The Government Industry Agreement for Biosecurity Readiness and Response

MPI guidance on levies and Crown loans

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Issued by GIA Secretariat
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Biosecurity Readiness and Response)

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INTRODUCTION

This guidance material has been prepared by the Ministry for Primary Industries (MPI) for release by the GIA Secretariat.

This information provides industry organisations with guidance about funding GIA Deed commitments, primarily by using Biosecurity Act levies and Commodity Levies Act levies. It also provides information about the development of the policy for Crown loans.

Industry organisations are recommended to use this information to support their planning for how they will fund GIA Deed commitments.

All sectors are different and proposals to fund GIA commitments will reflect this. It is critical for industry organisations to talk to MPI as early as possible on its proposed funding model, well in advance of any formal application and sector consultation.

Key terms in this document

- A **levy** is a means of compulsory collection of funds for a specific purpose, under legal authority.
- A **levy order** is a legislative instrument for the compulsory collection of a levy.
- A **ballot paper** is a device for an organisation's members to vote on a course of action.

Additional information

Additional information about using levies can be found at:

- Biosecurity Act 1993
  http://www.legislation.govt.nz/act/public/1993/0095/latest/DLM314623.html?src=qs
- Commodity Levies Act 1990
  http://www.legislation.govt.nz/act/public/1990/0127/latest/DLM226674.html?src=qs

BACKGROUND

An industry organisation wishing to sign the GIA Deed is required to meet its respective:

- Minimum commitments (refer to the GIA Deed clause 3.2)
- Share of readiness and response costs, as jointly agreed in an Operational Agreement

The industry organisation must consult its sector participants on funding arrangements as part of obtaining mandate to sign the GIA Deed.

To confirm an industry organisation is eligible to sign the GIA Deed, the Minister must be satisfied that, amongst other things, the organisation has one of the following in place:

- Arrangements in place to fund its commitments under the GIA Deed; or
- An adequate plan to put these arrangements in place.

Overview of the GIA funding options

Industry organisations will, in most cases, need to have a levy in place to collect funds from sector participants to fund their commitments under the GIA Deed.

Options include levies via levy orders established under the Biosecurity Act 1993 and/or the Commodity Levies Act 1990. A Commodity Levy Act levy can be used to fund GIA commitments subject to this being explicit in the purposes for which levy money may be spent - as set out in the levy order.

If an industry organisation has access to other funds that can be made available to meet its commitments under the GIA, and sector participants support this, those other funds can be used as an alternative funding source.

The Deed allows for 'in-kind' contributions for readiness and response activities. Operational Agreements will specify how in-kind contributions will be valued.

Subject to qualifying criteria, a Crown loan may also be approved, as **a last resort**, to fund an industry Signatory's response commitments.

Table 1 (next page) provides examples of different funding mechanisms that may be used by industry Signatories to fund their GIA activities.

Table 1: Examples of funding mechanisms for industry Signatories

Funding mechanism	Description
In-kind contributions	Non-cash resources that can be used to meet GIA commitments, such as people, goods, services or equipment.
Other funding channels or cash reserves	Industry organisations may have access to funds that can be used to meet GIA commitments.
Biosecurity Act levy	The Biosecurity Act includes provisions, under Part 5A, for a GIA-specific levy for the purpose of wholly or partly funding an industry Signatory's commitments under the GIA Deed.
Commodity Levies Act levy	A Commodity Levies Act levy can be used, within the six years that the levy is in place, to fund an industry organisation's GIA commitments [under the provisions of section 10(2)(b)(v) of the Act] for "the protection or improvement of the health of animals or plants", provided the levy order allows for this purpose.
Loan from reputable financial institutions	An industry organisation may use a loan from a financial institution to fund the GIA readiness and/or response activities.
Crown loan	Subject to qualifying criteria, a Crown loan may be approved, as **a last resort**, to fund an industry Signatory's response activities only.

Developing a funding model

It is up to the industry signatory to put in place a funding model that works for its sector, drawing on one or more of the options open to them. The amount of funding that an industry may need will depend on the size of the industry, the biosecurity risks to which it is exposed, and the costs of managing readiness and response activities.

