

SUBMISSION



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Submission on: Local Government Regulatory Performance (Issues Paper: July 2012)

From: Federated Farmers of New Zealand

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**FEDERATED FARMERS OF NEW ZEALAND
SUBMISSION TO THE NEW ZEALAND PRODUCTIVITY COMMISSION ON
LOCAL GOVERNMENT REGULATORY PERFORMANCE**

1. INTRODUCTION

- 1.1 Federated Farmers of New Zealand welcomes the opportunity to make this submission on the New Zealand Productivity Commission's Issues Paper on Local Government Regulatory Performance.
- 1.2 Federated Farmers is an organisation with considerable experience in the development of regulations at both the national and local levels of government. The Federation devotes considerable resources to submitting on and participating in decisions that enact, modify or remedy local regulations. The local regulatory environment has a significant impact on our members' ability to operate their businesses.
- 1.3 The Federation's members deal with the benefits and costs of regulation in a variety of situations as rural landowners and business operators. Its governance and staff are frequently participants in regulatory decision-making both at a local level and nationally, including within collaborative groups such as the Land and Water Forum (LAWF).
- 1.4 Local government regulation has a major impact on community well-being and economic prosperity, and it is good that the Government has sought a review of local government regulatory performance. The Federation agrees that the challenge is for government "... to deliver regulation that promotes wellbeing, while at the same time minimising the associated costs to individuals, businesses and the wider economy." (Issues Paper, page 5)
- 1.6 This challenge is increased by the difficulty of statistically quantifying, benchmarking or disseminating different and/or innovative approaches to local regulation, and of measuring the actual costs in administration and compliance on the one hand, and benefits to the community on the other.
- 1.7 There are various models for analysing costs and benefits of administration, compliance and economic impact of regulation, such as the cost-benefit analyses required by section 32 of the Resource Management Act (RMA) and those developed to assess the impact of regulated drinking water standards on communities. However, these models and cost benefit requirements often fail to quantify the actual costs and benefits of these things, especially when it comes to the cost on individuals of implementing local government regulation.
- 1.8 This submission offers comment on the July 2012 Issues Paper "Local Government Regulatory Performance", both broadly in terms of the regulatory policy environment and specifically in response to the questions contained in the document.
- 1.9 Federated Farmers would be happy to discuss its submission with the Inquiry and we also look forward to further engagement on the draft report once it is release for feedback in December.

2. SUMMARY OF RECOMMENDATIONS

2.1 Federated Farmers recommends that:

- (a) A broad interpretation be taken on the costs and benefits of regulation, particularly on the affected persons.
- (b) The Regulatory Standards Bill should be passed in its current form and extended as soon as possible to local government.
- (c) Central government should provide better process guidance to local government.
- (d) Central government should ensure that local government is adequately funded to carry out new and expanding regulatory roles.
- (e) An analysis and estimate be made of the 'unfunded mandate' and its impact on the regulatory incentives for central government

3. THE REGULATORY ENVIRONMENT

3.1 Federated Farmers' interest is to ensure that regulatory processes are necessary, fair, effective, transparent, and least cost to implement, administer and comply with. Our advocacy is targeted at both central government and local government, as business and farming businesses in particular carry the cost of not only compliance but a disproportionate cost of monitoring, implementing, and enforcing local government administered regulation.

3.2 Regulation is a major concern for our members. The Federation's six monthly Farm Confidence Survey has consistently highlighted 'regulation and compliance' as one of the biggest concerns of farmers, at least as prominent as perennials such as farmgate and commodity prices, the economic situation, input costs, the weather, and the exchange rate. Similarly, dealing to unnecessary or inefficient regulation and compliance is seen by respondents as a very high priority for government, alongside issues such as reducing government spending and government debt, promoting a better business environment generally, and monetary policy¹.

3.3 The most recent July 2012 Farm Confidence Survey shows that:

- 13.2 percent of respondents cited 'regulation and compliance costs' as their single biggest concern, making it the second-most pressing issue, behind farmgate and commodity prices. Much of the comment about regulation and compliance costs was non-specific but a number mentioned the impact of regional and district plans, resource consents, and effluent compliance. In addition, 6.2 percent cited 'local government and rates' as their single biggest concern.
- 9.3 percent of respondents cited 'reducing regulation and compliance costs' as their highest priority for the Government, making it the third highest priority. In addition, 4.6 percent cited 'local government reform' as their highest priority for the Government.

¹ See http://www.fedfarm.org.nz/f1849,146321/146321_FF_Farm_Confidence_Survey_July_2012e5.pdf

- 3.4 In general, the main criteria to be applied in assessing government policy are efficiency and overall community wellbeing. While we agree with this approach, when considering regulatory performance the objective of regulatory efficiency should not be considered solely from the perspective of the regulator and those in the community (and often those from outside the community) seeking the regulation.
- 3.5 A narrow focus on 'efficiency' tends to place emphasis on such factors as ease of formulation and enforcement as a 'least cost' consideration (that is, 'least cost' to those seeking the regulation and those administering and enforcing the regulation). Similarly, a narrow focus on 'community wellbeing' tends to ignore or downplay the impact of regulation on individuals who are faced with the cost of regulation. Ignoring concerns such as fairness, transparency, and costs imposed on affected persons, including the impairment of private property rights and the impeding of wider economic productivity, is of great concern to Federated Farmers.
- 3.6 Processes to improve the regulatory environment should incorporate into legislative and regulatory processes the rights and abilities of individuals to have a say on regulation affecting them, and flexibility such that regulations can accommodate the dynamic nature of communities and industries. This is more than 'consultation' in a pure sense of the word; it is about regulatory partnerships, empowering legislation that fosters trust between the regulator and any individual or groups of individuals. Cutting the cost of regulation should not simply mean reducing consultation requirements, it should 'turn it on its head' so that the people who are ultimately responsible for 'making stuff happen' trust, understand and if not embrace then at least accept the drivers for the regulation and the outcomes required. Transparent and consultative development (or not, as the case may be) of regulation, allocated to the most effective level of government, contributes greatly to ensuring quality and enduring outcomes through participation and debate prior to that regulation or legislation being enacted.
- 3.7 It is therefore pleasing that the Commission intends to take a somewhat wider view, "... a broad interpretation of the costs and benefits of regulation..." (Issues Paper, page 6)
- 3.8 Recommendation: Federated Farmers recommends that a broad interpretation be taken on the costs and benefits of regulation, particularly on the affected persons.**
- 3.9 Federated Farmers strongly believes that the principles of the Regulatory Standards Bill, before Parliament, should be passed in its current form and extended to local government. The Bill's principles are set out in clause 7(1) of the Bill and are reproduced below:

