

# Biosecurity Operational Agreements & a Biosecurity Levy for fresh tomatoes

June 2017

## Information for Commercial Fresh Tomato Growers on:

1. TomatoesNZ becoming a partner in GIA biosecurity operational agreements;
2. Implementing a Biosecurity Levy on Fresh Tomatoes.

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At this year's AGM on July 12th, TomatoesNZ will be asking fresh tomato growers' to support TomatoesNZ signing up to operational agreements under the Government Industry Agreement for Biosecurity Readiness and Response (GIA); and to approve a new Biosecurity Levy on fresh tomatoes which will fund that activity.

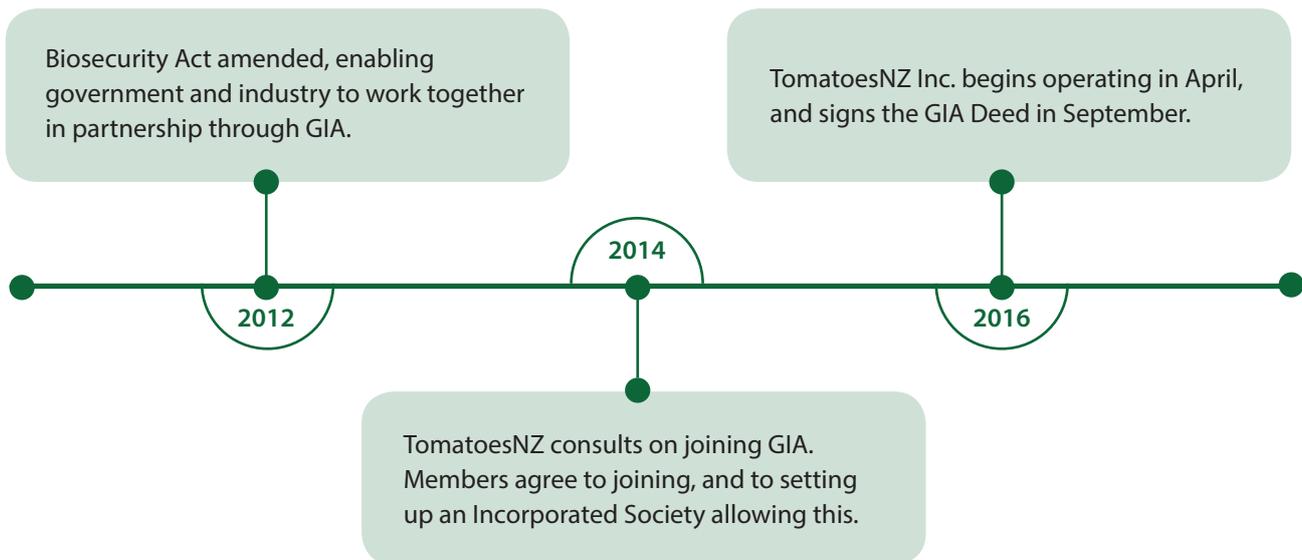


# 1. What is GIA and how did we get here?

In September last year, TomatoesNZ Incorporated (TomatoesNZ) signed up to the Government Industry Agreement for Biosecurity Readiness and Response Deed (GIA Deed).

The GIA Deed outlines the principles of the partnership between the Ministry for Primary Industries (MPI) and each industry that signs the GIA Deed. Signing up to this agreement has meant that we have more of a say in how biosecurity risks to our industry are managed. It means we have a "seat at the table" when decisions are made about whether to respond to new pests that will have an impact on fresh tomato growers and exporters. It also brings us into a "partnership" with MPI and other horticulture (and agriculture) sectors. That partnership means that we are talking about and assessing potential biosecurity risks together, and commissioning research and readiness plans that reduce the chances of new pests establishing.

The GIA Deed has been many years in the making.



TomatoesNZ, along with Horticulture NZ and other industry groups, has been involved in negotiations on the GIA Deed agreement and its governance from the start.

## Is GIA good for our industry?

On balance, yes. Historically the government, via MAF and now MPI, has taken full responsibility for biosecurity. We know that that system has not always proven to be as effective as industry demands. GIA allows us to be actively involved in assessing the effectiveness of the system, recommending improvements where required, planning for the risk of incursions and taking a lead role in the event of an incursion

## 2. Operational agreements

When TomatoesNZ first consulted on signing the Government Industry Agreement for Biosecurity Readiness and Responses Deed (GIA Deed) way back in 2014, we committed to giving growers further information before we signed up to any “operational agreements” (OAs) under the GIA Deed.

