

# SUBMISSION

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**Submission on:** Towards Better Local Regulation (Draft Report: December 2012)

**From:** Federated Farmers of New Zealand

**Date:** 13 March 2013

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## 1. INTRODUCTION

- 1.1 Federated Farmers welcomes the Commission’s draft report *Towards Better Local Regulation*.
- 1.2 We agree that the Inquiry is a wide and challenging piece of work, and contend that this is largely on account of the haphazard mix of delegation and devolution of regulatory responsibilities from central government and the divergent capacities and attitudes of individual local authorities.
- 1.3 As emphasised in our submission on the Commission’s July 2012 Issues Paper *Local Government Regulatory Performance* the Federation experiences the full range of local regulatory processes and impacts on farmers in our efforts to represent them.
- 1.4 Our primary concerns arising from this representation are that –
- There is presently ubiquitous growth in local government regulation. Rules are constantly being introduced, but are rarely deleted.
  - This growth in the volume of regulation in part arises from the haphazard relationship between central and local government.
  - That the variegated capacity of local authorities to administer regulation gives rise to differing responses.
  - That funding issues can give rise to a “rules first” mentality, as rules can mean income by way of fees as opposed to expenditure of rates on more enabling and educative approaches.
- 1.5 Federated Farmers congratulates the Productivity Commission on this draft report. We are particularly supportive of the ‘whole of system’ approach taken to the work and the inclusion of a chapter on funding issues.
- 1.6 Most of the recommendations made in the Federation’s submission to the Issues Paper have been addressed in one form or another by the draft report, but we note the lack of progress by the Government to advance the Regulatory Standards Bill. This lack of progress remains disappointing especially as the Bill was introduced prior to the 2011 election, and was intended to address the poor quality regulatory processes that the Commission’s draft report is rightly critical of.
- 1.7 This submission offers a commentary on the Overview to the report as a place to express broader opinion, along with comment on many of the findings in chapters 2-14 and responses to many of the questions raised in the report.

## 2. COMMENT ON THE OVERVIEW

### A ‘whole of system’ approach

- 2.1 Federated Farmers supports this approach. As emphasised in the report the mixture of devolved and delegated regulatory functions gives rise to systemic problems that cannot be addressed by focus on one particular area.

### Divergent views are creating tension between central and local government

- 2.2 Federated Farmers agrees with the proposition that there is “obvious and growing tension” between central and local government in terms of the regulatory system.

- 2.3 In our view the regulatory system, if it could be described as such, is haphazard and inconsistent, both in terms of the operation of legislation within which local government carries out delegated roles, and the devolution of central government roles to the local level.
- 2.4 This in our view is partly a natural consequence of the historically reactive and pragmatic relationship between central and local government and the lack of a defined protocol or constitutional delegation of powers.
- 2.5 In our experience local government is frequently viewed and utilised as an operational arm of central government.
- 2.6 The Federation has frequently raised concerns as to the proclivity of Government agencies such as the Department of Conservation and the New Zealand Transport Agency to appeal regional and district plan decisions, frequently for the purpose of seeking further regulation.
- 2.7 In Federated Farmers’ opinion the major failing of the regulatory system is the lack of incentives on the part of both central and local government to achieve optimal outcomes, and the inability of the system to take into account the varying capacities of councils to meet the requirements of legislation.

#### **The quality of regulations reflects central government processes**

- 2.8 Federated Farmers partly agrees with the statement above, but shortcomings in the quality of regulation delivered locally should not entirely be considered a by-product of central government processes or lack of them.
- 2.9 Local authorities themselves can advance their cause through transparency, collaboration and a more determined approach to the problem of funding. It is our belief that local government is frequently torn between a desire to protect and acquire regulatory powers while emphasising a lack of capacity to carry them out. This contradiction was perhaps evident in local government’s response to proposals to centralise building consents – on the one hand blaming government for regulatory disarray, yet on the other reluctant to let go of it and see it centralised to a government agency.
- 2.10 Further in our experience provisions within empowering legislation are poorly applied at local level, such as analysis done under section 32 of the RMA. We find that such analysis invariably fails to fully assess the cost and benefits of various methods, and ignores vital considerations such as the cost of enforcement, opportunity costs, and the impact on communities of regulatory intervention that imposes costs on communities for outcomes that may be (or are being) achieved through non-regulatory methods.
- 2.11 Local government does however have a case for the assertion that “central government neither understands, nor adequately considers, the impacts of new regulatory functions it assigns to councils.” While we cannot endorse this contention comprehensively we have direct experience of delegated legislation and policy standards that tend toward a one-size-fits-all approach, and legislation almost unenforceable in its complexity.
- 2.12 The imposition of requirements to upgrade drinking water supplies to comply with the Health (Drinking Water) Amendment Act 2007 is an example of a one-size-fits-all

regulatory obligation that failed to supply sufficient flexibility to reflect the cost-benefit of water treatment.

