



Management Agency Response to submissions on proposal to replace the American Foulbrood Apiary and Beekeeper Levy with a Hive and Beekeeper Levy

In August 2018, the Management Agency for the National American Foulbrood Pest Management Plan (the Agency) conducted a consultation amongst beekeepers to seek their views about a proposal to increase the American Foulbrood (AFB) Apiary and Beekeeper Levy (referred to as '2018 Levy Consultation'). Over 828 submissions were received, and the majority strongly disagreed that the levy should be increased as proposed.

The majority of 2018 Levy Consultation submissions considered that the Agency should not continue to use apiaries as a basis for calculating the levy and proposed a hive levy instead. A significant number of submissions were also concerned that non-compliant beekeepers were not paying the costs of the AFB problem they created.

In response to 2018 Levy Consultation submissions, the Agency revised the proposal to replace the existing apiary and beekeeper levy with a hive and beekeeper levy. The Agency also decided to fund its compliance and enforcement activities through cost recovery charges under section 135 of the Biosecurity Act 1993.

The Agency took the revised proposal back to the beekeeping community for consultation in 2019. The consultation period was for three weeks and opened on 4 March 2019 and closed on 22 March 2019.

477 unique submissions received, of which 466 were from survey respondents. Fourteen letters were sent to the Agency, three of whom were also survey respondents. The consultation findings and detailed description of the consultation process is presented in the companion Consultation Findings report.

The Agency would like to thank submitters for their submissions on the future funding of the elimination of clinical American Foulbrood in New Zealand.

Summary of Agency decisions

Having considered the submissions, the Agency has decided to request the Minister to make a new American Foulbrood – Hive and Beekeeper Levy Order with the maximum rate of levy set at \$2.55 per hive and \$40 per beekeeper.

The Agency has also decided to charge non-compliant beekeepers to recover fair and reasonable costs of compliance and enforcement actions.

The reasons for these decisions are set out below:

Replace the Apiary and Beekeeper Levy with a Hive and Beekeeper Levy

A narrow majority of submissions considered that the existing apiary and beekeeper levy should be replaced with a hive and beekeeper levy.



Submissions in favour of replacing the existing apiary and beekeeper levy with a hive and beekeeper levy stated that it more fairly distributed the cost between large and small operations, incentivises smaller apiaries and encourages people to take up hobby beekeeping.

The primary objection stated by submissions against replacing the apiary and beekeeper levy with a hive and beekeeper levy was that it was too easy for beekeepers to under report their true hive numbers.

The Agency noted the concerns expressed about the potential for beekeepers to underreport their hives under a hive levy. However, the Agency was not satisfied that these submissions made the case that the under reporting of hives would be significantly higher than the current under reporting of apiaries and believes this can be mitigated by developing new mechanisms to audit hive declarations. The Agency also considered that submissions in favour of changing to a hive and beekeeper levy made a more compelling case for changing to a hive and beekeeper levy than the submissions against as:

- *A hive and beekeeper levy fairly distributes costs between large and small beekeeping operations,*
- *A hive levy incentivises smaller apiaries with a lower disease risk, and*
- *Replacing the apiary levy with a hive levy removes the financial incentive for beekeepers not to register all their apiaries, thereby improving the Agency's ability to monitor and manage American foulbrood.*

Setting a maximum levy rate at \$40 per beekeeper and \$2.55 per hive

A majority of submissions opposed the proposed levy rates. The primary objection was that the proposed levy rates were too high, and beekeepers could not afford to pay them.

The Agency is concerned about the financial hardship that many beekeepers are experiencing. However, the Agency is also concerned that continued underinvestment in AFB elimination has the potential to further erode beekeeper incomes due to hive losses associated with AFB, particularly at a time when AFB may increase as a consequence of the financial pressures that beekeepers are experiencing. The proposed levy rate for 2020/21 and maximum levy rates are approximately \$0.65 (proposed) and \$1.80 (maximum) per hive above the current levy rate. The Agency considers that the additional levy is justified to reduce the costs associated with losing hives and production to AFB.

Charge non-compliant beekeepers to recover the costs of compliance and enforcement actions

A majority of submissions agreed that the Management Agency should charge non-compliant beekeepers to recover the costs of compliance and enforcement actions.