Rule of law

- (a) be consistent with the following aspects of the rule of law:
- (i) the law should be clear and accessible:
 - (ii) the law should not adversely affect rights and liberties, or impose obligations, retrospectively:
 - (iii) every person is equal before the law:
 - (iv) issues of legal right and liability should be resolved by the application of law, rather than the exercise of administrative discretion:

Liberties

- (b) not diminish a person's liberty, personal security, freedom of choice or action, or rights to own, use, and dispose of property, except as is necessary to provide for, or protect, any such liberty, freedom, or right of another person:

Taking of property

- (c) not take or impair, or authorise the taking or impairment of, property without the consent of the owner unless—
 - (i) the taking or impairment is necessary in the public interest; and
 - (ii) full compensation for the taking or impairment is provided to the owner; and
 - (iii) that compensation is provided, to the extent practicable, by or on behalf of the persons who obtain the benefit of the taking or impairment:

Taxes and charges

- (d) not impose, or authorise the imposition of, a tax except by or under an Act:
- (e) not impose, or authorise the imposition of, a charge for goods or services (including the exercise of a function or power) unless the amount of the charge is reasonable in relation to both—
 - (i) the benefits that payers are likely to obtain from the goods or services; and
 - (ii) the costs of efficiently providing the goods or services:

Role of courts

- (f) preserve the courts' role of authoritatively determining the meaning of legislation:
- (g) if the legislation authorises a Minister, public entity, or public official to make decisions that may adversely affect any liberty, freedom, or right of a kind referred to in paragraph (b),—
 - (i) provide a right of appeal on the merits against those decisions to a court or other independent body; and
 - (ii) state appropriate criteria for making those decisions:

Good law-making

- (h) not be made unless, to the extent practicable, the persons likely to be affected by the legislation have been consulted:
- (i) not be made (or, in the case of an Act, not be introduced to the House of Representatives) unless there has been a careful evaluation of—
 - (i) the issue concerned; and
 - (ii) the effectiveness of any relevant existing legislation and common law; and
 - (iii) whether the public interest requires that the issue be addressed; and
 - (iv) any options (including non-legislative options) that are reasonably available for addressing the issue; and
 - (v) who is likely to benefit, and who is likely to suffer a detriment, from the legislation; and
 - (vi) all potential adverse consequences of the legislation (including any potential legal liability of the Crown or any other person) that are reasonably foreseeable:

- (j) produce benefits that outweigh the costs of the legislation to the public or persons:
- (k) be the most effective, efficient, and proportionate response to the issue concerned that is available.

Clause 7(2), referred to above as subsection 2, states:

Any incompatibility with the principles is justified to the extent that it is reasonable and can be demonstrably justified in a free and democratic society.

Clause 7(3) states:

Nothing in this section limits the New Zealand Bill of Rights Act 1990.

3.8 Recommendation: Federated Farmers recommends that the Regulatory Standards Bill should be passed in its current form and extended as soon as possible to local government.

4. LOCAL GOVERNMENT AND REGULATION

- 4.1 Local government is an important player in the New Zealand economy. Its spending amounts to almost 4 percent of gross domestic product², and it employs 18,370 people in regulatory and administrative roles³. The regulatory functions undertaken by local government affect all businesses and people and the impact of these functions are much more significant than its percentage of GDP and number of staff would suggest.
- 4.2 Local government in New Zealand is not defined in any constitutional document and its powers are conferred by statutes which can be amended at any time. Local government is created by Parliament and exists because it is a useful institution for providing services and regulations that are traditionally or most efficiently handled on a small scale or limited to a particular geographic area.
- 4.3 The allocation of regulatory functions between central and local government in New Zealand will always therefore to some extent be a consequence of political agreements subject to modification by successive governments.
- 4.4 In recent years there has been a noticeable policy shift toward decentralisation and 'devolution' of regulatory functions to the local level of government. This in theory has significant advantages in that regulatory decision-making occurs more closely to those affected by it.
- 4.5 Federated Farmers supports the proposition where local involvement in the decision making process adds value to the formulation and implementation of those decisions. However, there are risks of duplication of function by central and local government. Here there are two issues – efficiency of rolling out that devolution and the cost of it in relation to the outcome. Bylaws are an excellent example (e.g., freedom camping, dog control, stock movement, etc.). The Federation believes that here must be massive opportunity for efficiency if central government's policy and regulation-makers provided better process guidance rather than the present imposition of the laws and leaving local government to work out to whom are they going to apply and who pays, and how to monitor, enforce, etc.