- 2.13 The regulation of hazardous substances is an example where local authorities have adopted an overly cautious approach to administering and enforcing a group standard, in part in our view on account of the complexity of the regulation imposed on them.

### **Monitoring and enforcement appears to be under-resourced**

- 2.14 We suggest that there is a distinction between monitoring and enforcement in terms of capacity and funding.
- 2.15 The funding of monitoring is a particular challenge where a council selects educative and voluntary processes as a response to regulatory requirements, as they cannot charge fees like they are able to with a rule. Funding of monitoring is then likely to fall to the general ratepayer and the property based funding system of local authorities which is inadequate for the purpose of funding public goods.
- 2.16 In addition we contend that there is a tendency toward an under-emphasis on the monitoring of the effectiveness of rules in achieving particular objectives, and an over-emphasis on rule formulation.

### **Cooperation on regulatory functions is widespread**

- 2.17 Federated Farmers supports cooperation between local authorities to improve efficiency in their regulatory functions and assist councils that lack the capacity to effectively manage their obligations.
- 2.18 Such cooperation should not just be about emphasising and beefing up enforcement. The sharing of expertise on managing appropriate methods of regulation is of vital importance.
- 2.19 Federated Farmers is aware of various “shared services” organisations that exist among groups of councils and cooperate in areas such as procurement. We believe there may be value in such models in the regulatory environment.
- 2.20 The capacity of local authorities to carry out their devolved and delegated functions efficiently, in a way that is enabling for communities and is fairly funded, is the crucial element in this discussion.
- 2.21 No amount of communication and good intent can ensure efficient regulation where a local authority is lacking this capacity. In addition to clearer implementation guidelines or regulatory consistency, cooperation may to an extent resolve this concern. Kawerau district council, for example, raised concerns in July 2012 at the cost of their district plan review, which was described as “colossal” by one councillor. The cost of dealing with an appeal from the NZTA was also raised and itemised. Kawerau mayor Malcolm Campbell suggested at the time that “in the future, all three Eastern Bay councils could combine their district plans to share review costs.”<sup>1</sup>

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<sup>1</sup> *Whakatane Beacon*, 20 July 2012

## **Mechanisms for assessing the regulatory performance of local government need improving**

- 2.22 Federated Farmers concurs with this statement and supports the broad themes set out in the section “Ways Forward”, particularly the focus on achieving a closer alignment of incentives and ensuring there is adequate capability to provide effective regulation.

### **3. CHAPTER 2: LOCAL GOVERNMENT IN NEW ZEALAND**

- 3.1 Federated Farmers agrees with the key points of Chapter Two of the report. As stated above we find the relationship between central and local government haphazard and inconsistent, and agree that this is undermining the effectiveness of current regulatory frameworks.
- 3.2 The position of stakeholders, i.e. property owners and ratepayers, within this difficult relationship should be given emphasis. Communities can find that consultation on regulations at local level is asymmetrical, with large amounts of information overwhelming submitters and limiting public interest.
- 3.3 **Finding 2.1:** *“The level of tension between central and local government about their respective roles may now be at a level that is unhealthy and could undermine the development and performance of regulatory functions”*
- 3.4 The Federation agrees that there is heightened tension. We consider this to be partly a consequence of the volume of legislation issuing from government in recent years, the economic downturn, and the pressure on communities of rising rates. These developments are challenging the capacity of local authorities to effectively monitor, implement and enforce such regulation.
- 3.5 **Finding 2.2:** *“It is important to be clear about the constitutional place of local authorities and, in particular, about the relationship between local and central government, because these matters will determine what options for the design of the regulatory system are feasible and appropriate”*
- 3.6 Federated Farmers agrees that clarity is important in the relationship between central and local government, however we do not see the necessity of establishing a formal constitutional status for local government.
- 3.7 With respect to regulation we contend that there is a significant need to codify processes where regulatory responsibilities are delegated or devolved. Such a code or protocol might require the assessment of capacities within local government to effectively establish and administer the regulation. A further assessment of available and appropriate revenue streams to fund the cost of administration, enforcement and externalities might also be included.
- 3.8 **Finding 2.3:** *“Contrary to common perceptions, almost all regulations made or administered by local authorities are undertaken on the direction of central government, or are necessary for carrying out their duties under Acts of Parliament”*
- 3.9 Federated Farmers agrees that the source of local government’s regulatory obligations and powers is not widely understood. This does not mean however that local authorities should not be held accountable for the quality of the regulation they ultimately deliver as they have in many cases, such as the RMA and bylaw making

