



GIA Levies

October 2010



Ministry of Agriculture and Forestry
Te Manatū Ahuwhenua, Ngāherehere



GIA levies: commodity levies act versus Biosecurity Act	1
Purpose	1
Issue 1	
Objective	Error! Bookmark not defined.
Options	1
Commodity Levies Act 1990	1
Key features	1
Setting zero percent levy rates	2
Option 1a – use a current CL Levy to fund GIA activities	3
Advantages with this option	3
Disadvantages with this option	3
Option 1b – Separating GIA from other funding purposes in the levy order ballot	4
Advantages with this option	4
Disadvantages with this option	4
Biosecurity Act 1993	4
Key features	4
MAF may use this option to collect funds from free-rider industries	5
Option 2a – MAF recovers the pre-agreed shares of costs directly from industry members	5
Advantages with this option	5
Disadvantages with this option	5
Option 2b – the industry organisation recovers the pre-agreed shares of costs from industry members and reimburses MAF	5
Advantages with this option	5
Disadvantages with this option	5
Contents of the Biosecurity Act levy	6
Links with mandate issues	6
Power to enter government/industry arrangement	6
Appendix 1: The Process for Making a Levy Order under the Commodity Levies Act	8

GIA levies: commodity levies act versus Biosecurity Act

PURPOSE

This paper investigates the options available to industry organisations seeking to put a levy in to fund activities under the Government/Industry Agreement (GIA) and provides a timeline for each option that broadly outlines the necessary process steps.

ISSUE

Industry organisations seeking to join the Government/Industry Agreement will, in most cases, need to put a levy in place to collect funds from their producers for jointly-agreed activities.

Industries have told MAF they would like the process, for applying for a levy, to be clearly outlined, and for any restrictions to be made clear.

OPTIONS

The levy options available to industry organisations seeking to fund GIA activities are:

- 1 . a levy under the Commodity Levies (CL) Act, either by:
 - a) using a current CL Levy to fund GIA activities (if the Levy Order allows for that spending); or
 - b) separating GIA from other funding purposes in the levy order ballot.

- 2 . a levy under the Biosecurity Act, where:
 - a) MAF collects the levy directly from industry members for whom a jointly-agreed GIA response programme is set up to benefit; or
 - b) An industry organisation collects the levy from its members for whom a jointly-agreed GIA response programme is set up to benefit. The industry organisation would then reimburse MAF after a response has commenced.

Industries may adopt the option they prefer. These options are all feasible and industries should select the option that suits their structure and membership best. MAF recommends the Biosecurity Act levy option, because this type of levy does not have to be re-balloted every six years. It is also likely to involve a lower cost and administrative effort than seeking a levy under the Commodity Levies Act 1990.

COMMODITY LEVIES ACT 1990

Key features

The Commodity Levies Act 1990 provides a mechanism for industry organisations to levy their producers, when there is sufficient support among the producers for the levy.

The industry organisation must represent a distinct group of prospective levy payers to impose a levy on a commodity. A prospective levy payer would be a producer of the commodity to be levied.

Primary sector industry groups rely on their Commodity Levy Orders to operate and cannot fund activities such as research and product promotion unless they have a levy in place.

The power to collect a compulsory levy is a considerable privilege and responsibility that carries obligations. Fulfilling all the requirements of the Act and having a compulsory levy imposed is a complex process that takes time. Appendix 1 outlines the process for making a levy order under the Commodity Levies Act 1990.

It can take about nine months for an industry to carry out consultations and prepare for a referendum, and six months from a successful referendum for the levy to come into force. When setting up a CL levy industries must decide, among other issues:

- Which commodity will be levied?
- What will the levy funds be spent on?
- Who will the levy payers be?
- What will be the basis of the levy?
- How will the levy be collected?
- What will the annual decision-making process be?

The most critical part of the process is drafting the referendum ballot paper. The levy order cannot vary from the contents of the ballot paper. It is essential that industries fully consult those who could be affected by the proposed levy before the ballot paper is finalised.

