

# SUBMISSION

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To: Clerk  
Commerce Select Committee  
Parliament Buildings  
WELLINGTON 6140

**Submission on: Regulatory Standards Bill**

**From: Federated Farmers of New Zealand**

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## **SUBMISSION TO THE COMMERCE SELECT COMMITTEE ON THE REGULATORY STANDARDS BILL**

### **1. INTRODUCTION**

- 1.1 Federated Farmers welcomes the opportunity to submit to the Commerce Select Committee on the Regulatory Standards Bill.
- 1.2 Federated Farmers strongly supports the Bill. The Federation has a long track record over many years of advocating for less regulation, better quality regulation, and better protection of property rights. We have long been concerned that poor regulatory quality has added significant costs to the productive sector and impeded its productivity with serious implications for our members' businesses and for the wider economy. We have also been particularly concerned about a lack of sufficient protection of property rights.
- 1.3 In 2001 the Federation joined other business groups in promoting a Regulatory Responsibility Bill and we generally supported the Private Member's Bill considered by this Committee in 2007-08. In 2009 an expert Regulatory Responsibility Taskforce gave careful consideration to the issue and reported a draft Regulatory Responsibility Bill. The Taskforce's draft Bill was the subject of public submissions in 2010 and we now have the Regulatory Standards Bill back in this Committee.
- 1.3 This Bill (and its predecessor) has been through an exhaustive process which has improved it greatly and Federated Farmers submits that it is now time for the Bill to proceed.
- 1.4 Federated Farmers would welcome the opportunity to present this submission to the Committee.

### **2. RECOMMENDATION**

- 2.1 Federated Farmers recommends that the Regulatory Standards Bill should **proceed**.

### **3. GENERAL COMMENT ON REGULATION**

- 3.1 New Zealand has 780 primary Acts and 3,365 statutory regulations. The rate of legislative change is bewildering with the Government each year creating and amending around 105 Acts and 405 regulations, representing between 6,000 and 9,000 pages of new legislation<sup>1</sup>. This does not include local government plans, policies and bylaws, many of which seem subject to constant change.
- 3.2 As well as quantity there is also a problem with quality. Businesses and farmers are concerned about the burden of regulation and the amount of change, and even officials concede that there are "many examples of legislation that has not met its intended objective, has had significant

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<sup>1</sup> Regulatory Impact Statement *Regulating for Better Legislation – What is the Potential of a Regulatory Responsibility Act*, The Treasury, February 2011 (pg. 4).

unintended consequences, and/or clearly lacks some of the key attributes of good legislation...”<sup>2</sup>

- 3.3 Federated Farmers has always taken a strong interest in regulation and its implications for and impacts on farming businesses. We acknowledge that a level of regulation is necessary but excessive or poor quality regulation can impose significant compliance costs and other economic costs outweighing the benefits.

### **Compliance Costs**

- 3.4 Compliance costs are the most high profile ‘cost’ of regulation. However, compliance costs are only the administrative and time costs of complying with regulation and as such they do not necessarily include all the costs arising from regulation. For example they exclude the costs associated with no longer being able to undertake an activity that had been permitted prior to the regulation and they exclude the amount of the tax or fee that is paid.
- 3.5 Nevertheless, surveys on compliance costs provide a useful indication of the costs of regulation and where they fall. Federated Farmers participated in the Business New Zealand-KPMG Compliance Cost Survey, which ran from 2003-08. This survey consistently showed that compliance costs fall particularly heavily on small businesses, including farms. For example, in the 2008 survey farmers had a particularly high compliance burden with the average total cost per employee for Federated Farmers respondents being \$2,127, nearly three times the average for all respondents (\$728). The average compliance cost per farm business was \$9,106<sup>3</sup>.
- 3.6 The issues of greatest concern for farmers were slightly different from those of businesses in general as shown in Table 1 below. Local government and the Resource Management Act are of greater concern while employment-related issues are of lesser concern. This reflects the nature of farming businesses, which are land intensive and make use of natural resources such as water, while most farmers employ fewer people than the average business.

