals are to be kept or held; and
 - (c) identify a NAIT animal with a NAIT device and register the animal with the NAIT organisation; and
 - (d) declare the movement of NAIT animals from 1 NAIT location to another; and
 - (e) declare the death, loss, or intended export of NAIT animals; and
 - (f) provide correct and up-to-date information to the NAIT organisation as required by or under this Act.
- (3) These obligations apply to every PICA—
 - (a) to the extent that they are applicable in particular circumstances; and
 - (b) unless a matter qualifies for an exemption under regulations made for that purpose under this Act.

25 Application of obligations

- (1) The obligations set out in this Part apply,—
 - (a) as far as they are applicable in particular circumstances, to every PICA, including—
 - (i) persons such as farmers, stock agents, livestock transport operators, livestock drovers, saleyard operators, meat processors, and organisers of school pet days; and
 - (ii) persons acting as delegates of PICAs; and
 - (b) subject to any exemption provided for in regulations made under this Act.
- (2) A PICA may permit—

- (a) a PICA delegate to act on behalf of the PICA in respect of any matter delegated by the PICA:
 - (b) an information provider to carry out functions and duties on behalf of the PICA under section 18.
- (3) If subsection (2)(a) or (b) applies, the PICA remains responsible for compliance with this Act in respect of the action or duty.
- (4) To avoid doubt, an entity accredited under section 20(1)(b) to deal with NAIT animals may employ 1 or more PICAs for whom the obligations set out in this Part apply under subsection (1)(a).

Subpart 1—Obligations on PICAs

Registration as PICA

26 Obligation to register as PICA

- (1) A person who is in day-to-day charge of NAIT animals, whether continuously or intermittently,—
- (a) must be registered as a PICA; and
 - (b) if not registered at the time of taking charge of NAIT animals, must register within the time specified in regulations made under this Act.
- (2) A registered PICA may—
- (a) nominate a delegate to undertake specified procedures and obligations under this Act on behalf of the PICA (a **PICA delegate**):
 - (b) appoint an information provider to carry out 1 or more of the functions referred to in section 18.
- (3) A person nominated as a delegate must register as a PICA delegate with the NAIT organisation in the manner provided for in section 27.

27 Registration process

- (1) To register as a PICA or as a PICA delegate with the NAIT organisation, the person wishing to register (or a person carrying out the registration on that person's behalf in accordance with section 26) must provide the prescribed information to the NAIT organisation.

- (2) If an information provider is registering a PICA or PICA delegate, the information provider must comply with the requirements set out in regulations made under this Act.

28 Registration in respect of saleyard or meat processing facility

- (1) This section applies to—
- (a) the owner of a saleyard or the nominated representative of the owner; and
 - (b) the owner of a meat processing facility or the nominated representative of the owner.
- (2) A person referred to in subsection (1) must be registered as a PICA.

Registration of NAIT location

29 Obligation to register NAIT location

- (1) Each PICA must register with the NAIT organisation every location where that person is in charge of NAIT animals (**NAIT location**).
- (2) In registering a NAIT location, a PICA must confirm that he or she is a PICA for the specified location.
- (3) However, in the case of locations where events are held that involve NAIT animals, such as shows and rodeos, the event organiser must, before the event,—
- (a) notify the event with the NAIT organisation; and
 - (b) register the location of the event as a NAIT location.
- (4) A person who owns a transit stop must register the place as a NAIT location.
- (5) An event organiser or transit stop owner is not required to be a PICA.
- (6) If there are 2 or more PICAs with NAIT animals of the same species or sub-group of species registered for a particular NAIT location, each PICA must keep his or her NAIT animals separate from those of the other PICAs at the location.
- (7) Subsection (6) does not apply in the case of a location that is operated—
- (a) as a saleyard; or
 - (b) for meat processing; or

- (c) by an accredited entity dealing with NAIT animals.

Animal identification and registration

30 Obligation to identify and register NAIT animals

- (1) A PICA must ensure that the NAIT animals in his or her charge are—
- (a) correctly fitted at all times with the NAIT device required for those animals in accordance with standards issued under section 14 or regulations made under this Act; and
 - (b) registered with the NAIT organisation.
- (2) A PICA must not move NAIT animals from the NAIT location which that PICA controls unless those animals are fitted with the prescribed NAIT device.

Movement and compliance

31 Obligation to declare movement of NAIT animals

- (1) Every PICA must declare every movement of NAIT animals between 2 NAIT locations to the NAIT organisation.
- (2) A declaration must be made both by—
- (a) the PICA at the location from which the animals are moved (**point of origin**); and
 - (b) the PICA at the location to which they are moved (**destination**).

Subpart 2—Other obligations

Death, loss, or export of animals

32 Obligation to declare death, loss, or export

- (1) A PICA must, as soon as practicable, make a declaration to the NAIT organisation if a NAIT animal dies or is lost (an **animal exit declaration**).
- (2) If a PICA intends to export a NAIT animal from New Zealand, the PICA must make an animal exit declaration at the transitional facility.
- (3) In subsection (2), **transitional facility** has the meaning given in section 2(1) of the Biosecurity Act 1993.

*Provision of information***33 Obligations relating to provision of information**

Every PICA must ensure that information that must be provided to the NAIT organisation under this Act is—

- (a) accurate at the time it is provided; and
- (b) kept up to date; and
- (c) provided in accordance with the time and any other requirements prescribed by regulations made under this Act.

34 When reporting time frames may be extended

- (1) Despite section 33(c), the NAIT organisation may, after consulting the Ministry and, if applicable, the relevant agency, give notice of alternative time limits to those prescribed by regulations made under this Act for the provision of information by any PICA.
- (2) Notice under subsection (1)—
 - (a) may only be given in the following circumstances:
 - (i) if a state of national or local emergency is declared under Part 4 of the Civil Defence Emergency Management Act 2002; or
 - (ii) if the NAIT organisation is satisfied on reasonable grounds that non-compliance with the time limits prescribed by regulations made under this Act is justified; and
 - (b) must be published in the *Gazette* and may be given anywhere else that the NAIT organisation considers appropriate, including on (but not limited to) an Internet site maintained by or on behalf of the NAIT organisation.
- (3) If, before notice is given under subsection (1), a PICA has failed to comply with the time limits prescribed by regulations made under this Act, the NAIT organisation may extend the time for the PICA to comply with those time limits.
- (4) However, subsection (3) applies only if the NAIT organisation is satisfied that the PICA's non-compliance was caused by, or is justifiable in, the circumstances leading to notice being given under subsection (1).

- (5) The alternative time limits notified by the NAIT organisation under subsection (1) are enforceable by the NAIT organisation as if the time limits were prescribed by regulations made under this Act.
- (6) In subsection (1), **relevant agency** means the agency that makes the declaration under Part 4 of the Civil Defence Emergency Management Act 2002.

35 Obligation on manufacturers of animal identification devices

- (1) This section applies to every person who—
 - (a) manufactures or supplies animal identification devices in New Zealand for NAIT animals; or
 - (b) imports such devices into New Zealand.
- (2) The persons referred to in subsection (1)—
 - (a) must ensure that animal identification devices manufactured or supplied for NAIT animals are NAIT devices; and
 - (b) must, in accordance with any requirements prescribed by regulations made, or standards issued, under this Act, provide information to the NAIT organisation about the devices they manufacture, import, or supply.
- (3) In this section, **supply** does not include the sale of animal identification devices to a person who deals in, or buys, such devices to sell again.

36 Obligation on other identification system administrators

- (1) This section applies to any person who administers an animal identification system approved under section 15(1)(b).
- (2) A person to whom this section applies must—
 - (a) provide to the NAIT organisation any information about animal identification devices required by any regulations made under this Act;
 - (b) take into account any information about animal identification devices that the NAIT organisation provides to the person.

*Exercise of regulation-making power in relation
to this Part*

37 Regulations exempting compliance with obligations

- (1) The Minister must not recommend the making of regulations under this Act to exempt any person or class of persons, wholly, partly, or conditionally, from an obligation under this Part if the exemption would create a significant biosecurity risk.
- (2) Before recommending the making of regulations to exempt persons from obligations under this Part, the Minister must have regard to—
 - (a) the need to protect NAIT animals from pests and unwanted organisms; and
 - (b) the desirability of facilitating market access for NAIT animals; and
 - (c) the desirability of maintaining consistency between the system of animal identification and tracing practised in New Zealand and the relevant standards, requirements, or recommended practices that are accepted internationally; and
 - (d) the relative cost of having an exemption against the cost of not having an exemption; and
 - (e) factors such as—
 - (i) who bears the costs; and
 - (ii) the negative and positive impacts of the exemptions on persons participating in the NAIT scheme; and
 - (f) other matters relevant to any exemption from an obligation otherwise applying under this Part.
- (3) In this section, **pest** and **unwanted organism** have the same meanings as in section 2(1) of the Biosecurity Act 1993.

Part 4

NAIT information system

38 Definitions for this Part

In this Part,—

administrator means the NAIT information system administrator appointed under section 39(2)

industry body means a body corporate that—

- (a) is constituted to represent livestock owners, managers, producers, or processors; and
- (b) either—
 - (i) is incorporated in New Zealand; or
 - (ii) has a place of business in New Zealand, although incorporated outside New Zealand

panel means the NAIT information system access panel established by regulations made under section 69.

39 Establishment and management

- (1) The NAIT organisation must maintain the NAIT information system.
- (2) The NAIT organisation must appoint a NAIT information system administrator to manage access to the NAIT information system.

40 Purposes of holding core data

Core data is held in the NAIT information system for the following purposes:

- (a) to enable the NAIT organisation, a NAIT officer, or a NAIT authorised person to exercise their powers and carry out their functions and duties:
- (b) to assist other persons with duties under this Act to carry out their duties:
- (c) to facilitate the purposes of the Animal Products Act 1999, Biosecurity Act 1993, Commodity Levies Act 1990, Primary Products Marketing Act 1953, and any other enactment relating to animals or animal health:
- (d) to respond to the following human health issues:
 - (i) food residues associated with animals:
 - (ii) food-borne diseases associated with animals:
 - (iii) diseases transferable between animals and humans:
- (e) to provide data supporting productivity, market assurance, and trading requirements:
- (f) to respond to natural disasters or requests from emergency services when rapid access to data on animals and people is needed to manage risks to life and welfare:

- (g) to provide statistical data for policy development and related advice about the industries to which this Act applies:
- (h) to enable the NAIT organisation to publish general agricultural statistics under section 49:
- (i) to provide data to enable a potential purchaser of a NAIT animal to trace the history of the animal over its life.

41 Non-core data held by agreement

- (1) A person may request the NAIT organisation to make an agreement with the person to hold non-core data in the NAIT information system.
- (2) The NAIT organisation may make the agreement if it is satisfied that—
 - (a) holding the data in the NAIT information system—
 - (i) is in the interests of the industry that the data is about; and
 - (ii) is consistent with the public good; and
 - (iii) does not compromise the operation of the NAIT information system; and
 - (b) the NAIT information system is the most efficient, effective, and appropriate place to hold the data; and
 - (c) the person who made the request has agreed to meet the full costs of holding the data in the NAIT information system.
- (3) The agreement must specify the terms and conditions on which the data is to be held.
- (4) The terms and conditions must include—
 - (a) the period for which the NAIT information system is to hold the data; and
 - (b) the persons who may have access to the data in addition to or instead of the person who made the agreement; and
 - (c) how the person who made the agreement, and the persons who may have access to the data in addition to or instead of the person who made the agreement, are to have access to the data; and
 - (d) the arrangements for the person who made the agreement to pay the full costs of holding the data.

42 Rules on holding and accessing data

- (1) The NAIT information system must have the functionality to distinguish between core data and non-core data easily.
- (2) The NAIT information system must be able to interact with—
 - (a) the biosecurity database; and
 - (b) any database established by the Crown for the purposes of the Animal Products Act 1999.
- (3) Interaction as described in subsection (2) may take place only for a purpose in section 40.
- (4) The NAIT information system must hold core data only for as long as reasonably necessary to achieve the purposes in section 40.
- (5) The NAIT information system must hold non-core data for the period agreed under section 41(4)(a).
- (6) The NAIT organisation must not make exclusive arrangements for access to data in the NAIT information system.
- (7) Access to data in the NAIT information system is available as follows:
 - (a) the NAIT organisation, NAIT officers, and NAIT authorised persons have access to the data when they need it to exercise their powers and carry out their functions and duties:
 - (b) the persons described in section 41(4)(c) have access by the means provided for in the agreement:
 - (c) other persons must apply for access under section 43.

43 Method of making applications

- (1) An application under section 45 or 46 may be made in writing, electronically, or orally.
- (2) The applicant must provide the prescribed information and the prescribed fee, if any, with the application to the extent to which it is possible to do so.
- (3) To the extent to which the applicant cannot comply with subsection (2), the applicant must provide the prescribed information and the prescribed fee, if any, within 5 working days of making the application.

- (4) An applicant making an application described in section 45(6) may provide additional information relevant to the application for use by the administrator in determining the application.

44 Handling of applications

- (1) An application must be made to the administrator.
- (2) The administrator may require an applicant to provide evidence of the applicant's identity in the form of a driver licence or other identification satisfactory to the administrator.
- (3) The administrator must decide whether the administrator or the panel is to determine an application described in section 46, having regard to the significance of the application to the industry to whose data access is sought.

45 Determinations by administrator

- (1) An application described in this section must be determined by the administrator.
- (2) An applicant may apply for access to the following data:
 - (a) the applicant's personal information;
 - (b) information that—
 - (i) is about an animal for which the applicant is the PICA; and
 - (ii) is not another PICA's personal information.
- (3) The administrator must grant the application if satisfied that the data is as described in subsection (2)(a) or (b).
- (4) The administrator must decline the application if not satisfied as described in subsection (3).
- (5) The following persons may make the application described in subsection (6):
 - (a) a New Zealand citizen;
 - (b) a permanent resident of New Zealand;
 - (c) a body corporate that is incorporated in New Zealand;
 - (d) a body corporate that is incorporated outside New Zealand but that has a place of business in New Zealand;
 - (e) a department or other Crown agency.

- (6) The application is an application for confirmation that the person specified by the applicant is the registered PICA for a NAIT animal.
- (7) The administrator must determine the application by confirming or denying that the person is the registered PICA for the animal.

46 Determinations by administrator or panel

- (1) An application described in this section must be determined by the administrator or the panel, as decided by the administrator under section 44(3).

Core data: personal information

- (2) The following persons may make the application described in subsection (3):
 - (a) a New Zealand citizen;
 - (b) a permanent resident of New Zealand;
 - (c) a body corporate that is incorporated in New Zealand;
 - (d) a body corporate that is incorporated outside New Zealand but that has a place of business in New Zealand.
- (3) The application is an application for access to core data that is personal information.
- (4) The administrator or the panel must grant the application, wholly or partly, if satisfied that—
 - (a) the applicant has express consent from the person to whose personal information the applicant seeks access to the applicant having access; or
 - (b) access to the data is reasonably necessary to achieve a purpose in section 40(b) or (c).

Core data: not personal information

- (5) The following persons may make the application described in subsection (6):
 - (a) a New Zealand citizen;
 - (b) a permanent resident of New Zealand;
 - (c) a body corporate that is incorporated in New Zealand;
 - (d) a body corporate that is incorporated outside New Zealand but that has a place of business in New Zealand.
- (6) The application is an application for access to core data that is not personal information.

- (7) The administrator or the panel must grant the application, wholly or partly, if satisfied that access to the data is reasonably necessary to achieve a purpose in section 40.

Core data: personal information or not personal information

- (8) A department or other Crown agency may make the application described in subsection (9).
- (9) The application is an application for access to core data, whether or not it is personal information.
- (10) The administrator or the panel must grant the application, wholly or partly, if satisfied that access to the data is reasonably necessary to achieve a purpose in section 40.

