

In Confidence

Office of the Minister for Biosecurity
Chair, Cabinet Legislation Committee

BIOSECURITY (RESPONSE – MILKSOLIDS LEVY) ORDER 2019: APPROVAL FOR SUBMISSION TO EXECUTIVE COUNCIL

Proposal

1. This paper seeks approval to submit to the Executive Council the Biosecurity (Response - Milksolids Levy) Order 2019.

Executive Summary

2. The Biosecurity (Response - Milksolids Levy) Order 2019 will enable the dairy industry to meet its financial commitments under the Government-Industry Agreement on Biosecurity Readiness and Response (GIA).
3. The dairy and beef industries have together committed to pay a 32% share of the overall costs incurred in responding to the cattle disease *Mycoplasma bovis*, subject to a fiscal cap. The industries will contribute \$289.2 million in total over 10 years towards the expected \$913 million total cost of the response.
4. The dairy industry's contribution to be recovered via the levy are:
 - Phase 1 costs of \$10.5 million (incurred from July 2017 to June 2018), to be recovered within two years of the levy's establishment; and
 - Phase 2 costs of \$133.5 million (incurred from July 2018 to June 2020), to be recovered within five years of the levy being established.
5. DairyNZ proposes to levy dairy farmers up to a maximum rate of 3.9 cents per kilogram of milk solids each year. The actual rate is likely to be set below the maximum, and will be reviewed each year until the industry's share of *M. bovis* response costs has been paid.
6. Levy payments will lower the average annual operating profit of a dairy farmer by two per cent. DairyNZ considers that most farmers will be able to absorb the additional levy cost, but if milksolids prices drop below \$6.00 per kilogram, farmer profitability is more likely to be affected. At that point, up to a quarter of farmers may find difficulty in meeting their costs without additional borrowing.
7. DairyNZ carried out extensive consultation on the levy proposals over three rounds, between late 2017 and early 2019. In the final round 1794 submissions were received, 61% being in favour of a levy at the suggested 3.9 cents per kilogram of milksolids per year.
8. As required by the Biosecurity Act 1993, I am satisfied that the proposed levy payers have been consulted and their views have been taken into account.

9. DairyNZ has requested that the levy is in place by 1 September 2019, to allow repayments to begin as soon as possible, and to be ready for the new season's milking beginning in Spring.
10. To meet the industry's timeline I am requesting a waiver of the 28-day rule. The shortened notice period is not expected to create any problems for levy payers, as the proposed levy has been well signalled over the last 15 months and received majority support from submitters.

Background

11. In April 2012, Cabinet confirmed the policy framework for the GIA [CBC Min (12) 2/6]. The GIA aims to improve overall biosecurity outcomes for New Zealand through partnerships between government and primary industry sector organisations.
12. The framework for the GIA was established through a 2012 amendment to Part 5A of the Biosecurity Act 1993. Part 5A of the Act provides a framework for the purpose of enabling the government and industry to work together in partnership to achieve the best possible outcomes from biosecurity readiness or response activities by:
 - making joint decisions on the activities; and
 - jointly funding the costs of the activities in shares that take into account the public benefits and industry benefits that the activities deliver.
13. The GIA framework also enables signatories to the Deed (including MPI) to enter into operational agreements. Amongst other things, the agreements may outline the shared decision making and cost sharing between industry organisations and MPI in relation to unwanted organisms.
14. DairyNZ signed the GIA Deed in November 2018.

Proposed levy

DairyNZ's commitment to meet part of Mycoplasma bovis response costs

15. In July 2017, *Mycoplasma bovis*, a bacterial disease of cattle, was detected in New Zealand. The Government announced on 28 May 2018 that it would fund the phased eradication of this disease through preventing spread of the disease from infected sites, and culling infected cattle.
16. DairyNZ is a signatory to the *Mycoplasma bovis* Operational Agreement, and has committed to pay an industry share of the response costs up to June 2020. The dairy industry will meet 94% of industry costs. The remaining 6% of industry share will be met by Beef+Lamb on behalf of beef farmers.