Submissions in favour of charging non-compliant beekeepers to recover the costs of compliance and enforcement actions stated that they believed that non-compliant beekeepers are the most responsible for the AFB problem and they supported strong penalties to deter non-compliance.

The primary reason given by submissions opposing charging non-compliant beekeepers to recover the cost of compliance and enforcement actions was that they believed the penalties were too severe, would encourage non-compliance and underreporting in order to avoid penalties.

Under the National American Foulbrood Pest Management Plan beekeepers are responsible for the costs of eliminating AFB from their beehives. Cost recovery is intended to recover the costs of the additional AFB control activities required to manage the consequences of non-compliant beekeepers' behaviour. The Agency believes it would be unfair to expect compliant levy payers to fund these

actions from the levy and has therefore decided to recover the costs of compliance and enforcement actions from non-compliant beekeepers.

Consultation questions and Agency response

The Agency consulted with beekeepers in March 2019 seeking their views on a proposal to replace the Apiary and Beekeeper Levy with a Hive and Beekeeper Levy. Beekeepers were asked to respond to six key questions:

1. Do you agree with the Management Agency proposed approach to AFB monitoring and auditing?
2. Do you agree to the Management Agency proposed approach to AFB compliance and enforcement?
3. Do you agree that the Management Agency should charge non-compliant beekeepers to recover the costs of compliance and enforcement actions?
4. Do you agree that the existing 'apiary and beekeeper' levy should be replaced with a 'hive and beekeeper' levy?
5. Do you agree for the beekeeper levy to be set at \$40 per beekeeper, and the hive levy at \$1.35 per hive increasing to a maximum of \$2.55 per hive over a five-year period?
6. Do you have any feedback about the proposed American Foulbrood Hive and Beekeeper Levy.

The Agency has considered the beekeeper response to these questions as follows:

1. Do you agree with the Management Agency proposed approach to AFB monitoring and auditing?

61% of submissions agreed or strongly agreed with the proposed approach to AFB monitoring and auditing. Support was highest amongst submitters with 1 – 50 hives, and lowest amongst submitters with 251 – 1,000 hives.

A small number of written submissions were made on this question. Some submissions stated that relying on visual inspections would miss too much AFB and that the use of PCR and dogs needed to be investigated. Some submissions were in favour of testing honey for AFB spores, while others were concerned that the science behind composite spore testing honey was not sufficiently understood and that trace back was impossible.

The Agency considers that visual inspection for AFB, appropriately performed by a competent person, has international recognition as a reliable method for diagnosing AFB.

The Agency notes that PCR is a promising diagnostic technology for the detection of AFB, and the Agency will make greater use of PCR as it becomes cost effective to do so. Scientific information about efficacy of dogs to detect AFB is currently unavailable. Under the levy proposal the Agency intends to make a greater investment in investigating the efficacy of alternative diagnostic methods for AFB.

The Agency is not proposing to use composite spore testing of honey to assess the level of AFB in beekeepers' hives. Honey samples collected will be collected from Risk Management Programme and Domestic Processor premises and contain honey from one beekeeper per sample. Harvest declarations will be used to provide traceback to the source apiaries. The results will be used as a screening tool to assist prioritisation of apiary inspections.

2. Do you agree to the Management Agency proposed approach to AFB compliance and enforcement?

63% of submissions agreed or strongly agreed with the proposed approach to AFB monitoring and auditing. Support was highest amongst submitters with 1 – 50 hives.

Submitters in favour of the proposed approach to AFB compliance and enforcement stated that they believe that non-compliant beekeepers are the most responsible for the AFB problem and that a strong consistent enforcement approach is required to deter non-compliance.

Some submissions thought the enforcement approach should go further including isolating infected apiaries, imposing harsher penalties and prosecutions.

Submissions against the proposed approach to AFB compliance and enforcement stated that the majority of beekeepers have AFB infections, do their best, and have the disease through no fault of their own. Harsh penalties were therefore unfair and would not address the problem. These submissions were concerned that the proposed approach would drive AFB reporting and non-compliance underground.

Many submissions considered that the Management Agency should focus on educating beekeepers and assisting them with AFB management, and that using penalties and cost recovery should be the last resort.

The Agency's proposed compliance and enforcement approach is designed to target beekeepers who have high levels of AFB and are seriously non-compliant with their Disease Elimination Conformity Agreement (DECA) and plan rules. Historically these beekeepers have been able to hide their non-compliance from the Agency simply by failing to report cases of AFB. The proposed approach to monitoring and auditing beekeeper elimination is designed to ensure that these beekeepers will be detected despite continuing to underreport AFB.