powers under the LGA, considerable discretion as to implementation, application, and enforcement.

#### 4. CHAPTER 3: DIVERSITY ACROSS LOCAL AUTHORITIES

- 4.1 **Finding 3.1:** *“New Zealand’s national population is projected to grow over the next 25 years, but almost half of New Zealand’s TA areas are expected to decline in population over this period”*
- 4.2 There is a high level of awareness of this challenge among smaller local authorities that struggle particularly with one-size-fits-all delegations.
- 4.3 Federated Farmers has for a number of years expressed concerns at declining rateable values in smaller cities and towns and the relative impact on farmland.
- 4.4 In our view collaboration among local authorities and the development of protocols for devolution and delegation of regulatory responsibilities, that incorporate assessments of capacity and funding, are the best response to declining population in certain jurisdictions.
- 4.5 **Finding 3.2:** *“Differences in demography, labour markets and local incomes across New Zealand’s local authorities may drive different regulatory needs and capacity at the local government level”*
- 4.6 We agree with this proposition. Clearly there exist quite different attitudes to such matters as district planning between larger and smaller local authorities, with the smaller jurisdictions seeking a more minimalist approach that places greater emphasis on avoiding appeals to the Environment Court. The risks of such inconsistencies can be managed if constructive measures, such as collaboration and the development of protocols, are taken to address them.
- 4.7 Central government can play a significant role at source in ensuring that in particular one-size-fits-all delegations are avoided, such as that presently contemplated for earthquake prone buildings.
- 4.8 **Finding 3.3:** *“Physical endowments vary across New Zealand’s TAs, as does industrial activity. Employment data indicate a pattern of larger hub TAs, which tend to have fuller suites of industries, along with a larger number of more specialised smaller authorities”*
- 4.9 Physical endowments generate differing regulatory obligations and burdens, for example those relating to the roading network in low population density jurisdictions with extensive roading networks, or those with significant DOC estates and associated out-of-jurisdiction visitors.
- 4.10 **Finding 3.4:** *“Greater industrial specialisation in smaller TAs suggests more specific regulatory needs in smaller authorities. This provides one explanation for variation in regulatory activity across New Zealand’s TAs”*
- 4.11 This is agreed.
- 4.12 **Finding 3.5:** *“New Zealand’s TAs have had mixed employment growth experiences. Employment growth has been steadier in larger TAs, while varying significantly across smaller TAs”*

- 4.13 This is agreed.
- 4.14 **Finding 3.6:** *“Local variation likely drives different regulatory approaches. Part of this variation in regulatory approach appears to be differing interpretations of local government’s role in promoting economic growth”*
- 4.15 Federated Farmers has supported local authorities that take an economic growth perspective on regulation and emphasise enabling and lean thinking approaches. We contend that this is a neglected area of economic development at a local level, with a greater focus among many local authorities on expenditure to promote ‘economic growth’ as opposed to playing a role in reducing the costs to businesses.
- 4.16 In the Federation’s view local government should more carefully consider the effect of regulation on economic growth.
- 4.17 **Finding 3.7:** *“The appropriate role of local government in fulfilling its mandate to pursue economic growth has been left unclear by central government”*
- 4.18 Federated Farmers agrees with this statement. The default position adopted by many local authorities is to promote the tourism industry where opportunities are thought to exist. There has been no cohesive message from central government on the role efficient regulation can play in economic growth, although some local authorities have raised this from time to time.
- 4.19 **Question 3.1:** *“To what extent should local government play an active role in pursuing regional economic development?”*
- 4.20 Federated Farmers considers the purpose statement in the Local Government Act that local authorities “... play a broad role in meeting the current and future needs of their communities for good-quality local infrastructure, local public services, and performance of regulatory functions” as appropriate to the pursuit of economic development.
- 4.21 Federated Farmers favours a more passive enabling role for local authorities, given that property value rates are their principal source of taxation revenue.

