

FORUM DISCUSSION PAPER

Establishing cost shares and fiscal caps

July 2014

Correction: Comments on this paper are due to the GIA Secretariat on 22 August, not 26 August as originally stated in the table on page 3. This file has been amended to reflect the correct date.

Recommendations

Participants of the GIA Biosecurity Forum 2014/II are asked to:

- a. **NOTE** guidance developed by the Financial Arrangements Joint Working Group (JWG) as a framework and principles for establishing cost shares and fiscal caps.
- b. **NOTE** that this guidance is to assist with the negotiation of cost shares and fiscal caps consistent with the GIA Deed and the decision of the Biosecurity Forum 2014/I that any guidance developed should seek to find an appropriate balance between enabling consistency and flexibility.

In the lead up to the Forum, participants are requested to:

- c. **REVIEW** the frameworks for establishing cost shares and fiscal caps (Attachments 1-3) and provide any feedback to the Secretariat (secretariat@gia.org.nz) by Friday, 22 August 2014.
- d. **CONSIDER** the issues arising that the JWG has elicited from its work and provide comments in the feedback form, along with any other issues you are concerned about.

A feedback form (Attachment 4) has been created to assist you. Feedback will be consolidated and discussed at the GIA Biosecurity Forum 2014/II on 4 September 2014.

Background

The Financial Arrangements (JWG) was established by agreement of the GIA Biosecurity Forum 2014/I to provide guidance to Deed Signatories to assist negotiation of cost-shares and fiscal caps consistent with their Deed rights and obligations.

The GIA Financial Arrangement JWG terms of reference can be viewed on the GIA website <http://www.gia.org.nz/Activities/Finance-JWG>.

The JWG has developed:

- (i) GIA financial arrangements framework - *A three-tier guidance framework*
- (ii) Framework for determining cost shares - *Principles that will inform impact analysis and cost share negotiations*
- (iii) Framework for determining fiscal caps - *Guidance for determining fiscal caps*

Additional comment from the TDGG

The Transitional Deed Governance Group (TDGG) has reviewed the frameworks and principles. It notes the work that has been completed and recommends that the principles be adopted as the basis for negotiating cost shares and fiscal caps.

Cost sharing is a fundamental component for GIA activities, and the TDGG understands that the financial arrangements area comes with much debate. One such area of debate is on how much definition can be given to assist Deed signatories to follow a process that will result in consistent application of the principles, versus having guidance supporting material available to assist in the negotiation.

The TDGG acknowledges that the JWG has gone as far as it is able to at this point. To progress this work the TDGG supports the next steps in this paper. The guidance will be tested with the Interim Fruit Fly Council (IFFC). This experience will determine if the principles are sufficient for parties to negotiate beneficiary cost shares in a fair and equitable manner, or if additional guidance and tools are required.

The JWG listed several issues of concern in this paper. The TDGG will seek advice on solutions from participants at the GIA Biosecurity Forum 2014/II.

The TDGG thanks the members of the JWG for their commitment to this piece of work.

Issues arising

Issues impacting the effective implementation of Deed financial arrangements have been collated and provided to the TDGG for its consideration of actions to address them. They include:

- (i) Whether the application of the 50% cap by government will impact MPI's cost:benefit analysis and therefore MPI's willingness to participate in a response
- (ii) Whether and under what circumstances industry can access powers of the Biosecurity Act 1993 to implement a response that MPI may choose not to participate in
- (iii) What rights and/or obligations do industries have that are impacted by a response but not harmed by the unwanted organism eliciting the response? How are they taken into account in impact/beneficiary analysis, cost shares, decision-making?
- (iv) Establishing clear guidance on the intent and application of 'good faith' in clause 5.1.13 of the Deed including:
 - . The circumstances under which Signatories can elect not to participate in readiness or response activities where evidence indicates that they would benefit
 - . What, if any, actions could be taken to compel participation in actions directed in an Operational Agreement (OA)
 - . What actions, if any, would be taken to recoup costs from Signatory beneficiaries, taking into account the considerations of the JWG that developed the Deed
- (v) What happens if government and affected industries agree to undertake a response but they cannot agree a cost share?
- (vi) There is a need to capture who is responsible for response costs in a situation where an unwanted organism is in or associated with recently imported goods that have cleared the border
- (vii) What happens if a relatively small sector disagrees with a particular action or response or decision that others agree to? Under the Deed consensus is required, which could derail the majority.