Setting zero percent levy rates

In the case of a levy for GIA purposes an industry may want to set its Levy Order at 0% until the levy is collected under certain conditions (i.e. following a jointly-agreed biosecurity response).

However this type of 'resting levy' won't fit with the current provisions contained in Section 6(1) (m) of the Commodity Levies Act 1990. This provides for only three options for setting levy rates, as follows:

6(1) (m) [Every levy order... shall specify] in respect of each rate of levy, one of the following:

- *(i) a maximum rate of levy, with the organisation empowered to set the actual rate*
- *(ii) a maximum amount by which the organisation may increase the rate of the levy in any specified period, with the initial rate of the levy to be fixed by the organisation with the approval of a Minister, and later rates to be fixed by the organisation either with the approval of a Minister or within the maximum*
- *(iii) the rate for a period, being either a rate fixed by the organisation and not higher than the rate last fixed, or a higher rate fixed by a Minister on the recommendation of the organisation*

MAF Legal Group has confirmed that it is not possible to set a 0% levy rate in a Levy Order. However it is possible to set a 0% levy rate by vote, for a limited period, providing there is a maximum rate set out in the Levy Order itself.

In short, a Commodity Levies Order:

- is required to be approved by the Governor General through an Order in Council and, if approved, will run for a six-year term;
- requires an industry organisation to hold a referendum with its membership early in the year preceding the seeking of approval from the Governor General;
- must include a list of specified uses for the levy funds (with no exceptions permitted throughout the six-year term) that could include covering the jointly-agreed share of costs for a GIA response programme;
- requires that the industry organisation undertake an annual consultation (usually by way of an AGM) with its membership on the proposed spending plan and levy rate for the coming year (that must not exceed the specified maximum permissible amount of the levy); and
- can potentially be revoked, provided this possibility can be agreed at an annual consultation, and the industry organisation is able to get Ministerial approval to revoke the existing Commodity Levies Order and then set up a referendum to seek approval for a new order.

Option 1a – use a current CL Levy to fund GIA activities

This option would depend on the purposes (listed in the levy order) that the organisation may spend its levy money on. In cases where a levy has a list of broadly defined purposes, it might be possible to spend some of the levy money on GIA activities.

Levy purposes can include, for example, product development, market research and development, protection or improvement of plant or animal health, development and implementation of quality assurance programmes, education, and day-to-day administration of the organisation.

An industry organisation must consult its members annually on the spending of the levy money. Commodity Levy Orders are renewed every six years through a referendum process. If a levy is about to be renewed, it might be fairly easy for some organisations to include GIA in their new list of levy purposes.

Advantages with this option

This would be a low cost option because the industry organisation would not be required to pursue a new levy. Some industries may be able to fund GIA readiness activities out of existing levy funds, if the Levy Order allows for that spending.

Disadvantages with this option

There is a very high risk that an organisation's membership would not support the use of their CL levy for GIA purposes. If this type of levy were undermined by a lack of membership support for GIA, then the organisation may risk losing its CL levy funding altogether.

Industries tend to be protective of their levy orders and work hard to ensure that nothing undermines them or puts future levy balloting at risk, so they are unlikely to favour this option.

It is unlikely that GIA responses would be easily funded out of existing levies. A GIA response programme would need to be included in the list of uses to be incorporated in an order. Due to the uncertain nature of biosecurity responses, there will be uncertainty about costs of responses, although the industry organisation's fiscal cap(s) will address some of this uncertainty.

Option 1b – Separating GIA from other funding purposes in the levy order ballot

Under this option, an industry organisation would seek two parts to a future CL levy ballot:

- 1 . general business, and
- 2 . GIA.

The two parts would be isolated so if there was a lack of support for GIA, the entire levy would not be undermined.

To do this, the industry organisation would hold one referendum with two different levy proposals, each proposal with its own voting paper. A Levy Order would then be made for the proposal that is supported. If both proposals were supported, they would be combined into one levy order at the order drafting stage.

Advantages with this option

The levy ballot would not be lost due to lack of support for GIA. Industry members could clearly signal whether they are willing or not for the organisation to sign up to GIA. This will support an industry's application to prove its GIA mandate to MAF's Director-General.

