



**ROAD TRANSPORT FORUM NEW ZEALAND INC  
National Livestock Transport and Safety Group  
SUBMISSION  
ON  
National Animal Identification and Tracing  
Amendment Bill (No 2)**

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## **SUBMISSION BY RTFNZ NATIONAL LIVESTOCK TRANSPORT AND SAFETY GROUP ON THE NATIONAL ANIMAL IDENTIFICATION AND TRACING AMENDMENT BILL (No 2)**

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### **1.0 Road Transport Forum New Zealand**

1.1 Road Transport Forum New Zealand (RTF) is a nationwide organisation representing the road transport industry. The Forum provides services to and public policy advocacy for its affiliated members who comprise owner-drivers, fleet operators and international corporates engaged in freight and logistics.

1.2 The Forum's Constituent Associations include:

- National Road Carriers (Inc)
- Road Transport Associations NZ (Inc)
- NZ Trucking Association

1.3 The Forum provides secretariat services to the National Livestock Transport and Safety Group (NLT&SG). The NLT&SG represents the interests of approximately 95 percent of the commercial livestock transport industry, comprising approximately 280 companies operating 2,600 livestock transport vehicles.

1.4 Following the release of the National Animal Identification and Tracing Amendment Bill (No 2) (**the Bill**), the NLT&SG Chair convened meetings in each of New Zealand's regions to discuss National Animal Identification and Tracing (NAIT) with commercial livestock transporters. The meetings were attended by the majority of commercial livestock transport fleet operators.

1.5 The outcome of those meetings was that NLT&SG would like the Select Committee to consider the following:

- The commercial livestock transport industry is willing to provide solutions to improve the National Animal Identification and Tracing (NAIT) regime
- Livestock transporters continue to be excluded from responsibilities for the NAIT regime

- The person in day-to-day charge of a NAIT animal (PICA) be made more responsible for NAIT's efficacy
- OSPRI play a greater role monitoring NAIT
- Greater effort be put into enforcing NAIT

1.6 The comments in this submission are made with the intention to ensure the betterment of NAIT, as well as New Zealand's biosecurity and trading reputation.

### **Preliminary comments**

1.7 NAIT is a regime designed by the farmers for farmers.

1.8 The commercial livestock transport sector is united in the desire for New Zealand's biosecurity system to improve. NAIT can function optimally without livestock transporters having responsibility for ensuring animals are within the NAIT system.

1.9 The commercial livestock transport sector's dismayed reaction to the Bill's proposals was predictable and understandable. Since its inception NAIT has failed to achieve what it was set up to do – provide traceability of certain farm animals. To counter that, the reaction has been to question and amend NAIT's structure, rather than address the source issues, which in our view are, PICAs abandoning their responsibilities, a lack of enforcement and poor oversight of NAIT. These are what threaten New Zealand's biosecurity and reputation.

1.10 It took the Mycoplasma bovis outbreak to highlight NAIT's failure. Now that has been done, it is only sensible to look at fixing those failures. We don't believe the Bill in its current form does that. PICAs appear to be given a free pass, to the detriment of livestock transporters. Including livestock transporters in NAIT will not improve livestock tracing and tracking because the fundamental NAIT issues that have caused it to fail in the past, will remain.