Operational agreements are between the Ministry for Primary Industries (MPI) and one or more industries. They are a mechanism describing how the parties will work together to make joint decisions and share the readiness and response activities and costs for specific new pests (or a group of pests). They are where “the rubber hits the road”, and we start committing money and resources to biosecurity readiness and response.

The agreements seek to mitigate the risk of incursions by providing better identification of biosecurity risks, improving pre-border and border management, better readiness to respond to the risks, and more successful and cost effective outcomes from biosecurity responses. They build both MPI and industry capability and capacity to successfully respond to new pests.

Operational agreements create a plan to:

- Keep the pest (or pests) out of NZ, and ensure early detection if the pest does arrive;
- Identify how to respond if the pest/s is/are found;
- Determine in advance how costs will be shared;
- Set a fiscal cap on spending during a response and for readiness activities for a particular pest or group of pests.
- Caps will relate to how significant an impact the pest would have on our industry if it established.

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### What will operational agreements cost?

Back in 2014, when fresh tomato growers agreed to become GIA Deed signatories, there were no operational agreements in place and we did not know what they would look like for the tomato industry and what the costs were likely to be.

Now there is an operational agreement for fruit fly (FFOA) in place, and as a signatory to the GIA Deed we are in a position to become a signatory to that OA. Current industry signatories to the FFOA are kiwifruit, pipfruit, avocado, vegetables and citrus.

TomatoesNZ has been “at the table” throughout the fruit fly negotiations, which included deciding “cost shares” for signatories. We have committed \$23,000 in “voluntary contributions” to the cost of running the readiness programme (including the fruit fly trapping surveillance network) for the 2017-18 year, which for now is being paid from Commodity Levy. This amounts to 4.6% of the total value of all industry contributions to running the readiness programme and operational agreement. This will be an ongoing annual cost.

Estimates for possible “response” costs, should there be a fruit fly incursion, vary depending on the level of the incursion and are outlined in Table 1 on page 4.



**Table 1: Potential fresh tomato industry cost share in the event of a fruit fly incursion.**

| Response Level       | Description  | Cost for TomatoesNZ |
|----------------------|--|---------------------|
| Level 1              | Response Level 1 is triggered when a male fruit fly is detected in one of the fruit fly surveillance traps, or reliable evidence is presented that fruit fly are present in New Zealand. This is the minimum trigger level. The objective of Response Level 1 is to determine if an establishing population is present. It is not an eradication response. Govt pays 70% and industry pays 30% | \$16,500            |
| Level 2              | Response Level 2 is when it is believed that a fruit fly population is establishing. The objective of Response Level 2 is to eradicate this population. Govt pays 80% and industry pays 20%  | \$110,000           |
| Level 3              | The move to Response Level 3 may be initiated when the infestation is found to be more widespread. Such a response will likely be a multiyear programme that includes significant extension of the Controlled Area and additional eradication actions Govt pays 90% and industry pays 10%  | \$110,000           |
| Maximum over 5 years | This is the agreed “fiscal cap” or share of the maximum costs the fresh tomato industry has proposed to pay, over any five year period.  | \$148,000           |

**What if we don't sign?**

The reality is that the fresh tomato industry will be required to pay a share of the cost of “readiness” (research, surveillance) and “response” (when incursions occur) activities, whether or not we are a signatory to the operational agreement – because MPI plans to “cost recover” from those industries that benefit from this work but are not signatories. By being a Signatory, we get a say on how much it costs, and how it is carried out, to ensure the maximum benefit to fresh tomato growers.

In addition to fruit fly, an operational agreement for Brown Marmorated Stink Bug is in the final stages of development. Cost shares are still being negotiated but look likely to be lower than those for fruit fly because there are more “beneficiary” groups, including a large “public good” component, because the pest is a public nuisance and attacks many native species.

We have also started developing a “Fresh Tomato Operational Agreement” which will cover off the top few priority pests that are of the most concern to our industry, such as Chilli thrips, Leafminers, and viruses such as Tomato torrado virus and Pepino mosaic virus. Some of these pests may be in common with other indoor or solanaceous crops, and we will be talking to those product groups about joint agreements and cost shares.

When there is no operational agreement in place for a specific new pest that arrives in New Zealand, then MPI and industry Deed Signatories who are directly impacted by that new pest would enter into a ‘rapid OA’ process to agree response cost shares and an operational agreement fiscal cap. MPI will respond until the ‘rapid OA’ is up and running.

The TomatoesNZ board will be asking fresh tomato growers to agree to give it the mandate to enter into GIA operational agreements on their behalf, via a vote at the AGM on July 12th.



