



## **Signing the Deed**

**A support pack for industry organisations considering  
signing the GIA Deed**

**June 2014 – Version 2**

**This version replaces the version dated May 2014.**

**Changes, other than minor editorial alterations, are noted at the beginning  
of each section in a red box.**

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## INTRODUCTION

### Changes to previous version:

- **Minor wording changes to clarify legislative requirements in first bullet point**
- **Comment on industry organisations' internal processes added as final bullet point**

This information pack provides industry organisations with information and advice about the requirements for signing the Government Industry Agreement for Biosecurity Readiness and Response Deed (the Deed).

It draws on legislation and experience to date to enable industry organisations to have confidence they are following a process that will result in Ministerial approval.

It has been prepared by the GIA Secretariat and the Ministry for Primary Industries (MPI).

From experience to date of this process, MPI has observed that:

- The legislative requirements specify what industry organisation must consult on, but they do not preclude industry organisations using the processes and methods that work best for their sector, provided they can also satisfy the Minister that they meet the eligibility criteria
- Industry organisations should discuss with MPI their eligibility as early as possible and what they need to do to demonstrate it to the Minister, and should keep connected to MPI as their engagement with sector participants progresses
- Even apparently minor changes or additions to an application at a late stage can have significant implications, such as requiring additional consultation and delaying ministerial approval, so it is very important to have full and frank discussions throughout the consultation and application process
- The process is necessary to protect sector participants and their nominated representatives, who may be called on to make decisions on readiness and response actions under the Deed that will bind the sector to action and investment
- The process also helps industry organisations clarify with their sector the authority that their representatives have to make decisions and to define the boundaries or limits of that authority
- It is important that early on in the process industry explore and confirm their internal processes and requirements to ensure they have the necessary authority to enter into the Deed.

## THE PROCESS

### Changes to previous version:

- Consultation requirements clarified in list item 3
- Comment on industry organisations' internal processes added in list item 6

The Industry decision tree for signing the Deed (see Appendix 1) outlines the process industry organisations will need to go through to: determine if they want to sign the Deed; gain the support of their sector for signing the Deed; and demonstrate to the Minister for Primary Industries that they are eligible to sign the Deed.

Very briefly, the steps an industry organisation must go through to sign the Deed are:

1. Establish that GIA is likely to be of value to the members of the sector (eg, kiwifruit, avocados, pork) it is seeking to represent (see Establishing value, page 5)
2. Ensure the organisation can meet the definition of an industry organisation under the Biosecurity Act 1993 (see Eligibility requirements, page 8)
3. Consult the members of the sector (including individuals and businesses) that will be represented by the organisation - this is likely to include but not necessarily be limited to the organisation's own members on (see Consultation requirements on page 10):
  - The proposal to sign GIA
  - How the sector's views will be represented during joint decision-making
  - How the organisation's commitments under the agreement will be funded
4. Make an application to the Minister for Primary Industries that demonstrates that the organisation adequately represents the interests of sector participants, that it has their mandate to sign the Deed, and that it meets the other eligibility requirements outlined in the Biosecurity Act 1993 (see Application to the Minister, page 12)
5. If the Minister agrees that the organisation meets the statutory requirements, MPI will arrange for a confirmation notice to be published in the New Zealand Gazette (see Signing the Deed, page 13)
6. Once this notice is published and the organisation has completed the necessary internal steps to obtain authority, the organisation can sign the GIA Deed (see Signing the Deed, page 13)

## ESTABLISHING VALUE

Taking part in GIA is not a decision that can be made lightly, as signing the Deed has legal and financial implications. Industry organisations must also be able to demonstrate they have the support of sector participants to sign the Deed. Establishing the value to the sector of signing up to GIA will help with gaining the support of sector participants.

### What the Deed offers primary industries

At a high level, the Deed offers industry a formal role, alongside MPI, in making decisions about biosecurity readiness and response activities. It also offers greater opportunity for discussion between industry and MPI about the actions that they each can take across the wider biosecurity system (pre-border, border control, readiness and response, and pest management) to improve biosecurity outcomes.

Specific benefits will be different for each industry, according to their interests, biosecurity risks, priorities and current level of engagement and investment.

### Minimum commitments

The minimum commitments an industry organisation makes to deliver the Deed outcomes are outlined in clause 3.2 of the Deed. Understanding how these apply to your organisation will affect your analysis of the costs and benefits of signing.

#### Clause 3.2 of the GIA Deed: Commitments

3.2.1 **Minimum commitments for all Signatories** to achieve Deed outcomes include:

- a. Maintaining access to technical biosecurity capacity and capability.
- b. Maintaining or improving the capacity to recognise and rapidly report the detection of any unwanted organism.
- c. Promoting awareness and use of mechanisms to report changes in New Zealand's biosecurity status.
- d. Establishing and maintaining mechanisms to communicate between Signatories and with relevant stakeholders.
- e. Securing and maintaining sufficient resources to meet their commitments for the administration of this Deed including annual meetings, consultation and decision-making.
- f. Establishing or accessing the necessary capacity and capability to engage in processes to implement this Deed, and any Operational Agreements developed.