## 5. CHAPTER 4: ALLOCATING REGULATORY RESPONSIBILITIES

- 5.1 **Finding 4.1:** *“Better regulatory decisions will be made, and overall well-being improved, when those who bear the costs and benefits from the regulation have representation in the jurisdiction making the decision”*
- 5.2 This is agreed, but the statement should not be taken as a limitation on the use of central government taxation revenue to support local authorities in the implementation of devolved and delegated regulatory responsibilities.
- 5.3 **Finding 4.2:** *“If there are spillover effects, better regulatory decisions will be made if the costs and benefits that are borne by those outside the decision-making jurisdiction are taken into account”*
- 5.4 As stated in the draft report this will depend on the range of mechanisms available for taking the relevant costs and benefits into account.

- 5.5 Spillover effects are difficult to define however such matters might best be addressed through local authority collaboration.
- 5.6 **Finding 4.3:** *“There are advantages from local decision-making if preferences are heterogeneous because local governments are better at aligning local preferences than central governments, but where preferences are more homogeneous across the country, there may be advantages from reducing the effort and cost of multiple decision-makers”*
- 5.7 This principal is agreed. In theory local authorities should be better at aligning local preferences, but this is only the case if their processes are transparent and consultation and communication with their communities effective. We contend that public apathy around many council processes where consultation is a significant check (such as bylaws and the special consultative procedure in the LGA) carries risks.
- 5.8 **Finding 4.4:** *“When allocating regulatory responsibilities, consideration should be given to what level of government has, or can most efficiently obtain, the relevant information needed for effective decision-making and implementation”*
- 5.9 Again this is agreed; however being local does not necessarily mean that local authorities can efficiently obtain relevant information necessary for effective decision-making.
- 5.10 A major stumbling block for local authorities in reaching their communities and establishing their preferences is the limitation of their general taxation powers to property value rates and uniform charges. A significant portion of the community, those that do not own property, do not directly experience the cost of administration of regulation and are therefore less inclined to take an interest in council affairs.
- 5.11 **Finding 4.5:** *“When allocating regulatory responsibilities, consideration should be given to the capabilities required of the role and the existence and quality of governance and accountability arrangements within the jurisdiction tasked with the role”*
- 5.12 Federated Farmers agrees with this statement, assuming that the word “capabilities” incorporates considerations of funding and resources.
- 5.13 **Finding 4.6:** *“Good regulatory outcomes are more likely to be achieved when there is clarity of role and coordination between levels of government responsible for standard-setting and implementation”*
- 5.14 This is agreed and could be comprehensively achieved with the development of intelligent protocols for the devolution and decentralization of regulatory responsibilities to supplant the haphazard set of relationships that presently exist.
- 5.15 **Finding 4.7:** *“Good regulatory decision-making and implementation will be compromised if the level of government responsible is inherently inefficient or unaccountable”*
- 5.16 This is agreed and again we refer the Commission to the inadequate methods of taxation available to local government.
- 5.17 **Finding 4.8:** *“Submissions point to a mismatch between national and local preferences and priorities when it comes to regulation. Around half of local authority*



*survey respondents agreed that there are conflicts between local priorities and regulations originating at central government level"*