From the perspective of a producer (i.e. levy payer), this option would be preferable to a Biosecurity Act levy. Under this option, producers are consulted annually on how the levy funds should be spent. Every six years, when the CL levy is re-balloted, producers have the opportunity to vote against an option that they do not support. The Biosecurity Act levy does not give producers the same opportunity to have their opinion taken into account.

Some industries may choose this option to fund GIA readiness activities, particularly in the short-term until industries are required to share the costs of GIA responses.

Disadvantages with this option

It is not possible to set the levy rate for one of these parts at 0% that is only collected under certain conditions (i.e. following a biosecurity response).

There is a significant cost associated with establishing a levy (for example, it recently cost one industry \$35,000 to renew their CL levy), and the levy would have to be re-balloted every six years.

Biosecurity Act 1993

Key features

The Biosecurity Act provides a mechanism for MAF or industry organisations to levy their producers for GIA readiness and response activities. Appendix 2 outlines the process involved in developing a Biosecurity Act levy.

A levy may be imposed on an industry organisation that is a party to GIA. The levy payment is compulsory for the producers that are specified as levy payers.

There is no ballot or renewal date, unlike levies made under the Commodity Levies Act. However, at the Minister's recommendation, a Biosecurity Act levy can be revoked.

The levy order must specify a number of issues including: how the levy will be spent, who will pay it, how the amount is calculated, who will collect it, and the maximum payable rate.

MAF is seeking an amendment to the Biosecurity Act that will expressly allow a GIA Levy Order to be set at 0 percent until certain conditions are met (i.e. following a jointly-agreed biosecurity response).

MAF may use this option to collect funds from free-rider industries

In some cases, an industry that has not committed to joint decision-making and cost sharing under a GIA response programme may receive a clear and significant benefit from the response programme. A situation like this could lead to concerns about ‘free-riding’ industries that have not signed the agreement.

When appropriate, MAF intends to use the levy provisions of the Biosecurity Act to collect a fair share of GIA response programme costs from ‘free-riding’ industries, after a response. MAF is hopeful that industries will instead choose to enter the GIA framework for joint decision-making and cost sharing.

Option 2a – MAF recovers the pre-agreed shares of costs directly from industry members

Under this option, MAF would act as the collection agency (or would nominate a collection agency) that would recover the pre-agreed shares of costs directly from industry producers for whom a jointly-agreed GIA response programme is set up to benefit.

Advantages with this option

Biosecurity Act levies do not have to be re-balloted every six years. They also would involve a lower cost and administrative effort than seeking a levy under the CL Act.

Disadvantages with this option

Due to the uncertain nature of biosecurity responses, there will be uncertainty about costs of responses, although the industry organisation’s fiscal cap(s) will address some of this uncertainty.

Option 2b – the industry organisation recovers the pre-agreed shares of costs from industry members and reimburses MAF

Under this option, an industry organisation would collect its shares of costs from its members for whom a jointly-agreed GIA response programme is set up to benefit. The industry organisation could collect directly from its members or specify some other body as the responsible collection agency.

The industry organisation would then reimburse MAF after a response has commenced, or retain funds as required to cover whatever component(s) of a jointly-agreed GIA response programme it was responsible for delivering.

Advantages with this option

Biosecurity Act levies do not have to be re-balloted every six years. They also would involve a lower cost and administrative effort than seeking a levy under the CL Act.

Disadvantages with this option

Due to the uncertain nature of biosecurity responses, there will be uncertainty about costs of responses, although the industry organisation’s fiscal cap(s) will address some of this uncertainty.

Industries may adopt whichever option they prefer. Some industries may prefer MAF to act as the collecting agent, while others may prefer to collect and retain the levy funds until the response commences. Industry and MAF can nominate another agency to collect on their behalf.