Non-core data: personal information or not personal information

- (11) The following persons may make the application described in subsection (12):
- (a) a New Zealand citizen;
 - (b) a permanent resident of New Zealand;
 - (c) a body corporate that is incorporated in New Zealand;
 - (d) a body corporate that is incorporated outside New Zealand but that has a place of business in New Zealand;
 - (e) a department or other Crown agency.

- (12) The application is an application for access to non-core data, whether or not it is personal information.
- (13) The administrator or the panel must grant the application, wholly or partly, if satisfied that the applicant has express consent from the person whose data it is to the applicant having access.

Link into and access

- (14) An information provider may make an application for access to enable it to link into and access the NAIT information system for the purposes of inputting and editing core data relating to a particular PICA or particular PICAs.
- (15) The administrator or the panel must grant the application, wholly or partly, if satisfied that—
- (a) the information provider is currently accredited under section 20; and

- (b) the information provider has been authorised by the relevant PICA or PICAs to act as their agent for the purposes of this Act; and
 - (c) the linking and access do not compromise the operation of the NAIT information system.
- (16) An entity dealing with NAIT animals may make an application for access to enable a particular PICA or particular PICAs for the entity to link into and access the NAIT information system, individually or jointly, for the purposes of inputting and editing core data.
- (17) The administrator or the panel must grant the application, wholly or partly, if satisfied that—
 - (a) the entity is currently accredited under section 20; and
 - (b) the linking and access do not compromise the operation of the NAIT information system.
- (18) An industry body may make an application for access to enable it to link into and access core data.
- (19) The administrator or the panel must grant the application, wholly or partly, if satisfied that—
 - (a) the industry body has express consent from the persons to whose personal information the body will have access to the body having access; and
 - (b) the linking and access do not compromise the operation of the NAIT information system.
- (20) The administrator or the panel must decline the application if not satisfied as described in this section.

47 Method of, and conditions on, access

- (1) This section applies when the administrator or the panel grants access to data under section 45 or 46.
- (2) The administrator or the panel must specify the method by which access will be given.
- (3) The method may be any method that the administrator or panel thinks fit.
- (4) The administrator must not impose any conditions on a grant of access to data that is—
 - (a) the applicant's personal information; or

- (b) information about an animal for which the applicant is the PICA.
- (5) The administrator or the panel may impose any conditions that the administrator or the panel thinks fit on any other grant of access, including, but not limited to, conditions that—
 - (a) restrict the use to which the data may be put:
 - (b) prohibit further disclosure of the data:
 - (c) protect an individual's privacy:
 - (d) protect the commercial sensitivity of the data.

48 Notification of determinations

- (1) The administrator or the panel must inform the applicant of a determination under section 45 or 46 as soon as practicable.
- (2) A determination to decline an application must include reasons and must be accompanied by a copy of the complaints procedure established under section 50.

49 Publication of statistics

The NAIT organisation may publish general agricultural statistics based on core data and non-core data.

50 Complaints procedure

The NAIT organisation must establish and publish a complaints procedure for use by applicants dissatisfied with—

- (a) decisions or determinations by the administrator; or
- (b) determinations by the panel.

51 Relationship with other laws

- (1) Nothing in the Official Information Act 1982 applies to data in the NAIT information system.
- (2) For the purposes of the rules of evidence, the contents of the NAIT information system are proved by the production of a certificate indicating its contents signed by the administrator or a person acting under a delegation from the administrator.

Part 5
**Compliance and enforcement, immunities,
cost recovery, regulation-making powers,
and transitional, repeal, and amendment
provisions**

Appointments

52 Appointment of NAIT officers and NAIT authorised persons

- (1) The Director-General must appoint, as necessary for the purpose of monitoring compliance with and enforcing this Act, fit and proper persons to be—
 - (a) NAIT officers; and
 - (b) NAIT authorised persons.
- (2) Persons appointed under this section must have the appropriate experience, qualifications, and technical competence relevant to the functions of a NAIT officer or NAIT authorised person, as the case may be.
- (3) Persons appointed under this section as NAIT officers or as NAIT authorised persons may (but need not) be employed by the Director-General under the State Sector Act 1988.
- (4) Subject to subsection (2), the following may be appointed as a NAIT officer:
 - (a) an inspector appointed under section 103 of the Biosecurity Act 1993;
 - (b) an animal product officer appointed under section 78 of the Animal Products Act 1999.
- (5) Without limiting the discretion of the Director-General under subsection (1), the NAIT organisation may recommend suitable persons for appointment as NAIT authorised persons.
- (6) To avoid doubt, if the Director-General delegates the power of appointment of NAIT officers or NAIT authorised persons to another Director-General under section 41 of the State Sector Act 1988, references in this section to the Director-General must be read as references to the Director-General to whom the power of appointment is delegated.

53 Authorisation of officers

- (1) The Director-General must supply every NAIT officer and every NAIT authorised person with a warrant of authorisation stating the powers and functions of the relevant officer or authorised person.
- (2) A NAIT officer or a NAIT authorised person, in exercising a power under this Act, must carry and produce, if required to do so,—
 - (a) his or her warrant of authorisation; and
 - (b) evidence of his or her identity.
- (3) A warrant must be surrendered to the Director-General on the termination of an appointment.

*Functions and powers generally***54 Functions and powers of NAIT officers and NAIT authorised persons**

- (1) The purpose of the powers conferred by this Act is to enable a NAIT officer or a NAIT authorised person, as necessary, to ascertain any breach of a NAIT obligation or of any matters prohibited by or under this Act, to give advice on compliance with this Act, and undertake any necessary enforcement of this Act, whether or not NAIT animals are involved.
- (2) The functions of a NAIT officer and a NAIT authorised person are to—
 - (a) ascertain whether persons participating in the NAIT scheme are complying with the obligations placed on those persons by or under this Act; and
 - (b) undertake the enforcement of this Act.
- (3) Persons appointed as NAIT officers or as NAIT authorised persons—
 - (a) have and may exercise powers conferred by or under this Act as necessary to perform the functions of a NAIT officer or a NAIT authorised person, as the case may be; and
 - (b) may be authorised to exercise all the powers and perform all the functions of their office under this Act or only those powers and functions specified in the warrant of authorisation.

- (4) In addition to the powers expressly conferred on NAIT authorised persons, a NAIT authorised person has, and may exercise, any other powers that a NAIT officer has under this Act for ascertaining or monitoring compliance with this Act, if such powers are expressly provided for in the warrant of authorisation issued to that person under section 53.

55 Compliance and enforcement provisions

Schedule 2 contains provisions relevant to—

- (a) the administration of the NAIT scheme; and
- (b) compliance with, and enforcement of, obligations under this Act.

Protection from civil and criminal liability

56 Immunities

- (1) This section applies to the following persons:
- (a) the Director-General;
 - (b) an employee or agent of the Ministry;
 - (c) a NAIT officer;
 - (d) a NAIT authorised person;
 - (e) an employee or agent of the NAIT organisation;
 - (f) any other person exercising powers or carrying out duties or functions under this Act.
- (2) The person is protected from civil and criminal liability for any act that the person does or omits to do—
- (a) under this Act; or
 - (b) in the exercise or intended exercise of the person's powers or the carrying out or intended carrying out of the person's duties or functions under this Act, done—
 - (i) in good faith; and
 - (ii) with reasonable cause.
- (3) No action may be brought against the persons referred to in subsection (1) for any loss or damage resulting from reliance on information—
- (a) received from 1 of those persons; or
 - (b) collected or held by 1 of those persons, whether accessed directly or indirectly or lawfully or unlawfully.

*Cost recovery***57 Costs must be recovered**

- (1) The Minister must carry out the duties in subsections (3) and (4) in the following years for the following periods:
 - (a) in the first full financial year after the commencement date of this section, for the next period of 3 financial years;
 - (b) in the final financial year of each subsequent set of 3 financial years, for the next period of 3 financial years.
- (2) The Minister must carry out the duties in subsections (3) and (4) in conjunction with the NAIT organisation.
- (3) The Minister must estimate the amount of costs to which the following apply:
 - (a) they will arise in the forthcoming period; and
 - (b) they are the expected direct and indirect costs of administering this Act; and
 - (c) they are not recoverable under another provision of this Act; and
 - (d) they will not be appropriated by Parliament for the purpose.
- (4) The Minister must then recommend the making of regulations under section 61 or 62 to recover one-third of the amount in each of the financial years in the period.
- (5) The reference in subsection (4) to recovering one-third of the amount is modified in that—
 - (a) a shortfall in cost recovery in a period may be recovered in the subsequent period; and
 - (b) an over-recovery of costs in a period may be counted towards the recovery of costs in a subsequent period.
- (6) The Minister must ensure that the regulations are made before the start of the period to which they apply.
- (7) The Minister may recommend the amendment of the regulations in the period to which they apply if the Minister is satisfied that—
 - (a) actual costs in the period are likely to vary significantly from the estimate of costs under subsection (3) on which the regulations were based; and

- (b) the persons likely to be substantially affected by the amendment, or their representatives, have been consulted.
- (8) An amendment under subsection (7) applies to the remaining full financial years in the period to which the regulations apply.
- (9) The Minister may also recommend the amendment of the regulations in the period to which they apply if the Minister is satisfied that—
 - (a) the addition to or removal from Schedule 1 of a species or sub-group of species requires a reallocation of costs among NAIT participants; and
 - (b) the persons likely to be substantially affected by the amendment, or their representatives, have been consulted.
- (10) An amendment under subsection (9) applies from the date on which the species is added or removed.

58 Principles

In making decisions under section 57, the Minister must have regard to the following principles:

- (a) equity, in that funding for a service should generally be sourced from the users or beneficiaries of the service at a level commensurate with their use of or benefit from it and with the risks associated with the activities they carry out, but without strict apportionment according to use or benefit having to be observed;
- (b) efficiency, in that the allocation of costs should generally aim at the provision of maximum services at minimum cost;
- (c) justifiability, in that costs should generally be recovered to meet only the actual and reasonable costs of the provision of services;
- (d) transparency, in that—
 - (i) both budget projections and actual costs should generally be transparent; and
 - (ii) costs should generally be identified for, and allocated as closely as practicable to, tangible service provision in the recovery period in which the service is provided:

- (e) ease of administration, in that the costs of collection should generally be kept as low as possible:
- (f) flexibility, in that the method of recovering costs should generally be able to—
 - (i) adapt to changes in species or sub-groups of species covered by the Act; and
 - (ii) cope with variations in costs to be recovered; and
 - (iii) encourage the provision of complete and accurate data.

59 Methods

- (1) The methods by which costs may be recovered by regulations made under section 61 or 62 are as follows:
 - (a) fees or charges of fixed amounts:
 - (b) fees or charges based on a scale:
 - (c) fees or charges determined on a time-unit basis:
 - (d) fees or charges calculated using a formula, which may or may not specify values attributed to components of the formula:
 - (e) fees or charges calculated using a method of calculation other than a formula:
 - (f) fees or charges determined by calculations involving an averaging of costs:
 - (g) fees or charges consisting of the actual and reasonable costs of providing a service:
 - (h) fees or charges based on estimated costs and paid before the provision of the service, followed by reconciliation and an appropriate further payment or refund after the provision of the service:
 - (i) refundable or non-refundable deposits paid before the provision of the service:
 - (j) fees or charges that differ depending on whether or not a special or an urgent service is provided:
 - (k) fees or charges that include more than 1 level of fee or charge for the same service provided in different ways, or provided in or for different places:
 - (l) fees or charges that differ for otherwise similar services provided in different ways:

- (m) fees or charges that differ depending on the amount of service required or the components of the service required for the particular person or class of persons:
 - (n) fees or charges imposed on all users of services, classes of users of services, all beneficiaries of services, or classes of beneficiaries of services:
 - (o) levies.
- (2) The methods may be used individually or in combination.

60 Consultation

- (1) The Minister must be satisfied that subsections (2) to (4) have been complied with before the Minister makes a recommendation under section 57(4).
- (2) The persons likely to be substantially affected, or their representatives, must be consulted.
- (3) The NAIT organisation must carry out the consultation.
- (4) The consultation must be about regulations proposed under section 61 or 62.
- (5) Regulations made under section 61 or 62 are not invalid on the grounds that—
- (a) subsections (2) to (4) were not complied with before the Minister recommended the making of the regulations; or
 - (b) the consultation carried out was about a specific amount of a fee, charge, or levy that is not the amount set in the regulations.

61 Regulations may impose fees or charges

- (1) The Governor-General may, by Order in Council and on the recommendation of the Minister, make regulations prescribing—
- (a) fees or charges of a kind or kinds described in section 59(1)(a) to (n):
 - (b) the persons liable for the payment of the fees or charges:
 - (c) the persons, if any, exempt from paying the fees or charges.
- (2) If an exemption is provided under subsection (1)(c), the reasons for it must be set out in the regulations' explanatory note.

62 Regulations may impose levies

- (1) The Governor-General may, by Order in Council and on the recommendation of the Minister, make regulations providing for the payment of a levy.
- (2) The regulations must—
 - (a) specify that the levy is payable to—
 - (i) the NAIT organisation; or
 - (ii) the organisation that collects the levy on behalf of the NAIT organisation:
 - (b) specify how the levy is to be spent by the NAIT organisation:
 - (c) specify the maximum levy rate or rates:
 - (d) specify that the NAIT organisation sets the actual levy rate or rates:
 - (e) specify that the NAIT organisation must consult with those affected by the payment or collection of the levy before setting the actual levy rate or rates:
 - (f) specify the persons or classes of persons responsible for paying the levy:
 - (g) specify the persons or classes of persons, if any, exempt from paying the levy:
 - (h) specify, if the levy is to be paid at different rates, the places, services, species, sub-group of species, or other things to which the different rates apply:
 - (i) specify how the levy rate or rates are calculated:
 - (j) specify how the levy rate or rates and variations of the rate or rates are to be notified:
 - (k) specify when and how the levy is to be paid:
 - (l) specify the persons responsible for collecting the levy:
 - (m) state whether or not the persons collecting the levy are entitled to recover the cost of collection and, if the persons are entitled to do so, specify the maximum rate of collection costs:
 - (n) for the purpose of ascertaining whether or not the regulations are being complied with,—
 - (i) require the keeping of accounts, statements, and records of a specified class or description by all or any of the NAIT organisation, the persons re-

- responsible for collecting the levy, and the persons responsible for paying it; and
- (ii) require the retention of the accounts, statements, or records for a specified period:
- (o) provide for the establishment of a dispute resolution process for disputes relating to levies, including—
 - (i) the appointment of persons to resolve the disputes; and
 - (ii) the procedures to be followed by the persons; and
 - (iii) the remuneration of the persons.
- (3) The regulations may specify—
- (a) the returns to be made to the NAIT organisation or some other person or body for the purpose of enabling or assisting the determination of amounts of levy payable:
 - (b) the circumstances in which, and conditions subject to which, persons may be allowed extensions of time for paying the levy:
 - (c) a method of paying the levy that may be used by persons who object on conscientious or religious grounds to paying the levy in the manner provided in the regulations:
 - (d) a requirement for the funds from which the collectors of levy payments are to make payments to the NAIT organisation to be held on trust in a separate account.
- (4) If an exemption is provided under subsection (2)(g), the reasons for it must be set out in the regulations' explanatory note.

63 NAIT organisation to account for levy

- (1) As soon as practicable after the end of a financial year in which a levy has been paid to the NAIT organisation, the organisation must prepare the following for the year:
- (a) a statement of the money paid to the organisation as levy in the year:
 - (b) a statement of the assets the organisation has at the end of the year as a result of money paid as levy in the year:
 - (c) a statement of the organisation's receipt and expenditure of money paid as levy in the year:
 - (d) all other statements necessary to show fully—

- (i) the organisation's financial position as a result of money paid as levy in the year; and
 - (ii) the financial results of all of the organisation's activities involving the use of the money paid as levy in the year or the use of assets the organisation has at the end of the year as a result of money paid as levy in the year.
- (2) The NAIT organisation must ensure that the statements are audited within 5 months after the end of the year.