- 5.18 This statement coincides with our own experience. In our discussions with councilors on for example significant indigenous vegetation, the weighting put by the Department of Conservation on maintenance and enhancement is often inconsistent with the priorities of local communities and there is a lack of guidance from central government on methods of implementation.
- 5.19 **Finding 4.9:** *"Approximately 70 percent of businesses in New Zealand only deal with one council and for those businesses that operate over more than one jurisdiction, this is over a limited range of regulatory matters"*
- 5.20 Most farm owners deal with one territorial authority and also a regional council excepting those jurisdictions governed by unitary authorities. However, the growing incidence of multiple farm ownership means that farm owners increasingly have to deal with multiple district and even regional councils.
- 5.21 **Finding 4.10:** *"Targeted approaches could be adopted for reducing the costs for businesses operating across multiple jurisdictions while maintaining the benefits of local tailored regulation"*.
- 5.22 The Federation would agree in principle, although any centralization of processes should retain flexibility and avoid one-size-fits-all approaches which may not suit local circumstances and preferences and would also remove the ability of local people to have their say on regulatory issues.
- 5.23 **Finding 4.11:** *"There are issues with insufficient regulatory capability but this can be found at all levels of government. There are a number of ways of dealing with capability gaps that do not always require a reassignment of roles to a different level of government"*
- 5.24 The Federation agrees with this, and views the development of protocols between central and local government, secondment of staff as suggested in the report, and collaboration between local authorities in an environment where there are appropriate revenue streams, as particular ways of ensuring regulatory responsibilities are not delegated or devolved to local authorities that lack the capability to administer and enforce them.
- 5.25 **Finding 4.12:** *"A misallocation of risk can have costly consequences. Insufficient attention has been given in the past to the ability to manage risk when allocating regulatory roles"*
- 5.26 This is agreed. This can work in both directions if an appropriate balance is not struck, for example the dam safety scheme covering too many low-risk farm dams, and the current proposals on earthquake-prone buildings.
- 5.27 **Finding 4.13:** *"Both local and central government need to work on a constructive engaged relationship for the development of quality regulations and the delivery of regulatory outcomes"*
- 5.28 This is agreed.

- 5.29 **Question 4.1:** “*Have the right elements for making decisions about the allocation of regulatory roles been included in the guidelines? Are important considerations missing?*”
- 5.30 The one page guide on page 59 of the report appears comprehensive. It is good to see the question of funding national benefits accruing from local regulation addressed, however we would add the further consideration of the overall capacity in terms of resources of the local authority to deliver quality regulation that accrues local benefits.
- 5.31 **Question 4.2:** “*Are the guidelines practical enough to be used in designing or evaluating regulatory regimes?*”
- 5.32 We contend that the guidelines are sufficiently practical and have the potential to form the basis of a protocol for allocating regulatory functions. As noted above however the guidelines need to address the issue of overall resources or capacity of the target local authority.
- 5.33 **Question 4.3:** “*Are the case studies helpful as an indicative guide to the analysis that could be undertaken?*”
- 5.34 We think the case studies are helpful, and the mention of the unfunded mandate in that of the kiwi habitat is appreciated. The question of overall resource required to implement, administer and enforce the regulation is not addressed, and this is notable in the building consent example.
- 5.35 **Question 4.4:** “*Should such analysis be a requirement in Regulatory Impact Statements or be a required component of advice to Ministers when regulation is being contemplated?*”
- 5.36 With the reservation above this would be helpful, however we contend that such analysis be elevated to form the basis of a protocol between central and local government.
- 5.37 **Question 4.5:** “*Should the guidelines be used in evaluations of regulatory regimes?*”
- 5.38 Yes.

## 6. CHAPTER 5: THE FUNDING OF REGULATION

- 6.1 **Recommendation 5.1:** “*Regulations should be reviewed to remove specific fee amounts and make those fees at the discretion of local authorities, subject to the requirements of section 101(3) of the Local Government Act 2002*”
- 6.2 Federated Farmers would agree that this measure may improve the efficiency of fee setting as an allocation of genuine costs to the beneficiary or exacerbator of local regulation.
- 6.3 The Federation has found local government’s application of the section 101 principles somewhat desultory and would urge that some oversight provisions accompany this recommendation.