Contents of the Biosecurity Act levy

The list of contents to be incorporated in a Biosecurity Act Levy for the purposes of GIA might be similar in form to other Biosecurity Act Levy Orders [Gypsy Moth (2004) & Shipping Container (2006)]:

- 1 Title
- 2 Commencement
- 3 Interpretation
- 4 Levy imposed
- 5 Importers primarily responsible for paying levy
- 6 Director General must collect levy
- Determination of levy
- 7 Basis of calculation of levy
- 8 Maximum rate of levy
- 9 Director General must fix actual rate
- 10 Rate if no rate fixed before beginning of levy year
- 11 Notification of levy rate
- Payment of levy
- 12 When and how levy payable
- 13 Purposes for which levy must be spent
- 14 Consultation on how levy spent
- Miscellaneous
- 15 Records
- 16 Remuneration of Auditors
- Arbitration in case of dispute
- 17 Appointment of arbitrator
- 18 Application of Arbitration Act 1996 to dispute
- 19 Payment of arbitration costs
- 20 Appeal to District Court.

Links with mandate issues

The Biosecurity Act Amendment Bill will contain a clause very similar to the following¹:

Power to enter government/industry arrangement

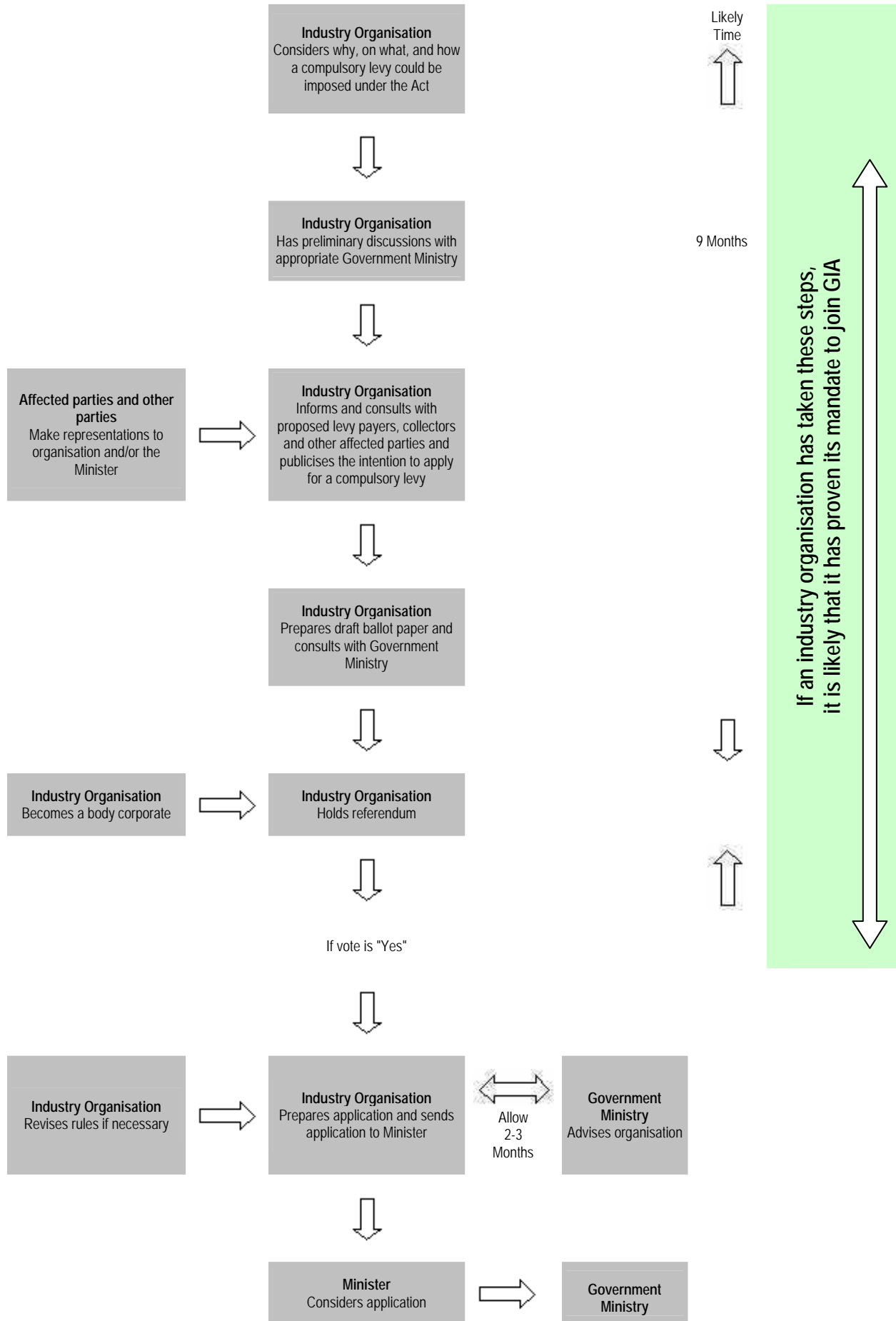
1. The Director-General may make a government/industry arrangement with an industry organisation that meets the criteria in **subsections (2) and (3)**.
2. The industry organisation must be a body corporate.
3. The industry organisation must represent the interests of all producers or a section of producers.
4. The Director-General must decide whether an organisation meets the criterion in **subsection (3)** and may include the following among the factors that he or she takes into account in making the decision:
 - a) whether membership of the organisation is open to all producers or all producers in the section that the organisation claims to represent:
 - b) the proportion of the producers eligible for membership of the organisation that are members of the organisation:
 - c) how accountable the executive of the organisation is to members of the organisation.