**Table 1: Compliance Cost Priorities**

All Respondents			Federated Farmers' Respondents		
Rank	Issue	%	Rank	Issue	%
1	Tax	70	1	Tax	70
2	ACC	34	2	Local Government	47
3	Employment Relations Act	32	3	RMA	31
4	Health & Safety in employment	30	4	ACC	29
5	Holidays Act	21	5	Statistics NZ surveys	25

*2008 Business NZ-KPMG Compliance Cost Survey*

- 3.7 Federated Farmers is also undertaking a six monthly Farm Confidence Survey. This survey, which commenced in July 2009, has shown that regulation and compliance consistently ranks as a significant concern for farmers and a high priority for government to address.
- 3.8 The most recent Farm Confidence Survey was undertaken in July. Table 2 shows respondents’ top ranked concerns and top ranked priorities for government. It is notable that compliance costs and regulation is of greater

<sup>2</sup> Ibid (pg. 6)

<sup>3</sup> Business NZ-KPMG Compliance Cost Survey 2008.

concern to farmers than the exchange rate (despite it being at record highs), banking, commodity prices, and the weather. Meanwhile, reducing compliance costs and regulation is also considered a high priority for government to address.

**Table 2: Concerns and Priority for Farmers**

Single Biggest Concern			Highest Priority for Government		
Rank	Issue	%	Rank	Issue	%
1	Climate Change Policy & ETS	14.5	1	Reduce government spending	16.5
2	Input Costs	12.8	2	Climate change policy & ETS	12.1
3	Compliance costs & regulation	12.0	3	Reduce government debt	9.8
4	Exchange Rate	11.5	4	Support agriculture & exporters	9.2
5	Debt, interest rates & banks	8.2	5	Reduce compliance & regulation	8.8
6	Farmgate & commodity prices	7.8	6	Economy & business (general)	8.7
7	Weather	6.6	7	Monetary policy	6.2

*July 2011 Federated Farmers Farm Confidence Survey*

### **Economic Costs**

- 3.9 Even more important than compliance costs is excessive and poor quality regulation making the economy less productive and flexible. Instead of facilitating prompt and efficient responses to changes in overseas and domestic markets, such an environment results in slower economic growth, unemployment, inflation, and economic imbalances.
- 3.10 This was very much the case in the 1970s and early 1980s when the 'Fortress New Zealand', 'Polish Shipyard' economy could not respond to a series of economic shocks, most notably the 1973 and 1979 oil price spikes combined with the UK's entry into the EEC. The economic malaise was deep and long-lasting and coincided with a slump in our relative position against the OECD average and the countries with which we like to compare ourselves, including Australia.
- 3.11 It took many years of at times painful economic reform by successive governments, of which deregulation was a key aspect, to put the economy on a stronger footing. The reform period delivered historically strong productivity growth which is illustrated in Table 3 below. Since 1978 the best periods for labour productivity, capital productivity, and multifactor productivity were the 1990-97 and 1997-2000 economic cycles.
- 3.12 However, for many people the adjustment was painful. There was public and political resistance to further economic reform and in the 2000s there was a trend towards re-regulation. It is not the purpose of this submission to debate specific policies pursued at that time but it would appear that deteriorating productivity may have been one of the consequences. The more recent economic cycles (2000-06 and 2006-10) have experienced below-average performance for all three productivity indicators (see Table 3 below).
- 3.13 The impacts of deteriorating productivity took time to manifest themselves and initially they were masked by high growth in both labour and capital inputs. However, it eventually led to renewed inflationary pressures and ultimately helped push New Zealand into recession in 2007-08, before the Global Financial Crisis.