In general terms, MPI considers that a Biosecurity Act levy is more suitable than a Commodity Levy Act levy for covering response costs. A Biosecurity Act levy can be valid for a longer period than a commodity levy, and can be structured in a way that suits an industry's particular situation, including how the burden of the levy is spread over time. Funds collected through a commodity levy must be spent within the six year time span of the levy. These factors make a biosecurity levy more suitable for building up reserves over time and repaying loans.

Industry organisations should not develop funding models that rely solely on access to a Crown loan for response costs. MPI will facilitate access to a Crown loan as **a last resort** for funding response costs, as per its minimum commitment in the GIA Deed. Access to a Crown loan is not guaranteed, but will be subject to whatever lending criteria the Crown puts in place.

A contingency fund or 'fighting fund', built up in advance of a response is not compulsory, but it may be appropriate depending on the sector and the circumstances. For example:

- A small contingency fund may be useful for paying a sector's share of low-cost responses.

- If sector members are concerned about their ability to pay increased levies after they are have been financially impacted by a response, then it may be appropriate to collect and “ring fence” funds in advance.

- If a sector does not have a levy in place before 1 July 2017 (when response cost-sharing begins) it will need an alternate mechanism for paying its share of costs in the event of an incursion.

Whatever model is developed, by 1 July 2017 industry organisations must be in a position to fund (or access funds for) response costs up to their fiscal cap.

Brief examples of funding models are outlined in the following sections. The examples are not intended to be comprehensive, but rather to assist thinking on how to set up a model that works for the sector.

Example 1: Biosecurity Act Levy

The industry organisation gets sector agreement to a new Biosecurity Act Levy to cover all GIA minimum commitments, readiness and response costs that are not covered by in-kind contributions. The rate is initially struck at a rate (for example, 2 cents per unit) to cover minimum commitments, readiness activities and to build up a contingency fund by 1 July 2017 to cover response costs up to the industry’s fiscal caps. The rate will be dropped (for example, to 1 cent per tray) once the contingency fund has been established.

In this situation the industry organisation has a regular funding stream to pay for ongoing GIA commitments, and an appropriately sized contingency fund to draw on in case of a response. It does not anticipate needing a loan.

Example 2: Biosecurity Act Levy and Commodity Levy

The industry organisation gets sector agreement to use its existing commodity levy to fund minimum commitments and readiness activities, and to put in place a Biosecurity Levy, (for example, rated at 2 cents per kg), which it uses to build a contingency fund for paying responses. The Biosecurity Levy can be increased to a pre-agreed limit (for example, up to 5 cents per kg) if additional funds are needed. It will also make use of in-kind contributions.

In this situation the industry organisation has a regular funding stream to pay for ongoing GIA commitments, and an appropriately sized contingency fund to draw on in case of a response. It does not anticipate needing a loan to pay for response costs.

Example 3: Biosecurity Act Levy, Commodity Levy with reliance on access to loan(s)

The industry organisation gets sector agreement to use its existing commodity levy to fund minimum commitments and readiness activities, and puts in place a Biosecurity Act Levy, initially zero rated but which it can increase to (for example, 3 cents per tray) to repay a pre-arranged bank loan for response costs. It will also make use of in-kind contributions.

In this situation the industry organisation has a regular funding stream to pay for ongoing GIA commitments, but it will need to access a loan to pay for response costs. The loan will be repaid through the Biosecurity Act Levy.

Example 4: Commodity Levy and use of other funding

The industry organisation gets sector agreement to use its existing commodity levy to fund minimum commitments and readiness activities. It has income from commercial activities and member fees, which the sector agrees it can use to build a contingency fund for response costs up to its fiscal cap. It will also make use of in-kind contributions.

In this situation the industry organisation has a regular funding stream to pay for ongoing GIA commitments and build a fund to pay for responses. As it does not anticipate needing a loan of any form, a Biosecurity Act Levy is not needed.

LEVY ORDERS

MPI expects that industry organisations will, in most cases, need to put a levy in place to collect funds from the businesses that make up their respective sectors.