- 1.11 The Bill proposals don't tackle the flaws in the NAIT system and livestock transporters sense more of the same behaviour that has pervaded and undermined NAIT and other livestock related regulations will continue to prevail.
- 1.12 In the 2018 NAIT discussion document<sup>1</sup>, it was stated that proposed changes to the NAIT Act and regulations had to be "*practical and, to the greatest possible extent, farmer-friendly*"<sup>2</sup>. Those principles have been incorporated into the Bill and that attitude undermines the biosecurity system.
- 1.13 We believe there is nothing practical about regulators expecting livestock transporters to compensate for PICAs that are not meeting their biosecurity obligations. It is not practical to make it easy for the very group of people that have unwound the integrity of the NAIT system to continue to do so. Making the system "farmer friendly" will not address NAIT's flaws. It will only perpetuate them.
- 1.14 We acknowledge that there are many farmers/PICAs that have worked earnestly and diligently to improve New Zealand's biosecurity system. While they manage themselves and work to comply to make NAIT successful, there are PICAs who have knowingly undermined NAIT. No business person enjoys working on an uneven field. The "farmer friendly" policy creates exactly that.
- 1.15 The general public must be looking at the handling of NAIT and wondering why members of the farming community have been allowed to act with disregard for New Zealand's biosecurity resilience. The investment of over \$700 million taxpayer dollars to eradicate disease spread created by apathetic and unapologetic farming sector members has raised very obvious questions about New Zealand's biosecurity.

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<sup>1</sup> <https://www.mpi.govt.nz/news-and-resources/consultations/proposed-changes-to-the-national-animal-identification-and-tracing-act-and-regulations/>

<sup>2</sup> Page 2. <https://www.mpi.govt.nz/news-and-resources/consultations/proposed-changes-to-the-national-animal-identification-and-tracing-act-and-regulations/>

## **Foreword**

2.0 There are a number of comments made in the Bill's introduction<sup>3</sup>. The most relevant to this submission are:

- I *This Bill makes changes to the National Animal Identification and Tracing Act 2012 (the Act). It makes improvements to the framework governing the national animal identification and tracing system (NAIT), to provide for the rapid and accurate tracing of animals and their movements that enables biosecurity management and manages risks to human health.*
- II *The Bill also addresses issues identified during the biosecurity response to the cattle disease *Mycoplasma bovis*, to enhance traceability and ensure that the legislation is fit for the future.*
- III *The fundamental model of the current NAIT system is not being changed. Persons in charge of NAIT animals (PICAs) are responsible for tagging and registering their animals and recording all their off-farm movements.*
- IV *To incentivise compliance with the scheme, the Bill provides for the location history of an animal to be available to a purchaser.*
- V *It also brings the penalty regime into line with the related penalty caps and infringement fees in the Biosecurity Act 1993 and Animal Products Act 1999. It will also become an offence to transport an untagged animal that does not have an exemption.*
- VI *Section 10(1)(a)(x) requires the NAIT organisation to develop and implement a national operations plan. That provision is amended to require the plan to specify performance measures for the NAIT organisation and to specify how the NAIT organisation's activities will be independently audited against those measures.*

2.1 Since NAIT's inception, the accurate tracing of livestock has confounded New Zealand's biosecurity system. The original NAIT concept was very simple. Farmers were to tag livestock, register them,

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<sup>3</sup> Page 1

and then advise when those animals left the farm so their movements could be traced. Transporters were excluded from the regime.

2.2 OSPRI were to oversee compliance and manage the database.

2.3 The important question is how effective with the Act amendments be in changing behaviour for the better? It is important to note that livestock transporters have been involved in a range of enterprises designed to positively change behaviour in the farming community. Including but not limited to:

- The National Stock Effluent Working Group. Formed in 1999 with the purpose of attempting to reduce effluent being spilled on to roads. Livestock transporters voluntarily fitted effluent catchment tanks to their vehicles. Councils were to install effluent dump sites in their regions. Farmers were to adequately stand stock so they could empty out before being transported to reduce volume of waste discharged onto trucks. To date only livestock transporters have met those obligations. Farmer behaviour in this respect has not significantly changed for the better.
- Implementation of the young calf regulations. The young calf mortality rate has dropped significantly since the regulations were implemented. PICAs continue to serve up a number of unfit calves for transport. It is only that they are rejected at pick up that the mortality rate has reduced. PICA behaviour is not changing fast enough.
- Animal Welfare regulations. In 2018 the Care and Surgical Procedures welfare regulations were implemented. The objective was to change PICA behaviour and have them present only fit livestock for transport. PICAs continue to present unfit livestock for transport and have them rejected. PICA behaviour has not significantly improved here either.