Beekeepers that find, report and destroy their cases of AFB should have no reasons to be concerned by the proposed approach to compliance and enforcement. The Agency understands that beekeepers may have cases of disease through no fault of their own, and that AP2 inspection may find a few cases of AFB before the beekeeper does. This is why the Management Agency proposes to only undertake compliance and enforcement actions when either high levels of unmanaged AFB is detected by AP2 inspection or critical DECA non-compliances are detected.

The Agency agrees that AFB education is an important focus. This is why the Agency ensures that AFB recognition and refresher courses are available to all beekeepers throughout the country each year. Currently over 1,300 beekeepers per year take up the opportunity to attend one of over 100 courses run.

The Agency agrees that more training and extension opportunities are required, which is why the levy proposal also included developing: an online AFB recognition course, an extension package for clubs and hubs to deliver to their members, and three regional workshops per year focussed on eliminating AFB from commercial beekeeping operations.

3. Do you agree that the Management Agency should charge non-compliant beekeepers to recover the costs of compliance and enforcement actions?

63% of submitters agreed or strongly agreed with the proposed approach to charging non-compliant beekeepers to recover the costs of compliance and enforcement actions. Support was highest amongst submitters with 1 – 500 hives, and 1,001 hives or more.

Submissions in favour of charging non-compliant beekeepers to recover the cost of compliance and enforcement actions stated that they believe that non-compliant beekeepers are the most responsible for the AFB problem. They supported strong penalties to deter non-compliance.

Submissions against charging non-compliant beekeepers to recover the cost of compliance and enforcement actions stated the cost recovery penalties were too severe and would encourage non-compliance and underreporting in order to avoid penalties. They also expressed concern about the potential for abuse of cost recovery powers, legal challenges, and that many of those who are penalised will not have the funds to pay.

A few submissions were concerned that the majority of beekeepers who have AFB are well intentioned, doing their best and have disease through no fault of their own, and therefore should not be penalised.

Under the National American Foulbrood Pest Management Plan beekeepers are responsible for eliminating AFB from their beehives, and therefore beekeepers are responsible for supplying the labour required to inspect hives and destroy any infected hives and equipment identified as well as the costs associated with destroying the hive and its production.

Seriously non-compliant beekeepers have failed to supply the labour required to adequately inspect their hives or destroy infected beehives and equipment, and it would be unfair to expect compliant levy payers to fund hive inspections and destruction of infected hives owned by non-compliant beekeepers through the levy. Therefore, the Agency intends to recover the costs of compliance and enforcement from non-compliant beekeepers.

The Agency agrees that that the majority of beekeepers who have AFB are well intentioned, are doing their best and may have cases of disease through no fault of their own. The Agency does not regard the presence of AFB in a beekeeper hives as evidence of non-compliance. A beekeeper is only considered to be non-compliant if AP2 inspection identifies a high level of AFB in their hives, or there is evidence of critical non-compliances with their DECA, and/or breaches of plan rules.

Beekeepers with cases of AFB whom are actively working towards AFB elimination from their hives as agreed in their DECA and as required by plan rules will not be subject to compliance and enforcement or cost recovery.

Beekeepers that wish to challenge compliance and enforcement actions taken by the Agency have several options for challenging the decision:

- *Making a complaint to the Agency. Complaints will be considered by a more senior member of the Agency (or the Board) than the person that made the decision.*
- *Making a complaint to the Ministry for Primary Industries whom administer the Biosecurity (National American Foulbrood Pest Management Plan) Order 1998.*
- *Making a complaint to the Ombudsmen*
- *Seeking judicial review of the decision in the High Court.*

4. Do you agree that the existing ‘apiary and beekeeper’ levy should be replaced with a ‘hive and beekeeper’ levy?

46% of submitters agreed or strongly agreed with the proposal to replace the ‘apiary and beekeeper’ levy with a ‘hive and beekeeper levy compared to 43% whom disagreed or strongly disagreed. Support was highest amongst submitters with 1 – 50 hives, and lowest amongst beekeepers with 51 or more hives.