² Statistics New Zealand (this has increased from around 3 percent of GDP in 2002)

³ Statistics New Zealand (this has increased from 13,630 people in 2002)

- 4.6 Currently there are a raft of national policy statements, national environmental standards, fee-setting guidelines, and 'Know How' and 'How To' documents relating to local regulatory responsibilities, however these are fragmented and happenstance.
- 4.7 Recommendation: Federated Farmers recommends that central government should provide better process guidance to local government.**
- 4.8 Federated Farmers also considers it important to question the resource and capacity of local authorities to regulate effectively arises. In the Federation's view central government has a clear advantage over local government in terms of the breadth of revenue sources, for example income, sales, and excise taxes, and serious consideration should be given to the possibility that overall community well-being is reduced if regulatory responsibilities are allocated locally without accompanying resource. Although the following is somewhat of a generalisation and there are some excellent staff within the 78 district and regional councils, they are diffusely spread and central government tends to have a greater number of staff and a higher quality pool of staff available to develop, monitor and enforce regulation. This is very important as councils take on more and more often complex regulation and looking ahead this will be particularly true with management of freshwater.
- 4.9 Federated Farmers submits that by ensuring local government has adequate finances and guidance to undertake regulatory roles, especially new and expanded roles, central government can enhance the quality of local regulation. We discuss the issue of funding further in the following section in relation to the 'unfunded mandate'.
- 4.10 Recommendation: Federated Farmers recommends that central government should ensure that local government is adequately funded to carry out new and expanding regulatory roles.**
- 4.11 To elaborate further on our concerns about the regulatory relationship between central government and local government, please refer to the following extract from Federated Farmers' submission on the National Policy Statement (NPS) on Biodiversity:

The Final report of the Ministerial Advisory Committee on Biodiversity on Private Land⁴ had a number of compelling statements, actions and recommendations. They are too long to list here, but it must be noted that potentially this report involved the most comprehensive and wide ranging discussion on the most appropriate path for the protection and management of Biodiversity on private land. It should not and can not be ignored in the development of a whole of Government response to the future of Biodiversity management. Specifically it recommended that the Government not proceed with an NPS at that time, but "keep the matter under review pending the implementation of other recommendations in this report". The other recommendations it referred to included focussing on really improving partnerships and increasing funding to and with Local Government and agencies such as Landcare and QEII trusts. It strongly recommended in its conclusion that "in essence we have concluded that (Central Government) leadership that undermines effective partnership with local government (and

⁴ Biodiversity and Private Land, Final Report of the Ministerial Advisory Committee, August 2000, MfE

*their communities) is something we can do without” it went on to say “by that we mean it would be hugely counter productive for the Government to show leadership through strong directives but remain unwilling to participate meaningfully in the practical achievement of the desired outcomes”. It talked in its conclusion about the incredible importance of Central Government funding (off the public estate) to support landholder efforts. Federated Farmers considers that the proposed NPS does not commit Government to a true partnership, that it fails to engage Local Government and it only further erodes the property rights of those individuals who have been investing their own money in enhancing biodiversity on their own land. **There is no new evidence brought forward in the supporting documentation to this NPS, that it should proceed now, or that the partnerships so strongly encouraged in that report have not been working to effectively “turn the tide”.***

5. INQUIRY TERMS OF REFERENCE

- 5.1 The Issues Paper states that the Inquiry terms of reference can be synthesized into three questions:
- How could the allocation of regulatory functions between central and local government be improved?
 - How can central and local government improve regulatory performance in the local government sector?
 - How can the regulatory performance of the local government sector be measured in a manner that leads to continuous improvement in the way it regulates?
- 5.2 These broad terms of reference are supported. Federated Farmers is concerned however that the terms do not include the funding of the costs of regulation, i.e. the cost of administration in particular incurred by local authorities and recovered by way of fees, charges and rates. The question of the funding of local government regulatory functions is in fact specifically precluded from the terms of the reference.
- 5.3 In the Federation’s view such funding, and the adequacy and equity of its sources, is also crucial to the quality of regulatory processes and their capacity to optimise community well-being.
- 5.4 The Federation’s comment on funding in this submission will be limited to its concern at what is termed the ‘unfunded mandate’, where obligations including regulatory obligations are placed on local government by central government without accompanying resources. We consider this relevant to the terms of reference in that a regulatory environment which maximises community well-being is sought.
- 5.5 The size of the ‘unfunded mandate’ is unclear and we are not aware of any published estimates from the local government sector. It would be useful if the Commission could seek information on this from the sector and come to an estimate of the size of the ‘unfunded mandate’ and its impact both on regulatory quality and on regulatory performance.
- 5.6 Recommendation: Federated Farmers recommends that an analysis and estimate be made of the ‘unfunded mandate’ and its impact on the regulatory incentives for central government.**

- 5.7 That said, the Federation's view is that central government's ability to impose regulatory obligations on local government without accompanying resource potentially provides it with insufficient incentive to reduce the costs that are to be imposed on the sector.
- 5.8 In the Federation's view the allocation of regulatory functions between central and local government should essentially be pragmatic, but properly incentivised and based on robust analysis indicating that regulation developed and implemented at the local level is appropriate, necessary, and produces a net benefit to the community most importantly.
- 5.9 There is no timeless set of principles governing allocation of regulatory functions between levels of government. As New Zealand local government's powers are essentially devolved from Parliament it should be central government's responsibility to ensure that regulatory powers appropriately allocated to the local level and are appropriately resourced, and that decisions to delegate powers to the local level are subject to robust analysis. Standards should also be set to ensure regulatory powers are not excessively used in ignorance of other methods.
- 5.10 Recommendation: Federated Farmers recommends that allocation of regulatory functions should be further based on a set of principles or protocols developed by central government in consultation with local government and key stakeholders.**
- 5.11 A particular endeavour of the Federation is to ward off unnecessary regulation, which may be duplicated elsewhere or is simply ill conceived. We are concerned that at both local and national level, regulation is increasingly favoured as a primary option, over educational and voluntary means of achieving positive community outcomes (this is not to say that government at any level does not have a part to play in that but that it can more effectively empower partnerships, industry self audited management and implementation, etc.). As discussed earlier in this submission, the Federation is a strong supporter of the Regulatory Standards Bill and we believe it important for this Bill to be passed in its current form (and extended to local government).
- 5.12 Improving the regulatory performance of the local government sector requires rigorous review to assess the methods of implementation of regulatory powers and the quality of outcomes. Review mechanisms are to an extent built into significant legislation under which local government operates, such as section 32 of the RMA and the checks and balances of the appeal process. However, Section 32 is in the Federation's experience woefully inadequate with analyses' discussion on 'costs' tending to be a glib overview of the costs to the council of applying the regulation rather than a rigorous assessment of the efficiency of one method over another in achieving the outcome and an assessment of the public versus private cost burden.
- 5.13 In addition, the Local Government Act 2002 offers little in the way of checks and balances, other than through consultation processes. Bylaw making powers are for example relatively unrestrained. There is much room for improvement in local government's regulatory development processes.
- 5.14 Furthermore, one of the 'pillars' of local government accountability – community involvement – is limited by information asymmetry and/or apathy. The low and

falling voter turnout at local elections is just one example of a lack of engagement in local government matters.