3.2.2 **Minimum MPI commitments** to this Deed and its implementation include:

- a. Maintaining a core competency to deliver effective response and readiness activities, including diagnostic and investigation capability, and to negotiate market access.
- b. Rapidly notifying potentially affected Signatories when a suspected unwanted organism is detected in New Zealand.
- c. Urgently establishing preliminary response arrangements consistent with Deed requirements and any Operational Agreements that may be in place, including initiating decision-making, cost sharing and impact/risk analysis processes.
- d. Managing trade and market access issues arising from the detection of the unwanted organism, and meeting international reporting obligations.
- e. Representing the interests of non-Signatories and other stakeholders, including Maori.
- f. Facilitating access for industry Signatories to Crown loans, as a last resort, to fund response commitments under this Deed.

- 3.2.3 **Minimum industry Signatory commitments** to this Deed and its implementation include:
- a. Being aware of the industry biosecurity risk profile and taking measures to manage the biosecurity risks that industry is best placed to manage.
  - b. Communicating with industry membership, including Maori, on biosecurity in general to elicit better biosecurity outcomes.
  - c. Working with MPI to integrate industry into response delivery programmes and processes.
  - d. Raising awareness of response arrangements described in the MPI response procedures and policies.
  - e. Promoting early reporting of unwanted organisms to MPI.
  - f. Securing appropriately skilled and committed people to engage in readiness and response activities, including technical and operational experts.
  - g. Raising awareness within their membership, of the GIA and the commitments that have been made through this Deed and any Operational Agreement(s).

## Business Case guidance

[A guide for developing the GIA business case](#) has been developed by the GIA Secretariat that may help you through the process of assessing whether the Deed is of value to your sector. It prompts thinking around:

- How important biosecurity is to your sector
- What risk a biosecurity incident poses to your sector and how it would impact business growth and/or profitability
- How much your sector is investing in biosecurity activities already, and why
- The biosecurity risks that your sector is most concerned about, where they are and how likely they are to arrive in NZ
- How would your sector respond to them and minimise the impact they have on the sector and its participants
- How important it is to your sector to have a say in how biosecurity risks are managed

## Discussion questions

Questions to help your organisation and sector participants discuss the potential value of signing the Deed include:

- Is biosecurity important to your industry?
  - Are there biosecurity threats that could severely impact your industry, were they to enter New Zealand and become established?
  - How do good biosecurity practices reduce the impact of pests and diseases on production, productivity and export market access?
- Is biosecurity a business risk?
  - Is prevention cheaper than managing the effects of a pest or diseases?
  - How would an incursion affect your industry's growth plans or potential?
  - What would it cost you, your community and your industry if you were affected by a major or minor biosecurity incursion?
  - What will be the effects of an incursion on-farm (eg, increased spraying requirements) and off-farm (eg, reduced market access for your products)?
- What value do you get from your current investment?
  - What are you currently spending? What are you spending it on?

- Does your industry feel the right decisions are being made about its biosecurity risks?
  - Would partnering with government through the GIA improve decision making?
- What is the value to your organisation of the opportunities the Deed offers?
  - Joint decision-making
  - Early involvement in response
  - Engagement in the wider biosecurity system
  - Identifying new and emerging risks
  - Joint investment and leverage of co-contribution to readiness
  - More effective response and more transparent transition
- Will your organisation be able to gain mandate from your industry sector to sign the GIA? Will it be able to put in place the necessary financial arrangements to support your involvement?

### **Supporting resources**

*GIA explained – a support pack for industry communicators* includes information about GIA and factsheets that will help inform discussions with sector participants. Of particular interest will be the factsheet that outlines how biosecurity will change for primary industries under the GIA.

You can also make use of the information on the GIA website: [www.gia.org.nz](http://www.gia.org.nz)

## ELIGIBILITY REQUIREMENTS

The Biosecurity Act 1993 contains the requirements that must be met for an industry organisation to sign the Deed.

The five core requirements, which are outlined in s 100ZA, are:

1. Legal entity: an eligible industry organisation needs to be a body corporate
2. Sector representation: the industry organisation must be able to demonstrate it represents the interests of the sector it wishes to represent
3. Funding arrangements: arrangements for meeting the organisation's cost sharing commitments must be evident – an adequate plan to fund those commitments may suffice
4. Consultation: the eligible industry organisation needs to adequately consult the sector organisations and individuals they wish to represent. The consultation must cover:
  - the proposal that the organisation become a party to the agreement; and
  - the way in which it is proposed that the sector's views will be represented by the organisation during joint decision-making under the agreement
  - the arrangements proposed to fund the organisation's commitments under the agreement
5. Sector feedback: the organisation must be able to show it has had due regard to the views of the sector that it received during consultation

What this means in practice is that an industry organisation must define the sector it represents, consult with sector participants to gain their support to sign the Deed and their acceptance of funding and representation arrangements and then apply to the Minister for Primary Industries for confirmation that it may sign the Deed.

### **Section 100ZA of the Biosecurity Act 1993**

- (1) An industry organisation is an organisation named in a notice published under subsection (2).
- (2) If the Minister is satisfied that an organisation meets the criteria in subsections (3), (4), (6), (7), and (9), the Minister must publish a notice in the *Gazette* stating that the organisation named in the notice represents the sector specified in the notice for the purposes of this Part.
- (3) The organisation must be a body corporate.
- (4) The organisation must represent the interests of a sector.
- (5) In deciding whether an organisation represents the interests of a sector, the Minister may include the following among the factors that the Minister takes into account:
- (a) whether the businesses that comprise the sector that the organisation claims to represent are able to be members of the organisation or another body that is a member of the organisation;
  - (b) the proportion of businesses that comprise the sector that are members of the organisation or another body that is a member of the organisation;
  - (c) how accountable the executive of the organisation is to members of the organisation.
- (6) The organisation must have consulted the sector that would be affected by the organisation becoming a party to the agreement about the following matters:
- (a) the proposal that the organisation become a party to the agreement; and
  - (b) the way in which it is proposed that the sector's views will be represented by the organisation during joint decision-making under the agreement; and
  - (c) the arrangements proposed to fund the organisation's commitments under the agreement.
- (7) The organisation must have had due regard to the views expressed during the consultation.