**Table 3: Average Annual Growth Rates for Productivity, 1978-2010**

Economic Cycle	Labour Productivity	Capital Productivity	Multifactor Productivity
1978-82	1.7%	0.8%	1.4%
1982-85	1.6%	-1.9%	0.2%
1985-90	2.9%	-3.5%	0.4%
1990-97	2.6%	1.2%	2.1%
1997-2000	2.9%	0.6%	1.9%
2000-06	1.5%	0.2%	0.9%
2006-10	0.9%	-2.3%	-0.5%
<b>1978-2010</b>	<b>2.0%</b>	<b>-0.6%</b>	<b>1.0%</b>

Source: Statistics New Zealand *Productivity Statistics 1978-2010*, March 2011

### **Improving Regulation**

- 3.14 Federated Farmers has long supported initiatives to improve the quality of regulation (including removing regulation where appropriate) and to reduce compliance costs.
- 3.15 What is clear to farmers is that New Zealand has a problem with both the volume of legislation passed and the quality of that regulation. This is worsened by public, media, and political ‘angst’ over real and imagined risks, accidents, and misdeeds. This angst has encouraged in both central and local government a culture of excessive risk aversion and a ‘government knows best’ mentality.
- 3.16 Attempts have been made by successive governments to improve the quality of regulation, exemplified most recently by the intent of the 2009 Government Statement on Regulation. However, these measures have yet to stem the tide and if anything the volume of regulation seems to be increasing. According to the Treasury “Only half of the significant regulatory proposals considered by Cabinet since November 2008 had regulatory impact statements that met expected standards”.<sup>4</sup>
- 3.17 It is Federated Farmers’ view that the current regime will never be enough on its own to achieve or sustain the kind of improvements that New Zealand needs. There needs to be a real culture change within government and we submit that this requires legislation to make officials and politicians (at both a central and a local level) take notice.

## **4. GENERAL COMMENT ON REGULATORY STANDARDS BILL**

### **Background**

- 4.1 Federated Farmers has been a consistently strong advocate for a Regulatory Responsibility Bill (or Regulatory Standards Bill as this Bill is entitled). In 2001 the Federation was one of four business organisations which sponsored a study entitled *Constraining Government Regulation*. The study recommended that there should be a Regulatory Responsibility Act to be the third pillar for good public policy – the other two being the Reserve Bank Act and the Fiscal Responsibility Act.

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<sup>4</sup> *Regulatory Impact Statement Regulating for Better Legislation – What is the Potential of a Regulatory Responsibility Act*, The Treasury (pg. 7).

- 4.2 In 2006, the Regulatory Responsibility Bill was drawn from the ballot of Private Members' Bills. In 2007 and 2008 the Bill (which was based on the draft Bill in *Constraining Government Regulation*) was considered by Parliament's Commerce Committee. Federated Farmers submitted in support of the Bill.
- 4.3 The Committee wrestled with the Bill, with one of the biggest problems being constitutional in that there were fears that if passed as introduced the Bill would override the supremacy of Parliament. The Committee eventually reported the Bill back to the House suggesting that more work should be done on the Bill by an expert taskforce.
- 4.4 After the 2008 election the Confidence and Supply Agreement between National and ACT provided for a Regulatory Responsibility Taskforce to be established to consider what amendments would be needed to get the Bill passed. In September 2009 the Taskforce presented its report (with draft Bill) to the Ministers of Finance and Regulatory Reform and shortly thereafter the report was publicly released.
- 4.5 The Taskforce's Bill was carefully considered by the Government, including public consultation in 2010. The Regulatory Standards Bill is the product of this consideration and is largely unchanged from the Taskforce's Bill.