- 5.15 Review of the regulatory performance in local government should be set against appropriate benchmarks, such as the better regulation principles set out by the Better Regulation Office of the NSW government:
- The need for government action should be established.
 - The objective of government action should be clear.
 - The impact of government action should be properly understood by considering the costs and benefits of a range of options, including non-regulatory options.
 - Government action should be effective and proportional.
 - Consultation with business and the community should inform regulatory development.
 - The simplification, repeal, reform or consolidation of existing regulation should be considered.
 - Regulation should be periodically reviewed, and if necessary reformed to ensure its continued efficiency and effectiveness.⁵
- 5.16 Such principles are ubiquitous among governments, but such is the scale and variegation of local regulation that they are difficult to apply consistently in the local government sector.
- 5.17 The question of measuring regulatory performance, in a manner that leads to continuous improvement, suggests a quantitative approach to such improvement. Statistical measurement of regulatory impacts can certainly add value to a process of improvement by, for example, estimating the overall cost of regulation (whether that is an administrative or economic cost) with a view to reducing it.
- 5.18 For example, the UK Better Regulation Task Force estimated in 2005 that "... the cost of regulation to the UK economy is between 10% - 12% of GDP – or over £100 billion – similar to the annual take in income tax."⁶ The NSW Government's 2009 publication "Guide to Better Regulation"⁷ set an objective of cutting red tape by \$500 million.
- 5.19 These examples are useful in terms of broad objective setting, but the question remains as to whether costs are actually being reduced through such processes, or simply transferred elsewhere.
- 5.20 Measurement of the cost of regulation must be accompanied by a qualitative approach that would perhaps incorporate case studies of particular social issues and the regulatory response.

6. KEY QUESTIONS

- 6.1 This section of the submission seeks to answer the 65 key questions posed by the Issues Paper.

⁵ Guide to Better Regulation: Better Regulation Office, NSW Department of Premier and Cabinet, November 2009

⁶ "From Design to Delivery", Better Regulation Task Force, Annual Report 2004/05, p4

⁷ *Ibid*

Q1: What is the relative importance of the range of regulatory activities local government undertakes? Where should the Commission's focus be?

As stated above the regulatory activities of local government are of major significance to communities. In the area of environmental regulation, for example in relation to water quality or land use, local authority decision-making can make or break farm businesses and as a result the local, regional, and national economies.

The Commission's focus should be on developing a cost-effective way of ensuring local regulation is independently reviewed on a principled basis, that opportunities for improvement are taken, and that there are the appropriate incentives or obligations in place for these improvements to be implemented.

Such review might be undertaken by an independent body that regularly examines the regulatory response of local government to a significant social or environmental issue. This examination might consider quality, consistency, appropriateness and benefit of the regulatory response, disseminates good practice and set targets for improvement.

Given that local regulatory powers are essentially arranged by central government and devolved to local authorities and local communities, the Commission's focus should also be on the quality of that relationship, and whether the incentives within it are resulting in ineffective or ubiquitous regulation.

Q2: What are the main economic, social, demographic, technological and environmental trends that are likely to affect local government regulatory functions in the future?

From the farming perspective the Federation's expectation is that there will be increasing pressures for environmental regulation, creating risk of over-regulation and an excessively rules based focus that is already becoming manifest.

As addressed earlier in this submission, Federated Farmers believes that these pressures are measured against a narrow focus on 'community wellbeing', which tends to ignore or downplay the impact of regulation on individuals who are faced with the cost of regulation. We reiterate that these measures ignore broader yet very relevant concerns such as fairness, transparency, and costs imposed on affected persons, including the impairment of private property rights and the impeding of wider economic productivity.

Concomitant with this we would anticipate calls for 'reduced regulatory costs', with the accompanying risk that this will be sought through truncated consultative processes and therefore less opportunity for **directly affected** persons to engage in the development of the regulation, rather than principled consideration of other methods such as education and voluntary regulation.

On the basis of recent trends significant growth in regulation, and its associated costs, is anticipated in the future. This growth can be better managed if measures are taken to appropriately incentivise the delegation of regulatory responsibilities from central to local government and regulatory performance is subject to independent systematic review.

Economic pressure in the future is likely to reduce the ability of local government to monitor and self-review their regulatory performance. The effect for example of indebtedness of councils on their regulatory performance should not be underestimated.

Technological advancement in the area of communications is a given and can be utilised to enhance the transparency of regulatory processes. An increased capacity for people to “check the rules” before engaging in an activity should not however be considered as a justification for the rules themselves given the significant costs of implementing regulation.

Q3: Has the Commission accurately captured the roles and responsibilities of local government under the statutes in Table 2?

Yes.

Q4: Are there other statutes that confer significant regulatory responsibilities on local government? What, if any, regulatory roles of local government are missing from Table 2?

Yes, the Civil Defence Emergency Management Act 2002 and associated responsibilities that may be considered regulatory.

Q5: Are there any other local organisations with regulatory responsibilities that the Commission should consider?

No.

Q6: Do the different characteristics and priorities of local authorities explain most of the difference in regulatory practice across local government?

As democratic institutions variegation of regulatory practice is inevitable. Different groups of people will make different decisions even in a similar setting, which may depend on the extent of involvement of the community in the development of local regulations and certainly on the capacity of an organisation to administer and monitor regulation.

Furthermore, regional and local government incorporates different communities and geographical factors that manifest themselves in different social, cultural, environmental and economic priorities, drivers and preferences. These are generally important influences to the formulation and implementation of regulatory practice, although the relevance of these different influences to regulation varies.