(8) In deciding whether an organisation has had due regard to the views expressed during the consultation, the Minister must also have regard to the views expressed during the consultation.

(9) The organisation must—

- (a) have arrangements in place to fund its commitments under the agreement; or
- (b) have an adequate plan as to how it is going to fund its commitments under the agreement.

## CONSULTATION REQUIREMENTS

### Changes to previous version:

- **Minor wording changes**
- **Added comment to note that industry organisations may need to go through further internal processes to ensure their decision makers have the required support.**

An industry organisation will need to go through a consultation process and be able to demonstrate this process and the outcomes to the Minister. Consulting with the sector forms part of the eligibility requirements outlined above.

Consultation should be planned with the end application in mind. Preparing a consultation plan will help both the industry organisation and MPI assess the likely success of the eventual application to the Minister. The consultation plan could cover:

- Who you plan to consult
- How you plan to consult them
- The specific propositions you are seeking their support on, particularly in relation to:
  - Representation and signing the Deed
  - Defining the sector
  - Funding arrangements
- How you plan to record and report on the feedback from the consultation

The consultation requirements are outlined in section 100ZA of the Biosecurity Act 1993. An industry organisation must consult with its sector to be eligible to sign the Deed. The objective of the consultation is to show that sector participants agree to:

1. The industry organisation signing the Deed on behalf of the sector
2. A funding proposal
3. A process for how their views will be represented e.g. joint decision-making during a response

To get agreement to sign the Deed, an industry organisation will need to define the sector it is seeking to represent, and gain sector participants' agreement to that definition and to the industry organisation representing their biosecurity interests.

The funding plan should outline how the industry organisation intends to fund its commitments as a Deed signatory. This should cover any intended readiness or response activities, as well as the costs of meeting minimum commitments (eg taking part in the Deed Governance Group and the GIA Biosecurity Forum). For further information see Funding Options, page 17.

The industry organisation could also use the consultation process to ensure that the industry representatives who will be making decisions under GIA have the support to do so, although a further internal process, such as a Board resolution, may also be required. This could be done by seeking sector participants' agreement to:

- A spending limit for response
- The negotiation of Operational Agreements (who, what (scope and boundaries) and process)
- Approved decision-makers

- Any boundaries around the decisions to be made by decision-makers (scope, financial limits)
- The establishment of a Biosecurity Act levy

The Biosecurity Act does not specify the use of specific consultation or reporting methods. This means industry organisations can make use of their existing consultation and communications methods that they know work with their sector. They can also determine which measures (for example, votes, resolutions and/or consultation responses) best indicate their sector's level of support.

Regardless of your chosen consultation method, sector participants must be given an opportunity for:

1. Direct engagement
2. Providing written feedback
3. Receiving a response to their feedback

To ensure that the Biosecurity Act's requirements are met, industry organisations should discuss their planned approach for engagement with MPI and keep MPI up-to-date with progress during the process.

## APPLICATION TO THE MINISTER

### Changes to previous version:

- **Minor wording changes to the text, no changes made to the tables**

Once the consultation process is complete, the industry organisation will need to apply to the Minister for Primary Industries to be named an 'industry organisation' in relation to a specified sector under the Biosecurity Act before it can sign the Deed.

There is no template or standard format for the application, but MPI can provide advice on the structure and content of an application given the sector an industry organisation is seeking to represent and its proposed consultation methods. Structuring the application in the same way as the legislation will help the Minister assess your application more efficiently.

In general, the application for an industry organisation to sign the Deed must demonstrate that a proportion of sector participants agree to:

1. The industry organisation signing the Deed on behalf of the sector
2. A funding proposal
3. A process for how their views will be represented during joint decision-making (e.g. negotiating an Operational Agreement)

The application should provide evidence that demonstrates the level of sector agreement to the above points and that the industry organisation meets the other eligibility criteria. Table 1 outlines:

- The legal eligibility requirements
- The factors the Minister may take into account when assessing if the industry organisation meets the requirements
- The sorts of information the Minister may be looking for
- The types of documentation that industry organisations can provide to demonstrate they meet the criteria

Table 2 provides more information about four documents that could be used as evidence:

- Consultation plan
- Consultation document
- Consolidated sector feedback
- Analysis of feedback