### **Purpose of the Bill**

3.0 The Bill's purpose is to change behaviour. In each of the cases above, the only noticeable change and resultant improvements have been implemented by the transport sector. PICAs have been allowed to act

with impunity for years and proposing to make transporters responsible for double checking PICAs are complying<sup>4</sup> does nothing to improve behaviour.

- 3.1 Transporters are prepared to assist improve the NAIT system. They are just not prepared to continue to shoulder the burden when clearly PICAs have primary responsibility, with oversight from OSPRI and the Ministry for Primary Industries (MPI). New Zealand biosecurity cannot afford for PICAs to shirk their NAIT responsibilities.
- 3.2 This is especially so, given the legislation change that means livestock transporters will be issued infringements for carting untagged livestock, when clearly no untagged livestock should ever be presented for transport. For untagged livestock to be presented for transport:
  - a) A farmer/PICA must have raised an animal and made the conscious decision not to NAIT tag that animal; or
  - b) A PICA must have received an untagged animal and not tagged it afterwards; or
  - c) The tag must have fallen out following fitment and prior to loading.
- 3.3 For an untagged animal to be presented for transport, there would be a large measure of intentional behaviour by the PICA. Admittedly, there will be a fine for that PICA if the untagged transport is detected. We do not believe the proposed magnitude of that fine is great enough to change behaviour and is more an undesirable continuation of the “farmer friendly” attitude.
- 3.4 Of the last two bullet points raised in para 2.3 above, the question not being asked is: What happens to livestock when they are rejected for transport? Are they receiving the care they deserve once they have been left behind and is the regulator aware this is happening? We will

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<sup>4</sup> Proposed clause 31A. Obligation on person who moves NAIT animals According to this, a transporter may be penalised if they transport untagged livestock.

return to this later, as this is very relevant to the livestock transporters position of remaining excluded from NAIT.

**Penalty**

- 3.4 The fine quantum suggested is \$400. The proposal is the fine should be the same for PICA, or transporter.
- 3.5 We oppose transporters that transport untagged livestock being infringed. We contend that the fine for PICAs presenting untagged livestock should be much higher, to ensure a change in behaviour.
- 3.6 Regulation 31A and others like it, including the penalty schedule, should be amended to remove livestock transporters from any culpability for transporting untagged livestock.
- 3.7 The regulations and penalty scheme should also be amended to introduce a similar quantum of fine for livestock recipients that do not report they have received untagged livestock.
- 3.8 The reality is, as stated above, for an untagged animal to be transported, a PICA must have knowingly presented that uncompliant animal for transport. That PICA would have spent time and had considerable contact with that animal(s) during rearing and before selecting, drafting, penning and checking condition for transport. By comparison the transporter would spend a fraction of that time assessing its health and fitness to transport, often in arduous conditions that are not conducive to picking up every welfare nuance an animal may have, let alone detecting a small tag inconsistently fitted to either of an animal's ears, in often differing positions, bobbing about and obscured from view while the animal is running onto a transport conveyance. There is also no way transporters could, or should be expected to know if PICAs have forwarded NAIT information.
- 3.9 Animals are inspected during transport to ensure they are still in reasonable condition to travel. Visually checking for tags during that phase is an impossibility, given stocking densities and load platform

layout. Livestock when reaching their destination are then unloaded as quickly as possible and left to the receiver to check their condition and compliance.

- 3.10 We believe mens rea culpability applies when PICAs present untagged livestock for transport. This means, there is a “guilty mind” presenting livestock for transport versus an innocent and unwitting transporter with limited time to assess livestock and transport them. It would be derelict of any judicial system to infringe an innocent being criminalised by someone knowing they are acting lawlessly.
- 3.11 There will be rare occasions that tags might fall off animals when they are being transported. Those animals will be easily identified in those cases and if necessary, the tag and animal reunited with each other, or identified and matched accordingly.