The Federation agrees with the analysis presented in the Issues Paper, and the emphasis particularly on the differing priorities of rural and urban councils. It is the tendency in local government however for there to be a rural and urban mix within “provincial” councils, where the perceived public good of urban service provision and regulation is also funded by rural areas on the basis of property value rates.

The different characteristics of local authorities include their resources, skills and capabilities to effectively implement regulation.

Q7: Are community expectations to ‘do more’ about social issues leading to different approaches to regulation between local authorities?

While not denying that such community expectations exist, we would contend that different approaches to regulation are more often generated by the varying skill levels and professional attitudes of the governance and staff of councils, and the extent to which they are lobbied by individuals and stakeholder groups

For example the status of the discharge of dairy shed effluent to land can differ between regional councils, for example in the Waikato this is a “permitted activity” under certain parameters, whereas in the Bay of Plenty it is a “restricted discretionary” activity. Both councils are navigating toward the same objective, but have taken different tacks. A collaborative process such as that being undertaken by the LAWF

may iron out such discrepancies through review of the effectiveness of the differing regimes, and the Federation supports and participates in its deliberations.

It is of great concern to Federated Farmers that expectations are set to achieve the 'public good' but costs are borne by private individuals. There is a lack of understanding or lack of concern about the cost implications of regulatory responses sought and no clear connection between these expectations and the private and public costs of meeting these expectations. This is particularly the case where farmers are a small minority (e.g., city councils and even many 'provincial councils', not to mention regional councils), and there is a limited understanding of regulatory impacts or the drivers of particular behaviours.

Q8: To what extent are local preferences a source of regulatory variation in New Zealand? How far should councils, when implementing a national standard, have discretion to reflect local preferences in their bylaws?

As indicated above we contend that local preferences are an important source of variation.

National standards risk a one-size-fits-all approach, but it is also important that delegation of authority from central government to local government is based on sound principles and an appropriate assessment of cost/benefit, and that there are checks and balances applied to the exercise of local authority discretion including recognition of the primacy of involvement for directly affected parties in the regulatory process.

Q9: Are there areas of regulation where local and central government regulation appear to be in conflict? If so, how far should such conflicts be accepted as a consequence of the diversity of preferences?

In the Federation's experience issues of conflict can be resolved by legislation placing priority on the primary regulation.

Our concerns in this area arise more from the duplication of regulations, for example in the area of indigenous vegetation where a Stratford District Council plan change would require landowners to get a resource consent to selectively log indigenous vegetation, even when the landowner has a selective logging permit or plan approved by Ministry for Primary Industries (MPI) . They would also be required to get a resource consent from Horizons Regional Council if they are in the Horizons region (part of the Stratford district is within the Horizons jurisdiction).

In general, in our view, there is duplication in indigenous vegetation rules with MPI, regional councils and district councils, particularly where the regional council has assumed a regulatory responsibility for indigenous vegetation.

Also there is duplication in hazardous substances with HSNO regulations, standards, group standards, approved handlers, EPA, regional and district councils all getting in on the action. We are currently going through this with Ruapehu District Council.

Another example is the Ministry of Health's drinking water standards. Costs are borne by local communities, whether they want the new standards or not and this is causing huge funding pressure on small, rural councils with often declining populations. Arguably it is better for directly affected local communities to develop their own approaches after appropriate consideration of the applicability of varying levels of service options against the individual and public costs.

Conflicts and duplications have a deleterious impact on community well-being and the tolerance of them should be a low tolerance.

Q10: Does the way in which a local authority chooses to exercise its regulatory powers – through bylaws or through its District Plan – lead to differences in effectiveness and outcomes for communities?

There is no question that local authority regulatory choices affect community outcomes. We contend, for example, that local authority choices within their RMA powers are resulting in excessive regulation. This excess arises from the proclivity of council planners to select rules as a method of implementation under Section 32 of the RMA, as opposed to other more cost effective methods.

Q 11: In what ways has the Treaty of Waitangi influenced how local authorities have undertaken regulatory functions delegated to them by the Crown?

Local authorities may be required by statute to consult with Maori. Local government's response to the Treaty accords Maori status as a powerful stakeholder, and in some cases a participant in governance and decision-making.

Q 12: What does this variation mean in practice for Maori, the local authority and for the regulation of the resource?

The addition of a further layer of policy imperatives is likely to increase the cost of developing regulation and associated consultation costs.

Such costs are not necessarily detrimental to community outcomes if they are resourced appropriately. It is with the Crown that Treaty obligations rest, and the costs of these obligations should be met from Crown revenue, as opposed to local government fees and charges or property value rates.

Q 13: Are there other significant sources of variation in local authority regulatory practice than those described in this chapter?

The issue of capacity to develop, administer and enforce regulation is not addressed in this chapter. In the Federation's view this is a source of considerable variation. Rural local authorities may, for example, take a less rigorous approach to testing and enforcing water quality standards on account of the small scale of suppliers and the cost preferences of those communities.

Q 14: Can you provide examples of inconsistencies in the administration and enforcement of regulations between local authorities?

One example of inconsistency in our experience is the administration of district council obligations under the Dog Control Act, which can be subject to major inconsistencies in fee structure and categorisation of dog types.

Some district councils (Thames Coromandel for example) recognise working dogs in a particular category, with a registration fee level set to scale for dog teams from which nuisance and compliance issues do not arise. Many other district councils do not recognise working dogs and farmers are required to pay full fees on every dog, which can be a considerable expense. The variation in fee levels between district councils is also considerable, due in part to different policies on cost recovery.

Federated Farmers also has experience with inconsistencies in bylaws, such as stock driving bylaws, where permit and fee structures are enforced by some councils and not others.

Regional council approaches to freshwater management can also vary, for a number of reasons, including the region's geography and hydrology as well as community preferences. Some regional councils take a regulation and compliance-based approach and others take a more supportive education-based approach, which is generally the

Federation's preference. In 2011 the Office of the Auditor General published a report looking at the ways regional councils manage freshwater.

Q 15: Do these inconsistencies impose extra costs on businesses? If so, are these extra costs significant?