### 3. A proposed Biosecurity Levy on fresh tomatoes

Along with this greater opportunity for representation, influence, and shared work on biosecurity readiness, comes a requirement to directly contribute to the costs of running biosecurity readiness and response programmes.

We are funding the “minimum commitments” of being a Deed Signatory from Commodity Levy funds. Minimum commitments include taking part in governance, development of operational agreements (e.g. Fruit Fly and Brown Marmorated Stink Bug); and developing TomatoesNZ’s biosecurity resources, such as describing and providing information about our industry’s “priority pests”. Some biosecurity readiness costs can and will be met with current Commodity Levy funds. However, now that operational agreements are being developed and signed, and response cost shares agreed, the funding commitments are rising.

#### Proposed Biosecurity Levy Rate

The TomatoesNZ board is proposing a Biosecurity Levy on Fresh Tomatoes, with an initial rate of 0.10% (10 cents per \$100) and maximum rate of 0.25% (25c per \$100) of value at the first point of sale (for domestic sales) or the free on board value for exports (table 2). The Levy will only fund biosecurity-related activities. It will not fund other non-biosecurity TomatoesNZ activities. This proposal will be voted on at the TomatoesNZ AGM on July 12th.



The Biosecurity Levy rate will apply to all fresh tomatoes grown in New Zealand for sale domestically or for export. There will only be one Levy rate. It will be calculated as a percentage of gross value at the first point of sale for domestic sales and a percentage of the Free on Board value (before deductions and charges) for exports.

The proposed maximum Biosecurity Levy rate is based on an estimate of the industry’s GIA commitments over a five year period, and what is sustainable for the industry. It is proposed that the rate will stay at the initial rate of 0.10% until such a time as the industry is required to increase its share for biosecurity readiness and response costs, where it be increased up to the maximum of 0.25%.

The TomatoesNZ board is proposing to use the Biosecurity Levy to build a biosecurity reserve fund of about \$120,000 per year (assuming no responses need to be funded), with a cap of \$1,000,000. This fund could be used to pay for response costs if and when they occur, or for readiness activities. If required, the rate of Levy could be moved up to no more than the maximum (0.25%). This could happen if multiple responses to fresh tomato pests occur within a few years, or if readiness costs increase beyond what can be funded by the Commodity Levy. The rate could also be moved down or set at zero if the reserve fund cap is reached and the Levy is not required for readiness activities.

Currently the Commodity Levy on Fresh Tomatoes is being collected from all commercial tomato growers at its maximum rate of 0.35% (excluding the HortNZ component of 0.15%). The Biosecurity Levy on Fresh Tomatoes Order would be made under the Biosecurity Act, and will be separate and additional to the Commodity Levy on Fresh Tomatoes.

**Table 2: Proposed initial and maximum rates for a new Biosecurity Levy on Fresh Tomatoes. Calculated on value at the first point of sale on domestic sales or free on board value of exports**

| Maximum Levy rate. | Initial Levy rate | Initial income per year* | \$ maximum income per year * |
|--------------------|-------------------|--------------------------|------------------------------|
| 0.25%              | 0.10%             | \$120,000                | \$300,000                    |

*\*Based on an industry value of \$120m*

As a GIA partner, TomatoesNZ has a seat at the table of “response governance” for any new pests under an operational agreement that impact fresh tomatoes; and therefore has a say in how much will be spent in any response. MPI will cover the cost of a biosecurity response initially, and then calculate and invoice each industry’s share using a pre-agreed cost share model and repayment terms which will be set out in operational agreements.

## Who will have to pay the Levy?

All commercial fresh tomato growers in New Zealand. No commercial grower will be exempt from paying the levy.

The Biosecurity Levy will apply to all fresh tomatoes grown in New Zealand and sold in New Zealand or exported. It will not apply to tomatoes grown for processing. The grower is responsible for paying the Levy. "Grower" means an individual or entity whose business includes the commercial growing of fresh tomatoes in New Zealand for sale in New Zealand or for export.

A grower who objects on conscientious or religious grounds to paying the Levy in the manner provided for by the order may pay the amount concerned to the Director-General. The Director-General must pay the amount to TomatoesNZ.

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## When will the Levy be activated and how will the rate will be notified?

The Levy will be activated 28 days after the new Levy Order is Gazetted. This will occur after TomatoesNZ submits a Levy application to MPI, who then undertakes a process to have the Levy Order approved by Cabinet and the Minister for Primary Industries. This process is expected to take a year or more.