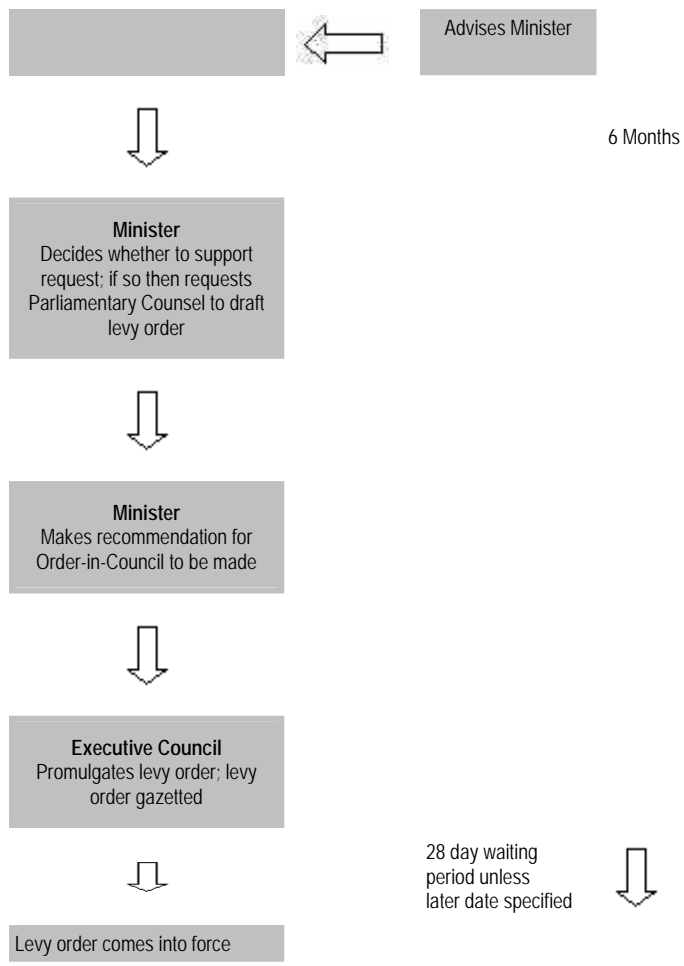
An industry organisation that wishes to sign up to GIA will need to satisfy the Director-General that it represents the interests of its producers, before it can gain the mandate to sign up members to the financial liabilities they would face in any future GIA levies.

¹ Excerpt from Biosecurity Amendment Bill (No 2) - version dated 17 Sept 2010

It is likely that gaining GIA mandate may involve a similar process as a Commodity Levy Order (consultation, balloting etc), and will require the industry organisation to be a registered entity with known members, constitution, AGM etc. It is therefore likely that the Director-General would consider that an industry had the mandate to join GIA if they already had a CL or Biosecurity Act levy in place.