Farm businesses might experience significantly differing compliance costs depending on the district or regional council jurisdiction within which the farm is located. This might be regarded as more of an opportunity cost for example to farmers in a region where local authorities emphasise planning rules over other methods, consent and monitoring fees are higher, or bylaw provisions affecting them are more onerous.

While farmers could in theory relocate to jurisdictions with lower regulatory cost regimes (in accordance to Tiebout's model), this is only feasible in theory and not in practice. The inconsistencies themselves indicate there are effective and less-effective regulatory practices, and this should be seen as a national cost to primary industries.

There are also costs where a farmer or farmers are spread over different regional council areas (e.g., Waitaki District is in both Otago and Canterbury regions) or where a farmer is spread between districts (a common occurrence as council boundaries do not always respect property boundaries). Local government reorganisation can also cause problems, and this could be a future issue to watch out for if amalgamations gather pace. For example, very different approaches to stock movement bylaws between the former Franklin District and Waikato District has caused 'hassle' and cost impositions for the many farmers from Franklin who since 2010 have found themselves in Waikato. Federated Farmers is currently in the process of challenging Waikato's current bylaw through the Ministry of Transport.

Q 16: To what extent does variation in regulatory practice matter?

Variations matter when it is a result of systemic problems, such as capacity and resource affecting regulatory attitudes and performance within jurisdictions. But the more important question is in what circumstances are these variations appropriate?

Q 17: Can you provide examples of regulatory innovation by local government?

There are individual examples where councils have eased regulation with a view to a more effective interaction with the community.

For example, Hastings District Council chose to make farm buildings exempt from requiring a building consent, a decision that recognises the effects of farm buildings are no more than minor yet the costs of gaining a consent are significant. This in turn has greatly enhanced the flow of information from the rural community as to what buildings exist.

Q18: Is the innovation specific to a particular local authority and its unique circumstances, or could it be adopted more widely?

Federated Farmers believes it could be adopted more widely.

Q 19: What mechanisms or incentives are there for local authorities to share innovations (or experiences with 'failed' innovations) with others?

This is a question for local government. We understand that Local Government New Zealand (LGNZ) maintains an active dialogue among its members, but more particularly the Society of Local Government Managers (SOLGM), in conjunction with LGNZ and the Department of Internal Affairs, has published a "KnowHow" document which is a guide to the regulatory and enforcement provisions of the Local Government Act 2002.

That said, provision of information doesn't always lead to uptake. What incentives currently exist for councils to assess alternative approaches prior to adopting their own? Should councils be required to assess and report on alternative approaches in a consultation process better enable community feedback as well?

Q 20: What factors encourage (or deter) local authority innovation? (e.g., the (in)ability to capture the cost savings from innovation)

Lack of resources, for example a small ratepayer base, may limit innovation, as well as the level of investment in existing practices. Risk aversion is also likely to be an important factor.

Q 21: Has the Commission captured the advantages and disadvantages of centralisation and decentralisation for each of the factors?

Yes.

Q 22: Which of the factors discussed in this chapter are the most important for allocating regulatory functions locally or centrally?

All of the factors are important:

- Preferences
- Economies of scale and scope
- Externalities
- Information
- Innovation
- Competition
- Regulatory consistency
- National priorities
- Capacity and capability
- Governance
- Constitutional considerations

As previously stated we regard capacity and capability as particularly important, as without it ineffective regulation is inevitable.

Q 23: Which other factors might be important for considering whether a regulatory function should be undertaken locally or centrally?

The Federation argues that the availability of appropriate taxation mechanisms to local authorities, or resource derived from central government's mechanisms, is also important.

For example, regarding the Issues Paper's commentary on the regulation of air quality (page 27), a local authority may be able to fund its obligations to improve air quality in a particular urban centre by way of a targeted rate, but also find however that there is resistance among those ratepayers to the cost. A "public good" share from the general rate might then be considered to ease the burden, resulting in properties in the balance of the region meeting the cost on the basis of their property values. Such distortions in equity and incentives can tend to politicise a regulatory response even when there are guidelines and standards in place at a national level.

This has also happened in some districts in respect to funding the costs of complying with the Ministry of Health's Drinking Water Standards (i.e., upgrading towns' water and waste water infrastructure and ongoing operating costs), despite rural ratepayers not having access to urban water and waste water services.

Q 24: Are the factors discussed above helpful in thinking about whether a regulatory function should be relocated?

Yes

Q 25: In the New Zealand context, are there regulatory functions that need reconsideration of who (central, local, community) carries them out?

Federated Farmers has no immediate and particular example, however we reiterate the concern across the board that local authorities lack the appropriate mechanisms to fund the cost of administration, monitoring and compliance for many of their regulatory functions. This in our view has a deleterious effect on regulatory performance.

This is not simply a question of centralisation or decentralisation, as suggested in the quote on page 25 of the Issues Paper, but of ensuring the factors at Question 22 along with funding are satisfactorily addressed before allocation of regulatory functions to local authorities occurs.

We also refer the Commission to our point 3.6 on page 4 of this submission.

Q 26: Do local authority significance policies allow for adequate consideration of the present and future costs and benefits of local government regulation-making?

No. In our experience significance policies have comprehensively failed as an accountability measure.

Q 27: Does the local government regulation-making process lead to good regulation? If there is evidence to show that it does not, how could the process be improved?

This is a very broad question. Local government regulation can work well when it incorporates local people developing and implementing local solutions but not when a council is creating problems to which they dictate solutions. Similarly, it can work well when decisions on regulation take full account of the costs and benefits for affected people, not just the regulator and those seeking the regulation.

In the Federation's experience the bylaw making powers of councils under the Local Government Act are only checked by the special consultative procedure and common law. There is no independent authority accessible to the public where the substance of a bylaw can be examined, either under the parameters set out in the Local Government Act 2002, or any other standard.

Q 28: Do you have examples of regulatory responsibilities being conferred on local authorities with significant funding implications?