- (viii) What happens if an industry reaches its fiscal cap and doesn't want to continue while a majority of industries do want to continue – if that industry will continue to benefit shouldn't they continue to pay?
- (ix) Direct impacts are caused directly by the organism. The treatment of indirect impacts (impacts that are not caused directly by the organism, such as loss of employment) needs further work.

Next steps

The JWG considers that to determine the value of the guidance it should be tested for real pests, using real data, and establish cost shares that are binding by agreement of potentially affected parties in an OA.

It is proposing additional actions in the lead up to the Forum and in parallel with the consultation process on this discussion paper. The Interim Fruit Fly Council (IFFC) is intending to test the guidance for four species of fruit fly and agree a cost share in their draft OA. Other sectors may also seek to test the cost share guidance for significant unwanted organisms that are likely to be the subject of an OA, such as foot and mouth disease and equine influenza.

Outcomes of testing will be presented at the Forum, including any suggestions for improving the guidance.

Additional guidance may be developed by the JWG as a result of testing. This should be documented by the Secretariat and posted on the website by agreement of the TDGG.

Guidance on splitting industry cost-share across multiple industry beneficiaries still needs to be developed and this remains an outstanding action. It will be informed by IFFC testing.

Date	Proposed actions
Late-July 2014	Forum Discussion Paper 'Establishing cost shares and fiscal caps' sent to (potential) Signatories
July/August 2014	Cost share guidance to be tested through the IFFC
22 August 2014	Comments on Forum Discussion Paper due to the GIA Secretariat
04 September 2014	GIA Biosecurity Forum 2014/II – financial arrangements section <ul style="list-style-type: none"> · Present the frameworks · Discuss feedback on paper · Reflect on the outcomes of testing · Agree what work is required post Forum
Post Forum 2014/II	<ol style="list-style-type: none"> 1. Capture experiences from establishing cost shares and revise guidance as appropriate 2. Develop guidance for establishing industry cost share splits

Attachments

- Attachment 1 GIA financial arrangements framework
- Attachment 2 Framework for determining cost shares
- Attachment 3 Framework for determining fiscal caps
- Attachment 4 Feedback form – establishing cost shares and fiscal caps Forum Discussion Paper

GIA financial arrangements framework

Early in its meetings the JWG agreed a framework for developing guidance on GIA financial arrangements.

The framework in Table 1 takes into account the position agreed at the Biosecurity Forum 2014/I that any guidance developed should seek to find an appropriate balance between enabling consistency and flexibility. The JWG endorsed a three-tier guidance framework, in which:

- Tier 1 - Is a preamble that identified the policy provisions of the Deed and captures their intent
- Tier 2 - Uses principles to interpret the Deed policy for common understanding between (potential) Signatories
- Tier 3 – Lists processes, tools and other resources to assist implementation in line with the principles

Table 1



Framework for developing guidance on GIA financial arrangements

Three key areas central to developing guidance on GIA financial arrangements are *policy*, *guidance* and *process*.

The table below captures what resources will be needed in each area and why. Any *guidance*, in the form of principles, will relate back to the Deed *policy* and any *process* or tools developed will tie back to the *guidance*.

Industry and MPI delegates at the GIA Biosecurity Forum 2014/I recognised that any guidance developed should seek to find an appropriate balance between enabling consistency and allowing flexibility.