### **Penalty magnitude**

- 3.12 As stated above, transporters should not be fined for transporting untagged livestock. However, sending PICAs should. So should receiving PICAs, if they do not inform NAIT they have received untagged livestock.
- 3.13 The magnitude of penalty is always a difficult discussion and is one that the Transport Minister is grappling with in terms of changing behaviour of drivers using and being distracted by cell phones while driving. Some OECD nations have considerably higher penalties than New Zealand and that is cited for the significantly lower incidence of cell phone use in their jurisdictions.
- 3.14 The proposed \$400 fine should be increased. We are aware that MPI intends to fine PICAs that amount for each untagged animal transported.
- 3.15 Erroneous or false declarations under section 154N of the Biosecurity Act 1993 are strict liability offences. The penalty for a false declaration is a \$400 infringement fee. However, the consequences for making a

deliberate incorrect or false declaration carries much higher penalties - in some cases up to \$100,000. It would be unreasonable to expect PICAs presenting untagged livestock be liable for the upper penalty quantum - unless their behaviour is to such extent that is deserved. A penalty of \$800-\$1200 per untagged animal presented for transport should help shift behaviour in a positive manner.

### **Responsibility**

- 3.16 In (I) above (para 2.0) the premise is that NAIT amendments will *"provide for the rapid and accurate tracing of animals and their movements"*. In (III) the Bill writers state that *"persons in charge of NAIT animals (PICAs) are responsible for tagging and registering their animals and recording all their off-farm movements"*.
- 3.17 Livestock tracing is the sole responsibility of livestock senders and receivers. If PICAs do as required, the system will function as expected.
- 3.18 The glaring question is "how will the regulator know if untagged livestock exist in the NAIT ecosystem?"
- 3.19 This brings us back to our earlier comment in para 3.4 regarding livestock that have been rejected by livestock transporters for welfare reasons. The regulator has no idea about the condition or number of livestock being rejected by transporters. PICAs do, and there is no doubt that a number of those animals are not being sufficiently cared for after being rejected. There are many examples where unfit livestock have been rejected for transport and then shortly after re-presented. Some PICAs ask a different transporter to come back to cart those unfit livestock. However, the livestock industry is at a much greater level of maturity than those PICAs and in most cases those same animals are concurrently rejected. MPI is aware this is happening.

### **Maturity**

- 3.20 Policy makers believe the transport industry has evolved that maturity as a result of the infringements and penalties imposed via

related legislation. That however is not the case. The livestock transport industry is driven by a genuine desire to “do the right thing”. The best example of that is the Care and Surgical Procedures regulations. Prior to their implementation, the livestock transport sector engaged MPI to present to workshops the NLT&SG had set up throughout New Zealand’s regions. Those workshops were very well attended with more than 95 percent of commercial transport operators attending. That educative process was the cornerstone for the change in transporters behaviour when assessing livestock for transport. It was supported by constant and continual dissemination of related material and the creation of additional electronic and hard copy collateral. The farming community held no workshops and the level of education was by comparison non-existent. It should be noted the transport industry implored MPI to conduct workshops for farmers/PICAs but unfortunately, the regulator did not.

- 3.21 The salient point is that livestock transporters willingly chose to change their behaviour. Willing compliance created through understanding and desire to improve, has far greater merit than imposing legislation without supporting educative and transformational process.
- 3.22 Policy makers neglect the fundamental premise that PICAs have total responsibility for ensuring the efficacy of the NAIT system.
- 3.23 If PICA compliance is to be improved, an educative programme for farmers/PICAs should be embarked on. That does not mean we do not also support an infringement or penalty regime as undoubtedly, there will be a belligerent few that defy compliance.
- 3.24 The point that also seems to evade policy makers is how PICA performance and improvement will be monitored. Defiant and neglectful PICAs will continue to fly under the radar under the current proposals. The regulator will have no idea how many animals will be presented or transported untagged. Addressing that can be achieved

by ensuring receiving PICAs notify NAIT if untagged livestock are received.