An industry organisation may use the provisions of the Biosecurity Act 1993 and/or the Commodity Levies Act 1990 to fund its GIA commitments. However, it must first ensure that its sector participants support the use of levied funds for this purpose, and that the levy order allows for collected funds to be used for the GIA purposes.

Funds raised via a levy must only be used to fund the activities listed in the levy order.

Appendix A outlines the process for making a levy order under Part 5A of the Biosecurity Act 1993.

Appendix B outlines the process for making a levy order under the Commodity Levies Act 1990.

Biosecurity Act levy

A Biosecurity Act levy order must specify a number of issues including:

- How the levy rate is calculated
- The maximum payable levy rate
- Who will pay the levy
- Who will collect the levy
- How the levied funds will be spent

A Biosecurity Act levy order will remain valid unless it is revoked, provided it is confirmed within the applicable timeframes under section 100ZH of the Act. There is no expiry date for the levy, unless it is specifically stipulated in the levy order.

A Biosecurity Act levy payment is compulsory for the persons (e.g. growers) that are specified as levy payers.

The levy can be used by an industry organisation to pay for readiness activities and/or build up a contingency fund for response activities. It can also be used to pay for minimum commitments. The industry organisation must consult with its sector members on the proposed details of the levy order.

When the levy order has been approved by the Executive Council and made by Order-in-Council, it will specify how the levy rates will be set.

For example, the rate may initially be set at a zero, or it may be set at a higher rate to:

- Cover minimum commitments
- Cover readiness activities

- Build up a reserve fund as a contingency to cover future response costs

Then, in the event of a response, the levy rate may be increased to a level up to, or equal to, the maximum rate specified in the levy order. There will be a lag period to increase the levy, and the time needed to implement an increase to the levy rate will be subject to the implementation requirements specified in the levy order, such as how often the levy is collected and the logistics of the process of collection.

Building up a reserve fund is a practical way to cover cost-share requirements for a response.

Commodity Levies Act levy

A Commodity Levies Act levy order:

- Runs for a six-year term
- Must specify how the levied funds will be used
- Requires that the industry organisation undertake an annual consultation with its sector members on the proposed spending plan and levy rate for the coming year

A Commodity Levies Act levy can fund a number of activities including protection or improvement of animal or plant health. On that basis, an industry organisation can use a Commodity Levies Act levy to fund its GIA commitments - provided that this use of the levy funds is supported by the levy payers and **is included in the levy order as a purpose for which levy funds can be used**.

An industry organisation that chooses to use a Commodity Levies Act levy to fund its GIA commitments can use either:

- A current Commodity Levies Act levy if the levy order allows for that use
- A new Commodity Levies Act levy, where that funding stream is separated from any other funding purposes listed in the levy order. i.e. more than one Commodity levy can be in place for an industry.

Developing a levy order

Establishing a levy is a fairly complex, process designed to protect the interests of producers and provide them with the opportunity to comment. The process involves industry sector consultation, regulatory impact analysis, and Cabinet approval followed by Executive Council approval before promulgation. The entire process can take over 12 months.

Industry organisations can combine their consultation on signing the GIA Deed with their consultation on establishing a levy.

During the early steps of the process to establish a levy, MPI will undertake an initial assessment of the regulatory impacts of the proposed levy. The assessment will cover the funding options proposed, the net benefits and whether the proposed option complies with the relevant legislation.

Appendix A outlines the process for making a levy order under Part 5A of the Biosecurity Act 1993.

Appendix B outlines the process for making a levy order under the Commodity Levies Act 1990.

Scope

The scope of each levy order is prescribed in the relevant legislation, and will include, but not be limited to, answering the following matters:

- Which commodity will be levied?
- How will the levy be spent?
- Who will pay the levy?
- What will be the basis of the levy?
- What will the levy rates be (i.e. would there be a single rate or different rates)?
- How will the levy be collected?
- Who will collect the levies?

Drafting the ballot paper is critical as the levy order **cannot** vary from the contents of the ballot paper.

Restrictions on levies

Restrictions on levies are specified in the relevant legislation. These restrictions are summarised in Table 2. Relevant restrictions are also outlined in respective levy orders.