64 Levy regulations to be confirmed

- (1) Subsection (2) applies to regulations under section 62 that—
 - (a) are made on or after 1 January and before 1 July in the same year; and
 - (b) are not revoked with effect before or on 1 July in the next year; and
 - (c) are not stopped from having effect before or on 1 July in the next year by the application of section 5 of the Regulations (Disallowance) Act 1989; and
 - (d) will not be stopped from having effect before or on 1 July in the next year by the application of section 5 of the Regulations (Disallowance) Act 1989.
- (2) The regulations are deemed to have been revoked at the close of 30 June in the next year unless they have been confirmed by an Act of Parliament passed before or on that day.
- (3) Subsection (4) applies to regulations under section 62 that—
 - (a) are made on or after 1 July and before or on 31 December in the same year; and
 - (b) are not revoked with effect before or on 1 January in the year after the next year; and
 - (c) are not stopped from having effect before or on 1 January in the year after the next year by the application of section 5 of the Regulations (Disallowance) Act 1989; and
 - (d) will not be stopped from having effect before or on 1 January in the year after the next year by the application of section 5 of the Regulations (Disallowance) Act 1989.

- (4) The regulations are deemed to have been revoked at the close of 31 December in the year after the year in which they were made unless they have been confirmed by an Act of Parliament passed before or on that day.

65 Failure to pay

- (1) This section applies if a fee, charge, or levy imposed by regulations made under section 61 or 62 is wholly or partly unpaid 20 working days after a request for payment.
- (2) The amount unpaid is liable for compound interest at 10% per annum.
- (3) The NAIT organisation may waive all or part of the amount of the interest if it is satisfied that the failure or refusal of a person to pay the original debt is a result of a genuine dispute between the person and the organisation as to the person's liability to pay the debt.
- (4) The NAIT organisation may recover a fee, charge, or levy, and unpaid interest, from a person responsible for paying it as a debt due in a court of competent jurisdiction.

66 Charges for services outside this Act

- (1) This section applies if the NAIT organisation provides services other than the services required by this Act.
- (2) Sections 57 to 65 do not apply to the services.
- (3) The NAIT organisation must keep income from and expenditure for the services separate from income from and expenditure for the services required by this Act.

Other regulation-making powers

67 Regulations affecting Schedule 1

- (1) The Governor-General may, on the recommendation of the Minister,—
- (a) make an Order in Council bringing Schedule 1 into force for both species in it; or
- (b) make a separate Order in Council for each species in Schedule 1 bringing the schedule into force for the particular species.

- (2) The Governor-General may, by Order in Council and on the recommendation of the Minister, amend Schedule 1 by—
- (a) adding a species or sub-group of species of animal; or
 - (b) removing a species or sub-group of species of animal.
- (3) The Minister must take the following steps to consult on the Minister's proposal to make the recommendation, before making it:
- (a) for the NAIT organisation, current NAIT participants, the industry concerned, and persons affected by the addition or removal,—
 - (i) ensure that they, or their representatives, are given notice of it; and
 - (ii) give them, or their representatives, a reasonable opportunity to make submissions to the Minister on it; and
 - (iii) consider any submissions received from them; and
 - (b) at least 28 days before making the recommendation, publish a notice in the *Gazette* containing information about the proposal and the reasons for it; and
 - (c) ensure that a copy of the proposal is available for any person to read before the regulations are made.
- (4) Before recommending the addition of a species or sub-group of species to the schedule, the Minister must apply 1 of the following:
- (a) subsection (5); or
 - (b) subsection (6).

First scenario: industry-led initiative

- (5) For the purposes of subsection (4), the Minister must—
- (a) be satisfied that the addition was proposed by an industry group that has a business case, and the mandate of its members, for the addition, regardless of whether or not the addition is necessary for a purpose specified in section 3; and
 - (b) have regard to—
 - (i) the capacity of the NAIT scheme; and
 - (ii) the need to be fair to all NAIT participants and the proposed new participant in matters of costs, benefits, and risks; and

- (iii) the integrity of the NAIT scheme.
- Second scenario: not industry-led initiative*
- (6) For the purposes of subsection (4), the Minister must—
 - (a) be satisfied that the addition is necessary for 1 or more of the purposes specified in section 3; and
 - (b) have regard to—
 - (i) the capacity of the NAIT scheme; and
 - (ii) the need to be fair to all NAIT participants and the proposed new participant in matters of costs, benefits, and risks; and
 - (iii) the integrity of the NAIT scheme; and
 - (iv) the regulatory burden on the sector affected by the addition and the impact on the NAIT organisation and existing NAIT participants; and
 - (v) whether the regulatory burden of the addition is reasonable in comparison to the risks of and benefits from the addition; and
 - (vi) the likelihood of the sector joining the NAIT scheme voluntarily; and
 - (vii) the risks posed to New Zealand’s market reputation and biosecurity status by not making the addition; and
 - (viii) the need to be able to respond to the human health issues relating to food residues associated with animals, food-borne diseases associated with animals, and diseases transferable between animals and humans.
 - (7) Subsections (3) to (5) do not apply if the Minister is satisfied on reasonable grounds that urgent action under subsection (2)(a) is required for the purposes of this Act.
 - (8) Before recommending the removal from Schedule 1 of a species or sub-group of species that was added under subsection (5), the Minister must—
 - (a) have regard to—
 - (i) the need to be fair to all NAIT participants in matters of costs, benefits, and risks; and
 - (ii) the costs to be reallocated among remaining participants; and
 - (b) be satisfied that—

- (i) at least 5 years have passed since the species or sub-group of species was added to the schedule; and
 - (ii) the presence of the species or sub-group of species in the schedule is not necessary to meet any of the purposes specified in section 3; and
 - (iii) the industry has requested the removal.
- (9) Before recommending the removal from the schedule of a species or sub-group of species that was added under subsection (6), the Minister must—
 - (a) have regard to—
 - (i) the need to be fair to all NAIT participants in matters of costs, benefits, and risks; and
 - (ii) the costs to be reallocated among remaining participants; and
 - (b) be satisfied that—
 - (i) at least 5 years have passed since the species or sub-group of species was added to the schedule; and
 - (ii) the presence of the species or sub-group of species in the schedule is no longer necessary to meet any of the purposes specified in section 3.

68 Orders in Council to be confirmed

- (1) This section applies to an Order in Council made under section 67(2).
- (2) Subsection (3) applies to an order that—
 - (a) is made on or after 1 January and before 1 July in the same year; and
 - (b) is not revoked with effect before or on 1 July in the next year; and
 - (c) is not stopped from having effect before or on 1 July in the next year by the application of section 5 of the Regulations (Disallowance) Act 1989; and
 - (d) will not be stopped from having effect before or on 1 July in the next year by the application of section 5 of the Regulations (Disallowance) Act 1989.

- (3) The order is deemed to have been revoked at the close of 30 June in the next year unless it has been confirmed by an Act of Parliament passed before or on that day.
- (4) Subsection (5) applies to an order that—
 - (a) is made on or after 1 July and before or on 31 December in the same year; and
 - (b) is not revoked with effect before or on 1 January in the year after the next year; and
 - (c) is not stopped from having effect before or on 1 January in the year after the next year by the application of section 5 of the Regulations (Disallowance) Act 1989; and
 - (d) will not be stopped from having effect before or on 1 January in the year after the next year by the application of section 5 of the Regulations (Disallowance) Act 1989.
- (5) The order is deemed to have been revoked at the close of 31 December in the year after the year in which it was made unless it has been confirmed by an Act of Parliament passed before or on that day.

69 Other regulations

- (1) The Governor-General may, by Order in Council and on the recommendation of the Minister, make regulations for any of the purposes set out in subsection (3).
- (2) Before the Minister makes a recommendation,—
 - (a) the following consultation requirements must be complied with:
 - (i) consultation must be carried out with the persons likely to be substantially affected or their representatives; and
 - (ii) the consultation must be about the regulations proposed under this section; and
 - (b) the reasons for an exemption proposed to be provided under subsection (3)(g) must be identified and prepared for inclusion in the regulations' explanatory note.
- (3) The purposes are—
 - (a) prescribing standards for the purposes of the definition of **NAIT device** in section 4:

- (b) prescribing the radius of the circle for the purposes of the definition of **NAIT location** in section 5:
- (c) prescribing information and requirements for the purposes of section 27:
- (d) prescribing devices for the purposes of section 30(1):
- (e) prescribing requirements for the purposes of section 33(c):
- (f) prescribing requirements for the purposes of section 35(2):
- (g) providing exemptions for the purposes of section 37:
- (h) prescribing the particulars that must be provided in an application or other document under this Act:
- (i) prescribing information that must be provided with an application or other document under this Act:
- (j) prescribing the form and manner in which an application or other document must be submitted under this Act:
- (k) prescribing forms:
- (l) providing for—
 - (i) the establishment of the NAIT information system access panel:
 - (ii) the appointment and removal of members of the panel:
 - (iii) the panel's remuneration, functions, duties, powers, procedures, employees, administration, operation, and reporting requirements:
- (m) prescribing offences for breaching or not complying with regulations made under this Act and the penalties for the offences, up to a maximum of \$1,000:
- (n) prescribing the offences against or under this Act that are infringement offences:
- (o) prescribing the form of an infringement notice for an infringement offence:
- (p) prescribing any additional particulars required in an infringement notice for an infringement offence:
- (q) prescribing an infringement fee no greater than \$1,000 payable for each infringement offence:

- (r) providing for matters that are contemplated by this Act or necessary to give it full effect or necessary for its administration.

70 Incorporation of material by reference

- (1) Regulations and standards made under this Act may incorporate by reference all or any part of the following kinds of written material:
 - (a) frameworks, codes of practice, standards, requirements, or recommended practices of international or national organisations:
 - (b) frameworks, codes of practice, standards, requirements, or recommended practices prescribed in any country or jurisdiction:
 - (c) material that is from any other source, deals with technical matters, and is too large to include in, or print as part of, the regulations or standards:
 - (d) material that is from any other source and deals with technical matters and that it would be impracticable to include in, or print as part of, the regulations or standards:
 - (e) the current edition of a work of reference that the Director-General or the NAIT organisation considers is accepted internationally or by an industry as a standard one to refer to on the subject matter of the particular work:
 - (f) a specific edition of a work of reference that the Director-General or the NAIT organisation considers is accepted internationally or by an industry as a standard one to refer to on the subject matter of the particular work:
 - (g) a register established by or under this Act.
- (2) If material is incorporated by reference in regulations or standards made under this Act, Schedule 3 applies to that material.
- (3) However, if the incorporated material is a New Zealand Standard (as defined in section 2 of the Standards Act 1988), that Act applies.

*Transitional provisions***71 Previously approved identification systems may continue**

- (1) This section applies to a NAIT animal identified at the commencement of this Act in accordance with an identification system approved under section 158 of the Animal Products Act 1999 or section 50 of the Biosecurity Act 1993.
- (2) The animal may continue to be identified in accordance with the system.
- (3) The animal must also be identified with a NAIT device in accordance with regulations made under this Act.

72 First recovery period

- (1) The first period for which costs must be recovered after this Act has commenced (**first recovery period**) is the period starting on the commencement date of this section and ending at the end of the first full financial year after the commencement date.
- (2) The Minister may carry out the duties in section 57(3) and (4) for the first recovery period before or after the commencement date of this section, but the regulations recommended need recover only the amount necessary to cover the direct and indirect costs of administering this Act in the first recovery period.

73 Pre-commencement consultation

- (1) Section 60(2) to (4) are satisfied by consultation of the kind described in those subsections carried out before their commencement.
- (2) Section 69(2)(a) is satisfied by consultation of the kind described in that paragraph carried out before its commencement.

*Miscellaneous***74 Repeal of Animal Identification Act 1993**

The Animal Identification Act 1993 is repealed.

75 Amendments to other enactments

The enactments specified in Schedule 4 are amended in the manner shown in that schedule.

Schedule 1

s 4

NAIT animals

Cattle	All members of the subfamily Bovinae (including bison and buffalo that are farmed or kept in captivity)
Deer	All members of the family Cervidae that are farmed or kept in captivity

Schedule 2

s 55

Compliance and enforcement**1 Interpretation**

- (1) In this schedule, unless the context otherwise requires,—
- access**, in relation to any computer system, means instruct, communicate with, store data in, receive data from, or otherwise make use of any of the resources of the computer system
- access information** includes codes, passwords, and encryption keys, and any related information that enables access to a computer system or any other data storage device
- call associated data** has the meaning given in section 3(1) of the Telecommunications (Interception Capability) Act 2004
- computer system**—
- (a) means—
 - (i) a computer; or
 - (ii) 2 or more interconnected computers; or
 - (iii) any communication links between computers or to remote terminals or another device; or
 - (iv) 2 or more interconnected computers combined with any communication links between computers or to remote terminals or any other device; and
 - (b) includes any part of the items described in paragraph (a) and all related input, output, processing, storage, software, or communication facilities, and stored data
- document** includes call associated data and the content of telecommunications for which, at the time an application is made under clause 14 for a production order against a network operator, the network operator has storage capability, and stores that data and content in the normal course of its business
- evidential material**, in relation to a particular offence, means evidence or any other item, tangible or intangible, of relevance to the investigation of the offence
- issuing officer** means—
- (a) a Judge;
 - (b) a person such as a Justice of the Peace, Community Magistrate, Registrar, or Deputy Registrar

law enforcement agency means the Ministry or the NAIT organisation

network operator has the meaning given in section 3(1) of the Telecommunications (Interception Capability) Act 2004

Registrar and **Deputy Registrar** mean the Registrar and Deputy Registrar of the District Court

remote access search means a search of a thing such as an Internet data storage facility that does not have a physical address that a person can enter and search

search power, in relation to any provision in this schedule, means every search warrant issued under this Act

search warrant means a search warrant within the meaning of clause 29(2).

- (2) For the purposes of the definition of computer system, a computer is interconnected with another computer if it can be lawfully used to provide access to that other computer—
- (a) with or without access information; and
 - (b) whether or not either or both computers are currently turned on; and
 - (c) whether or not access is currently occurring.

Part 1

Powers relevant to administration of NAIT scheme

Requirements for information

2 Production of information

- (1) A NAIT officer or a NAIT authorised person may direct any person, including a person who is otherwise exempt from obligations by regulations made under section 69(3)(g),—
- (a) to provide personal information about that individual, including identifying information such as the person's name, date of birth, gender, place of residence, and place of business;
 - (b) to produce information or documents;
 - (c) to answer relevant questions.
- (2) The matters that may be required under subclause (1) must be reasonably necessary for the purpose of—

Part 1—*continued*

- (a) determining whether—
 - (i) a person is duly registered as a PICA in respect of 1 or more specified NAIT locations; or
 - (ii) a person is complying with this Act, regulations made under it, or standards issued under it; or
 - (iii) a NAIT officer, a NAIT authorised person, or the Director-General should exercise other powers under this Act for the purpose of ascertaining and ensuring compliance with this Act; or
- (b) ascertaining the movements of NAIT animals.
- (3) This section is subject to clause 64 (which provides for a privilege against self-incrimination).