- 6.4 **Finding 5.1:** *“The local government sector has a strongly held view that central government passes regulatory functions to local authorities without sufficient consideration of the funding implications for councils”*
- 6.5 Federated Farmers agrees with this proposition. There are many examples of additional costs being imposed by central government on councils, most recently current proposals on earthquake-prone buildings.
- 6.6 We support the view of local authorities mentioned in the key points that “... were of the view that regulatory functions delegated to them should be at least part funded through taxation.” We concur for two reasons:
- Property value rates are unsuitable for the funding of public goods derived from regulatory activity, whether within a particular jurisdiction or beyond it. Income tax and sales tax are by far the better funding mechanisms and should be shared with local government to alleviate the direct burden on property owners.
  - If central government has no systemic funding obligations there is little incentive manage the devolution and decentralization of regulation effectively, and to ensure that local authorities are accountable for their regulatory outcomes.
- 6.7 The “strong accountability requirements” that would result from this would, we would think, be welcomed, and would do much to correct the failing relationship between central and local government on regulation.
- 6.8 **Question 5.1:** *“Do any regulatory functions lend themselves to specific grants? If so, what is it about those functions that make them suitable for specific grants?”*
- 6.9 Yes, specific grants can be ‘ongoing’ for activities that have some national benefit (e.g. habitat protection) or one-off where central government has made decisions that impose one-off cost increases on councils to achieve a national benefit.
- 6.10 For example, the Ministry of Health’s Drinking Water Standards imposed significant costs on councils to upgrade water infrastructure (around \$337 million in capital costs alone) and the Government recognised this by making available an on application subsidy for councils. The subsidy did not however meet the full capital costs (let alone the ongoing operating costs) and is only available to deprived areas.
- 6.11 Looking ahead, the Ministry of Business Innovation and Employment’s proposals on earthquake-prone buildings would, if adopted, require councils to assess within five years all non-residential buildings and multi-story, multi-unit residential buildings in their areas – this would impose significant costs on councils, yet we are not aware of any analysis of these costs.
- 6.12 **Question 5.2:** *“If general grants were to be considered, on what basis could ‘needs assessments’ be undertaken? What indicators could be used to assess need?”*
- 6.13 Federated Farmers supports general grants in principle, as above, with strong accountability including an element of means-testing of local authorities. The Government’s fiscal responsibility regulations that are presently being developed might be used to assess which councils are in need.
- 6.14 Key indicators might include establishing:

- Whether the regulation involves the local authority acting solely as an agent or implementer of central government objectives.
  - The implications of funding the activity locally (fees or rates) or centrally, both in terms of efficiency (monitoring, enforcement, level of service and revenue collection), equity, and incentives to achieve an optimal regulatory outcome.
- 6.15 Our main caution is that any grant regime of a general type should not serve to support councils in difficulty on account of profligate decision-making.
- 6.16 **Question 5.3:** “*What would appropriate accountability mechanisms for funding local regulation through central taxation look like? How acceptable would these be to local authorities?*”
- 6.17 In our view an accounting of expenditure on specific regulatory activities, the form of those activities, and an assessment of the impact on communities.
- 6.18 The disbursement of financial assistance to local authorities for local road provision through financial assistance rates offers a useful example of working accountability mechanisms for what is essentially a revenue share.
- 6.19 In our experience local government is strenuous in its efforts to retain autonomy. As emphasised however in Finding 2.3, in the case of regulation local government’s functions are entirely delegated and devolved from central government. This relationship itself provides a ready platform for accountability in the case of any revenue share, as central government can simply seek an accounting of the return on its investment as part of its regulation of local government.
- 6.20 We have no comment on **Chapter 6, The Regulation Making System.**

## 7. CHAPTER 7: REGULATION MAKING BY CENTRAL GOVERNMENT

- 7.1 **Finding 7.1:** “*Regulation-making at the central level is below leading practice. This is having a material impact on the quality of regulations devolved or delegated to the local government sector*”
- 7.2 We agree with this finding. Federated Farmers and other business organisations have previously criticised regulation-making processes, including the deficiency of Regulatory Impact Statements.
- 7.3 **Finding 7.2:** “*Current institutional arrangements can shield central government agencies from the full fiscal and political cost of decentralising regulatory functions*”
- 7.4 This is absolutely the case and is a component of the perverse incentives within the current regulatory system.
- 7.5 **Finding 7.3:** “*When regulations are developed centrally and implemented locally the incentives faced by central government to undertake rigorous policy analysis are reduced. However, care needs to be taken not to confuse implementation problems with inadequacies in the underlying design of regulations – this requires careful post-implementation analysis*”
- 7.6 The Federation agrees with both statements. In the case of unfunded mandates in particular there is little incentive for rigour on the part of central government, despite a plethora of quality assurance processes. Once the responsibility is transferred it

becomes local government’s “problem”. Post-implementation analysis in our experience rarely happens.