Table 2: Restrictions on levy orders

Biosecurity Act 1993	**Commodity Levies Act 1990**
Refer to Part 5A of the Biosecurity Act for a fuller list of restrictions. Section 100ZB(6): The Minister must not recommend that a levy order be made unless satisfied that the proposed levy payers have been consulted and their views taken into account. There is also the restriction in section 100ZB(1): the levy must be for the purposes of wholly or partly funding commitments under the GIA. There are also restrictions on: • Who the levy can be imposed on (section 100ZB(4) and 100ZB(5)) • Who the levy is payable to (section 100ZC(2)) such as the Director-General or industry organisation • What the order must specify (section 100ZD(1)) Levy orders must be confirmed by an Act of Parliament [section 100ZH].	Refer to section 5 of the Commodity Levies Act for a fuller list of restrictions. Section 5 (1): No Minister can recommend a levy order unless the body corporate to which the levy is to be payable has: • Asked the Minister to do so • Given the Minister a written plan showing how the levy would be spent Section 5(2): No Minister shall recommend a levy order on any commodity unless the Minister is satisfied, based on information and evidence, that: • Within the previous 12 months the participant organisation has held a referendum in relation to a proposal that the levy should be imposed on the commodity (section 5 (2)(aa)(i)) • The ballot paper described the proposal clearly... that the imposition of the levy was proposed on one of the following matters: (i) the production of the commodity; (ii) the value of the commodity; (iii) the area of land devoted to the production of the commodity; (iv) the number, quantity, or capacity, of a thing or things of a specified kind used in connection with the production of the commodity (section 5(2)(ac)) • The support referendum was held so that potential levy payers had a reasonable opportunity to participate in it (section 5(2)(ae))

	• More than half of the participants support the referendum (section 5(2)(ag)) • Where voting was conducted on the basis of production of the commodity, that during the 12 months before the support referendum was held the total amount and total value of the commodity produced by supporters was more than half of the total amount and value of the commodity produced of all participants (section 5(2)(ah)) • The organisation has consulted adequately with persons likely to be effected by the payment or collection of the levy (section 5(2)(a)) Section 10: No industry organisation shall spend any amount of levy for any commercial or trading activity.

Levy rates

Each industry organisation will need to determine the rate of the levy to be paid and whether or not there will be a single rate. If there are different rates, both the Commodity Levies Act and Biosecurity Act require that the Levy Order specify the things to which the different rates apply, such as:

- Different classes or descriptions of the commodity
- Different things of a specified kind, connected with the production of the commodity on the basis of which the levy is imposed
- A maximum for each levy rate or rates

Levy rates must be in accordance with the relevant legislative provisions described in Table 3.

Table 3: Legislative provisions related to setting levy rates

Biosecurity Act 1993	**Commodity Levies Act 1990**
Section 100ZD(1)(e) states: A readiness or response levy order must specify on the rate of levy: • Whether there is a single or 2 or more different rates • The things to which the rates apply • The maximum for each rate or rates • The setting of the actual rate by the payee so that the industry organisation can meet its commitments under the agreement • How the rate or rates of the levy and variations of the rate or rates must be notified 100ZD(3) states: A readiness or response levy order may: (a) set a rate or rates initially at zero or (b) provide for a rate or rates to be set at zero For example, an industry organisation may set up a Biosecurity Act levy, with the levy rate initially at zero, to be activated at a rate within the pre-agreed maximum	Section 6(1)(l) states: Every levy order shall specify, in respect of each rate of levy, whether there is a single or 2 or more different rates; and if at different rates: the things to which the rates apply. Section 6(1)(m) states: Every levy order imposing on any commodity a levy payable to any industry organisation 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

levy rate in the event that that funding is required for cost-sharing of response activities.	

Levy rate reviews

Levy rates should be reviewed regularly, especially when things change such as commodity values, costs and industry size, to ensure that:

- The assumptions on which the levy rates are based remain valid and relevant
- The levy rates are sufficient to meet the respective industry Signatories' GIA funding commitments

Levy rate reviews should include simple updating provisions, where suitable, and not be subject to frequent adjustments.