3 Audit of core data

- (1) A NAIT officer or a NAIT authorised person may, at any time, audit core data for the purpose of ascertaining compliance with—
 - (a) the obligations set out in Part 3 of this Act;
 - (b) any requirements of this Act, of regulations made under it, or of standards issued under it.
- (2) A fee or charge may be charged to recover the cost of the audit.
- (3) Before commencing an audit, the NAIT officer must notify the PICA, the PICA's delegate, and the PICA's information provider (if any) that—
 - (a) an audit is to be carried out; and
 - (b) the audit will be conducted on a cost-recovery basis; and
 - (c) the PICA, the PICA's delegate, or the PICA's information provider may make a written submission before an adverse report is issued on the basis of the audit.
- (4) This section is subject to clause 64 (which provides for a privilege against self-incrimination).

4 Power to determine status of person as PICA

- (1) If there is no PICA registered for a NAIT location, a NAIT officer must determine who the PICA is for that location.
- (2) The NAIT officer must take into account the following factors:

Part 1—*continued*

- (a) if a person (**person A**) is actually in charge of NAIT animals and is employed by another person (**person B**), whether person B agrees to person A being the PICA for the NAIT location; and
 - (b) whether person A has the authority and ability to carry out the obligations arising under this Act, including—
 - (i) the obligation to register as the PICA for the NAIT location; and
 - (ii) the obligations of a PICA such as—
 - (A) obtaining and fitting NAIT devices for the species or sub-groups of species of NAIT animals at the location; and
 - (B) declaring the movement of NAIT animals to or from the location.
- (3) Subclause (2) does not limit the matters that a NAIT officer may take into account in making a determination under subclause (1).
- (4) A NAIT officer may require evidence from person A to establish the matters required by subclause (2).
- (5) If a NAIT officer determines that person A is a PICA in accordance with the factors specified in subclause (2), the NAIT officer must—
- (a) give notice of that determination in writing to the person; and
 - (b) advise the person of—
 - (i) the requirements for registration as the PICA for the location; and
 - (ii) the obligations that apply to that person as the PICA for that location; and
 - (iii) the offences and penalties that apply for breaches of this Act or of regulations made under it.

5 Power to give directions

- (1) A NAIT officer or a NAIT authorised person may, if he or she considers it necessary,—
- (a) give directions to a PICA, a PICA delegate, or an information provider to ensure that a NAIT animal is iden-

Part 1—*continued*

tified and registered in the manner and within the time required by or under this Act:

- (b) give any other reasonable direction to ensure compliance with this Act, regulations made under this Act, or standards issued under it.
- (2) Directions must be given in writing but, if it is impracticable to do so in the circumstances, may be given orally, and those directions must be given in writing as soon as practicable after an oral direction has been given.

6 Power to act if person defaults

- (1) This clause applies to a person who is directed under clause 5 to take some specified action.
- (2) If the person fails to comply with the direction within the time specified in the notice or, if no time was specified in a notice under clause 5(2), within a reasonable time, a NAIT officer or a NAIT authorised person may take action, or cause action to be taken, that is reasonably necessary and appropriate for achieving the purposes of the notice.
- (3) If a specified action is required to be carried out on Māori land, the notice given to the owners must comply with section 181 of Te Ture Whenua Maori Act 1993.
- (4) The NAIT officer or a NAIT authorised person is entitled to recover the costs and expenses reasonably incurred under sub-clause (2) as a debt due from the person to whom the notice was given.

7 Holding of property seized or produced under this Part

Any property, other than NAIT animals, seized or produced in the course of exercising a power under this Part may be held by the law enforcement agency, but only for as long as is reasonably necessary for investigation as evidential material.

Part 1—*continued*

Rights in respect of things seized or produced

8 Application for release of, or access to, things seized or produced

- (1) The persons described in subclause (2) may, by written notice to the person who has custody of a thing seized under a search power or produced under a production order, apply for the release of or access to the thing at any time before proceedings are brought for an alleged offence in respect of which the thing was seized or produced.
- (2) The persons are as follows:
 - (a) the person who produced the thing or from whom the thing was seized:
 - (b) the owner or person entitled to possession of the seized or produced thing:
 - (c) any person with a legal or equitable interest in the seized or produced thing.
- (3) The person in whose custody the seized or produced thing is may release the thing to the applicant or provide reasonable access to it.
- (4) A person who receives an application under subclause (1) may refuse that application on the ground that release of the thing or, as the case requires, access to it is likely to prejudice the maintenance of the law.
- (5) A release of, or provision of access to, a thing may be granted unconditionally or subject to conditions.
- (6) A person refusing an application under subclause (1) must inform the applicant of the decision in writing.

9 Failure to comply with conditions

If a person to whom a seized or produced thing is released or who is given access to it under clause 8 fails to comply with any condition imposed under clause 8(5), the thing may be seized again, or required to be produced, or the ability to have access to the thing ended at the direction of the person who released it or provided access to it.

Part 1—*continued***10 Application to District Court for access to thing seized or produced**

- (1) A person referred to in clause 8(2) may apply to the District Court for access to any thing seized by a person exercising a search power or produced to any person under a production order if the person's application under that section—
 - (a) has been refused; or
 - (b) has been granted, but is subject to conditions that the applicant does not accept.
- (2) The District Court may either—
 - (a) grant the application; or
 - (b) refuse it on the ground that allowing the person to have access to the thing, or varying or cancelling the conditions concerned, is likely to prejudice the maintenance of the law.

11 Application to District Court for release of thing seized or produced

- (1) A person referred to in clause 8(2) may apply to the District Court for the release of any thing seized by a person exercising a search power or produced to a person under a production order.
- (2) The court may release the thing to the applicant if it is satisfied that it would be contrary to the interests of justice for the item to be retained in custody, having regard to—
 - (a) the gravity of the alleged offence;
 - (b) any loss or damage to the applicant that is caused or likely to be caused by not returning the thing;
 - (c) the likely evidential value of the thing, having regard to any other evidence held by the law enforcement agency that employed or engaged the person who seized the thing or to whom the thing was produced;
 - (d) whether the evidential value of the thing can be adequately preserved by means other than by keeping it.
- (3) This section is subject to any enactment that requires an amount of any kind to be paid before any seized thing may be returned.

Part 2**Powers applying in relation to all livestock****12 Recovery of straying livestock**

- (1) This Part applies to all livestock, whether or not they are NAIT animals.
- (2) If a livestock owner (**person A**) believes on reasonable grounds that livestock of that person have strayed onto land occupied by another person (**person B**) or are in the possession of person B, for the purpose of identifying and recovering any livestock,—
 - (a) person A may apply in writing to a NAIT officer requesting that written notice be given to person B about the straying livestock; and
 - (b) the NAIT officer may give notice to person B, requiring that person, on the date specified in the notice,—
 - (i) to muster his or her livestock of the kind to which the application relates; or
 - (ii) if person B is not holding such livestock on land in his or her occupation, to allow any livestock whose identity is in question to be mustered in a yard or pen.
- (3) The NAIT officer, if he or she considers it appropriate to do so, may—
 - (a) enter the land and carry out the muster of livestock on person B's land; and
 - (b) on the application of person B, postpone the date fixed to muster the livestock.
- (4) Person B may recover from person A—
 - (a) the reasonable expenses incurred in mustering, delivering, or holding the livestock if so ordered by a NAIT officer; and
 - (b) compensation for any unavoidable damage suffered in complying with a notice given under subclause (2).
- (5) Subclause (6) applies if the NAIT officer—
 - (a) is unable for good reason to deal with an application made under subclause (2) without delay; and

Part 2—*continued*

- (b) believes on reasonable grounds that livestock may be removed from the land or otherwise disposed of in the meantime.
- (6) The NAIT officer may, if requested to do so by person A, order livestock to be held in the manner that the NAIT officer thinks appropriate until the application is dealt with or the expiration of 7 days, whichever is the earlier.
- (7) If person B refuses or fails to comply with a notice given under subclause (2) or an order given under subclause (6), person B commits an offence and is liable on summary conviction to a fine not exceeding \$1,000.

13 Removal of straying livestock

- (1) If an occupier of land (**person A**) believes on reasonable grounds that livestock owned by another person (**person B**) have strayed onto person A's land,—
 - (a) person A may apply in writing to a NAIT officer requesting that written notice be given to person B, requiring that person to remove livestock that belong to person B at that person's expense; and
 - (b) the NAIT officer may give notice to person B, requiring that person, on the date specified in the notice, to remove the livestock.
- (2) If a person who is a party to a covenant established to protect any of the values specified in subclause (3) (**person C**) believes that there are, on the covenanted land, livestock owned by person B that are likely to affect adversely the values being protected,—
 - (a) person C may apply in writing to a NAIT officer for, and the NAIT officer may give, written notice to person B requiring the livestock to be removed or destroyed by the date specified in the notice; and
 - (b) person C or the NAIT officer may, if the notice is not complied with by the specified date, impound the livestock at the cost of person B, until that person complies with the notice.
- (3) The values are—

Part 2—*continued*

- (a) the viability of threatened species or sub-groups of species of organisms:
 - (b) the survival and distribution of indigenous plants or animals:
 - (c) the sustainability of natural and developed ecosystems, ecological processes, and biological diversity:
 - (d) soil resources or water quality:
 - (e) human health or enjoyment of the recreational value of the natural environment:
 - (f) the relationship of Māori and their culture and traditions with their ancestral lands, waters, sites, wāhi tapu, and taonga.
- (4) If person B refuses or fails to comply with a notice given under this clause, that person commits an offence and is liable on summary conviction to a fine not exceeding \$1,000.

Part 3

Powers of NAIT officers to obtain certain
orders

Production orders

14 NAIT officer may apply for production order

- (1) This clause applies to a NAIT officer who is entitled to apply for a search warrant to obtain documents.
- (2) The NAIT officer may apply to an issuing officer for a production order against a person in respect of those documents if the NAIT officer is satisfied that the conditions specified in clause 15 for making the order against the person are met.
- (3) An application must be in writing and must set out the following particulars:
 - (a) the name of the applicant:
 - (b) the provision under this Act authorising the making of an application for a search warrant in respect of the suspected offence:
 - (c) a description of the offence that it is suspected has been, is being, or will be committed:

Part 3—*continued*

- (d) the facts relied on to show reasonable grounds to suspect that an offence has been, is being, or will be committed:
- (e) a description of the documents for which production is sought:
- (f) the facts relied on to show reasonable grounds to believe that the documents sought are in the possession, or under the control, of the person against whom the order is sought:
- (g) whether the person against whom the order is made should be required to produce,—
 - (i) on 1 occasion only, those documents for which production is sought that are in his or her possession or under his or her control when the order is made; or
 - (ii) on an ongoing basis,—
 - (A) those documents for which production is sought that are in the person's possession or under the person's control at the time the order is made; and
 - (B) those documents for which production is sought and that come into the person's possession or under the person's control at any time while the order is in force.

15 Conditions for making production order

- (1) The conditions for making a production order are that there are reasonable grounds to—
 - (a) suspect that an offence has been, is being, or will be committed (being an offence in respect of which this Part authorises a NAIT officer to apply for a search warrant); and
 - (b) believe that the documents sought by the proposed order—
 - (i) constitute evidential material in respect of the offence; and

Part 3—*continued*

- (ii) are in the possession or under the control of the person against whom the order is sought, or will come into the possession or under the control of that person while the order is in force.
- (2) A production order does not affect the privilege against self-incrimination provided for in clause 64.

16 Issuing officer may make order

An issuing officer may make a production order against a person if satisfied, on an application made under clause 14, that the conditions specified in clause 15 are met.

17 Form and content of production order

- (1) A production order must be in the prescribed form and must require the person against whom it is made (**person A**)—
 - (a) to give the NAIT officer who applied for the order, or a person identified in the order,—
 - (i) any documents described in the order that are in the possession or under the control of person A; and
 - (ii) if clause 14(3)(g)(ii)(B) applies, documents described in the order that come into the possession or under the control of person A while the order is in force; and
 - (b) if any of those documents are not, or are no longer, in the possession or under the control of person A, to disclose, to the best of person A's knowledge or belief, the location of those documents to the NAIT officer who applied for the order or to the person identified in the order.
- (2) The production order must set out the following:
 - (a) the name of person A;
 - (b) the grounds on which the order is made;
 - (c) the documents required to be given;
 - (d) whether the documents must be produced on 1 occasion only or on an ongoing basis for the duration of the entire order:

Part 3—*continued*

- (e) the time by which, and the way in which, the documents must be produced.
- (3) The production order may describe the documents required to be given by reference to a class or category of document.
- (4) If the production order is made against a body corporate or unincorporated, the order may specify an individual (whether by name or by reference to a position held in the body) who is to comply with the order as the body's representative.

18 Duration of production order

A production order is in force for the period specified in the order (not exceeding 30 days after the date on which the order is made).

19 Documents produced under production order

When any document is produced in compliance with a production order, the NAIT officer who applied for the order may—

- (a) retain the original document produced if it is relevant to the investigation:
- (b) take copies of the document, or of extracts from the document:
- (c) if necessary, require the person producing the document to reproduce, or to assist any person nominated by the Director-General or a delegate of the Director-General to reproduce, in usable form, any information recorded or stored in the document.

20 Copy of retained document

If a NAIT officer retains an original document that is produced in compliance with a production order, the officer must, as soon as practicable after the document is produced, take a copy of the document and give the copy to the person who produced the original document under the production order.

Part 3—*continued***21 Other provisions applying to production orders**

- (1) The following provisions apply to an application for a production order as if any reference in those provisions to a warrant or search warrant were a reference to a production order:
- (a) clause 30(2) (requirements for further information); and
 - (b) clause 31 (verification of application); and
 - (c) clause 32 (mode of application); and
 - (d) clause 33 (retention of documents).
- (2) Clauses 37 (transmission of search warrants) and 39 (when a search warrant is invalid) apply to production orders as if any reference in those provisions to a warrant or search warrant were a reference to a production order.

Part 4

Search and inspection powers

Exercise of duties

22 Who may carry out duties

Any duty imposed on a NAIT officer under this Part may be carried out instead by an inspector appointed under the Biosecurity Act 1993 by the Ministry.

Consent searches

23 Application of rules about consent searches

Clauses 24 to 27 apply in respect of consent searches undertaken by a NAIT officer in circumstances where a power of search by a NAIT officer could be exercised if he or she held a particular belief or suspicion specified in this Act.

24 Purposes for which consent search may be undertaken

A NAIT officer may ask a person to consent to undergo a search or to consent to a search being made of a place, vehicle, or other thing apparently in the control of the person, if the officer wishes to conduct the search for 1 or more of the following purposes:

Part 4—*continued*

- (a) to prevent the commission of an offence against this Act;
- (b) to investigate whether an offence against this Act has been committed;
- (c) any purpose for 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.

25 Advice that must be given before consent search undertaken

Before conducting a search by consent, the NAIT officer who proposes to conduct it must—

- (a) determine that the search is for a purpose authorised by clause 24; and
- (b) advise the person from whom consent is sought of the reason for the proposed search; and
- (c) advise the person that he or she may either consent to the search or refuse to consent to the search.

26 Circumstances where search by consent unlawful

A search by consent is unlawful if—

- (a) it is not for a purpose set out in clause 24; or
- (b) the NAIT officer fails to comply with clause 25(a), (b), or (c); or
- (c) the search is undertaken in reliance on a consent given by a person who does not have authority to give that consent.

27 Ability of persons under 14 years to consent to searches of places, vehicles, or other things

- (1) A person under 14 years of age is unable to consent to the search of a place, vehicle, or other thing.
- (2) Subclause (1) does not apply to a person under 14 years of age found driving a vehicle with no passenger aged 14 years or older who has authority to consent to the search of the vehicle.

Part 4—*continued***28 Exceptions to consent search rules**

Clauses 24 to 27 do not—

- (a) apply to a search conducted as a condition of entry to any public or private place; or
- (b) apply to a search conducted in accordance with a power conferred by an enactment; or
- (c) affect the rule of law relating to the implied licence to enter property.