17. The dairy and beef industries have together committed to pay a 32% share of the overall costs incurred in responding to the cattle disease *Mycoplasma bovis*, subject to a fiscal cap.
18. The fiscal caps set the following maximum contribution to the total each party is required to contribute:
 - dairy \$271.85 million
 - beef \$17.35 million
19. Taking the fiscal caps into account, the industries will contribute \$289.2 million towards the expected \$913 million total cost of the response over 10 years.
20. Under the Operational Agreement, the dairy industry's contribution to the costs of the response covers separate phases:
 - Phase 1 costs: repayment of \$10.5 million incurred from July 2017 to June 2018, is to be paid within two years;
 - Phase 2 costs: repayment of \$133.5 million incurred from July 2018 to June 2020 is to be paid within five years.

Levy Content

21. DairyNZ has proposed to meet its response commitments through a levy imposed on milksolids, payable by dairy farmers. The levy proposal has been informed by comprehensive industry consultation. MPI supports DairyNZ's proposal as the most appropriate funding mechanism.
22. DairyNZ has managed a commodity levy on milk solids since 2008 – currently under the Commodity Levies (Milksolids) Order 2014. The biosecurity levy will follow, as far as possible, the example of the commodity levy, using the same definitions and existing collection mechanisms. These are supported and well understood by dairy farmers.
23. The Act provides that a GIA levy may be imposed only by an Order in Council. Section 100ZD of the Act specifies a range of matters which must be included in the levy order, including:
 - how the levy may be spent;
 - who will be responsible for paying the levy;
 - the basis on which the levy will be calculated; and
 - how the levy is to be paid.
24. All dairy farmers who produce milk from cows that is supplied to a dairy processor will be responsible for paying the proposed biosecurity levy. No farmers who currently pay the milk solids commodity levy to DairyNZ will be exempt from paying the proposed biosecurity levy.
25. The value of the levy requested by DairyNZ will be set at the maximum rate of 3.9 cents per kilogram of milk solids. DairyNZ will maintain the actual rate of the levy close to that level, until the industry's commitment to the *M. bovis* response costs has been paid.

26. The proposed biosecurity levy will be collected and paid in the same way as levies under the Commodity Levies (Milksolids) Order 2014 – a dairy processor will pay the levy and recover it from the price paid to the dairy farmer. DairyNZ proposes that in acting as a collection agent for the levy, the dairy processor may deduct a collection fee for the service. This follows the practice in collecting the commodity levy.

Impact of the Biosecurity Levy on Dairy Farmers

27. DairyNZ's assessment is that at its maximum rate, the levy would increase costs on a dairy farmer producing the average quantity of milk solids (158,733 kilograms) by approximately \$6,216 per year. This amount will lower the annual operating profit of the average dairy farmer by 2%.
28. The cumulative effect of the proposed biosecurity levy, together with the existing commodity levy, is a maximum of 7.5 cents per kg of milk solids. At forecast prices of over \$6.50 per kilogram of milk solids, DairyNZ's projections are that most farmers will be able to absorb the additional levy, but that if milk prices drop below \$6.00 per kilogram, farmer profitability is more likely to be affected. At that point, up to a quarter of farmers may find difficulty in meeting their costs without additional borrowing.
29. However, MPI's June 2019 *Situation and Outlook for Primary Industries* publication is forecasting relatively strong pay-outs for dairy farmers in the next two seasons. The DairyNZ Board will take milk prices into consideration each season when it sets the biosecurity levy rate that will apply for the coming year.
30. DairyNZ also points out that the \$1.3 billion cost to the dairy industry of not responding to *M. bovis* outweighs the expected total cost of the response at \$913 million. Eradicating *M. bovis* will eliminate significant animal health and welfare concerns, and allow farmers the flexibility to be able to graze animals away from the dairy farm in the off-season. These benefits will be ongoing.

Approval for PCO to draft the levy Order

31. I agreed in May 2019 that MPI send a drafting request for the levy direct to the Parliamentary Counsel Office, without referring the request to the Cabinet Economic Development Committee for policy approval [B19-0267 of 24 May 2019 refers].
32. As noted in the Background section above, the levy reflects the GIA commitments of an industry organisation, and is made after consultation within the industry. It is not an external financial imposition on an industry by government.
33. The policy settings for the GIA were adopted into legislation in 2012. Accordingly I have agreed that the proposed dairy industry GIA levy does not require a new government policy decision, and can be considered routine.

34. The Cabinet Manual notes that if regulations are routine and do not require new policy decisions, the Minister may authorise drafting without reference to Cabinet (para 7.91(d)).