Federated Farmers' understanding is that local authority responsibilities under RMA were transferred to local government without direct funding for district and regional plan development. This legislation, and the funding of the costs of developing plans and policies under its requirements, has had a significant financial impact on local authorities.

The Biosecurity Act and its requirement that Regional Pest Management Strategies be developed is another example, highlighted by the fact that Department of Conservation land is non-rateable.

The Ministry of Health's Drinking Water Standards has also imposed significant infrastructure costs on councils to bring their water and waste water schemes up to a high standard. The councils facing the highest costs are often small, rural councils with ageing infrastructure and declining, low income populations.

Q 29: How might central government regulation-making better take account of the costs and impact on local authorities from the delegation of regulatory functions?

Through a principled decision making framework to assess the costs and benefits of implementation at the local level rather than the national level, and the establishment of a mechanism ensuring that central government is obligated to transfer commensurate funding.

This would incentivise central government to properly take cost impacts into account when delegating regulatory responsibilities.

Q 30: How might central government better work with local authorities on the design, implementation and funding of delegated regulatory functions?

Through the application of leading regulatory practice to a protocol that is developed between the two levels of government and stakeholders, and accompanied by funding commitments from central government. These commitments would ensure that central government both has an incentive to facilitate effective regulatory performance in local government, and also a mechanism for accountability.

Q 31: How could the RIA framework be improved to promote a fuller understanding of the impact of devolving new regulatory functions to local authorities?

See response to Q 30.

Q 32: How successful has the guidance document *Policy development guidelines for regulatory functions involving local government* been in improving the consistency and coherence of central government policies that involve local government?

Federated Farmers is not in a position to comment, however we support the development of such guidelines even where the appropriate incentives are not in place.

Q 33: To what extent is the effective implementation of regulations delegated to local government hampered by capability issues in local authorities? Do capability issues vary between areas of regulation?

This submission has commented to some extent on the question of capability within local authorities, and the necessity to appropriately resource delegated regulatory functions.

We also refer the Commission to our response to Question 13.

Q 34: Can you provide examples of regulatory cooperation and coordination between local authorities or between central and local government, and describe successes and failures?

The Federation understands that there are a number of shared services initiatives under way in local government. The Local Authority Shared Services (LASS) companies focus on shared services and procurement, but may also be a useful platform for regulatory coordination.

The Land and Water Forum (LAWF) has recently released its second report and is due to provide its third report to Government in September/October. While it is ultimately for Government to consider its recommendations we believe that this is a useful example

of cooperation and dialogue on freshwater management that incorporates a range of regulatory issues.⁸

Q 35: What types of regulatory functions more readily lend themselves to coordination to improve regulatory performance?

The types of functions more readily coordinated are likely to be those that involve more than one local authority and/or require a high level of technical expertise.

Q 36: What are the most important factors for successful regulatory coordination?

Appropriate incentives and a willingness to share authority on the basis of collective agreement.

Q 37: Are opportunities for regulatory coordination being missed?

Yes.

Q 38: What are the main barriers to regulatory coordination?

In our experience a simple fear that coordination risks making individual local authorities less relevant, and therefore vulnerable to amalgamation, can act as a barrier to coordination.

There are also of course natural, geographical considerations that may prevent coordination, and questions of costs and revenue sharing where local authorities are relying on their ratepayers for all or part of the cost.

Q 39: Are there examples in New Zealand where local authorities mutually recognise each other's regulations?

There is some regulation sharing on a regional basis. For example, dam regulation is an area where a handful of regional councils will be taking on the administration and enforcement of the Dam Safety Scheme.

The three Wairarapa district councils (Masterton, Carterton, and South Wairarapa) have developed a Wairarapa Combined District Plan for their area. It is now operative.

Q 40: Which local government regulatory areas (e.g., planning and land use, building and construction, environmental regulation, public safety and food safety) impose the greatest unnecessary regulatory burden on individuals and businesses?

Of the regulatory functions of local government, from the farming perspective the RMA would by far be the source of the greatest regulatory burden. The extent which the burden is unnecessary would require examination of the merits of each Council's planning provisions in the light of leading regulatory practice.

Q 41: In what ways are these regulatory areas unnecessarily costly (e.g., are they too complex, prescriptive or unclear)?

The Federation has broadly contended in this submission that local authorities are taking an excessively rules-based approach to implementation of the principles of the RMA.

A recent example has been the district plan change proposals that seek to introduce 'buffer zones', or regulated widths, either side of national grid transmission lines that

⁸ See Second Report of the Land and Water Forum: Freshwater policy and plan-making through collaboration, LAWF, April 2012

are above and beyond recognised safety standards as set out in the Code of Practice for Electrical Safety Distances (NZECP43:2001). The Federation has invested considerable resource in opposing these proposals, as in our view they represent an additional unnecessary layer of regulation to protect infrastructure already governed by the code of practice. These buffer zone proposals are being advanced in response to the National Policy Statement on Electricity Transmission, so another example of poorly conceived centrally-imposed regulation being implemented by local government.

Rules impose compliance costs and uncertainties, for example in the area of resource consents. Their requirements are contained within complex and obscure planning documents.

Q 42: Are there particular examples where local government approaches to regulatory responsibilities are especially effective at minimising unnecessary compliance costs for individuals and businesses?

Not that we are aware of, although we do understand there are initiatives related to urban development which simplify permit requirements etc.

Q 43: For which aspects of the regulatory process (e.g., approval, monitoring, enforcement and appeals) could compliance costs to business be reduced without compromising the intent of the regulation? How could this be done?

Compliance costs to any or all of these areas could be reduced were the principles of good regulation, as set out in the Issues Paper and elsewhere, applied.

Q 44: How well are the principles on which local authorities are required to base the funding of regulatory activities applied?

There are 78 local authorities in New Zealand, so it is not possible to answer this question other than in general terms.

In the Federation's experience the allocation of funding of the cost of regulation is pragmatic and political. A council may set a fee to recover a certain percentage of a regulatory cost (for example building consents) to reflect private benefit and exacerbator considerations but upon finding resistance to that fee level, simply increase the portion of the activity that is funded by general rates.