Search warrants

29 Power to apply for search warrant

- (1) A NAIT officer may apply for a search warrant in the manner set out in clauses 30 to 33 if the officer has reasonable grounds—
 - (a) to suspect that an offence against this Act has been, is being, or will be committed; and
 - (b) to believe that the search will disclose evidence in respect of that offence.
- (2) The provisions of clauses 30 to 33 apply in respect of every warrant applied for, or issued, under this Act that would enable, in respect of any land, premises, place, vehicle, or other thing,—
 - (a) entry; or
 - (b) entry and search; or
 - (c) entry and inspection; or
 - (d) entry and examination.

30 Application for search warrant

- (1) In applying for a search warrant, a NAIT officer must include, in reasonable detail, the following particulars:
 - (a) the name of the applicant;
 - (b) the provision authorising the making of the application;
 - (c) the grounds on which the application is made (including the reasons why the legal requirements for issuing the warrant are believed by the applicant to be satisfied):

Part 4—*continued*

- (d) the address or other description of the place, vehicle, or other thing proposed to be entered, entered and searched, inspected, or examined:
 - (e) a description of the item or items or other evidential material believed to be in or on or part of the place, vehicle, or other thing that is sought by the applicant:
 - (f) the period for which the warrant is sought:
 - (g) if the applicant wants to be able to execute the warrant on more than 1 occasion, the grounds on which execution on more than 1 occasion is believed to be necessary.
- (2) The issuing officer—
- (a) may require the applicant to supply further information concerning the grounds on which the search warrant is sought; but
 - (b) must not, in any circumstances, require the applicant to disclose the name, address, or any other identifying details of an informant unless, and only to the extent that, such information is necessary for the issuing officer to assess either or both of the following:
 - (i) the credibility of the informant:
 - (ii) whether or not there is a proper basis for issuing the warrant.
- (3) The applicant must disclose in the application—
- (a) details of any other application for a search warrant that the applicant knows to have been made within the previous 3 months in respect of the place, vehicle, or other thing proposed to be searched; and
 - (b) the result of that application or those applications.
- (4) The applicant must, before making an application for a search warrant, make reasonable inquiries to the Ministry or the NAIT organisation, as appropriate, for the purpose of complying with subclause (3).
- (5) The issuing officer may authorise the search warrant to be executed on more than 1 occasion during the period in which the warrant is in force if he or she is satisfied that this is required for the purposes for which the warrant is being issued.

Part 4—*continued***31 Application must be verified**

An application for a search warrant must contain or be accompanied by a statement by the applicant confirming the truth and accuracy of the contents of the application.

32 Mode of application for search warrant

- (1) An application for a search warrant—
 - (a) must be in writing, unless subclause (3) applies; and
 - (b) may be transmitted to the issuing officer electronically.
- (2) The applicant must appear in person before, or communicate orally with, the issuing officer, unless subclause (4) applies.
- (3) An issuing officer may allow an application for a search warrant to be made orally (for example, by telephone call) or by personal appearance and excuse the applicant from putting all or any part of the application (including any required material) in writing if—
 - (a) the issuing officer is satisfied that the delay that would be caused by requiring an applicant to put all or any part of the application (including any required material) in writing would compromise the effectiveness of the search; and
 - (b) the issuing officer is satisfied that the question of whether the warrant should be issued can properly be determined on the basis of an oral communication or a personal appearance (and the material described in paragraph (c)); and
 - (c) the information required by clause 30(1) to (3) is supplied (whether orally, or partly orally and partly in writing) to the issuing officer.
- (4) An issuing officer may allow an application for a search warrant to be made without either an appearance in person or an oral communication with the issuing officer if—
 - (a) the issuing officer is satisfied that the question of whether the search warrant should be issued can properly be determined on the basis of any written communication by the applicant (including the material described in paragraph (b)); and

Part 4—*continued*

- (b) the information required by clause 30(1) to (3) has been supplied to the issuing officer; and
 - (c) the issuing officer is satisfied that there is no need to ask any questions of, or seek any further information from, the applicant.
- (5) An issuing officer who allows an application for a search warrant to be made under subclause (3) must record the grounds for the application as soon as practicable.

33 Retention of documents

- (1) The Registrar of the District Court where an application is made (or of the District Court closest to that place) must retain control of a copy (whether in electronic form or otherwise) of—
- (a) every written application for a search warrant; or
 - (b) in the case of an oral application, the record of the application made by the issuing officer.
- (2) The copy must be retained until,—
- (a) in a case where a search warrant is issued, the completion of any proceedings where the validity of the warrant may be in issue; or
 - (b) in any other case, the expiry of 2 years after the records were first retained under the control of the Registrar of the District Court.
- (3) An applicant to whom a search warrant is issued must retain the warrant (whether in electronic form or otherwise), a copy of the application (if made in written form), copies of all documents tendered by the applicant in support of the application, and a copy of any search warrant report referred to in clause 36 required to be prepared,—
- (a) in the case of a warrant that is executed, until the completion of any proceedings where the validity of the warrant may be in issue; or
 - (b) in any other case, until the destruction or transfer of the warrant and other documents is required by or under the Public Records Act 2005 or any other enactment or rule of law.

Part 4—*continued*

Issuing of search warrants

34 Restrictions on issue of search warrant

- (1) An issuing officer may issue a search warrant on application by a NAIT officer, if the issuing officer is satisfied that there are reasonable grounds—
 - (a) to suspect that an offence against this Act has been, is being, or will be committed; and
 - (b) to believe that the search will find evidence in respect of the offence.
- (2) An issuing officer must not issue a warrant to seize any thing held by a lawyer that is a communication of a kind to which legal professional privilege normally applies, unless the issuing officer is satisfied that there is a prima facie case that the thing was made, received, compiled, or prepared—
 - (a) for a dishonest purpose; or
 - (b) for the purpose of planning to commit or committing an offence.

35 Form and content of search warrant

- (1) Every search warrant issued must be in the prescribed form.
- (2) Every search warrant issued must be directed to a NAIT officer who has authority to execute the warrant.
- (3) A search warrant may be—
 - (a) executed by—
 - (i) the NAIT officer to whom it is directed; or
 - (ii) any constable (whether or not the warrant is directed to that constable or generally to constables):
 - (b) subject to any conditions specified in the warrant that the issuing officer considers reasonable, including (without limitation)—
 - (i) any restriction on the time of execution that is reasonable:
 - (ii) a condition that the occupier or person in charge of a place must provide reasonable assistance to a person executing the warrant if, in the absence

Part 4—*continued*

of such assistance, it would not be practical to execute the warrant without undue delay:

- (c) executed only once, unless execution on more than 1 occasion has been authorised.
- (4) Every search warrant must contain, in reasonable detail, the following particulars:
- (a) the name or other individual designation of the issuing officer and the date of issue:
 - (b) the provision or provisions authorising the issue of the warrant, including, where relevant, the suspected offence or offences:
 - (c) that the person executing the warrant may use any assistance that is reasonable in the circumstances:
 - (d) that any person authorised to do so may execute the warrant:
 - (e) that the person executing the warrant may use any force, if authorised by this Act or any other enactment, that is reasonable in the circumstances to enter, break open, or access any area within the place, vehicle, or other thing being searched, or anything found:
 - (f) the address or description of the place, vehicle, or other thing that may be entered, entered and searched, inspected, or examined:
 - (g) a description of what may be seized:
 - (h) the period during which the warrant may be executed, being—
 - (i) a period specified by the issuing officer not exceeding 14 days from the date of issue; or
 - (ii) if the issuing officer is satisfied that a period of longer than 14 days is necessary for execution, a period specified by the issuing officer not exceeding 30 days from the date of issue:
 - (i) any conditions specified by the issuing officer under subclause (3)(b):
 - (j) if the warrant may be executed on more than 1 occasion, the number of times that the warrant may be executed:

Part 4—*continued*

- (k) if the warrant is intended to authorise a remote access search (for example, a search of a thing such as an Internet data storage facility that is not situated at a physical location), the access information that identifies the thing to be searched remotely:
 - (l) an explanation of the availability of relevant privileges and an outline of how any of those privileges may be claimed:
 - (m) a statement that, in the case of any other search authorised by this Act, any person found in the place or vehicle to be searched may be searched if there are reasonable grounds to believe that an item being searched for is on that person.
- (5) A search warrant may authorise the search of more than 1 place, vehicle, or thing.
- (6) An issuing officer may not issue a search warrant authorising the remote access search of a thing unless he or she is satisfied that the thing is not located at a physical address that a person can enter and search.
- (7) A person is not required, as a consequence of a condition imposed under subclause (3)(b)(ii), to give any information tending to incriminate the person.

36 Issuing officer may require search warrant report

- (1) An issuing officer may impose a condition under clause 35(3)(b) requiring the employer of any person to whom a search warrant is issued to provide that issuing officer with a search warrant report within a specified period.
- (2) A search warrant report must state—
 - (a) whether the search warrant was executed:
 - (b) whether the execution of the search warrant resulted in the seizure of evidential material, and, if so, whether that material was material specified in the search warrant:
 - (c) whether any other powers exercised in conjunction with the execution of the warrant resulted in the seizure of evidential material:

Part 4—*continued*

- (d) whether any criminal proceedings have been brought, or are under consideration, that relate to any evidential material seized.

37 Transmission of search warrant

If it is not possible or practicable for the person charged with executing the warrant to have it in his or her possession at the time of execution, one of the following documents (which is deemed for all legal purposes to constitute the warrant) may be executed:

- (a) a facsimile, or a printout of an electronically generated copy, of a warrant issued by the issuing officer;
- (b) a copy made by the person to whom the warrant is directed, at the direction of the issuing officer and endorsed to that effect.

38 When search warrant executed

A search warrant is executed when the person executing the warrant and any person assisting in the execution of the warrant—

- (a) has seized all the items specified in the warrant; or
- (b) leaves the place, vehicle, or other thing being searched and does not return within 4 hours.

39 When search warrant invalid

- (1) A search warrant is invalid—
 - (a) if, having regard to the information contained in the application, the grounds or conditions for lawful issue of a warrant set out in clause 34(1) were not satisfied at the time that the search warrant was issued;
 - (b) if the warrant contains a defect, irregularity, omission, or want of form that is likely to mislead anyone executing or affected by the warrant as to its purpose or scope.
- (2) If a warrant is invalid under this clause, section 204 of the Summary Proceedings Act 1957 (which provides that a warrant is not invalid by reason only of a defect, irregularity, omission, or want of form) does not apply to that warrant.

Part 4—*continued*

Carrying out search powers

40 Search powers

Every search power authorises the person exercising it—

- (a) to enter and search the place, vehicle, or other thing that the person is authorised to enter and search, and any item or items found at that place or in that vehicle or other thing, at any time that is reasonable:
- (b) to request any person to assist with the entry and search (including, without limitation, a member of a hapū or an iwi if the place to be entered is of cultural or spiritual significance to that hapū or iwi):
- (c) to use any force in respect of any property that is reasonable for the purposes of carrying out the entry and search and any lawful seizure:
- (d) if and only if clause 45(2) applies to the person exercising the power, to detain any person who is at the place or in the vehicle or other thing being searched, or who arrives there while the search is being undertaken, for a reasonable period (using reasonable force if necessary), to enable the person exercising the power to determine whether the person is connected with the object of the search:
- (e) to seize any thing that may lawfully be seized:
- (f) to bring and use in or on the place or in the vehicle or other thing searched, any equipment, to use any equipment found on the place or in the vehicle or other thing, and to extract any electricity from the place, vehicle, or other thing to operate the equipment that it is reasonable to use in the circumstances, for the purposes of carrying out the entry and search:
- (g) to copy any document, or part of a document, that may lawfully be seized:
- (h) to access and copy intangible material from a computer system or other data storage device located (in whole or in part) at the place or in the vehicle or other thing searched (including copying by means of previewing,

Part 4—*continued*

cloning, or other forensic methods either before or after removal for examination):

- (i) to use any reasonable measures to—
 - (i) gain access to any computer system or other data storage device located (in whole or in part) at the place or in the vehicle or other thing to be searched; and
 - (ii) create a forensic copy of any material in such a computer system or other data storage device:
- (j) to take photographs, sound and video recordings, or drawings of the place, vehicle, or other thing searched, and of any thing found in that place, vehicle, or other thing searched, if the person exercising the power has reasonable grounds to believe that the photographs or sound or video recordings or drawings may be relevant to the purposes of the entry and search.

41 Remote access search of thing authorised by warrant

Every person executing a search warrant authorising a remote access search may—

- (a) access and copy intangible material from the thing being searched (including copying by means of previewing, cloning, or other forensic methods); and
- (b) use reasonable measures to—
 - (i) gain access to the thing; and
 - (ii) create a forensic copy of material in the thing.

42 Items of uncertain status may be seized

If a person exercising a search power is uncertain whether any item found may lawfully be seized, and it is not reasonably practicable to determine whether that item can be seized at the place or in the vehicle or other thing where the search takes place, the person exercising the search power may remove the item for the purpose of examination or analysis to determine whether it may be lawfully seized.

Part 4—*continued***43 Powers of persons called to assist**

- (1) Every person called on to assist a person exercising a search power is subject to the control of the person with overall responsibility for exercising that power.
- (2) Every person called on to assist a person exercising a search power may, in addition to exercising the powers set out in clause 40(a), (d), (e), (f), and (i),—
 - (a) use reasonable force in respect of any property for the purposes of carrying out the entry and search and any lawful seizure, while under the direction of the person exercising the power;
 - (b) search areas within the place, vehicle, or other thing that the person exercising the power has determined may lawfully be searched;
 - (c) take photographs, sound and video recordings, or drawings of the place, vehicle, or other thing, and things found at the place or in the vehicle or other thing, if the person exercising the power has determined that those things may lawfully be taken.
- (3) If a constable is assisting another person exercising the search power, that constable may, without any direction or supervision by the person he or she is assisting, exercise any power ordinarily exercisable by that constable.
- (4) The person exercising the search power must—
 - (a) accompany any assistant on the first occasion when the assistant enters the place, vehicle, or other thing to be searched; and
 - (b) provide such other supervision of any assistant as is reasonable in the circumstances.
- (5) Subclause (4) does not apply if the assistant is a constable.

44 Powers of persons called to assist remote access search

Every person called on to assist a person executing a search warrant authorising a remote access search may—

- (a) access and copy intangible material from the thing being searched (including copying by means of previewing, cloning, or other forensic methods); and

Part 4—*continued*

- (b) use reasonable measures to—
 - (i) gain access to the thing; and
 - (ii) create a forensic copy of material in the thing.

45 Limitation on exercise of powers

- (1) The powers conferred by clauses 40 to 44 are subject to—
 - (a) any conditions imposed under clause 35(3)(b) by an issuing officer who issues a search warrant;
 - (b) clauses 62 to 72 (which relate to privilege and confidentiality).
- (2) The powers conferred by clause 40(d) to detain a person may only be exercised by a person who has power to arrest the person to be detained—
 - (a) for a suspected offence to which the search relates; or
 - (b) for a suspected offence to which evidential material that is discovered in the course of the search relates.
- (3) To avoid doubt, the powers conferred by clauses 40(c) and 43(2)(a) do not authorise the application of force to any person.

46 Securing place, vehicle, or other thing to be searched

- (1) The person carrying out a search may, in a manner and for a duration that is reasonable for the purposes of carrying out the search,—
 - (a) secure the place, vehicle, or other thing searched, any area within that place, vehicle, or other thing, or any thing found within that place, vehicle, or other thing;
 - (b) exclude any person from the place, vehicle, or other thing searched, or from any area within the place, vehicle, or other thing, or give any other reasonable direction to such a person, if the person carrying out the search has reasonable grounds to believe that the person will obstruct or hinder the exercise of any power under this Part.
- (2) A person who exercises any power under subclause (1) must, on the request of any person affected by the exercise of the power,—
 - (a) identify himself or herself; and

Part 4—*continued*

- (b) advise the person affected of the reason and authority for the exercise of the power.