Impact Analysis

35. The Regulatory Quality Team at the Treasury determined on 3 July 2019 that the regulatory decisions sought in this paper are exempt from the requirement to provide a Regulatory Impact Assessment, as the Government has limited statutory decision making discretion or responsibility for the content of proposed delegated legislation.

Compliance

36. The Biosecurity (Response- Milksolids Levy) Order 2019 complies with each of the following:
- The principles of the Treaty of Waitangi;
 - The rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990 (including the grounds of discrimination in the Human Rights Act 1993);
 - The disclosure statements;
 - The principles and guidelines set out in the Privacy Act 1993; and
 - The Legislation Advisory Committee guidelines on the Process and Content of Legislation.
37. No relevant international standards or obligations apply.

Consultation and Statutory Prerequisites

Consultation with levy payers

38. Under section 100ZB(6) of the Biosecurity Act, the Minister for Primary Industries must be satisfied that the proposed levy payers have been consulted and their views taken into account, before recommending that a levy order be made. I received a briefing from MPI and have agreed that DairyNZ has undertaken adequate consultation with affected levy payers [B19-0267 of 24 May 2019 refers].
39. DairyNZ has undertaken extensive consultation with dairy farmers, over three rounds. Round one began on 31 October 2017 and continued for over four months, and included material posted direct to all 8,010 payers of the commodity levy.
40. Round two was carried out over a two-week period in April 2018. This round was focused on encouraging dairy farmers to complete and return a hard copy submission form. Consultation rounds one and two generated a total of 74 submissions.

41. Round three of the consultation was carried out over a period of four weeks during February 2019, following the decision to eradicate *M. bovis* from the national herd. 1794 submissions were received; 61% were in favour of DairyNZ collecting a levy at a maximum rate of 3.9 cents per kilogram of milksolids per year.

Consultation with departments

42. The following departments were consulted on this paper: the Treasury, Ministry of Justice, Ministry of Foreign Affairs and Trade, and Ministry of Business, Innovation and Employment. The Department of the Prime Minister and Cabinet and Te Puni Kokiri have been informed.

Waiver of the 28-day rule

43. DairyNZ has requested that the levy is in place urgently, by 1 September 2019. The levy needs to be in place as soon as possible so that DairyNZ can meet its commitment under the Operational Agreement to repay Phase 1 costs within two years of the levy's establishment.
44. It is also important that the levy is in place before Spring milking begins, so that the levy can be applied to all dairy farmers over their full season.
45. To meet these deadlines I am requesting a waiver of the 28-day rule. If the levy Order is submitted to the Executive Council on Monday 5 August 2019, this will provide levy payers with 23 days' notice.
46. The shorter than normal period of notice is not expected to create any difficulties for levy payers or collection agents. As noted in the consultation section above, the proposed levy has been well signalled to both groups over the previous 15 months, and the proposal has received majority support from submitters.

Proactive Release

47. Following Cabinet consideration I intend to consider the release of this paper, with certain redactions in line with the Official Information Act 1982.

Publicity

48. DairyNZ will continue to lead the stakeholder communication ensuring all participants are aware of the new requirements and can adjust their business practices in readiness for the implementation of the levy on 1 September 2019.

Recommendations

The Minister for Biosecurity recommends that the Cabinet Legislation Committee:

1. **Note** that I have agreed to a levy being drafted to enable the dairy industry to meet its financial commitments under the Government-Industry Agreement on Biosecurity Readiness and Response, as a routine matter that does not require a new policy decision;
2. **Note** that the Biosecurity (Response – Milksolids Levy) Order 2019 will give effect to the decision referred to in paragraph 1 above;
3. **Authorise** the submission to the Executive Council of the Biosecurity (Response – Milksolids Levy) Order 2019;
4. **Note** that a waiver of the 28-day rule is sought:
 - 4.1 So that the regulations can come into force as soon as possible, and the levy can be applied to all dairy farmers over their full season;
 - 4.2 On the grounds that early commencement is necessary to avoid the defeat of the purpose of the regulations in recovering payments; and
5. Agree to waive the 28-day rule so that the regulations can come into force on 1 September 2019.

Authorised for lodgement

Hon Damien O'Connor
Minister for Biosecurity