CROWN LOANS

Cabinet has agreed in-principle that, where required, the Crown can offer loans to industry Signatories, to fund their respective shares of **response costs only**, subject to qualifying criteria. Cabinet has also agreed that interest will be charged on the loans and that the interest rate should adequately reflect the cost and risk to government of lending the money.

MPI's minimum commitments in the GIA Deed include facilitating access for industry Signatories to Crown loans, **as a last resort**, to fund their response commitments only (refer to the GIA Deed clause 3.2.2(f)). MPI will consult with Treasury and inform industry on the details and qualifying criteria for Crown loans under the GIA. MPI must report back to the Minister of Finance and the Minister for Primary Industries on the final loan arrangements for the GIA by 30 March 2017.

At the time of writing (December 2015) the Crown loans policy is not confirmed. The following information is a guide only.

The main issues that need to be worked through are:

- The approach to calculating interest and a recommended interest rate
- Eligibility criteria
- Implementation details, including how the loans will be managed and resourced

The following principles are likely to underpin Crown loans:

- Crown loans would be available to industry GIA Deed Signatories only, subject to qualifying criteria
- A Crown loan may be granted only as a last resort, meaning that industry Signatories must exhaust all other financial options before applying for a Crown loan
- Crown loans for response costs only may be available from 1 July 2017, from which time cost sharing will begin for responses under the GIA Deed
- Interest to be charged on Crown loans will adequately reflect the cost and risk to government of lending the money
- If a Crown loan is advanced, subject to qualifying criteria, the loaned amount, including any interest incurred, will need to be repaid within a time-period likely to be up to 10 years

Eligibility criteria for an industry organisation to meet will likely include (but not limited to):

- Providing evidence that all other possible options for sourcing the funding have been exhausted
- Having an asset or levy order in place that would provide the Crown with security for a loan e.g. this could be a Biosecurity Act Levy with no expiry date, set at zero-rate, and activated within a pre-agreed maximum rate when required. Noting that a Commodity Levies Act levy may only provide suitable security for a Crown loan if the term of the loan is shorter than what remains of the six-year term of the levy order (see Commodity Levies Act levy, p.7)
- Demonstrating an ability to repay the loan, including interest, within the required time-period, by forecasting its potential future revenue stream
- Meeting other criteria that MPI may from time-to-time notify industry Signatories of

These issues, principles, and criteria are still under development. MPI expects it will be releasing details on the proposed Crown Loan administration structure in early 2016

FREQUENTLY ASKED QUESTIONS

1. Can an unincorporated industry organisation sign the GIA Deed?
2. Does an industry organisation have to be a Commodity Levies Act organisation to be approved by the Minister to sign the GIA Deed?
3. What are the timeframes for GIA levies?
4. Why does MPI say it prefers industry organisations to use a Biosecurity Act levy rather than a Commodity Levies Act levy for GIA activities?
5. Can an industry Signatory use a levy to generate a reserve to pay for its share of a GIA response cost?
6. Can a levy to fund GIA commitments be set at zero?
7. What is the trigger for an industry Signatory to increase its Biosecurity Act levy rate from zero?
8. How will MPI recover costs from non-Signatory industry sectors that are beneficiaries of GIA readiness and response activities?
9. Where do the levy funds go?
10. What reporting is required for a Biosecurity Act levy?
11. How can an industry Signatory apply for a Crown loan?

1. **Can an unincorporated industry organisation sign the GIA Deed?**

No. To become a GIA Deed Signatory, an industry organisation must be a body corporate.

2. **Does an industry organisation have to be a Commodity Levies Act organisation to be approved by the Minister to sign the GIA Deed?**

No.

3. **What are the timeframes for the GIA levies?**

A Biosecurity Act levy order for an industry Signatory will remain valid unless it is revoked, provided it is confirmed within the applicable timeframes under section 100ZH of the Act. There will be no expiry date for the levy, unless specifically stipulated in the levy order.

A Commodity Levies Act levy will expire six years after promulgation, or earlier if it has been revoked, or has ceased to have effect before the six years is up. Following expiry of a Commodity Levies Act levy, an industry organisation will need to start a new process, as required under the Act, if it wants to have another levy order put in place.