- 7.7 **Finding 7.4:** *“The degree of Ministerial pressure on the public service to provide quality advice on local government regulatory issues is a key influence on behaviour. It is therefore important that Ministers have strong incentives to ensure that the advice they receive on these issues is of high quality and the product of a rigorous policy process”.*
- 7.8 This is agreed; however Ministers are also often happy for the financial costs and political risk to be imposed on local government.
- 7.9 **Finding 7.5:** *“The tendency of central government agencies to operate independently has resulted in regulatory functions being conferred on local government without considering their interaction and impact on existing regulatory functions administered by local authorities”*
- 7.10 This is agreed. Regulatory fragmentation is apparent in central government, especially as the volume of legislation increases, and in the absence of protocols and guidelines this must of course impact local government when regulatory functions are devolved and delegated.
- 7.11 **Finding 7.6:** *“An opportunity exists to use the Better Public Service Initiative to promote a more joined up, whole of government approach to regulatory policy involving the local government sector”*
- 7.12 Federated Farmers agrees there is an opportunity to at least improve central government’s delegation and devolution processes, reducing fragmentation.
- 7.13 **Finding 7.7:** *“The RIS process has a valuable role to play in ensuring the quality of regulations delegated or devolved to local government. However, at present this value is not being fully realised and improvements to the process are required”*
- 7.14 This is agreed. Federated Farmers and other business organisations have previously criticised the deficiency of RISs.
- 7.15 **Finding 7.8:** *“While there are some examples of leading practice, consultation with local government on the design of new regulations is generally poor”*
- 7.16 We concur with this statement. While not privy to this consultation we frequently hear such assertions made in and outside of council chambers by local authority staff and elected members.
- 7.17 **Finding 7.9:** *“There is evidence to suggest that implementation analysis is a generic weakness of policy analysis in New Zealand. This weakness impacts on local government because local government is often the implementer of government policy”*
- 7.18 This is agreed. Central government needs to do much more and better in this space.
- 7.19 **Finding 7.10:** *“The financial, capability, capacity, and risk management challenges faced by local government in implementing regulations appear to be poorly understood within central government. There is little analysis of how these challenges will impact the successful achievement of regulatory outcomes”*

- 7.20 This is agreed.
- 7.21 **Finding 7.11:** *“A spectrum of measures exist that would help improve the quality of regulation delegated or devolved to local government. Many of these would have broader benefits for the overall standard of central government decision-making”*
- 7.22 Federated Farmers agrees with the focus on the four themes set out on page 90.
- 7.23 **Question 7.1:** *“What measures, or combination of measures, would be most effective in strengthening the quality of analysis underpinning changes to the regulatory functions of local government?”*
- 7.24 The Federation agrees with most of the measures listed in table 1. However, Federated Farmers has long supported a Regulatory Standards Bill as an accountability and transparency tool and it is disappointing that this hasn’t been included as an option.
- 7.25 Another factor that would certainly focus the minds of Ministers would be general funding contributions to local government’s implementation and administration costs.
- 7.26 **Finding 7.12:** *“While guidance and training material on good policy practices are available, the incentives on agencies to ensure they utilise this material are weak. Perhaps the most relevant example of this is the limited traction obtained by DIA’s policy guidelines for regulatory issues involving local government”*
- 7.27 Federated Farmers agrees with both statements. In the absence of revenue sharing there is little incentive on the part of central or local government to utilise guidelines.
- 7.28 **Question 7.2:** *“What measures, or combinations of measures, would be most effective in lifting the capability of central government agencies to analyse regulations impacting on local government?”*
- 7.29 Refer to answer to Question 7.1
- 7.30 **Finding 7.13:** *“Pragmatic approaches to building better relationships between central and local government are needed. These relationships must be based on a mutual understanding that both levels of government ultimately exist to create public value and that their ability to create public value is tied, at least in part, to the actions of the other”*
- 7.31 This is agreed.

## 8. CHAPTER 8: LOCAL GOVERNMENT COOPERATION

- 8.1 **Finding 8.1:** *“There is significantly more cooperation, coordination, and sharing of resources occurring amongst local authorities than is commonly known”*
- 8.2 As stated earlier Federated Farmers believes there is scope for improvement in regulatory efficiency through the cooperation of councils, particularly where the method of regulation is clearly defined by statute and as such alignment is in large part achieved.
- 8.3 In terms of more comprehensive collaboration we would support partnerships that are transparent and identify their cost savings through procurement and sharing of

expertise and capacity. The local authority shared services model among Bay of Plenty councils, which facilitates collaboration in areas such as procurement and operates as a limited liability company, is perhaps a useful model.