Submissions in favour of replacing the existing ‘apiary and beekeeper’ levy with a ‘hive and beekeeper’ levy stated that it more fairly distributes cost between large and small operations, incentivises smaller apiaries and encourages people to take up hobby beekeeping.

The majority of submissions against replacing the ‘apiary and beekeeper’ levy with a ‘hive and beekeeper’ levy stated that under a hive levy it was too easy for beekeepers to underreport their true hive numbers with some questioning what the legal definition of a hive is and how hive numbers would be assessed.

A small number of submissions stated that the proposed levy structure was unfair for commercial beekeepers, particularly smaller operations, non-manuka producers, nuc and Queen producers and beekeepers with single-brood box hives.

The Agency has noted the concerns expressed about the potential for beekeepers to underreport their hives under a hive levy. However, the Agency is not satisfied that these submissions made the case that the underreporting of hives would be significantly higher than the current underreporting of apiaries, and considers that this can be mitigated by developing new audit mechanisms. The Agency also considered that the March 2019 and 2018 levy consultation submissions in favour of changing to a hive and beekeeper levy made a better case for changing to a hive and beekeeper levy than the March 2019 submissions in favour of the status quo as:

- *A hive and beekeeper levy fairly distributes costs between large and small beekeeping operations,*
- *A hive and beekeeper levy incentivises smaller apiaries with a lower disease risk, and*
- *Replacing the apiary levy with a hive levy removes the financial incentive for beekeepers not to register all their apiaries, thereby improving the Management Agency’s ability to monitor and manage American foulbrood.*

The legal definition of a beehive is defined in the Biosecurity (National American Foulbrood Pest Management Plan) Order 1998 as “a thing constructed for the keeping of honey bees and that is being used or has been used for that purpose; but does not include an introduction cage or a mailing cage.” This provides the legal definition of a beehive for levy purposes. The basis for the

calculation of the levy will be as at 31 March of the previous levy year as prescribed by the current levy order.

5. Do you agree for the beekeeper and apiary levy to be set at \$40 per beekeeper, and the hive levy set at \$1.35 per hive increasing to a maximum of \$2.55 per hive over a five year period?

37% of submitters agreed or strongly agreed with the proposed levy rates compared to 53% whom disagreed or strongly disagreed. Support was highest amongst submitters with 1 – 5 hives, and lowest amongst submitters with 51 or more hives.

Submissions in favour of the proposed levy rates stated that they were fair.

The majority of submissions against the proposed levy rates stated that the proposed levy rates were too high and that beekeepers could not afford to pay the proposed levy as:

- The beekeeping industry is struggling and commercial beekeepers cannot cope with increased levy charges
- Young commercial operations are not yet profitable, and
- Beekeeping is expensive and hobbyists do not draw income from beekeeping

Submissions from hobby beekeepers against the proposed levy rates stated that they were unfair as:

- The beekeeper levy is too high
- They already bear the costs of disease prevention and destruction
- The increased levy unfairly penalises compliant beekeepers whom are being asked to subsidise non-compliant beekeepers
- Their AFB risk was increased by large beekeeping operations who move hives about the country and overcrowd their apiaries – hobbyists should not have to pay for this.

A small number of submissions against the proposed levy rates stated that a levy increase was not required as:

- The current funding is sufficient to manage the disease, or
- That cost recovery from non-compliant beekeepers should be sufficient.

Other objections to the proposed levy rates stated that there would be an increased risk of hobbyists failing to register, and that there should be and should not be a cap on the maximum number of hives levied.

The Agency is concerned about the financial hardship that many commercial beekeepers are experiencing, however, the Agency is also concerned that continued under-investment in AFB elimination has the potential to further erode beekeeper incomes due to hive losses associated with AFB, particularly at a time when AFB may increase as a consequence of financial pressures many beekeepers are experiencing.

The Agency is satisfied that it is not possible to achieve the National American Foulbrood Pest Management Plans primary objective of reducing the level of AFB with the current level of levy funding either with or without cost recovery of compliance and enforcement actions. The Agency considers that the proposed levy rates achieve an appropriate balance between the need to minimise the levy cost incurred by beekeepers and reducing the number of hives beekeepers lose to AFB each year. The proposed levy rate for 2020/21 and maximum levy rates are approximately

\$0.65(proposed) and \$1.80 (maximum) per hive above the current levy rate. This represents a small fraction of the value of a hive and its production.