	Components of each section	Why section is needed
<div style="border: 1px solid blue; background-color: #4a86e8; color: white; padding: 10px; text-align: center; margin-bottom: 10px;"> Policy (The what) </div> <div style="text-align: center; margin-bottom: 10px;"> </div>	<ul style="list-style-type: none"> • The GIA Deed will underpin how cost shares and fiscal caps will be determined • The cost shares or fiscal caps will ultimately be applied to operational agreements. • Specific elements will be agreed/negotiated based on the guidance and process below. 	<ul style="list-style-type: none"> • The GIA Deed is a formal contract between MPI and industry – signatories are bound by the clauses within the Deed. • By signing the Deed each party agrees to act in good faith and has a moral obligation to honour commitments within the Deed.
<div style="border: 1px solid blue; background-color: #4a86e8; color: white; padding: 10px; text-align: center; margin-bottom: 10px;"> Guidance (Principles – interpreting the Deed) </div> <div style="text-align: center; margin-bottom: 10px;"> </div>	<ul style="list-style-type: none"> • Principles will be used to interpret the GIA Deed. • A framework sufficient enough for MPI and industry to negotiate operational agreements is required. • The agreed principles will be taken into account each time cost shares and fiscal caps are determined. 	<ul style="list-style-type: none"> • Agreed guidance will allow a common understanding between signatories and potential signatories. • Guidance should consider: <ul style="list-style-type: none"> ○ Consistency ○ Flexibility ○ Transparency ○ Equity
<div style="border: 1px solid blue; background-color: #4a86e8; color: white; padding: 10px; text-align: center;"> Process (The doing/how) </div>	<ul style="list-style-type: none"> • Resources will help signatories determine cost shares or fiscal caps. These are likely to include: <ul style="list-style-type: none"> ○ Methods ○ Standards ○ Tools: <ul style="list-style-type: none"> ▪ decision tree with criteria ▪ process map with guidance ▪ spreadsheets 	<ul style="list-style-type: none"> • The process developed will help signatories negotiate and agree cost shares or fiscal caps. • The resources available should allow MPI and industry to use the simplest approach where appropriate. • Offers options and flexibility as there may be more than one way of calculating cost shares/fiscal caps.

Endorsed by the GIA financial arrangements joint working group (JWG). Refer JWG Meeting 3 minutes, May 2014.

Framework for determining cost shares

The proposed framework in [Table 2](#) includes principles that provide guidance to Deed Signatories as they negotiate cost shares for readiness and response activities under the GIA Deed.

They are intended to provide a consistent and fair approach to assist negotiation of the cost share splits between government and industries that are impacted by an unwanted organism. They build on the draft principles considered by potential Signatories at the GIA Biosecurity Forum 2014/I in March 2014.

The approach to establishing cost shares, as far as practicable, should:

- Be perceived as fair by all funding parties
- Be based on a sound, well-explained rationale
- Treat like parties consistently (unless strong reasons are articulated for different treatment)
- Limit the extent of 'free riding' by any party, and

The JWG has not yet developed guidance for splitting cost shares between industries impacted by the same pest. However, this should be informed by this framework and assisted by any support tools developed.

Table 2



Framework for determining cost shares

Policy (The what)

The Government Industry Agreement for Biosecurity Readiness and Response Deed (the Deed), together with the Biosecurity Act 1993, provide for cost sharing of biosecurity readiness and response activities undertaken by Deed Signatories and recorded in an Operational Agreement (OA).

The Deed describes the principles and higher level policies for determining the shares of costs that parties to an OA contribute. This includes proportioning cost, taking into account the proportion of benefit that accrues to each beneficiary, and setting out boundaries and conditions for calculating and applying cost shares. The Glossary defines a number of terms and concepts that are applicable to the Deed, including beneficiary and cost sharing.

Minimum commitments are not eligible for cost sharing.