#### **Provisions of the Bill**

- 4.6 The Regulatory Standards Bill is essentially a transparency mechanism, similar to the Fiscal Responsibility Act (provisions now included in the Public Finance Act). It would not prevent a government from putting forward legislation inconsistent with the principles. Nor would it give the courts the power to strike down legislation or award compensation to aggrieved parties.
- 4.7 Clause 7 states the principles for responsible regulation, which are designed to accord with and reflect broadly accepted principles of good legislation, and are in six broad categories:
- **Rule of law** – legislation should be clear and accessible, not adversely affect rights or impose obligations retrospectively, treat people equally before the law, and resolve issues of legal right and liability by application of law, rather than exercise of administrative discretion.
  - **Liberties** – legislation should not diminish a person's liberty, personal security, freedom of choice or action, or rights to own, use or dispose of property, except as necessary to provide for any such liberty, freedom or right of another person.
  - **Taking of property** – legislation should not take or impair, or authorise the taking or impairment, of property without the consent of the owner, unless it is necessary in the public interest and full compensation is provided to the owner, such compensation to be provided to the extent practicable by or on behalf of the persons who obtain the benefit of the taking or impairment.
  - **Taxes and charges** – legislation should not impose or authorise the imposition of taxes except by or under an Act, nor should it impose or authorise charges that exceed the reasonable cost of providing the goods or services or the benefit that payers are likely to obtain.
  - **Role of Courts** – legislation should preserve the Courts' role of authoritatively determining the meaning of legislation and where

legislation authorises a public entity to make decisions that may adversely affect any person or property it should state appropriate criteria for making those decisions and provide a right of appeal against those decisions to a Court or other independent body.

- **Good law making** – legislation should not be made unless those likely to be affected by the legislation have been consulted and there has been a careful evaluation of the need for legislation to address the issue concerned. Furthermore the benefits of any legislation should outweigh its costs and any legislation should be the most effective, efficient and proportionate response to the issue available.

- 4.8 Clauses 8-10 of the Bill provide for ministers and chief executives to certify whether the legislation is compatible with these principles, and whether any incompatibility is justified.
- 4.9 **Federated Farmers strongly supports these principles** and when we consulted our elected representatives there was unanimous agreement with them. We particularly support the principle around the taking of property as it is consistent with the Federation's long-standing efforts to protect and promote private property rights and the rights associated with property ownership.
- 4.10 Clauses 12-14 of the Bill provide for a new role for the courts to make declarations of incompatibility with the principles in the Bill, but otherwise it would specifically exclude any power to make injunctive or compensatory orders on the basis of the Bill's principles. It would require the Courts to interpret legislation consistently with the Bill's specified principles if possible. We note that this provision should address the concerns of those who thought that the original Regulatory Responsibility Bill would compromise the supremacy of Parliament. **We support this provision.**
- 4.11 Clause 15 provides for the Minister responsible for the Act to issue guidelines to public entities and clause 16 of the Bill provides for every public entity to use its best endeavour to regularly review all legislation that it administers for compatibility with the principles. **We support these provisions.**

#### **Matters Excluded from the Bill**

- 4.12 Clause 4's definition of a 'public entity' specifically excludes local government. The Regulatory Responsibility Taskforce recommended that 'further work' should be undertaken to address how best to ensure quality legislation at a local government level. The Federation's strong preference is for the Bill to be extended to local government as soon as practicable. As discussed in section 3 above, farmers are particularly concerned about the costs of local government regulation, which in many cases (particularly its implementation of the RMA) is also eroding farmers' property rights. We accept that extending the Bill to local government might not be possible without additional work and we would not want this additional work to delay the Bill. So, we would **support the Bill advancing in its current form subject to it being extended in due course to local government.** We also note that much of what local government does in terms of regulation is in response to national legislation (which will be subject to the Bill).
- 4.13 The Taskforce has also recommended further work on the appropriateness of extending the provisions of the Public Works Act 1981 to provide

compensation for takings and impairments of both real and personal property.  
**We support this work being undertaken as a high priority.**