**Table 1: List of requirements and examples of supporting evidence**

Legal Requirement	Factors the Minister may take into account	Examples of the sort of information the Minister will be looking for to determine whether legal requirements have been met	Examples of documentation that could be used as evidence
The Industry Organisation is a <b>Body Corporate</b>  Section 100ZA (3)		Confirmation that the organisation is a body corporate.	Certificate of Incorporation
The industry organisation <b>represents the interests of the sector</b> that they claim to represent  Section 100ZA (4)	<b>Eligibility of the businesses that comprise the sector to be members</b> of the Organisation (4)(a)	A description of the sector that the organisation claims to represent.  A description of who from the sector is eligible to join the organisation.	Body Corporate governing documents
	<b>The proportion of businesses that comprise the sector that are members</b> of the Organisation (4)(b)	A description of the members (i.e. businesses, individuals and levy payers) that make up the organisation.  The number of members in the organisation as compared to the sector as a whole, AND <ul style="list-style-type: none"> <li>· the value of the commodity produced by members of the organisation versus the sector as a whole, OR</li> <li>· the amount of the commodity produced by members of the organisation versus the sector as a whole, OR</li> <li>· the area of land devoted to production of the commodity managed by members of the organisation versus the area of land managed by the sector as a whole</li> </ul> Identification of any significant parts of the sector (or closely related sectors) that are not members of the organisation, including any comments on why and/or who (if anyone) represents this group and how.	Documentation showing where this information has been generated from (including any assumptions)
	<b>Accountability of the executive</b> of the organisation to its members (4)(c)	Who the directors are.  Who the shareholders are.  That at least half the directors are elected by the members.  That all members who would be contributing to cost-shares have speaking rights at meetings.	Body Corporate constitution that demonstrates that directors are accountable to its members
The industry organisation must have <b>arrangements for (or an adequate plan to) fund its commitments</b> under the agreement.  Section 100ZA (9)(a) and (9)(b)		Summary of funding methods (including rationale) proposed for: <ul style="list-style-type: none"> <li>· minimum commitments (e.g. provision of personnel to sit at the decision-making table for responses)</li> <li>· readiness activities</li> <li>· response activities</li> </ul> Details of who will be contributing funds, including rationale.  Statement of how and when funding arrangements will be established and on what basis.  Statement of how funding levels will be maintained at an appropriate level.	Documentation of the case for signing the Deed, including consideration of funding mechanisms  Consultation document outlining proposed funding mechanisms  Evidence of cash reserves (or a plan to build cash reserves)  Evidence of an existing levy that could be used to fund commitments (or a plan to establish a levy)  Loan approval from a recognised financial institution.

Legal Requirement	Factors the Minister may take into account	Examples of the sort of information the Minister will be looking for to determine whether legal requirements have been met	Examples of documentation that could be used as evidence
<p>The industry organisation has consulted the sector that would be affected by the decision for an Organisation to sign the GIA Deed</p> <p>Section 100ZA (6)</p>	<p>Consultation on the proposal that the Organisation becomes a party to the agreement (6)(a)</p> <p>Consultation on the ways in which an Organisation proposes to represent the sector's view during joint-decision making under the agreement (6)(b)</p> <p>Consultation on the proposed arrangements for funding an Organisation's commitment under the agreement (6)(c)</p>	<p>Who was consulted and how.</p> <p>What efforts were made to ensure that businesses and individuals that make up the sector were appropriately informed of the proposal, had reasonable opportunity to consider and to provide feedback on the proposal.</p> <p>The case presented to the sector outlining the justification signing the Deed. For example, pre-requisites, costs, benefits, opportunities, and how the organisation proposed to represent the sectors views.</p> <p>Specific items where feedback and a statement of support (or otherwise) was requested, including the:</p> <ul style="list-style-type: none"> <li>. Proposal to sign the Deed</li> <li>. Ways in which the industry organisation proposes to represent the sector's views during joint decision-making</li> <li>. Proposed financial arrangements for funding future readiness commitments</li> <li>. Proposed financial arrangements for funding future response commitments</li> </ul>	<p>Consultation plan (including evidence of Implementation)</p> <p>Consultation document</p> <p>Records of meetings (eg, presentations, minutes)</p> <p>Voting results</p>
<p>The industry organisation has had due regard to the views expressed during consultation</p> <p>Section 100ZA (7)</p>		<p>The proportion of the sector that responded to and/or provided feedback on the proposal.</p> <p>Details on the nature of feedback received from businesses and individuals that make up the sector.</p> <p>A clear position from the sector as a whole on whether or not they support the proposal to join GIA, and for the organisation to represent them.</p> <p>How the organisation has taken into account the feedback received.</p> <p>Acknowledgement of any impacts on businesses or individuals that did not support the proposal, and how the organisation intends to manage this.</p>	<p>Collated feedback (original submissions) on the proposal from individuals and/or businesses</p> <p>Analysis of Feedback</p>

**Table 2: Documents that MPI suggests an industry organisation submits to the Minister as evidence of consultation for demonstrating mandate**