Establishing search scene

47 Special powers where application for search warrant pending

- (1) If an application for a search warrant is about to be made or has been made and has not yet been granted or refused by an issuing officer, a NAIT officer present at the place or in the vehicle or other thing that is or is to be the subject of the application may, if authorised by subclause (2),—
 - (a) enter and secure the place, vehicle, or other thing for which authorisation to enter and search is being sought, and secure any items found at that place or in that vehicle or other thing, at any time that is reasonable in the circumstances;
 - (b) direct any person to assist with the entry and securing of the place, vehicle, or other thing or the securing of items in it (including, without limitation, a member of a hapū or an iwi if the place to be entered is of cultural or spiritual significance to that hapū or iwi).
- (2) The powers conferred by subclause (1) may be exercised if the NAIT officer has reasonable grounds to believe that evidential material may be destroyed, concealed, altered, damaged, or removed before a decision is taken to grant or refuse the issue of a search warrant.
- (3) The powers conferred by subclause (1) may be exercised until the first of the following occurs:
 - (a) the expiry of 6 hours from when the power is first exercised;
 - (b) the warrant is available for execution at that place or in respect of that vehicle or other thing;
 - (c) the application for a search warrant is refused.
- (4) A person who exercises any power under subclause (1) must, on the request of any person affected by the exercise of the power,—

Part 4—*continued*

- (a) identify himself or herself; and
- (b) advise the person affected of the reason and authority for the exercise of the power.

Seizure of items in plain view

48 Seizure of items in plain view

- (1) A NAIT officer who exercises a search power or who is lawfully in any place as part of his or her duties may seize any item found by the officer or a person assisting in the course of carrying out the search or as a result of observations at that place, if the officer has reasonable grounds to believe that the item could have been seized under—
 - (a) a search warrant that could have been obtained by him or her under this Act; or
 - (b) any other search power exercisable by him or her under this Act.
- (2) If a NAIT officer seizes an item under subclause (1), in circumstances where the officer is not already exercising a search power, the officer may exercise the relevant power conferred by clause 41 in relation to the seizure.

Inspection without warrant

49 Power of entry without warrant for inspection

- (1) At any reasonable time a NAIT officer or a NAIT authorised person may enter and inspect a place without a warrant for the purpose of determining whether or not a person is complying with this Act, regulations made under it, or standards issued under it.
- (2) However, a NAIT officer or a NAIT authorised person must not enter or inspect a dwelling house or marae, or a building associated with a marae, except—
 - (a) with the consent of an occupier; or
 - (b) if a warrant has been issued under clause 34, in compliance with any conditions of the warrant.

Part 4—*continued*

Powers relating to vehicles

50 Stopping vehicles with or without warrant for purposes of search

- (1) A NAIT officer or a NAIT authorised person may stop a vehicle to exercise the power conferred by clause 49.
- (2) A NAIT officer may stop a vehicle to conduct a search under a power to search with a warrant issued under this Act if he or she is satisfied that the warrant has been issued and is in force.

51 Moving vehicle for purpose of search

A NAIT officer or a NAIT authorised person may move a vehicle to another place if he or she finds or stops the vehicle and he or she has lawful authority to search the vehicle, but it is impracticable to do so at that place.

52 Search warrants to enter and search vehicles

If a search warrant is issued authorising the entry and search of a vehicle, the person executing the warrant may enter any place for the purpose of locating and searching the vehicle, where the person has reasonable grounds to believe that the vehicle is in that place.

53 Duty to remain stopped

If a NAIT officer or a NAIT authorised person exercises a power to stop or search a vehicle, the officer or authorised person may require the vehicle to remain stopped for as long as is reasonably necessary for the purposes of the stopping or to undertake the search.

54 Duty to provide information

If a NAIT officer or a NAIT authorised person exercises a power to stop a vehicle, he or she must, immediately after stopping the vehicle,—

- (a) identify himself or herself to the driver of the vehicle, either by name or unique identifier; and

Part 4—*continued*

- (b) inform the driver of the officer's authority to stop the vehicle; and
- (c) produce evidence of his or her identity if the driver requests proof of identity.

Personal search power

55 Power to detain and search

- (1) In the circumstances described in subclause (2), a constable may, with a search warrant,—
 - (a) detain a person for as long as is reasonably necessary to carry out a search of that person; and
 - (b) search the person; and
 - (c) take possession of any information to which subclause (2) applies.
- (2) The circumstances when the powers may be exercised under subclause (1) are as follows:
 - (a) if a constable suspects on reasonable grounds that a person—
 - (i) has knowingly accessed, in breach of this Act, information of a kind referred to in subclause (3)(a) or (b) in the NAIT information system; and
 - (ii) is, or may be, holding that information in either or both electronic format or hard copy; or
 - (b) if a constable has been informed by a NAIT officer or NAIT authorised person who has reason to believe that a person—
 - (i) has knowingly accessed, in breach of this Act, information of a kind referred to in subclause (3)(a) or (b); and
 - (ii) is or may be holding that information in either or both electronic format or hard copy.
- (3) The information to which subclause (2) applies is—
 - (a) personal information (within the meaning of the Privacy Act 1993); and
 - (b) commercially sensitive within the meaning of section 9(2)(b) of the Official Information Act 1982:

Part 4—*continued*

- (4) A person may not be detained and searched under this clause before the constable has—
 - (a) advised the person that the constable proposes to detain and search the person under this clause; and
 - (b) produced evidence of his or her authority to do so (whether or not the constable is in uniform or on duty at the time).
- (5) This clause does not authorise a constable to undertake an internal search of any part of the person's body.
- (6) If a constable takes possession of any information under sub-clause (1), that information must be given without delay to a NAIT officer.
- (7) As soon as is reasonably practicable after detaining and searching a person under this clause, the constable must provide to the Commissioner of Police a written report on the search and the circumstance under which it was conducted.

Computer system searches

56 Duty of persons with knowledge of computer system or other data storage devices to assist access

- (1) In this clause, a **specified person** is a person who—
 - (a) is the owner or lessee of the computer system or other data storage device or is in possession or control of the computer system or other data storage device, an employee of any of the above, or any service provider who provides service to any of the above and holds access information; and
 - (b) has relevant knowledge of—
 - (i) the computer system or other data storage device; or
 - (ii) measures applied to protect data held in, or accessible from, the computer system or other data storage device.
- (2) A person exercising a search power at any place or in respect of any vehicle or other thing may require a specified person to provide access information and other information or assistance

Part 4—*continued*

that is reasonable and necessary to allow the person exercising the search power to access data held in—

- (a) a computer system that is located (in whole or in part) at the place or in the vehicle or other thing being searched;
 - (b) any other data storage device that is located (in whole or in part) at the place or in the vehicle or other thing being searched.
- (3) A specified person may not be required under subclause (2) to give any information tending to incriminate the person.
- (4) Subclause (3) does not prevent a person who is exercising a search power from requiring a specified person to provide information that—
- (a) is reasonable and necessary to allow the person exercising the search power to access data held in, or accessible from, a computer system or other data storage device that—
 - (i) is at the premises or the place or in the vehicle or other thing to be searched; and
 - (ii) contains or may contain information tending to incriminate the specified person; but
 - (b) does not itself tend to incriminate the specified person.
- (5) Subclause (3) does not prevent a person exercising a search power from requiring a specified person to provide assistance that is reasonable and necessary to allow the person exercising the search power to access data held in, or accessible from, a computer system or other data storage device that—
- (a) is at the premises or the place or in the vehicle or other thing concerned; and
 - (b) contains or may contain information tending to incriminate the specified person.
- (6) Subclauses (2), (4), and (5) are subject to Part 5 of this schedule (which relates to privilege and confidentiality).

Part 4—*continued*

Identification and notice requirements

- 57 Identification and notice requirements for person exercising search power (other than remote access search power)**
- (1) A person exercising a search power (other than a remote access search power) must,—
- (a) before initial entry into or onto the place, vehicle, or other thing to be searched,—
 - (i) announce his or her intention to enter and search the place, vehicle, or other thing under a statutory power; and
 - (ii) identify himself or herself; and
 - (b) before or on initial entry into or onto the place, vehicle, or other thing to be searched,—
 - (i) give the occupier of the place or the person in charge of the vehicle or other thing a copy of the search warrant or advice about the enactment (the **authority**) that authorises him or her to conduct the entry and search; and
 - (ii) produce to the occupier of the place or any person in charge of the vehicle or other thing evidence of his or her identity (which may include details of a unique identifier instead of a name).
- (2) The person exercising the search power is not required to comply with subclause (1) if he or she has reasonable grounds to believe that—
- (a) no person is lawfully present in or on the place, vehicle, or other thing to be searched; or
 - (b) compliance with subclause (1)(a) would—
 - (i) endanger the safety of any person; or
 - (ii) prejudice the successful exercise of the entry and search power; or
 - (iii) prejudice ongoing investigations.
- (3) The person exercising the search power may use reasonable force in order to effect entry into or onto the place, vehicle, or other thing if—
- (a) subclause (2) applies; or

Part 4—*continued*

- (b) following a request, the person present refuses entry or does not allow entry within a reasonable time.
- (4) If the occupier of a place is not present at any time during the search, or no person is in charge of the vehicle or other thing during the search, the person carrying out the search must,—
- (a) on completion of the search, leave a copy of the authority referred to in subclause (1)(b)(i) and the notice referred to in subclause (5) in a prominent position at the place, or in or on the vehicle or other thing; or
 - (b) if the requirement of paragraph (a) is not reasonably practicable, provide the copy of the authority referred to in subclause (1)(b)(i) and the notice referred to in subclause (5) to the occupier of the place or the owner of the vehicle or other thing no later than 7 days after the exercise of the power.
- (5) The notice required by subclause (4) is a written notice containing the following particulars:
- (a) the date and time of the commencement and completion of the search;
 - (b) the name or unique identifier of the person who had overall responsibility for that search;
 - (c) the address of the office to which inquiries should be made;
 - (d) if nothing is seized, the fact that nothing was seized;
 - (e) if any thing was seized, the fact that seizure occurred and (if an inventory was not provided at the same time under clauses 59 to 61) that an inventory of the things seized will be provided to the occupier of the place or person in charge of the vehicle or other thing no later than 7 days after the seizure.
- (6) For the purposes of this clause and clauses 59 to 61,—
- (a) the following persons may not be treated as the occupier of the place or the person in charge of a vehicle or other thing:
 - (i) any person who is under 14 years of age (unless clause 27(2) applies to that person):

Part 4—*continued*

- (ii) any person who the person executing the warrant has reasonable grounds to believe is not the occupier of the place or person in charge of the vehicle or other thing:
 - (b) every reference to a copy of the authority referred to in subclause (1)(b)(i) means, in a case where a search is undertaken without a search warrant, written advice about the enactment that authorises the search.
- (7) Subclauses (4) and (5) are subject to clauses 60 and 61.
- (8) This section does not apply to a remote access search.

58 Identifications and notice requirements for remote access search

- (1) A person who conducts a remote access search must, on completion of the search, send an electronic message to the email address of the owner of the thing searched—
- (a) attaching a copy of the search warrant; and
 - (b) setting out the following particulars:
 - (i) the date and time of the commencement and completion of the search;
 - (ii) the name and unique identifier of the person who had overall responsibility for that search;
 - (iii) the address of the office to which inquiries should be made.
- (2) If the person conducting the search is unable to send the electronic message required by subclause (1) (or it is returned undelivered), the person must take all reasonable steps to identify the user of the thing searched and to send the information referred to in subclause (1)(a) and (b) to that person.

59 Inventory of items seized

- (1) The person who carries out a search must, at the time he or she seizes any thing, or as soon as practicable after the seizure of any thing, and in any case not later than 7 days after that seizure, provide to the occupier of the place, or the person in charge of the vehicle or other thing, from which the seizure took place, and to every other person who the person who car-

Part 4—*continued*

ried out the search has reason to believe is the owner of the thing that was seized,—

- (a) written notice specifying what was seized; and
 - (b) a copy of the authority referred to in clause 57(1)(b)(i).
- (2) A written notice referred to in subclause (1)(a)—
- (a) must contain information about the extent to which a person from whom a thing was seized, or the owner of the thing, has a right to apply—
 - (i) to have access to the thing; or
 - (ii) to have access to any document relating to the application for a search warrant or the exercise of any other search power that led to the seizure; and
 - (b) must contain information about the right to bring a claim that any privileged or confidential information has been seized; but
 - (c) need not be provided to the occupier of the place or person in charge of the vehicle or other thing from which the seizure took place if the person who carries out the search is satisfied that none of the items seized are owned by that person.
- (3) If the occupier of the place or person in charge of the vehicle or other thing is not present at the time of seizure, a written notice referred to in subclause (1)(a) and a copy of the authority referred to in clause 57(1)(b)(i) may be provided to that person by leaving the notice in a prominent position at the place, or in or on the vehicle or other thing.
- (4) Subclause (1) is subject to subclauses (2) and (3).
- (5) This clause is subject to clauses 60 and 61.

60 Compliance with certain provisions may be postponed

- (1) The Director-General may apply to the District Court for an order to postpone the obligation to comply with clause 57(4) or (5) or 59 on the grounds that compliance would—
- (a) endanger the safety of any person; or
 - (b) prejudice ongoing investigations.

Part 4—*continued*

- (2) An application may be made under subclause (1),—
 - (a) in the case of an entry and search power that is a search warrant, at the time of the initial application or until the expiry of 7 days after the warrant is finally executed; or
 - (b) in the case of any other entry and search power, until the expiry of 7 days after the search power is exercised.
- (3) On an application under subclause (1), the District Court may make an order to postpone for a specified period not exceeding 12 months the obligation to comply with clause 57(4) or (5) or 59 if the District Court is satisfied that there are reasonable grounds for believing that compliance would—
 - (a) endanger the safety of any person; or
 - (b) prejudice ongoing investigations.

61 Further postponement of, or dispensation from, obligation to comply with certain provisions

- (1) A person who has obtained an order under clause 60(3) may, before the expiry of that order, apply to the District Court for a further order to postpone or dispense with the obligation to comply with clause 57(4) or (5) or 59 on the grounds that compliance would—
 - (a) endanger the safety of any person; or
 - (b) prejudice ongoing investigations.
- (2) An application for a further order to postpone may only be made on 1 occasion.
- (3) On an application under subclause (1), the District Court may—
 - (a) make an order to postpone, for a further specified period not exceeding 12 months, the obligation to comply with clause 57(4) or (5) or 59; or
 - (b) order a permanent dispensation from that obligation.
- (4) The District Court may exercise the discretion under subclause (3) if satisfied that compliance would—
 - (a) endanger the safety of any person; or
 - (b) prejudice ongoing investigations.

Part 4—*continued*

- (5) The District Court may not, under subclause (3), make an order to postpone or dispense with an obligation in respect of anything that has been seized, unless the thing seized is—
- (a) a copy or clone of any information taken or made; or
 - (b) a thing the possession of which by the person from whom it was seized is unlawful under New Zealand law (for example, a controlled drug that is found in the possession of a member of the public in circumstances in which possession by the person of the controlled drug is an offence against the Misuse of Drugs Act 1975).