Appendix 1: The Process for Making a Levy Order under the Commodity Levies Act





Appendix 2: Biosecurity Act levy development - process step	Details	Minimum estimated time
Starting point – assumptions:	<p>MAF has</p> <ul style="list-style-type: none"> held initial discussions with affected parties (i.e. producers that would pay) received Cabinet policy approval to apply for a levy order. MAF will need to seek Cabinet approval for the operational agreement with each industry organisation. At this point, MAF could also seek approval to apply for the industry's levy order. <p>Industry Organisation has:</p> <ul style="list-style-type: none"> considered why, on what, and how a compulsory levy could be imposed under the Act consulted with proposed levy payers, most probably via a referendum or ballot, and publicised the intention to apply for a compulsory GIA levy to collectors, importers and other affected parties. consulted with MAF 	<p>12 months</p> <p>If an industry organisation has taken these steps, it is likely that it has proven its mandate to join GIA</p>
Develop consultation document	Document should outline the need for a levy and discuss levy design: e.g. who would pay, how amount would be calculated, how levy would be collected, how dollars would be spent, etc (refer s140).	2 weeks
Formal consultation with affected parties	MAF seeks public submissions on the levy proposal. The consultation document should be well publicised.	6 weeks
Analysis of submissions	Time depends on amount and length of received submissions.	1-3 weeks
Write levy order proposal	<p>MAF must ensure that the levy proposal meets legislative and consultation requirements and complies with all relevant legislation.</p> <p>The Biosecurity Amendment Bill is seeking to add GIA levy provisions to a new Part 5A.</p> <p>Among other requirements, a levy order must specify e.g. who pays, how amount has been calculated, who collects, how dollars will be spent (s140), how records will be kept (s141A), and how disputes will be resolved (s142).</p>	2-4 weeks
Draft briefing to Minister proposing levy order	<p>MAF drafts brief, which includes letter to PCO for Minister to sign.</p> <p>MAF officials should already have had informal contact with PCO.</p> <p>http://www.pco.parliament.govt.nz/working-with-the-pco/</p>	1 week (concurrent with above step)
Minister issues drafting instructions to Parliamentary Counsel Office (PCO)	Minister issues drafting instructions to PCO for an Order in Council to establish the levy under the Biosecurity Act 1993.	1 day

PCO drafts levy order	<p>PCO drafts levy order, based on MAF's proposal.</p> <p>Draft regulations (e.g. levy order) must certified by PCO as being in order for submission to Cabinet.</p>	4 weeks
Draft Cabinet paper and Regulatory Impact Statement (RIS)	<p>MAF drafts paper to the Cabinet Legislative Committee (LEG), seeking approval for the submission of the levy order to the Executive Council.</p> <p>Time includes consultation with other departments. All submissions to Cabinet and Cabinet committees on regulations (e.g. levy orders) must comply with standard consultation requirements. http://cabguide.cabinetoffice.govt.nz/procedures/executive-council-governor-general</p> <p>The Audit Office Guidelines to Costing and Charging for Public Sector Goods and Services (2008) should also be consulted if cost recovery is involved.</p> <p>MAF submits Cab paper, RIS, draft levy order (from PCO) and accompanying brief to Minister.</p>	4 weeks (may be partly concurrent with above step)
LEG recommends the levy order to Cabinet and the Executive Council	<p>Minister tables LEG paper that recommends draft levy to Cabinet. Cabinet authorises the levy order to the Executive Council.</p> <p>LEG meets every Thurs. Cabinet meets every Monday.</p>	1 week
Governor-General imposes levy by Order in Council	<p>The Executive Council, headed by the Governor-General, considers and makes regulations (by Order in Council).</p> <p>Executive Council meets after Cabinet on Mondays.</p>	1 day
Levy order gazetted	<p>Regulations cannot come into force until at least 28 days after they have been notified in the <i>New Zealand Gazette</i>. Published every Thursday</p>	3 days after above
Levy order in force		28 days after Gazette notice