Document	Purpose	Audience	Content	Outcome sought	Why required
<b>Consultation plan</b>	To set out the approach for consultation with the sector.	The Minister, MPI, the industry organisation	Describes the businesses, individuals, and body members that make up the sector. Provides an overview of what is being consulted on. Outlines the methods that will be used to communicate and consult with the audience. Describes the evidence that will be collected to show that the intended audience has been made aware of the proposal and has had sufficient opportunity (including methods) to consider and provide comment. NOTE: If an industry organisation chooses to do a single round of consultation that covers both mandate and establishing a Biosecurity Act Levy(s), then one consultation plan covering both items will suffice.	Through implementation of the plan, all businesses, individuals, and body members that make up a sector and that would be affected by a GIA will have been made aware of the proposal and have had sufficient opportunity to comment.	The Minister requires evidence that the sector has been appropriately consulted. A documented consultation plan, with evidence of implementation (e.g. advertisements, sector communications) is a good way to do this.
<b>Consultation document</b>	To communicate the proposal to sign the Deed (including mandate requirements and implications).  To seek feedback from those affected.	Sector participants, including businesses, individuals, and body members that make up the sector.	The justification for signing the Deed (including costs and benefits). The pre-requisites for joining, including the implications of assigning mandate. A list of specific items where feedback and a statement of support (or other feedback) is required, including: 1. The proposal to enter into a GIA 2. The way in which an industry organisation proposes to represent the sector in joint decision-making under GIA 3. Proposed funding arrangements (for Readiness and Response activities, and minimum commitments) 4. Proposed Body Corporate (if one doesn't already exist) The process for providing feedback (including timeframes). NOTE: If an industry organisation chooses to do a single round of consultation that covers both mandate and establishing a Biosecurity Act Levy(s), then one consultation document covering both items will suffice.	A document that can be used as the basis for sector consultation, and that will generate relevant feedback.	The Minister requires evidence that the sector has been appropriately consulted. As this document contains the basis of an industry organisation's consultation, MPI may need to view this document on behalf of the Minister.
<b>Sector feedback</b>	To report on what sector participants think about signing the Deed and other mandate requirements.	The Minister, also potential to use with the sector participants	Collated feedback received from individuals and businesses that make up the sector, on the proposal to join GIA (refer above).	A clear position from the businesses, individuals, and body members that make up a sector on whether or not they support the proposal to join GIA and to be represented by the industry organisation.	The Minister requires evidence that an industry organisation has consulted with the Sector and given due regard to feedback. MPI may need to view the specific feedback from individuals and businesses, on behalf of the Minister.
<b>Analysis of feedback</b>	To determine whether there is support from across the sector to join GIA.	The Minister, also has potential use with sector participants	Analysis of the feedback and implications for the industry organisation's proposal to sign GIA.	A clear position from the sector as a whole on whether or not they support the proposal to join GIA and to be represented by the industry organisation.	The Minister requires evidence that an industry organisation has consulted with the Sector and given due regard to feedback. On behalf of the Minister, MPI will need to view this Analysis of Feedback. The Sector are also likely to want to know the results of the Consultation process, and this analysis would provide a useful input.

## SIGNING THE DEED

### Changes to previous version:

- **Minor wording changes**

Once the Minister has agreed that the industry organisation is eligible to sign the Deed, MPI will arrange to publish a notice in the NZ Gazette. An industry organisation cannot sign the Deed until the notice is published.

The Gazette is published weekly on Thursday afternoons, and notices must be received by the Monday prior. For this reason, an industry organisation should expect a delay of at least a week from when the Minister makes his or her decision and when it can sign the Deed.

The GIA Secretariat will work with the industry organisation and MPI to arrange the logistics for signing the Deed and any associated event or publicity.

Each organisation will have its own internal requirements as to how it obtains authority to sign the Deed. For example, the organisation's Board may need to make a resolution that its representative can sign the Deed. This should be identified early on and discussed with MPI as the requirements may affect the arrangements for the industry organisation to sign the Deed.

## FUNDING OPTIONS

### Changes to previous version:

- Minor wording changes
- Dates that the transitional discounts apply corrected
- Example for how funding would be obtained altered to a Biosecurity Levy

Under the Deed each party will be required to meet the minimum commitments in the Deed and the organisation's share of readiness and response costs. To confirm that an industry organisation is eligible to sign the Deed, the Minister must be satisfied that:

- the organisation has arrangements in place to fund its commitments under the GIA
- or
- the organisation has an adequate plan to put these arrangements in place.

Readiness cost sharing commences from 1 July 2014, with transitional discounts applying until June 2020. Response cost sharing commences from 1 July 2017, with transitional discounts applying until June 2023. Minimum commitments are not eligible for cost-sharing or transitional discounts.

Due to the high uncertainty associated with responses, section 100Z(4)(d)(iii) of the Biosecurity Act enables the industry organisation to set a fiscal cap.

### **Minimum funding arrangements for the purposes of demonstrating eligibility to enter a GIA**

An industry organisation does not have to commit to any cost shared activities for joint readiness work until it signs an Operational Agreement. For joint responses, cost sharing begins in 2017. Specific costs are agreed in the Operational Agreements, so cannot be determined until the negotiation is completed.

Therefore, proposed funding arrangements for the purposes of demonstrating eligibility only needs to outline at a high level how:

- funding would be obtained (eg, state the intent to progress a Biosecurity Act levy to fund GIA readiness and response obligations)
- sector participants' views will be taken into account when decisions are being made that have financial implications (for example during operational agreement negotiations or determining fiscal caps).

To satisfy the requirements to sign the Deed, an organisation must provide evidence to demonstrate that its proposed funding mechanisms are reasonable and realistic. For example, if an industry organisation is intending to use cash reserves for readiness and does not currently have any, what is the plan for building these reserves up? If the intention is to set a Biosecurity Act levy, then who will be paying it and how (including justification)?

## Summary of options

Table 3 provides examples of different funding mechanisms that could be used by industry organisations to fund joint activities. These examples are not intended to be prescriptive. Alternative funding sources can be put forward if an organisation has access to other funds that can be made available to meet commitments under GIA.

An industry organisation could choose different funding options for readiness and response activities. The sector must be consulted on funding arrangements as part of the industry organisation obtaining mandate to sign the Deed.