## 5. COMMENT ON ARGUMENTS AGAINST THE BILL

- 5.1 This Bill has been the subject of criticism by a number of interest groups and by the public sector. The opposition to the Bill is disappointing but perhaps not surprising.
- 5.2 Federated Farmers has seen the arguments made by the Bill's opponents and our comments follow.
- **The need for legislation** – The argument is that New Zealand has no need for a Regulatory Standards Bill because we already have a good regulatory environment. We strongly disagree and even Treasury, which opposes the Bill, acknowledges that there are 'obvious limitations' to current legislative development, scrutiny, and quality assurance arrangements<sup>5</sup>. While it might be relatively easy to set up a business in this country, current regulatory management processes do not seem to be stemming the tide of regulation or reducing compliance costs. There is also little recognition in legislation of important principles such as protection of property rights, as observed in 2008 by Evans, Quigley and Counsell<sup>6</sup>.
  - **Inappropriate principles** – We strongly disagree that the Bill's principles are 'not appropriate'. Our understanding is that the six principles were taken from the Legislation Advisory Committee Guidelines and from the common law so are hardly novel. More fundamentally, we find it hard to believe that any reasonable person could object to any of the principles.
  - **Compliance costs** – Treasury estimates costs to departments of around \$3-4 million per year in certification costs with additional costs in the event of court action<sup>7</sup>. Our expectation is that the certification process should be able to be undertaken in conjunction with current regulatory management processes and the costs met within existing budgets.
  - **Role of Courts** – The argument is that the Bill would alter New Zealand's constitutional balance by giving the courts a mandate to inquire into policy considerations. While the original Bill as introduced in 2007 would have run that risk, the Taskforce did a lot of work to address this concern. The Bill now being considered has been substantially altered and the role of the courts made more akin to the process for the Bill of Rights Act. We therefore consider that opponents to the Bill have overblown this concern.
- 5.3 Federated Farmers has seen Treasury's Regulatory Impact Statement (RIS). Treasury opposed the Bill but acknowledged that there is a problem with existing regulatory processes. As part of the RIS, it considered several other options, most of which were unappealing even to the Treasury. In doing so it developed an alternative proposal ('Option 5') to strengthen parliamentary

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<sup>5</sup> *Regulatory Impact Statement Regulating for Better Legislation – What is the Potential of a Regulatory Responsibility Act*, The Treasury (pg. 3).

<sup>6</sup> *Protection of Private Property Rights and Just Compensation: An Economic Analysis of the Most Fundamental Human Right Not Provided in New Zealand*, Lewis Evans and Neil Quigley with Kevin Counsell, Victoria University and NERA Economic Consultancy, 2008.

<sup>7</sup> *Adoption of Regulatory Responsibility Bill Drafted by the Regulatory Responsibility Taskforce*, paper to Cabinet Economic Growth & Infrastructure Committee, February 2011 (pg. 11).

review of legislation, including the establishment of a parliamentary commissioner for regulation<sup>8</sup>.

- 5.4 Aspects of Option 5 might be an improvement on the status quo (e.g., more resources for select committees) but the Federation continues to prefer the Regulatory Standards Bill. This is because the Bill puts the six principles in legislation and provides for the incompatibility process, which in our opinion provides a more powerful incentive for ministers and departments to properly consider implications of proposed regulation. It also avoids the creation of another bureaucratic entity.
- 5.5 What opponents of the Bill do not recognise is that it would not prevent a government from putting forward legislation inconsistent with the principles. Nor would it give the courts the power to strike down legislation or award compensation to aggrieved parties. What the Bill does do is put in place disciplines that should improve regulatory processes and make them more transparent.

## **6. CONCLUSION**

- 6.1 Federated Farmers supports this Bill. We believe it addresses the concerns of the Select Committee but in a way that retains teeth as a transparency mechanism. Farmers and the wider business community have waited a long time for this Bill and much work has been done to refine it. Federated Farmers now wants the Bill advanced as soon as possible.

## **7. ABOUT FEDERATED FARMERS**

- 7.1 Federated Farmers is a member based organisation that represents farmers and other rural businesses. Federated Farmers has a long and proud history of representing the needs and interests of New Zealand's farmers.
- 7.2 The Federation aims to add value to its members' business. Our key strategic outcomes include the need for New Zealand to provide an economic and social environment within which:
  - Our members may operate their business in a fair and flexible commercial environment;
  - Our members' families and their staff have access to services essential to the needs of the rural community; and
  - Our members adopt responsible management and environmental practices.

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<sup>8</sup> Regulatory Impact Statement *Regulating for Better Legislation – What is the Potential of a Regulatory Responsibility Act*, The Treasury (pp. 24-28)