The Agency notes that the levy order requires it to consult before setting the levy rate each year. The Agency will consider beekeeper views as part of evaluating the appropriate balance between the competing needs to minimise levy costs and maximise AFB elimination before it sets the levy rate each year.

The Agency is satisfied that the proposed \$40 beekeeper levy fairly reflects the additional cost associated with each beekeeper registration. The Agency also notes that under the National American Foulbrood Pest Management Plan that all beekeepers, not just hobbyists are responsible for the cost of disease prevention and destruction, and the proposed hive and beekeeper levy fairly distributes costs between large and small beekeeping operations.

The Agency does not consider that the increased levy rates for hobbyists will increase the number of hobbyists that fail to register as the cost increase is small, between a maximum of \$7.38 (1 hive) and \$30.33 (10 hives) per year, and the Agency will have increased resources to identify unregistered beekeepers whom risk being charged \$250 per apiary.

The levy proposal did not propose a cap on the maximum number of hives levied and the Agency does not intend to propose a cap on the maximum number of hives levied as this would result in beekeepers that owned less hives than the cap threshold subsidising beekeepers that owned more beehives than the cap threshold.

6. Other feedback about the proposed American Foulbrood Hive and Beekeeper Levy

Submissions that provided other feedback on the levy proposal either expressed a lack of confidence in the Management Agency and/or plan.

Confidence in the Management Agency

These submissions expressed a lack of confidence that the Agency can effectively manage AFB. They stated that AFB is a problem that can only be solved by beekeepers, noted that the Agency had done a poor job of managing AFB to date and had not worked hard enough on compliance and enforcement. Many stated that the Agency was too incompetent or self-interested to carry out an effective AFB plan.

The Agency agrees that AFB is a problem best solved by beekeepers and notes that under the Biosecurity (National American Foulbrood Pest Management Plan) Order 1998 beekeepers are responsible for eliminating AFB from their beehives. However, due to a lack of compliance and enforcement by the Management Agency a minority of beekeepers have been able to flout these regulations, propagate AFB, and spread infection to neighbouring beehives owned by compliant beekeepers without serious consequence since 1998.

The Agency recognised that the lack of compliance and enforcement of plan rules was unacceptable in June 2016 when it initiated the development and roll out of a 5-year strategy to eliminate American foulbrood. Implementation of the strategy led to the employment of two full time professional managers with extensive experience in biosecurity incursion investigation and response and American foulbrood elimination, and transfer of the management of Authorised Persons Level 2 (AP2s) from AsureQuality to the Agency. These changes have enabled the Agency

to take enforcement action to address serious non-compliance with the National American Foulbrood Pest Management Plan since 1 November 2018.

The Agency's approach to enforcement recognises the requirement to both eliminate AFB from the non-compliant beekeeper's hives and to treat them with compassion and respect. The Agency also offers referral to appropriate agencies for support.

Confidence in the plan

Submissions were made both for and against the implementation plan described in the levy proposal. The views of submissions made against the plan that have not been addressed under consultation questions 1 - 5 above are that the plan:

- wasn't needed because the current system is sufficient,
- wasn't needed because AFB couldn't be eliminated,
- needed to address seasonal movement of beehives
- should not be based on the destruction of AFB hives.

The Agency is confident that the current system is not sufficient to deliver the level of AFB control desired by beekeepers. Beekeepers have consistently provided the Agency with feedback that they required improved levels of AFB control throughout the levy consultation and other fora.

The Agency agrees that achieving the ultimate objective of eliminating clinical AFB from managed hives in New Zealand is a challenging goal. All beekeepers will benefit from reduced levels of AFB in their hives as we work toward achieving this goal.

The Agency agrees that the seasonal movement of hives infected with AFB is responsible for substantial geographic spread of AFB. However, many beekeepers engaged in migratory beekeeping operate highly effective processes and procedures to eliminate AFB from their beehives and it would be unfair to impose movement controls that compromised their ability to manage their business. It is more appropriate to identify the seriously non-compliant beekeepers that are responsible for spreading AFB and undertake compliance and enforcement actions to reduce the level of AFB in their beehives and limit their ability to spread disease.

The Agency is aware of only two internationally accepted practices for the control of AFB. One is based on regular inspection of hives for AFB and destruction of infected hives. The other is based on feeding antibiotics to honey bees. It is illegal to use antibiotics in beehives in New Zealand.