**Table 3: Examples of industry organisation funding mechanisms**

Funding mechanism	Description
Baseline funding or cash reserves	Industry funds available for readiness and response activities.
Biosecurity Act levy	<p>The Biosecurity Act includes provisions for a GIA-specific levy “for the purpose of wholly or partly funding an industry organisation’s commitments under the agreement”.</p> <p>The levy provisions can be used to pay for readiness activities and / or build up a contingency fund for response activities. A levy can also be initially set at zero and activated if there is a response. In this situation, the industry organisation would need to identify a mechanism to fund initial response costs until the levy was changed.</p>
Commodity levy	A commodity levy can be used to fund the protection or improvement of the health of animals or plants related to a commodity or commodities, subject to approval from levy payers. A commodity levy could be used to pay for readiness activities and to build up a contingency fund for response activities. However, the risk of the latter is if the industry does not continue its levy after failing to receive support at a referendum.
Loan from ordinary financial institutions	Industry organisations can access a loan from a reputable financial institution to fund readiness and response activities.
Loan from the Crown for response costs only	If an industry organisation does not have the funds to pay for their share of response costs, the Crown may lend the funds, as a lender of last resort.

## QUESTIONS AND ANSWERS

### Changes to previous version:

- Question about weighting responses deleted.
- Answers to question 7 and 8 reworded to clarify.
- Answer to question 13 expanded.

1. If an industry organisation is not a legal entity in its own right, can it sign the Deed?
2. Do you have to be a Commodities Levy Act organisation to sign the Deed?
3. How much is it going to cost an industry to be part of GIA?
4. How do we work out if the benefits of being part of GIA outweigh the costs?
5. What is a sector?
6. Can we establish an organisation specifically for Deed purposes?
7. What happens if two potential Deed Signatories define their sector in a way that overlaps?
8. For industry organisations that represent a range of crops can the organisation sign for some crops but not others?
9. What (engagement and reporting) mechanisms support gaining and demonstrating mandate?
10. What level of evidence do you require to show we have consulted sector participants?
11. How do you show mandate? Is a vote of members required?
12. What percentage of the sector needs to support the industry organisation proposal to sign the Deed? What constitutes 'a reasonable proportion of sector participants'?
13. What if only a small proportion of sector participants respond to a consultation or questionnaire? Is silence or non-response taken as support?
14. How do you consult across industries with thousands of members?
15. How do we know we have followed a process that is robust enough for the Minister to accept?
16. Why do we need to consult with sector participants?
17. My organisation was set up to represent grower interests around biosecurity. Don't I already have their mandate to sign the Deed?
18. I have briefed my members (farmers and growers) on the Deed in newsletters, at AGMs, grower meetings – why do I need to do more to meet consultation requirements?
19. How can we describe our funding plan when we don't know what our costs are going to be because we haven't developed an Operational Agreement?
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21. Who can I talk to?

### 1. If an industry organisation is not a legal entity in its own right, can it sign the Deed?

An organisation must be a body corporate to sign the GIA Deed. If an organisation that wants to sign the Deed is not currently a body corporate, it must become one before it can sign.

If you have questions about whether or not your organisation is a body corporate, you should seek legal advice.

## **2. Do you have to be a Commodities Levy Act organisation to sign the Deed?**

No. You need to be a body corporate, but you do not need to have been established to administer a commodity levy.

## **3. How much is it going to cost an industry to be part of GIA?**

The up-front costs of signing the Deed need not be great. Any additional cost will depend on how much the organisation is currently spending on biosecurity, and what it is spent on.

Costs related to GIA fall into three areas:

1. Getting the agreement of industry members to sign the Deed and presenting this in a submission to the Minister for Primary Industries
2. Meeting the minimum commitments outlined in section 3.2 of the Deed
3. Funding the industry organisation's involvement in Deed governance processes and attending the Biosecurity Forum

As a Deed Signatory, an industry organisation makes a future commitment to:

- Cost share any biosecurity response that it benefits from up to the level of its fiscal cap, starting from mid-2017
- Pay its share for activities agreed in any Operational Agreement signed with MPI, from mid-2014

In return, the industry organisation gets:

- A seat at the response decision table with MPI and other affected industries, so you can have a say in what will be done when an unwanted organism impacting your industry is found
- Access to the transitional discounts and the 50% cap on industry's share of readiness and response costs offered to Deed Signatories by government
- Access to a crown loan (as a last resort) to fund a response up-front, from mid-2017
- A meeting with MPI at least once a year to work through the sector's biosecurity risk profile, discuss how these risks are being managed and discuss whether the risks could be managed better
- A say in how the Deed is implemented through a seat on the Deed Governance Group

An industry organisation must consult with its sector to be eligible to sign the Deed. This may have a cost associated with it – depending on how the industry organisation chooses to get this agreement. For instance, an industry organisation may decide to use a combination of existing engagement methods such as newsletters, field days, annual general meetings, conferences or regional visits by the organisation Board and executive to raise awareness of the Deed and seek feedback and approval from their members to sign it. Alternatively, it may decide that a formal vote is the best way to get a clear message from its members.

#### **4. How do we work out if the benefits of being part of GIA outweigh the costs?**

The business case guide developed by the Secretariat, and the associated guidance on establishing the value proposition may help you to identify whether the Deed offers your industry sufficient value to sign it.

While an industry organisation may have reservations about paying for a response, being part of the decision-making process offers value – including taking part in decisions to initiate or cease a response. The Government can recover costs from non-signatories without involving them in decision making.