Part 5

Privilege and confidentiality

62 Recognition of privilege

- (1) The following privileges are recognised for the purposes of this Part:
- (a) legal professional privilege, to the extent that (under section 53(5) of the Evidence Act 2006) it forms part of the general law;
 - (b) privilege for communications with legal advisers (as described in section 54 of the Evidence Act 2006);
 - (c) privilege for preparatory materials for proceedings (as described in section 56 of the Evidence Act 2006);
 - (d) privilege for settlement negotiations or mediation (as described in section 57 of the Evidence Act 2006);
 - (e) privilege for communications with ministers of religion (as described in section 58 of the Evidence Act 2006);
 - (f) privilege in criminal proceedings for information obtained by medical practitioners and clinical psychologists (as described in section 59 of the Evidence Act 2006);
 - (g) to the extent provided in clause 64, and only to that extent, any privilege against self-incrimination (as described in section 60 of the Evidence Act 2006);
 - (h) privilege for informers (as described in section 64 of the Evidence Act 2006):

Part 5—*continued*

- (i) the rights conferred on a journalist under section 68 of the Evidence Act 2006 to protect certain sources.
- (2) For the purposes of this Part, no privilege applies for any communication or information if there is a prima facie case that the communication or information is made or received, or compiled or prepared,—
 - (a) for a dishonest purpose; or
 - (b) to enable or aid any person to commit or plan to commit what the person claiming the privilege knew, or ought reasonably to have known, to be an offence.

63 Lawyers' trust accounts

- (1) Subclause (2) applies to documents that are books of account or accounting records kept—
 - (a) by a solicitor in relation to any trust account money that is subject to section 112 of the Lawyers and Conveyancers Act 2006; or
 - (b) by a nominee company that—
 - (i) is subject to practice rules made by the Council of the New Zealand Law Society under section 96 of the Lawyers and Conveyancers Act 2006; and
 - (ii) is operated by a barrister and solicitor or an incorporated law firm as a nominee for securities and documents of title held for clients.
- (2) The application by clause 62 of section 54 of the Evidence Act 2006 (which relates to the privilege for communications with legal advisers) does not prevent, limit, or affect—
 - (a) the making of a production order, issuing of a search warrant, or exercise of any other search power concerning a document to which this subclause applies; or
 - (b) the obligation to comply with that production order, search warrant, or other search power concerning a document to which this subclause applies; or
 - (c) the admissibility, in a criminal proceeding for an offence described in the production order or search warrant or for an offence concerning which any other search

Part 5—*continued*

power was exercised, of any evidence that relates to the contents of a document obtained under the production order or search warrant, or as the result of the exercise of any other search power.

64 Privilege against self-incrimination

- (1) A production order does not affect the privilege against self-incrimination that an individual may have under section 60 of the Evidence Act 2006.
- (2) Any assertion of a privilege against self-incrimination must be based on section 60 of the Evidence Act 2006.
- (3) If any individual refuses to produce any information or document or to answer any question on the ground that it is a privileged communication under section 60 of the Evidence Act 2006, the NAIT officer concerned may apply to the District Court for an order determining whether or not the claim of privilege is valid.
- (4) For the purposes of determining any application referred to in subclause (3), the individual must offer sufficient evidence to enable the District Court to assess whether self-incrimination is reasonably likely if the individual produced the information or the document or answered the question.
- (5) Section 63 of the Evidence Act 2006 does not apply to a production order.

65 Other privileges

- (1) If any person refuses to disclose any information on the ground that it is privileged under this clause, the Director-General may apply to the District Court for an order determining whether or not the claim of privilege is valid.
- (2) For the purpose of determining any application, the District Court may require the information or document to be produced.
- (3) The District Court must, on the application of the Director-General, disallow a privilege claim under this clause if satis-

Part 5—*continued*

fied that the claim to privilege would, under section 67(1) of the Evidence Act 2006, be disallowed in a proceeding.

66 Effect of privilege on search warrants and search powers
A person who claims privilege in respect of any thing that is seized or sought to be seized has the right, in accordance with clauses 67 to 72,—

- (a) to prevent the search under this Act of any communication or information to which the privilege would apply if it were sought to be disclosed in a proceeding, pending determination of the claim to privilege, and subsequently if the claim to privilege is upheld:
- (b) to require the return of a copy of, or access to, any such communication or information to the person if it is seized or secured by a person exercising a search power, pending determination of the claim to privilege.

67 Search warrants that extend to lawyers' premises or material held by lawyers

- (1) This clause applies to the execution of a search warrant that authorises the search of materials held by a lawyer relating to a client.
- (2) If this clause applies, the search warrant may not be executed unless—
 - (a) the lawyer is present; or
 - (b) a representative of the lawyer is present.
- (3) If the person who is to execute the search warrant is unable to contact the lawyer or his or her representative, that person must instead contact the New Zealand Law Society and request that a person be appointed by the Society to represent the interests of the client of the lawyer in relation to the search.
- (4) Before executing the search warrant, the person who is to execute it must give the lawyer or his or her representative, or any person appointed by the New Zealand Law Society under sub-clause (3),—
 - (a) the opportunity to claim privilege on behalf of the lawyer's client; or

Part 5—*continued*

- (b) the opportunity to make an interim claim of privilege if instructions have not been obtained from the client.

68 Search warrant extending to certain other privileged materials

- (1) This clause applies to the execution of a search warrant that authorises the search of professional material held by a minister of religion, medical practitioner, or clinical psychologist.
- (2) If this clause applies, the search warrant may not be executed unless—
 - (a) the minister of religion, medical practitioner, or clinical psychologist is present; or
 - (b) a representative of that person is present.
- (3) If the person who is to execute the search warrant is unable to contact the minister of religion, medical practitioner, or clinical psychologist, or his or her representative, that person must instead contact the church or professional body to whom the minister, medical practitioner, or clinical psychologist belongs and request the church or body to appoint a person to represent the interests of the parishioners, patients, or clients of the minister, medical practitioner, or clinical psychologist, in relation to the search.
- (4) Before executing the search warrant, the person executing it must give the minister of religion, medical practitioner, or clinical psychologist, or his or her personal representative, or a person appointed by the church or professional body under subclause (3),—
 - (a) the opportunity to claim privilege on behalf of the parishioners, patients, or clients of the minister of religion, medical practitioner, or clinical psychologist; or
 - (b) the opportunity to make an interim claim of privilege if the minister, medical practitioner, or clinical psychologist, or his or her personal representative, or a person appointed under subclause (3), is unable immediately to contact the parishioners, patients, or clients.

Part 5—*continued***69 Searches otherwise affecting privileged materials**

- (1) This clause applies if—
- (a) a person executes a search warrant; and
 - (b) he or she has reasonable grounds to believe that any thing discovered in the search may be the subject of a privilege recognised by this Part.
- (2) If this clause applies, the person responsible for executing the search warrant or exercising the other search power—
- (a) must give any person who he or she believes may be able to claim a privilege recognised by this Part a reasonable opportunity to claim it; and
 - (b) may, if the person executing the search warrant or exercising the other search power is unable to identify or contact a person who may be able to claim a privilege, or that person's lawyer, within a reasonable period,—
 - (i) apply to the District Court for a determination as to the status of the thing; and
 - (ii) do anything necessary to enable the District Court to make that determination.

70 Interim steps pending resolution of privilege claim

If a person executing a search warrant is unable, under clause 61, 67, 68, or 69, to search a thing (whether as a result of the requirements of any of those provisions, or because of a claim of privilege made concerning the thing, or for any other reason), the person—

- (a) may—
 - (i) secure the thing; and
 - (ii) if the thing is intangible (for example, computer data), secure the thing by making a forensic copy; and
 - (iii) deliver the thing, or a copy of it, to the District Court, to enable the determination of a claim to privilege; and
- (b) must supply the lawyer or other person who may or does claim privilege with a copy of, or access to, the secured thing; and

Part 5—*continued*

- (c) must not search the thing secured, unless no claim of privilege is made, a claim of privilege is withdrawn, or the search is in accordance with the directions of the court determining the claim of privilege.

71 Claims for privilege for things seized or sought to be seized

Any person who wishes to claim privilege concerning any thing seized or sought to be seized by a person executing a search warrant or exercising another search power—

- (a) must provide the person responsible for executing the search warrant, or exercising the other search power, with a particularised list of the things for which the privilege is claimed, as soon as practicable after being provided with the opportunity to claim privilege or being advised that a search is to be, is being, or has been conducted, as the case requires; and
- (b) if the thing for which the privilege is claimed cannot be adequately particularised in accordance with paragraph (a), may apply to the District Court for directions or relief (with a copy of the thing provided under clause 70(b)).

72 Admission of evidence

- (1) If the District Court upholds a claim to privilege under clause 64, 65, 69, 70, or 71 concerning any communication or information, the communication or information to which the privilege applies is not admissible in any proceedings arising from, or related to, the execution of the search warrant or exercise of the other search power or surveillance power.
- (2) Subject to subclause (1), this Part does not limit or affect the admissibility of any evidence, or the discretion of any court to admit or refuse to admit any evidence, in any proceedings.

Part 6 Reporting

73 Reporting of exercise of powers within Ministry agency

- (1) A NAIT officer, a NAIT authorised person, or a constable who exercises an entry power or a search power without a warrant must provide a written report on the exercise of that power to the Director-General as soon as practicable after the exercise of the power.
- (2) The report must contain a short summary of the circumstances of the exercise of the power and the reason or reasons why the power needed to be exercised.

74 Annual reporting of search powers

Every annual report prepared by the Director-General for the purposes of section 39 of the Public Finance Act 1989 or any other applicable enactment requiring an annual report to be presented to Parliament, for the period covered by the report, must state the number of occasions on which entry powers (other than searches by consent) were exercised without a warrant.

Part 7 Offences and penalties

Offences other than infringement offences

75 Offences relating to stopping vehicles

- (1) Every person commits an offence who—
 - (a) fails to stop as soon as practicable when required to do so by a NAIT officer exercising a power to stop or search a vehicle; and
 - (b) knows or ought reasonably to know that the person exercising the power is a NAIT officer.
- (2) Every person commits an offence who—
 - (a) fails to comply with a requirement of a NAIT officer under clause 53; and
 - (b) knows or ought reasonably to know that the person imposing the requirement is a NAIT officer.

Part 7—*continued*

- (3) Every person who commits an offence against subclause (1) or (2) is liable on summary conviction to a term of imprisonment not exceeding 3 months.
- (4) Any constable may arrest without warrant any person who the constable has reasonable grounds to suspect has committed an offence against subclause (1) or (2).

76 Offence of failing to carry out obligations in relation to computer system search

Every person commits an offence and is liable on summary conviction to imprisonment for a term not exceeding 3 months who fails, without reasonable excuse, to assist a person exercising a search power when requested to do so under clause 56.

77 Offences relating to exercise of powers

- (1) Every person commits an offence who intentionally—
 - (a) threatens, assaults, obstructs, or hinders a person in the exercise of a power or the performance of a function or duty prescribed by or under this Act:
 - (b) impersonates or falsely represents himself or herself as a NAIT officer or a NAIT authorised person.
- (2) Every person who commits an offence against this clause is liable on summary conviction,—
 - (a) in the case of an individual, to imprisonment for a term not exceeding 6 months or a fine not exceeding \$25,000:
 - (b) in the case of a body corporate, to a fine not exceeding \$50,000.

78 Offences relating to information required by, or held under, this Act

- (1) Every person commits an offence who knowingly provides information that is materially false or misleading to—
 - (a) the NAIT organisation; or
 - (b) a NAIT officer or a NAIT authorised person exercising powers under this Act.

Part 7—*continued*

- (2) A PICA for a NAIT location commits an offence who knowingly provides a materially false or misleading declaration that a NAIT animal consigned for transport or droving has been identified and registered with the NAIT organisation in accordance with this Act.
- (3) Every person commits an offence who, contrary to the provisions of this Act, knowingly accesses, uses, or discloses information on the NAIT information system that is—
 - (a) personal information within the meaning of the Privacy Act 1993; or
 - (b) commercially sensitive within the meaning of section 9(2)(b)(ii) of the Official Information Act 1982.
- (4) Every person commits an offence who, in the circumstances set out in subclause (5),—
 - (a) uses, in the course of business or trade,—
 - (i) the name NAIT organisation; or
 - (ii) any other trading name used by the NAIT organisation; or
 - (iii) a logo, mark, or design that identifies the NAIT organisation; or
 - (b) forms an association using the name NAIT organisation, or any other trading name used by the NAIT organisation.
- (5) The circumstances referred to in subclause (4) are as follows:
 - (a) the action is carried out knowingly and without the prior written approval of the NAIT organisation;
 - (b) the action is carried out in a manner that misleads a person or misleadingly suggests that it was carried out with the approval of the NAIT organisation.
- (6) Every person who commits an offence against this clause is liable on summary conviction,—
 - (a) in the case of an individual, to imprisonment for a term not exceeding 6 months or a fine not exceeding \$25,000;
 - (b) in the case of a body corporate, to a fine not exceeding \$50,000.

Part 7—*continued***79 Obligation to maintain confidentiality**

- (1) This clause applies to NAIT officers and NAIT authorised persons exercising powers or performing functions under this Act.
- (2) A person to whom this clause applies must not disclose any information that comes into the person's knowledge while the person is exercising powers or performing functions under this Act, except—
 - (a) with the consent of the person to whom the information relates; or
 - (b) to the extent that the information is already in the public domain; or
 - (c) to the extent that the information is used for the purposes of, or in connection with, the exercise of powers conferred by this Act; or
 - (d) as provided for, by, or under this Act; or
 - (e) in connection with an investigation or inquiry concerning proceedings for an offence against this Act.
- (3) A person who contravenes subclause (2) commits an offence and is liable on summary conviction,—
 - (a) in the case of an individual, to imprisonment for a term not exceeding 6 months;
 - (b) in the case of a body corporate, to a fine not exceeding \$100,000.

80 Offence of failing to comply with production order

- (1) Every person commits an offence if he or she fails to comply with a production order made under clause 16.
- (2) Every person who commits an offence against subclause (1) is liable on summary conviction,—
 - (a) in the case of an individual, to imprisonment for a term not exceeding 1 year;
 - (b) in the case of a body corporate, to a fine not exceeding \$40,000.

81 False application for production order or search warrant

Every person commits an offence and is liable on summary conviction to imprisonment for a term not exceeding 1 year

Part 7—*continued*

who makes an application for a production order or search warrant that contains any assertion or other statement known by the person to be false.

82 Offences relating to registration and declarations

- (1) Every person commits an offence who—
 - (a) is, or has been determined to be, a PICA for a NAIT location by a NAIT officer; and
 - (b) in breach of section 26 or 27, fails to register as a PICA in accordance with this Act.
- (2) A PICA for a NAIT location commits an offence who fails, unless an exemption applies,—
 - (a) to register a NAIT animal at that location in accordance with this Act:
 - (b) to comply with section 31 in relation to a NAIT animal consigned for transport or droving from a NAIT location registered by the PICA:
 - (c) to comply with section 32 in relation to a NAIT animal that dies, is lost, or is exported live.
- (3) Every person who commits an offence against subclause (1) is liable on summary conviction,—
 - (a) in the case of an individual, to a fine not exceeding \$10,000:
 - (b) in the case of a body corporate, to a fine not exceeding \$20,000.
- (4) Every person who commits an offence against subclause (2) is liable on summary conviction,—
 - (a) in the case of an individual, to a fine—
 - (i) not exceeding \$10,000; or
 - (ii) not exceeding \$1,000 for each animal to which the offence relates, up to a maximum of \$10,000:
 - (b) in the case of a body corporate, to a fine—
 - (i) not exceeding \$20,000; or
 - (ii) not exceeding \$2,000 for each animal to which the offence relates, up to a maximum of \$20,000.