- 3.25 We recommend adding a more definitive statement regarding this in the proposals. The most obvious place to introduce that would be at proposed regulations 31A or 32A and would state that PICAs receiving untagged livestock and failing to report that would be penalised similarly to those that have sent untagged livestock.
- 3.26 Livestock transporters do not tag livestock, send NAIT information, or trace animal movements. That is the PICA's, OSPRI's and MPI's responsibility<sup>5</sup>. Incorporating transporters into the NAIT regime only encourages those recidivist PICAs to continue to abandon their responsibilities with impunity. Transporters should remain excluded from NAIT. Their inclusion is unnecessary and seems an objective of expediency and convenience rather than policy or enforcement purity.

### **Welfare system**

- 4.0 Policy makers have looked to animal welfare regulations and the reductions in welfare issues and have concluded a similar model will improve the NAIT system. There are significant differences between the animal welfare and NAIT systems.
- 4.1 The animal welfare system uses processing plants for monitoring and enforcement purposes. Very few spontaneous on farm visits/audits are made by the regulator. That level of activity needs to be increased and has been suggested many times to MPI.
- 4.2 The *Mycoplasma bovis* outbreak has been a precursor for changing NAIT. That disease was not spread across New Zealand by transporting livestock to slaughter. The rapid spread was resultant of farm-to-farm,

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<sup>5</sup> Which is clearly stated multiple times by the Minister and proposed legislation.

or farm-to-saleyard-to-farm movements. i.e. movements not involving the processing industry.

- 4.3 The regulator has drawn attention to the significant reductions in young calf mortality rate while being transported for processing and of reductions in animal welfare cases being noted at processing plants. Figures and information relating to farm-to-farm, or farm-to-saleyard-to-farm (i.e. any movement that does not have a processing plant in the loop) animal movements are not recorded and are not monitored to the same degree. That is the pitfall NAIT faces. That is where the major biosecurity risk lies.
- 4.4 Attempting to have transporters compensate for PICA non-compliance fails to address the issue at its source. If the issue is not addressed at source it will remain. Introducing transporters into the mix only places a small band aid over a large wound. PICAs must be more responsible and perform their roles as originally intended. That is exactly what is stated in the Bill's introduction as highlighted in (III, para 2.0) above. Behaviour must be changed at source and can only be achieved through voluntary and willing desire with punitive consequences as backup.
- 4.5 Policy makers ignore the example set by the 2018 Care and Surgical procedures regulations. Presenters of unfit livestock with pre-existing conditions are held responsible, not the transporter. Presenting an untagged animal is a similar situation. It is the PICA's responsibility to ensure their livestock are fit for transport. Clearly, untagged animals being presented for transport are not fit by biosecurity standards to be transported.
- 4.6 NAIT policy should reflect animal welfare policy in this respect. Untagged animals should be treated as animals with pre-existing conditions, with the PICA being held responsible for presenting them for transport.

### **Contract and Commercial Law Act (2017)**

- 4.7 Sections 261-273 of the Contract and Commercial Law Act Act imply into every contract of carriage a statutory warranty by contracting parties as to the condition of the goods, including that the goods are fit to be carried and stored in accordance with the contract.
- 4.8 Presenters of goods are responsible for the condition of those goods prior to transport. There is onus on the transporter to check those goods prior to transport. However, the transporter is not held responsible if any action on the presenter's behalf made those goods unsuitable for transport, or if those goods or their packaging had pre-existing conditions making them unsuitable for transport.
- 4.9 The same context applies to untagged livestock being presented for transport. The onus should be wholly on the presenter.