Industry organisations also derive value from knowing and understanding the biosecurity risks facing their sector, having confidence that the risks are being appropriately managed to reduce the chance of them entering NZ and having processes in place to reduce their impact if they do come in.

#### **5. What is a sector?**

In the Act (section 100Y) a sector means:

- a group made up of businesses that are engaged in one or more of the following activities:
  - producing animals
  - producing animal products
  - harvesting animals
  - harvesting animal products
  - producing plants
  - producing plant products
  - harvesting plants
  - harvesting plant products
  - processing animals, animal products, plans or plant products that have been produced or harvested

OR

- a group of businesses that, although engaged in a different activities from any of those described above, would still benefit directly from readiness or response activities

It is up to the industry organisation to define the sector it represents.

One approach to defining a sector is to base it around common biosecurity concerns. This can help clarify the relationship between who is impacted (by a biosecurity risk, the decisions made), who pays and who makes the decisions. This will also identify which industry organisation is best placed to represent the sector.

Another approach is for a sector to include those who share the impacts of the same biosecurity risk. For example, the meat sector could include both producers and the processors that are dependent on the supply of animals for their business, because they will both be impacted by a disease that disrupts the supply chain. Conversely, the grain and seeds industry is made up of growers and traders. Traders are able to redirect production to other plant species and reduce the impact of a pest or disease on a host plant. This reduces the dependency between the grower and the trader.

## **6. Can we establish an organisation specifically for Deed purposes?**

Yes. If you define your sector and there is no existing organisation that can or wants to represent the collective interests, then you can create one for Deed purposes. It will have to meet the same eligibility criteria for signing as any existing industry organisation does.

## **7. What happens if two potential Deed Signatories define their sector in a way that overlaps?**

The industry organisations signing the Deed must represent the interests of a defined sector. Where there is the potential for industry organisations to overlap in their sector definitions the organisations should work together to identify a solution that is mutually agreeable.

There are several models for representation that a sector could consider, such as:

- Forming a separate organisation to undertake wider biosecurity activities including GIA
- Nominating an existing organisation within the sector to sign the Deed
- Establishing a separate organisation to represent the sector under GIA

If two organisations with an overlapping sector apply to the Minister to sign the Deed at the same time, the Minister will consider both applications to determine which will represent which portions of a sector. The Minister may decide to not approve one or both organisations.

If an organisation's application overlaps with an existing Signatory's sector, the Minister will take this into account when making a decision.

In either case, the Minister will consider the proportion of an industry the organisation is representing, the efforts the organisations have made to come to an alternative arrangement, and the reasons behind the separate applications.

## **8. For industry organisations that represent a range of crops can the organisation sign for some crops but not others?**

Yes. An organisation needs to define the sector it intends to represent and establish mandate for that sector in order to sign the Deed.

An industry organisation can represent members of a sector that are not members of the organisation.

## **9. What (engagement and reporting) mechanisms support gaining and demonstrating mandate?**

The Biosecurity Act does not specify the use of any specific consultation or reporting methods.

Industry organisations are best placed to know what communications and consultation methods work given the structure and makeup of their sector. They have a range of consultation and communication tools available to them, including road shows, field days, conferences, regional discussion forums and AGMs.

Industry organisations can use their existing communications and consultation channels to elicit the views of their members. But in planning engagement and reporting, an industry organisation should be mindful that its application to the Minister must address the requirements outlined in Part 5A, section 100ZA of the Biosecurity Act. The industry organisation must provide adequate evidence of its engagement with the sector and their approval.

#### **10. What level of evidence do you require to show we have consulted sector participants?**

The application to the Minister must include the outcomes of consultation on the proposal for the industry organisation to sign the Deed on the sector's behalf.

The submission should include the feedback received from sector participants, an analysis of this feedback and a clear explanation of how this feedback has been taken into account in the proposal to the Minister.

Appropriate evidence includes:

- Consultation plan, or an outline of who was consulted and how they were consulted
- Consultation documents or the specific proposal sector participants were asked for feedback on
- The feedback received and the organisation's analysis of and response to it
- Meeting minutes
- Voting or referendum results
- Presentations
- Records from Q&A sessions

Where consultation is through a meeting, be sure to capture the key points in presentations, the number of attendees and their feedback during and after the meeting. Record questions and responses as this will provide evidence of industry member support or otherwise. Actions to address concerns might also be discussed and agreed at meetings.

#### **11. How do you show mandate? Is a vote of members required?**

A vote to demonstrate mandate is not required – unlike the agreement requirements for a commodity levy which specify that a vote is needed. Each industry organisation will know how best to engage with its members and demonstrate their collective agreement to signing the Deed.

A vote is a simple and unequivocal way of identifying the level of support to sign GIA, but other options open to industry organisation include:

- A consultation and submission process
- Resolutions at AGMs
- Meetings with sector members or their representatives to discuss the proposal
- Road shows

**12. What percentage of the sector needs to support the industry organisation proposal to sign the Deed? What constitutes a reasonable proportion of sector participants?**

There is no absolute number attached to the percentage of sector members that must agree to the proposal to sign the Deed.

The Minister will consider the proportion of the sector that supports the proposal, both as a percentage of the total number of producers, and the percentage of value of production.

The application to the Minister should explain the level of support within the sector, the concerns sector participants have raised during the consultation, and how the industry organisation has or will address any concerns to reduce them to an acceptable level.

To illustrate levels of support, industry organisations can draw parallels between measures of support (eg, voting rates, attendance at meetings) for GIA with the results on other consultation or decision making process.