Part 7—*continued***83 Offences relating to fitting NAIT devices**

- (1) A PICA for a NAIT location commits an offence who, contrary to the requirements prescribed by regulations made under this Act,—
- (a) fails to fit a NAIT device to a NAIT animal born in that location, before the animal is first moved from the location or within the time specified in regulations made under this Act, whichever is the sooner, unless an exemption applies:
 - (b) in a case where a NAIT device is lost or becomes detached from a NAIT animal in that location, before the animal is moved from that location, fails—
 - (i) to apply a replacement device; and
 - (ii) to reregister that animal:
 - (c) fits a NAIT device prescribed for 1 species or sub-group of species to an animal of another species or sub-group of species:
 - (d) unless an exemption applies, when a NAIT animal arrives at that location without a NAIT device, fails either to—
 - (i) return the animal to the PICA who consigned the animal to the location; or
 - (ii) fit a replacement device on the animal and reregister it in the manner, and within the time, specified in regulations made under this Act.
- (2) Every person who commits an offence against subclause (1) is liable on summary conviction,—
- (a) in the case of an individual, to a fine—
 - (i) not exceeding \$10,000; or
 - (ii) not exceeding \$1,000 for each device to which the offence relates, up to a maximum of \$10,000:
 - (b) in the case of a body corporate, to a fine—
 - (i) not exceeding \$20,000; or
 - (ii) not exceeding \$2,000 for each device to which the offence relates, up to a maximum of \$20,000.

Part 7—*continued***84 Offences relating to alteration, removal, reuse, and supply of NAIT devices**

- (1) Every person commits an offence who—
 - (a) alters or defaces a NAIT device:
 - (b) unless the person is, or has been authorised by, a NAIT officer or a NAIT authorised person, removes a NAIT device from a live animal:
 - (c) fits on a NAIT animal (whether dead or alive) a NAIT device removed from another NAIT animal, whether dead or alive:
 - (d) manufactures or supplies a device that does not comply with the requirements of regulations made, or standards issued, under this Act, while purporting that it is a NAIT device:
 - (e) without the prior written approval of the NAIT organisation, sells or trades a NAIT device supplied by a manufacturer or importer of NAIT devices:
 - (f) without the prior written approval of the NAIT organisation, reuses, sells, or trades a radio frequency identification device component extracted from a NAIT device.
- (2) Every person who commits an offence against subclause (1) is liable on summary conviction,—
 - (a) in the case of an individual, to a fine—
 - (i) not exceeding \$10,000; or
 - (ii) not exceeding \$1,000 for each device to which the offence relates, up to a maximum of \$10,000:
 - (b) in the case of a body corporate, to a fine—
 - (i) not exceeding \$20,000; or
 - (ii) not exceeding \$2,000 for each device to which the offence relates, up to a maximum of \$20,000.
- (3) There is no offence under subclause (1)(b) in the case of removal of a NAIT device at, or immediately before, slaughter.

Part 7—*continued***85 Offence of failing to comply with directions**

- (1) Every person commits an offence who fails to comply with directions given by a NAIT officer or a NAIT authorised person under—
 - (a) clause 2; or
 - (b) clause 5.
- (2) Every person who commits an offence against subclause (1) is liable on summary conviction,—
 - (a) in the case of an individual, to a fine not exceeding \$10,000; or
 - (b) in the case of a body corporate, to a fine not exceeding \$20,000.

Infringement offences

86 Offences that may be proceeded with by way of infringement notice

- (1) This section applies when a person is alleged to have committed an infringement offence.
- (2) Proceedings may be taken against a person by serving an infringement notice on the person under clause 87.
- (3) If an infringement notice is served,—
 - (a) proceedings for an offence may be commenced in accordance with section 21 of the Summary Proceedings Act 1957; and
 - (b) section 21 of that Act applies with the necessary modifications.
- (4) In this clause and clauses 87 to 89,—

infringement fee, in relation to an infringement offence, means the amount prescribed by regulations made under this Act to be payable for the offence

infringement offence means an offence that is declared, by regulations made under section 69, to be an infringement offence for the purposes of this Act.

Part 7—*continued***87 Service and cancellation of infringement notices**

- (1) An infringement notice may be served on a person if a NAIT officer or a NAIT authorised person—
 - (a) observes the person committing an infringement offence; or
 - (b) reasonably believes that the person is committing an infringement offence; or
 - (c) reasonably believes that the person has committed an infringement offence.
- (2) An infringement notice may be cancelled by a NAIT officer or a NAIT authorised person if—
 - (a) the interests of justice require cancellation; and
 - (b) neither the particulars of a reminder notice nor a notice of hearing relating to the infringement notice has been filed in the District Court.
- (3) An infringement notice is cancelled by the service of a cancellation notice.
- (4) An infringement notice or a cancellation notice may be served by a NAIT officer or a NAIT authorised person personally delivering it to the person alleged to have committed the infringement offence, though a different NAIT officer from the one who issued the notice may deliver the notice and the notice served may be a copy.
- (5) Alternatively, an infringement notice or a cancellation notice may be served by post addressed to,—
 - (a) if the person is a natural person,—
 - (i) the address of the person's last-known place of residence; or
 - (ii) the address on the person's driver licence; or
 - (iii) the person's address on the latest electoral roll; or
 - (iv) the person's last-known registered address, if the person has or has had a registered address for any purpose; or
 - (v) the person's address in the latest telephone directory; or
 - (vi) the address of the person's last-known place of business; or

Part 7—*continued*

- (b) if the person is not a natural person,—
 - (i) the person's last-known registered address, if the person has or has had a registered address for any purpose; or
 - (ii) the person's address in the latest telephone directory; or
 - (iii) the address of the person's last-known place of business.
- (6) For the purposes of the Summary Proceedings Act 1957, an infringement notice or a cancellation notice served under subclause (5) is treated as having been served on the person at the time when it was posted.

88 Form of infringement notice

- (1) An infringement notice must be in the form prescribed by regulations made under section 69.
- (2) The prescribed form must contain the following details:
 - (a) sufficient information for the person served with the notice of the time, place, and nature of the alleged infringement offence; and
 - (b) the amount of the infringement fee prescribed for the infringement offence; and
 - (c) the time within which the infringement fee must be paid; and
 - (d) the address of the place at which the infringement fee must be paid; and
 - (e) a statement of the person's right to ask for a hearing; and
 - (f) a statement of the person's right to ask for cancellation of the notice; and
 - (g) a statement of what will happen if the person does not pay the infringement fee or ask for a hearing or for cancellation of the notice; and
 - (h) a summary of the provisions of section 21(10) of the Summary Proceedings Act 1957.

Part 7—*continued***89 Payment of infringement fees**

All infringement fees paid for infringement offences must be paid to the Ministry.

General provisions applying to offences under
Act**90 Period within which information must be laid**

An information for any offence against this Act must be laid within 2 years after the time when the matter giving rise to the information first became known, or should have become known, to the Ministry or the NAIT organisation.

91 Liability of body corporate

- (1) This clause applies when—
 - (a) a body corporate is charged with an offence against this Act; and
 - (b) for the purpose of the prosecution, it is necessary to establish the body corporate's state of mind.
- (2) It is sufficient to show that a director, an employee, or an agent of the body corporate, acting within the scope of his or her actual or apparent authority, had the state of mind.

92 Liability of principals and agents

- (1) Subclause (2) applies if an offence is committed against this Act by a person (**person A**) acting as the agent or employee of another (**person B**).
- (2) Person B is liable for the offence as if person B had personally committed it, if it is proved that person B—
 - (a) authorised, permitted, or consented to the act constituting the offence; or
 - (b) knew the offence was, or was to be, committed and failed to take all reasonable steps to prevent or stop it.
- (3) Subclause (2) does not prejudice the liability of person A.

Part 7—*continued***93 Liability of director or manager of body corporate**

If a body corporate is convicted of an offence against this Act, a director or manager of the body corporate is also guilty of the offence if it is proved that the director or manager—

- (a) authorised, permitted, consented, or participated in the act or omission that constituted the offence; or
- (b) knew, or could reasonably be expected to have known, that the offence was to be, or was being committed and failed to take all practicable steps to prevent or stop it.

94 Defences must be notified to prosecutor

(1) In a prosecution for an offence against clause 82, 83, 84, or 85, it is a defence if the defendant proves—

- (a) that the defendant took all reasonable steps to avoid committing the offence; or
- (b) that the act or omission constituting the offence—
 - (i) took place in circumstances of an adverse event or an emergency; and
 - (ii) was necessary for the preservation, protection, or maintenance of animal or human life or for animal welfare purposes.

(2) A defence is available only if the defendant provides to the prosecutor a written notice—

- (a) stating that the defendant intends to rely on a defence under subclause (1); and
- (b) specifying, as relevant,—
 - (i) for a defence under subclause (1)(a), the reasonable steps that the defendant claims to have taken;
 - (ii) for a defence under subclause (1)(b), the circumstances of an adverse event or emergency and the reasons why the act or omission was necessary for the preservation, protection, or maintenance of animal or human life or for animal welfare purposes.

(3) A notice given under subclause (2) must be provided to the prosecutor—

Part 7—*continued*

- (a) not later than 7 working days after the summons has been served on the defendant; or
- (b) with the leave of the court, any further time that the court allows.

95 Evidence in proceedings

- (1) In proceedings for an offence against this Act, a certificate or document that purports to be signed by the Director-General or delegate stating that a named person was, at the specified date or period, a NAIT officer or a NAIT authorised person—
 - (a) is admissible in evidence; and
 - (b) unless the contrary is proved, is sufficient evidence of the contents of the certificate or document.
- (2) A certificate or document referred to in subclause (1) includes an electronic copy of the certificate or document.

96 Service of orders or notices

- (1) If an order or a notice is to be given to a person for the purposes of this Act, it may be given—
 - (a) by delivering it personally to the person; or
 - (b) by delivering it at the usual or last-known place of residence or business of the person, including by fax or by electronic mail; or
 - (c) by sending it by prepaid post addressed to the person at the usual or last-known place of residence or business of the person.
- (2) If an order or a notice is to be served on a body corporate for the purposes of this Act, service on an officer of the body corporate or on the registered office of the body corporate in accordance with subclause (1) is deemed to be service on the body corporate.
- (3) If an order or a notice is to be served on a partnership for the purposes of this Act, service on any one of the partners in accordance with subclause (1) or (2) is deemed to be service on the partnership.

Part 7—continued

- (4) If an order or a notice is sent by post to a person in accordance with subclause (1)(c), the order or notice 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.
 - (5) This clause is subject to any other provision of this Act that provides differently for the service of orders or notices.
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Schedule 3

s 70(2)

**Provisions applying where material is
incorporated by reference in regulations
made under section 70**

- 1 Incorporation of material by reference in regulations or standards**
 - (1) Material incorporated by reference in regulations or standards made under this Act may be incorporated—
 - (a) in whole or in part; and
 - (b) with modifications, additions, or variations specified in the regulations or standards.
 - (2) The material incorporated by reference has legal effect as part of the regulations or standards.

- 2 Effect of amendments to, replacement of, and expiry of, material incorporated by reference**
 - (1) An amendment to, or replacement of, existing material incorporated by reference into regulations or standards made under this Act has legal effect as part of the regulations or standards only if the regulations or standards—
 - (a) provide that a reference to that particular existing material includes a reference to the material as subsequently amended or replaced; or
 - (b) are amended to refer to the material as amended or replaced.
 - (2) If material that is incorporated by reference expires or ceases to have effect, and is not replaced, the material continues to have effect for the purpose of the regulations or standards unless or until the regulations or standards are amended in a way that means the material is no longer incorporated by reference.

- 3 Proof of material incorporated by reference**
 - (1) A copy of material incorporated by reference in regulations or standards made under this Act, including any amendment to or replacement of the material, must be—
 - (a) certified as a correct copy of the material by the chief executive of the Ministry or, in the case of standards

- made by the NAIT organisation, by the chief executive of that organisation; and
- (b) retained by the chief executive of the Ministry or of the NAIT organisation, as the case requires.
- (2) The production in proceedings of a certified copy of the material is, in the absence of evidence to the contrary, sufficient evidence of the incorporation of the material in the regulations or standards.

4 Requirement to consult

- (1) Subclause (2) does not apply if, in relation to particular material (including amendment or replacement material) proposed to be incorporated by reference into regulations or standards made under this Act,—
- (a) the material would amend or replace existing material incorporated by reference, and the regulations or standards provide that references to that existing material include references to any amendment to or replacement of the material; or
 - (b) the Minister is satisfied that the NAIT organisation already uses, or has been adequately consulted on, the material proposed to be incorporated by reference.
- (2) Before regulations or standards are made that incorporate material by reference (including amendment or replacement material), the chief executive of the Ministry must—
- (a) make copies of the material available for inspection during working hours for a reasonable period, free of charge, at the head office of the Ministry or of the NAIT organisation, as the case requires; and
 - (b) ensure that copies of the material are available for purchase; and
 - (c) give notice in the *Gazette* of where and when the material may be inspected free of charge, and how it may be purchased; and
 - (d) allow a reasonable opportunity for persons to comment on the proposal to incorporate the material by reference; and
 - (e) consider any comments made.

- (3) Subclause (2) applies to the chief executive of the NAIT organisation in the case of standards made by that organisation.
- (4) A failure to comply with subclause (2) does not invalidate regulations or standards that incorporate material by reference.

5 Access to material incorporated by reference

- (1) The chief executive of the Ministry or of the NAIT organisation, as the case requires,—
 - (a) must make any material that is incorporated by reference into regulations or standards made under this Act available for inspection at the head office of the Ministry or of the NAIT organisation, as the case requires, during working hours, free of charge; and
 - (b) must ensure that copies of the material are available for purchase; and
 - (c) may make copies of the material available in any other way that the chief executive considers appropriate (for example, on an Internet site); and
 - (d) must give notice in the *Gazette*—
 - (i) stating that the material is incorporated in the regulations or standards and giving the date on which they were made; and
 - (ii) setting out where and when the material may be inspected free of charge, and how it may be purchased.
- (2) A failure to comply with subclause (1) does not invalidate the regulations or standards that incorporate the material by reference.

6 Acts and Regulations Publication Act 1989 not applicable to material incorporated by reference

The Acts and Regulations Publication Act 1989 does not apply to material incorporated by reference in regulations.

7 Application of Regulations (Disallowance) Act 1989

- (1) Nothing in section 4 of the Regulations (Disallowance) Act 1989 requires material that is incorporated by reference in regulations or standards made under this Act to be presented to the House of Representatives.

- (2) The Regulations (Disallowance) Act 1989, apart from the modification to the application of section 4 of the Act made by subclause (1), applies to regulations.
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Schedule 4

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Enactments amended**Animal Products Act 1999 (1999 No 93)**

Section 161(5)(a)(viiiia): repeal and substitute:

“(viiiia) the National Animal Identification and Tracing Act 2012.”.

Ombudsmen Act 1975 (1975 No 9)

Part 2 of Schedule 1: insert the following in its appropriate alphabetical order:

“National Animal Identification and Tracing Organisation”.

Wild Animal Control Act 1977 (1977 No 111)Section 2(1): definition of **wild animal**: omit “an identification system registered under section 3 of the Animal Identification Act 1993” from paragraph (a)(iii)(B) and substitute “an animal identification device approved under the National Animal Identification and Tracing Act 2012”.

Section 9(2)(d)(i): repeal and substitute:

“(i) approved under the National Animal Identification and Tracing Act 2012; or”.

Section 12(2): omit “the branding thereof as provided for pursuant to section 3 of the Animal Identification Act 1993” and substitute “the identification of it under the National Animal Identification and Tracing Act 2012”.

Section 12A(8): omit “registered under section 3 of the Animal Identification Act 1993” and substitute “approved under the National Animal Identification and Tracing Act 2012”.

Section 12B(4): omit “registered under section 3 of the Animal Identification Act 1993” and substitute “approved under the National Animal Identification and Tracing Act 2012”.

Legislative history

9 December 2010	Introduction (Bill 268–1)
14 December 2010	First reading and referral to Primary Production Committee
13 July 2011	Reported from Primary Production Committee (Bill 268–2)
6 September 2011	Second reading
7 February 2012	Committee of the whole House (Bill 268–3)
15 February 2012	Third reading
20 February 2012	Royal assent

This Act is administered by the Ministry of Agriculture and Forestry.
