

The GIA and the Biosecurity Act

The Biosecurity Act 1993 (the Act) was revised in 2012 to make provision for the Government Industry Agreement for biosecurity readiness and response and the GIA Deed. Part 5A of the Act (sections 100X-100ZH) provides a framework to enable the GIA partnership for biosecurity readiness and response. This is to be achieved through joint decision making on activities and joint funding that take into account the public and private benefits that are delivered by the agreed activities.

Agreement is made between the Director-General of the Ministry for Primary Industries and one or more industry organisations by way of a Deed. The agreement may or may not include an Operational Agreement.

Terms and Definitions

Section 100Y provides definitions of terms used in the Act for readiness and response activities under GIA.

Of particular importance are definitions of a 'sector' and 'industry organisation' that can enter into the agreement. Section 100Y also outlines the scope of activities in relation to an unwanted organism and provisions for ceasing activities or transitioning to some other arrangement.

Response activity ends when the unwanted organism is:

1. Eradicated; or
2. Transitioned to long term management; or
3. No further action is appropriate.

The Deed

The Act outlines a number of provisions that may be included in a GIA. They include:

- The unwanted organisms that will be the focus of readiness or response activities
- The activities the parties agree to undertake
- Joint decision making on readiness and response activities to be undertaken
- The sharing of costs for these activities including the proportions of costs, the methods for paying cost shares and whether a fiscal cap will be set
- The variation of compensation provisions in section 162A of the Act subject to agreement of the Director-General under certain circumstances
- How signatories will engage on issues relating to parts of the biosecurity system other than response and readiness
- Anything else the signatories agree to.

Signing up to the Deed

The Biosecurity Act requires an industry organisation that wishes to sign the GIA Deed to demonstrate that its members support it doing so.

This mandate is established by satisfying the Minister for Primary Industries that the organisation adequately represents the interests of industry participants. Industry organisations must demonstrate that they have sufficient mandate to make decisions and commit resources on behalf of the industry they represent. Matters that will be considered by the Minister include that:

- The organisation is a body corporate and is accountable to its members.

- The businesses that comprise the sector are entitled to become members of the industry organisation.
- The organisation represents a sufficiently large and representative portion of the sector.
- The organisation has consulted the businesses within the sector on specific matters and has given due regard to the views as expressed during the consultation.
- The organisation must have arrangements in place to fund its commitments under the agreement or an adequate plan for doing so.

If satisfied, the Minister will publish a notice in the Gazette stating that the organisation represents the sector in the GIA.

Some specific considerations relevant to mandate include:

- The nature of consultation with the affected sector
- The proposal to become a party
- How the sector's views will be represented by the organisation during joint decision-making
- Proposed funding arrangements to meet Deed commitments
- Views expressed during consultation
- Whether businesses can become a member of the organisation that is to be the member
- The proportion of businesses that are members of the organisation
- The accountability of the organisation executive to its members.

Establishing and operating a biosecurity levy

What is a biosecurity readiness or response levy and how do I go about setting one up?

A Biosecurity Act GIA levy can be imposed by the Governor-General at the recommendation of the Minister to fund all or some of an industry organisations commitments to the GIA.

It can only be imposed on a sector specified in the Gazette notice, unless the Minister is satisfied that:

1. the persons outside a sector are represented by a Deed signatory and are likely to benefit from the activities funded by the levy, and the costs of paying the levy are not disproportionate to the benefits they are likely to receive,
- or
2. the levy is the most effective and efficient means of collecting funds from the organisation's sector and it is not practicable to exclude individuals from the levy. These individuals are likely to receive benefits from the funded activities and that the costs of paying the levy are not disproportionate to the benefits they are likely to receive.

The Minister cannot recommend a levy unless satisfied that proposed levy payers have been consulted and their views taken into account. Note that the Act allows for consultation undertaken by an industry organisation for the purposes of entering into a GIA and for establishing a levy to be undertaken together.

How does a levy work?

A readiness or response levy can be paid to the Director-General of MPI or to the industry organisation (the payee). If paid to the industry organisation, it is to enable the organisation to meet its GIA commitments. These provisions are described in section 100ZC of the Act.

If a levy is established, its payment is compulsory and legal action can be taken to recover unpaid levies.

What needs to be included in an application for a readiness or response levy order?

A readiness or response levy order must specify a number of things. These are described in section 100ZD of the Act and include:

- How the levy may be spent
- Who must pay it
- How the levy amount is set
- The rate of the levy including whether there is a single or multiple rates, what multiple rates apply to, the maximum rate(s) and how the rate is set by the payee to ensure the industry organisation meets its commitments, and how they are notified
- When and how the levy must be paid
- Who is responsible for collecting the levy
- What fees are paid for collecting the levy, including whether a collection fee is allowable, what the fee is and how it is set
- How compliance with the levy order will be determined including accounting, recording and reporting requirements of the levy collection, payer and the payee and the retention of records
- How disputes over who pays the levy and how much they pay will be resolved, including procedures to appoint arbitrators, arbitration processes, payment of arbitrators and arbitration costs, rights of appeal, appeal procedures and their governance and any other matters relating to dispute resolution
- Remuneration of auditors

It may further specify:

1. Repayments to be made to the payee to help determine the amounts of levy payable
2. The circumstances and conditions for extensions of time to pay the levy
3. Alternative ways of paying the levy
4. Penalties for non, part or late payment
5. Use of a trust account for levy payments

The levy rate can be set at zero.

How are funds held?

There are requirements for levy payments that are held in trust accounts. These are outlined in section 100ZE of the Act.

How can I be sure my levy money is safe?

The Minister can appoint an auditor at the request of the payee. Section 100ZF of the Act outlines the scope and purpose of a levy compliance audit and who can or cannot conduct the audit.