### **Defence**

- 5.0 If Government remain unconvinced that NAIT system responsibility lies primarily with sending and receiving PICAs and wishes to continue to seek to include transporters in the system the livestock transport industry would seek to explore the defence mechanism discussed in the Minister's Cabinet Paper<sup>6</sup>.
- 5.1 We must reiterate, PICAs should not be presenting untagged livestock for transport and PICAs that receive untagged livestock should be reporting that. Transporters will seek to protect themselves by having PICAs complete an indemnifying form to accompany livestock while being transported.
- 5.2 That form would state that livestock presented are NAIT compliant. Livestock would not be moved until transporters had that signed form in their possession. It makes sense to make PICAs responsible for

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<sup>6</sup> National Animal Identification and Tracing (NAIT) legislative amendments: Policy approvals- SUB19-0026

providing that form. Transporters, before commencing their journey to collect livestock would ensure the form will be available and had been signed.

## **CONCLUSION**

- 6.0 The NAIT scheme is of critical importance to New Zealand's biosecurity and trading reputation. It is crucial that it functions and performs beyond reproach.
- 6.1 The commercial livestock transport sector is united in its desire for NAIT to improve. That can be achieved without transporter liability. NAIT participants and those with oversight of the regime must take complete responsibility for its efficacy.
- 6.2 We do not support suggestions that transporters check livestock for tags and be fined for transporting untagged animals. Fining transporters for PICA oversight is unjust. Making them accountable will not change PICA non-compliance.
- 6.3 For an untagged animal to be presented the PICA must have made the conscious decision not to tag and intentionally present that animal. Even after drafting and inspecting for readiness for transport.
- 6.4 Other regulations recognise animals with pre-existing conditions are the presenter's fault. The same should apply with NAIT. Not tagging an animal should be considered a pre-existing condition.
- 6.5 We do not believe it is justified to penalise an innocent person that has been incriminated by someone with mischievous intent.
- 6.6 The original NAIT designers quite rightly saw that PICAs and OSPRI were wholly responsible for the system. That their performance has been so manifestly underwhelming should not be the reason to attempt

to incorporate transport operators that are in effect, unrelated third parties to livestock tracing and tracking.

- 6.7 NAIT principles are simple. PICAs tag livestock, register them and advise when they are moved. Livestock transporters do not tag livestock, send NAIT information, or trace animal movements. The Bill makes it abundantly clear that is the PICA's and OSPRI's responsibility. Attempting to incorporate transporters into the NAIT regime only encourages recidivist PICAs to continue to abandon their responsibilities with impunity.
- 6.8 Existing NAIT issues will not be resolved until underperforming PICAs are dealt with accordingly.
- 6.9 The Bill proposals require further amendment to place greater responsibility on PICAs receiving untagged livestock. When that occurs PICAs should be informing NAIT. Failure to do so should incur a penalty of similar magnitude to those that send untagged livestock.
- 6.10 The infringement regime requires bolstering to change non-compliance. We recommend increasing the infringement penalty to a quantum that signals the importance of complying with New Zealand's biosecurity requirements and protecting New Zealand's trading reputation.
- 6.11 Two recent models of success are the care and surgical procedures and young calf regulations. Their introduction has significantly improved animal welfare outcomes. Compliance is picked up at the processing stage. Disease spread is naturally contained by that process. The real NAIT and disease spread threat is with livestock being sent farm-to-farm or farm-to-saleyard-to-farm.
- 6.12 There is minimal oversight on those movements and transactions. The regulator must be more determined to monitor and enforce that.

- 6.13 The Bill proposals should focus on improving PICA, OSPRI and MPI performance when it comes to NAIT.
- 6.14 An earnest education process should also be embarked on to convey the importance of complying, and inform the penalties and ramifications of non-compliance, with NAIT.
- 6.15 We welcome the opportunity to discuss our submission further. We wish to present to the Select Committee in person on this.