General rates are a coercive, funding tool, based on property value and are only directly paid by owners of land. Their use to fund regulation and monitoring, which is common to local authorities, is a questionable practice.

We also refer the Commission to our response to Question 23.

Q 45: Are there examples of where cost recovery is reducing compliance with regulations and reducing their effectiveness?

Business and individuals will respond to cost signals and incentives. For example, with respect to dog control, high registration fees may produce non-compliance if there is thought to be no value to the dog owner and a low risk of being identified.

Q 46: To what extent are councillors involved in the administration and enforcement of regulation? Has this raised issues in regard to the quality of regulatory decision-making and outcomes?

Federated Farmers is not able to indicate an extent to which councillors are involved in the administration and enforcement of regulation.

While such involvement is not supported, Federated Farmers does acknowledge the value of local councillors in liaison capacities where they have been approached by a member of the public who feels they are not receiving fair treatment.

Q 47: Are there any other governance issues which impede the efficiency of local government regulation?

The skill level and experience of governance is crucial to effective regulation, especially relative to staff of a council.

Q 48: Are the current processes for reviewing existing regulation adequate? Could they be improved?

No. Review processes can be improved by providing appropriate incentives for improvement in both the development and implementation of regulation and in the dissemination and promotion of good practice and innovation.

Q 49: In which regulatory areas are there good regulatory review mechanisms? In which regulatory areas are there poor or insufficient regulatory mechanisms?

We are not aware of good review mechanisms. Reviews of district and regional plans can be very time consuming and costly.

Q 50: Who should undertake regulatory review – the responsible agency or an independent body?

In the Federation's view appropriate incentives on central government, i.e. appropriate funding of the cost of regulation delegated to local authorities, would improve their performance as a review agency.

Where possible an independent body (for example the Productivity Commission or the Office of the Auditor General) should review regulatory performance on significant social or environmental issues on a case-by-case basis. At the least, national benchmarking and publishing of regulatory performance measures would provide some basis to compare regulatory approaches, enable communities to benchmark comparative performances, and provide some incentive to regulators to investigate better practice.

Q 51: Is there a sufficient range of mechanisms for resolving disputes and reviewing regulatory decisions of local authorities.

As earlier stated there are checks and balances within the major legislation that delegates regulatory decision-making to local authorities, for example the RMA and the Biosecurity Act.

In our view, however, the regulatory powers under the Local Government Act 2002 are lacking review and resolution provisions. In the course of disputes with councils over bylaws for example we have found that the only mechanism available to members of the public is the Office of the Ombudsmen.

Q 52: Are some appeal mechanisms used excessively, frivolously or for anti-competitive reasons?

As noted in the Issues Paper this is a problem in respect of the RMA. The disregard for property rights and the lack of compensation for regulatory takings is a very real problem.

Q 53: In what areas of local government regulation is performance being monitored effectively?

The Ministry for the Environment requires councils to report on processing of resource consents.

Q 54: Are there areas of local government regulation where performance is not being monitored and assessed?

At best this seems to be done only occasionally (if at all) for most RMA-related issues, building regulation, and the other key areas of local regulation.

Q 55: Is the current monitoring system effective in providing a feedback loop through which improvements in the regulatory regime can be identified and rectified? What examples are there of successful improvements to a regulatory regime?

Federated Farmers is not aware of any substantial improvements.

Q 56: What challenges or constraints do local authorities face in developing and sourcing data for better practice regulatory performance measures?

Obtaining information may be costly.

Q 57: Are there examples where local authorities are using better practice performance measures? What, if any, obstacles exist for wider adoption of these measures?

Federated Farmers cannot answer this question.

Q 58: What kind of regulatory performance measurement would add maximum value to local authorities, their communities and New Zealand?

Federated Farmers believes benchmarking and requiring assessment of alternative options in regulatory documents would help. External review by independent agencies of key regulatory regimes would also assist.

Q 59: What regulatory performance indicators are most commonly used by local authorities? Can you provide examples of good input, output and outcome measures for regulations you have experience with? What makes them good indicators?

Federated Farmers believes practice is variable and that there is a reliance of easy-to-measure indicators that are not necessarily the most important when evaluating regulatory performance. It would be useful if reviews of regulatory regimes could develop useful standard performance indicators that can be reported against by councils.

Q 60: What kind of centrally provided data would enhance the local government regulatory monitoring regimes?

Relative costs of implementation of regulations, net costs for varying types of business between authorities, administrative costs of regulation, direct user charge cost recovery versus general rates cost recovery, comparative expenditure across particular cost areas, costs involved with addressing poor regulation.

Q 61: Are there quality issues in existing nationally available data sets that would need to be resolved before developing national performance measurement regimes?

There is a paucity of reporting and inconsistency of reporting frameworks and the availability of this information. Federated Farmers is not aware of any national reports on this and when councils do it themselves the results tend to be incompatible with other councils and often opaque.

Q 62: What are the specific characteristics of individual local authorities that make local authorities comparable with regard to their regulatory performance?

The following different types of councils are likely to have sufficient commonalities that will make comparisons useful:

- Regional councils, including unitary councils;
- 'Metro' councils;
- Provincial city councils;
- Provincial district councils, and
- Rural district councils.

Q 63: Of the performance indicators commonly collected by local authorities, do any naturally lend themselves to systematic benchmarking of regulatory performance?

Federated Farmers cannot answer this question in any detail but it should be possible to find some.

Q 64: What new performance indicators could meaningfully measure the regulatory performance of local government?

The focus should be on the efficacy of important regulatory regimes, output information and comparisons among local authorities.

Q 65: Is there a role for a third party evaluator to measure customer service standards in local authority regulatory functions?

Yes.

7. ABOUT FEDERATED FARMERS

7.1 Federated Farmers of New Zealand is a member-based organisation representing farming and other rural businesses. Federated Farmers has a long and proud history of representing the needs and interests of New Zealand farmers.

7.2 The Federation aims to add value to its members' farming 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.