4. **Why does MPI say it prefers industry organisations to use a Biosecurity Act levy rather than a Commodity Levies Act levy for GIA activities?**

The Biosecurity Act, as amended in 2012, makes specific provisions for a Biosecurity Act levy to fund an industry Signatory's GIA commitments.

A Biosecurity Act levy is more flexible than a Commodity Levies Act levy and allows an industry Signatory to structure a levy in a way that suits their particular situation, including when the levy rates are to be reviewed and how the burden of the levy is spread over time.

A Commodity Levies Act levy is a prescriptive and rigid regime with a six-year expiry date and an annual review process that is subject to sector member approval. The limited life of the commodity levy may make it unsuitable for repaying loans (commercial or crown) for response costs. For example an industry organisation may find itself in the position of needing a ten-year loan, but only having two years of funding remaining guaranteed through the Commodity Levy.

5. **Can an industry Signatory use a levy to generate a reserve to pay for its share of a GIA response cost?**

Yes. A Biosecurity Act levy can be used to generate a reserve to fund a Signatory industry's future GIA activities, but that purpose must be clearly stated in the levy order.

A Commodity Levies Act levy may be used to fund a Signatory industry's GIA commitments within the six years that the levy order is in place, provided that such use is supported by the levy payers—however, it will be inappropriate to use the levy to generate a reserve fund that would be held beyond six years.

6. **Can a levy to fund the GIA commitments be set at zero?**

A Biosecurity Act levy can be set at zero, or provide for the levy to be set at zero, in a levy order.

For example, a Signatory industry may set up a Biosecurity Act levy, with the levy rate initially at zero, to be activated at a rate within the maximum levy rate set in the levy order in the event that funding is required for cost-sharing of GIA response activities.

A Commodities Levies Act levy cannot be set at zero in its levy order.

However, once a Commodities Levies Act levy has come into effect for an industry Signatory, it may set a zero levy rate for the year ahead within the maximum rate set in the levy order. This is permitted under section 6(1)(m)(i) of the Commodity Levies Act (refer to table 3 above), subject to the terms of the organisation's constitution.

7. **What is the trigger for an industry Signatory to increase its Biosecurity Act levy rate from zero?**

An industry Signatory can increase a Biosecurity Act levy rate from zero once its cost-share under a response Operational Agreement has been specified. The higher levy rate must be set at a level within the maximum levy rate set in the levy order.

8. **How will MPI recover costs from non-Signatory industry sectors that are beneficiaries of GIA readiness and response activities?**

The Biosecurity Act allows MPI to recover costs, via a levy, from non-Signatory beneficiaries of GIA readiness or response activities.

Under clause 5.1.12 of the GIA Deed, where a non-Signatory industry has been identified as a beneficiary of an Operational Agreement:

- MPI will meet the non-Signatory's share of costs
- MPI will recover costs from that non-Signatory, pursuant to section 137 of the Biosecurity Act, if it is considered equitable and efficient to do so

- The Crown will retain all costs recovered from that non-Signatory

9. Where do the levy funds go?

Levy orders, whether under the Biosecurity Act or the Commodity Levies Act, will specify that the levy will either be collected directly by the industry organisation, or collected by an agent such as MPI on the industry organisation's behalf.

MPI prefers that industry organisations have their levies collected independently from MPI, although some industry Signatories may prefer MPI to act as their collecting agent.

An industry Signatory's levy order will specify how the funds collected must be used to meet its GIA commitments.