TomatoesNZ will notify growers directly when the Biosecurity Levy is to be activated and what the rate is, through existing communication media including by a direct letter to growers and collection agents, the NZ Grower magazine, and the TomatoesNZ website.

Any changes to the Biosecurity Levy rate would also be notified through those channels.

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## How will the Levy be spent?

The Biosecurity Levy will **only** fund biosecurity-related activities. Specifically, it will be used for meeting the fresh tomato industry's agreed share of biosecurity readiness and response costs under operational agreements. It will not fund other non-biosecurity TomatoesNZ activities, or any commercial or trading activity.

TomatoesNZ may invest Biosecurity Levy funds until they are spent.

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## Who will collect the Levy and how will it be reported on?

Growers will pay the Biosecurity Levy in the same way they pay their Commodity Levy, via levy collectors (including wholesalers, packhouses, auctioneers, brokers, produce distribution centers, retailers and exporters) who buy fresh tomatoes from, or sell fresh tomatoes on behalf of, growers. Collection agents would collect the Levy at the first point of sale and pay it to TomatoesNZ.

However, in the case of grower direct sales to the public (e.g. through gate or roadside sales, internet sales, farmers or flea markets, restaurants or grower-own exports), growers will pay the Levy directly to TomatoesNZ

Levy collection agents will be entitled to retain a collection fee of up to 4% (plus GST) of the amount collected.

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## When is the Levy due?

**Collection agents:** The due date for payment of the Levy by a collection agent is the date on which the collection agent deducts the Levy from the grower. The latest date for payment of the Levy by the collection agent is the 20th day of the month following the deduction of Levy from the grower.

**Direct sales by growers:** If fresh tomatoes are sold directly to the public by growers, or exported by growers, the due date for payment of the Levy is 30 June, for sales during the preceding 12 months. The latest date for payment is 30 September in the same calendar year.

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## **Penalty for late payment**

If any Levy money (or any goods and services tax payable on that money) has not been paid on or before the latest date as described above, TomatoesNZ may add a penalty of 10% to the amount owing at the end of the first month that the debt remains outstanding, and a further 2% to the amount owing including any previous penalties at the end of each additional months the amount remains outstanding.

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## **What records must growers keep?**

Growers and collection agents must retain records, for each Levy year, for at least two years after the Levy year to which the records relate, of:

- The name and address of the grower; and,
- The amount of Levy paid to TomatoesNZ or the Director-General of the Ministry for Primary Industries for growers who are conscientious objectors; and,
- The sales that the Levies were deducted from; and,
- Growers must retain the name and address of the collection agent if applicable; and,
- Collection agents must retain the details of the growers they have collected Levies from (including grower's name, trading name and postal address).

TomatoesNZ may request, in writing, from a grower or collection agent any information that they reasonably require for the purpose of determining the amount of Levy payable by the grower. Growers and collection agents must provide these records in writing, if requested by TomatoesNZ, as soon as is reasonably practical.

## **What records must TomatoesNZ keep?**

- TomatoesNZ shall retain records for at least two years after the Levy year to which the records relate;
  - The amount of Levy paid to it; and,
  - The date on which the money is received; and,
  - The name of the person or entity who paid the money; and,
  - The manner in which the Levy funds were spent or invested.
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## **How will the Levy be reported on?**

TomatoesNZ would report on Biosecurity Levy income and expenditure in an annual report and at the annual general meeting.

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## **Will there be a process for disputes?**

There will be a robust disputes process described in the Biosecurity Levy aligned to the Arbitration Act 1996. Note that the Minister for Primary Industries has the power to Audit the Levy Order and industry would pay the costs of any audit.

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## 4. What next?

We welcome your comments on this proposal. Please give any feedback to Helen Barnes (contact details below), by Monday July 10th 2017.

A vote on the Biosecurity Levy Proposal, and GIA operational agreement mandate will be held at the TomatoesNZ Annual General Meeting (AGM) on the 12th July, 2017 in Tauranga. All growers will have the opportunity to submit their vote in person or by proxy. Proxy forms will be posted to growers along with the AGM papers, and voting forms will be available at the AGM.

If the vote at the AGM is successful, then TomatoesNZ will prepare an application for a Biosecurity Levy Order for Fresh Tomatoes. It is expected the application and Levy Order drafting process could take up to 12 months before coming into effect. TomatoesNZ will notify growers directly when the Biosecurity Levy is to be activated, through existing communication media including this magazine, the TomatoesNZ.co.nz website, grower forums and meetings.



### For further information or to discuss any part of the proposal:

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