Guidance (Principles – interpreting the Deed)

1. Cost share processes and outcomes are transparent and treat all Deed Signatories consistently unless strong reasons are articulated for different treatment.
2. Cost share guidance is applied in an equitable manner to all Deed Signatories and implies the same treatment to Signatories in an identical situation.
3. The calculation of the proportion of public and industry benefit is determined in accordance with the scenario described in clause 5.1.8 of the Deed.
4. The simplest workable approach should be used to achieve an agreed cost share.
5. The impact assessment needs to be detailed enough to determine beneficiary cost shares for all material beneficiaries, including any non-signatories.
6. A benefit is defined as the avoided, delayed or reduced impact of an unwanted organism. The impacts include:
 - Increased costs of managing the unwanted organism
 - Additional costs of production
 - Production losses
 - Costs of creating new production systems
 - Environmental
 - Social/cultural including human health

- Macroeconomic
 - Market demand
 - Market access including preferred access from pest freedom status
7. Impact is assessed against the unwanted organism and expressed in terms of impact avoided.
 8. Industry beneficiaries are identified and agreed with reference to the impact assessment.
 9. Signatories have the right of reply where they are assessed as a beneficiary.
 10. The total industry cost share is derived from the industry impacts identified in the assessment.
 11. Standard criteria for assessing impacts are applied consistently.
 12. When assessing the impact of a new unwanted organism, any current biosecurity practices that incidentally reduce its impact are not a shareable cost.
 13. Economic and non-economic parameters are considered in defining both public and industry benefits.
 14. Determining the public benefits of avoiding macro- and regional-economic impacts will use existing Government policy as a guide.
 15. Direct and indirect impacts of an unwanted organism are considered in the impact assessment.
 16. New information will be used to trigger a review of cost shares if the OA Signatories agree.

Process (The doing/how)

Tools to assist negotiating cost shares may be developed. These may include:

- Standard criteria that form the basis for assessing the impacts of unwanted organisms and defining benefit
- A template to assist with collating data needs

Framework for determining a fiscal cap

The framework for determining a fiscal cap applies the three-tier guidance framework to interpret the relevant Deed provisions through a set of principles. The proposed principles in Table 3 were derived from the draft principles considered by potential Signatories at the Biosecurity Forum 2014/1 in March 2014.

In reviewing the draft principles the JWG agreed that a fiscal cap is pest-specific and is set by an industry consistent with the expected impact an organism might have and how much an industry is prepared to invest to avoid or mitigate that impact. The JWG also agreed that setting a fiscal cap should be simple. For this reason the JWG did not wish to set a fiscal cap as a proportion of industry value, due to inherent difficulties and inconsistencies in determining it e.g. Should value consider export earnings, value adding from any processing, be limited to reflect farm gate value etc.

Framework for determining fiscal caps

Policy (The what)

The Government Industry Agreement for Biosecurity Readiness and Response Deed (the Deed) provides for industry Signatories to set a limit on their funding liabilities for cost-shared biosecurity readiness and response activities undertaken by Deed Signatories and recorded in an Operational Agreement (OA).

A fiscal cap will allow response decision-makers from industry Signatories to make commitments on behalf of their sector to the fiscal cap amount without further consultation. The fiscal cap may be used as a trigger to allow an industry to determine whether they support funding a response past their cap.

Guidance (Principles – interpreting the Deed)

1. A fiscal cap will only apply to response.
2. It will be set by the OA Signatories.
3. Each OA has its own fiscal cap.
4. It will be expressed as a dollar (NZD) amount.
5. The fiscal cap must be sufficient to ensure the OA it applies to can be fully funded.
6. Fiscal caps will be listed in the relevant OAs and will not be covered by any confidentiality agreements.
7. Industry Deed Signatories should define a fiscal cap for each of its priority unwanted organisms using an estimate of the indicative response costs for each organism.
8. Government's share of funding is within MPI financial appropriations.
9. A fiscal cap may be reviewed on the basis of new information.

Process (The doing/how)

Tools to assist with setting fiscal caps may include:

- A template to assist with collating data needs
- A cost calculator tool to assist the assessment of response costs for priority pests

Feedback form – establishing cost shares and fiscal caps Forum Discussion Paper

[Please use this form to guide your comments that are to be submitted to the GIA Secretariat by **22 August 2014** secretariat@gia.org.nz]

Category	Comments
1. The proposed framework for developing guidance on GIA financial arrangements	
2. The principles for determining cost shares under the GIA	
3. The principles for determining a fiscal cap	
Issues outstanding	
Next Steps	