10. What reporting is required for a Biosecurity Act levy?

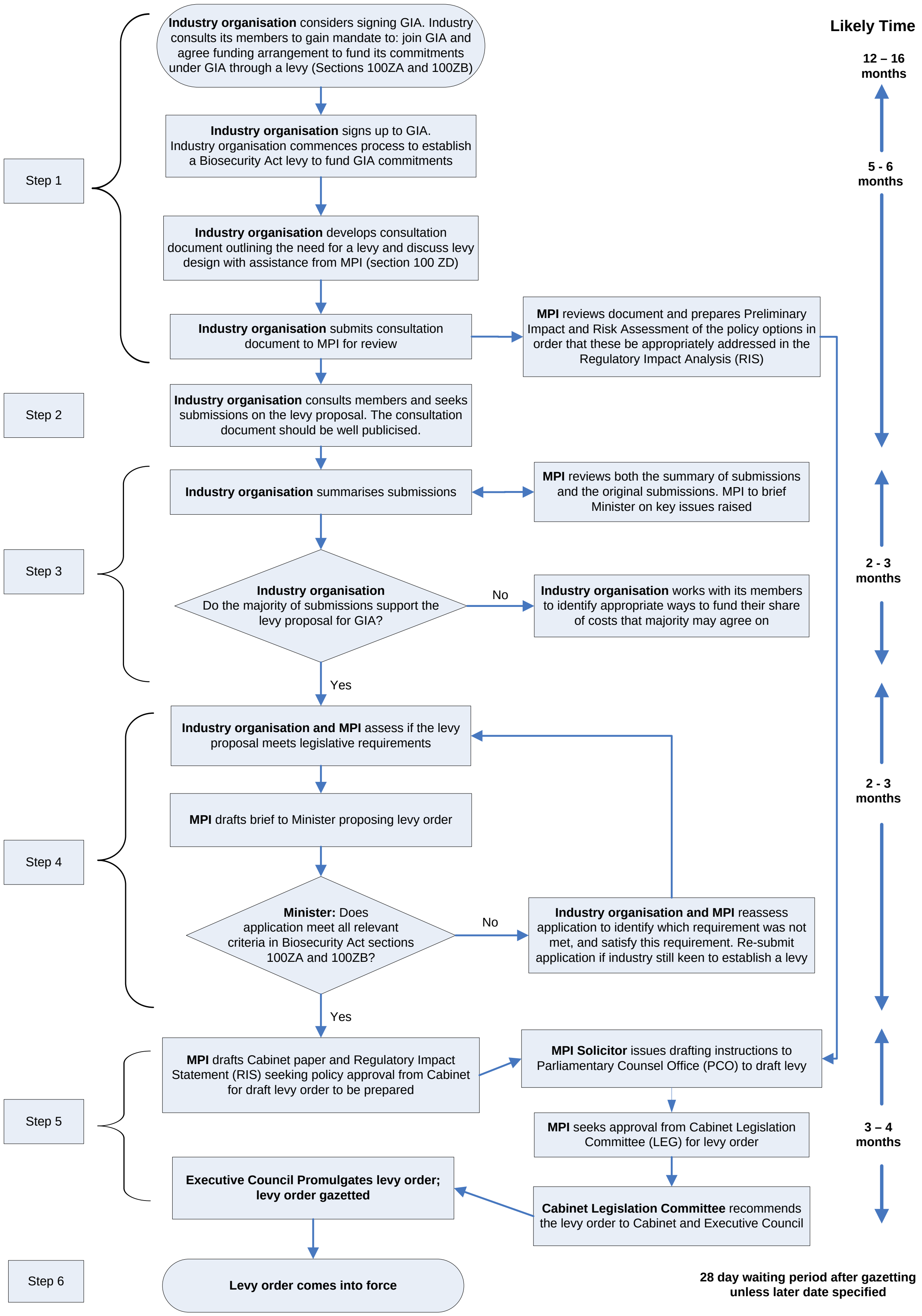
A Biosecurity Act levy order for an industry Signatory must specify:

- The keeping of accounts, statements and records by the persons responsible for collecting the levy, the persons responsible for paying it, and the payee
- The retention of the accounts, statements or records for a specified period.

11. How can an industry Signatory apply for a Crown loan?

An industry Signatory would have to make a loan application to MPI and the loan would be subject to approval by The Treasury. The process for making an application will be developed as part of MPI's consultation on Crown loans.

APPENDIX A: PROCESS FOR MAKING A LEVY ORDER UNDER THE BIOSECURITY ACT



APPENDIX B: PROCESS FOR MAKING A LEVY ORDER UNDER THE COMMODITY LEVIES ACT