**13. What if only a small proportion of sector participants respond to a consultation or questionnaire? Is silence or non-response taken as support?**

No. Non-response or silence will not be taken as indicating support. It is important that the application to the Minister clearly states the response rate in terms of proportion of businesses in the sector as well as percentage of the industry's total production. This will allow the Minister to determine whether he or she is satisfied that the organisation represents the interests of the sector.

**14. How do you consult across a sector with thousands of members?**

Industry organisations are in the best position to know what works in consulting with their sector. We suggest you build on your proven communications channels for the purpose of gaining mandate to sign the Deed. Bear in mind the outcomes you need from the consultation – in particular that you need to provide evidence that you have met the requirements in the Biosecurity Act.

**15. How do we know we have followed a process that is robust enough for the Minister to accept?**

Contact MPI early to discuss the approach you plan to use and maintain contact with MPI throughout the process to monitor progress as you consult with your members and to analyse the outcomes of the engagement in writing up your application.

MPI understands that each industry organisation and sector is unique, and will provide advice that takes this into account.

MPI advisers are available to review the engagement strategy with industry, both before and during the consultation period. They can advise on approaches that are likely to be acceptable to the Minister. The processes to demonstrate eligibility are untested and over time there will be more clarity around the Minister's considerations and decisions. For this reason, industry organisations are encouraged to keep in touch with MPI advisers to ensure that new information from experience with the process is fed into their engagement with members and the resultant submission.

## **16. Why do we need to consult with sector participants?**

There are a number of reasons why there needs to be a process:

- The Act requires it
- It will protect your industry organisation and the individuals who will represent your organisation in joint decision-making for biosecurity readiness and response, and safeguard farmers and growers from excessive liabilities
- It will ensure that the people who are making decisions have the authority to do so
- Industry members will know and understand what the Deed commits them to and what arrangements will be in place to meet those commitments

## **17. My organisation was set up to represent grower interests around biosecurity. Don't I already have their mandate to sign the Deed?**

Not necessarily. The engagement with an industry organisation's members on the establishment and operation of the organisation may go a long way towards achieving mandate. However, there are specific commitments in the Deed that will require explicit agreement of sector participants – particularly around joint decision-making and cost-sharing – that may go beyond the initial role of the organisation. Nearly all industry organisations pre-date the Deed and their original mandate is likely to need reviewing and updating to accommodate the Deed commitments.

Industry organisations need to ensure that sector participants understand what the Deed specifically means for them and the commitments that will be made on their behalf – even though it is the industry organisation that signs the Deed. The industry organisation signs the Deed for the collective interests of its sector.

## **18. I have briefed my members (farmers and growers) on the Deed in newsletters, at AGMs, grower meetings – why do I need to do more to meet consultation requirements?**

The Minister needs to be satisfied that the members of industry organisations fully understand what signing the Deed means for them and agree to the representation arrangements being proposed. The consultation process enables an organisation to obtain this agreement and demonstrate it to the Minister.

## **19. How can we describe our funding plan when we don't know what our costs are going to be because we haven't developed an Operational Agreement?**

The funding plan can be described at a high level and could be based on securing the funds to a specific spending limit, such as a fiscal cap for responses. Whereas, the development of an operational agreement to undertake specific readiness activities [co-funded with MPI] could be described as occurring through the industry organisation's annual business planning and budgeting processes (including approval process) given that the cost to undertake specific readiness activities would be known quantities once an operational agreement has been negotiated.

The plan should outline how you will go about securing or accessing funds, not just the options you have for doing so.

If you are considering establishing a Biosecurity Act levy to fund some or all of your Deed commitments, the required engagement with your members to secure their approval to establish the levy can be undertaken as part of your Deed mandate engagement or as a separate process after signing the Deed. Some industry organisations are proposing a several stage approach to securing mandate to sign the Deed and the required funding. You will know your industries best and should take into account whether you need the alternative funding arrangements for GIA that are enabled by the Biosecurity Act.

## **20. We don't have a levy in place yet, but we are working towards it. How advanced does a levy plan need to be to satisfy the Minister?**

It would be sufficient to state the intent to progress a commodity levy that would include ability to use monies obtained from the levy to fund specific GIA obligations eg. fund readiness activities negotiated under an Operational Agreement.

If an industry organisation intends to use a Crown loan to fund response commitments, a Biosecurity Act levy is preferred over a commodity levy. The Biosecurity Act levy would need to be in place by 1 July 2017 when cost-sharing for responses starts. The levy would need to have a maximum rate that would be sufficient to repay the maximum amount of a loan within ten years, though could have a zero rate until a response occurs. Note that Crown loans will be offered only as a last resort and therefore will be subject to a number of requirements, including that all other reasonable options were exhausted.

Some industries may already have a commodity levy in place that includes a provision to use the money for biosecurity activities. This would need to be stated during consultation and application to the Minister.

## **21. Who can I talk to?**

For more advice from MPI on demonstrating eligibility to sign the GIA Deed, contact David Talbot, GIA Business Lead:

- [david.talbot@mpi.govt.nz](mailto:david.talbot@mpi.govt.nz)
- 04 894 0008

For more information on the Deed and GIA, contact the GIA Secretariat:

- [secretariat@gia.org.nz](mailto:secretariat@gia.org.nz)
- 04 894 0419

# INDUSTRY DECISION TREE FOR SIGNING UP TO GIA