- 8.4 In terms of more specific partnerships we are encouraged by the example of Palmerston North City Council and Manawatu District Council as regards building consents on page 111 of the report.
- 8.5 **Finding 8.2:** *“Despite the wide use of cooperative arrangements, very few empirical studies have been undertaken (either domestically or internationally) to quantify the benefits and costs of council cooperation on regulatory functions”*
- 8.6 If local authorities are investing in collaboration they should be reporting the benefits.
- 8.7 **Finding 8.3:** *“Because local authorities operate within a highly diverse set of circumstances, the returns from cooperation are likely to be highly situation-specific. As a result, significant care must be taken in applying or interpreting business cases from one jurisdiction in another”*
- 8.8 This is agreed. There is particular difficulty in quantifying outcomes that may be encountered where the regulatory methods of the cooperating councils are not aligned. Theoretically however the cost of a particular regulation delivered on a standalone basis, as opposed to a cooperative one, can be established.
- 8.9 **Question 8.1:** *“What are the benefits and costs of cooperation? Are there any studies that quantify these benefits and costs?”*
- 8.10 We concur with the outline of costs and benefits in the report on pages 111-114. We are not aware of any studies that quantify the benefits and costs of cooperation on regulatory activities.
- 8.11 **Finding 8.4:** *“Cooperation can capture many of the benefits of centralisation while maintaining the advantages of local decision-making (such as ability to cater for spatial variations in community preferences)”*
- 8.12 We agree that this is the case. Our main concern with cooperative models is that some local autonomy as to regulatory method may be lost.
- 8.13 **Finding 8.5:** *“The speed with which central government seeks to implement new regulatory initiatives may materially affect the likelihood of local cooperation. Central government consultation processes, done well, can lay the foundation for local authorities working together”*
- 8.14 Yes, but as acknowledged on page 118, cooperation can also be a response to poor consultation.

## 9. CHAPTER 9: LOCAL AUTHORITIES AS REGULATORS

- 9.1 **Finding 9.1:** *“Local authorities do not appear to be using their powers of general competence to get into new areas of regulation. However, local authorities are using the powers available to them to deal with local issues they face. Some local authorities will take a very cautious approach with regulation that requires a high level of technical expertise, reflecting capability or risk issues”*

- 9.2 Federated Farmers does not disagree with these statements. Our organisation has not encountered entirely new developments in regulation and would be surprised to see such as the result of the power of general competence – particularly given existing concerns about the unfunded mandate.
- 9.3 As noted on page 133 Federated Farmers does, however, experience an excessive emphasis on rules where councils have discretion as to the method of regulation. We consider this to partly arise from the financial necessity of charging fees to cover costs. We encounter this for example with stock driving bylaws and the introduction of permits, and certainly within RMA processes (although with respect to the RMA rules may be particularly sought by central government through the consultation process).
- 9.4 We disagree with LGNZ’s comment that “incentives appear more than adequate for elected members to ensure local regulatory frameworks do not impose unnecessary costs on business”. The Government’s criticisms of RMA section 32 analyses and its determination to lift their quality indicates that local governance is not entirely responding to the growth incentive.
- 9.5 **Finding 9.2:** *“Elected council members involvement in individual regulatory decisions is most likely greater than previously understood”.*
- 9.6 This is not our experience – the understanding within the farming community of the role of councilors tends to be high. There is a high level of interaction with councils on a range of regulatory matters and this highlights for farmers the role of elected councilors. Farm groups frequently form to address new regulatory proposals and will seek the involvement of local councilors
- 9.8 **Question 9.1:** *“Are there potential pooled funding or insurance style schemes that might create a better separation between councillors and decisions to proceed with major prosecutions?”*
- 9.9 The Local Government Funding Agency initiative for pooling risk to gain cheaper finance may be instructive here. The challenge is perhaps that risk is equalised across all local authorities regardless of the quality of their decision-making.
- 9.10 **Finding 9.3:** *“The independent hearings panel process can be a good way of ensuring the views of interested parties are heard fairly and lead to recommendations being made to councils”*
- 9.11 In general the Federation would agree, although our experience with local processes is variegated. Independent hearings panels theoretically allow for separation of policy drafting and decision making, the avoidance of bias or the appearance of bias, and most importantly provide the opportunity for much needed technical expertise.
- 9.12 **Question 9.2:** *“Are bylaws that regulate access to council services (e.g., trade wastes bylaws) being used to avoid incurring costs, such as the cost of new infrastructure? Is regulation therefore being used when the relationship between supplier and customer is more appropriately a contractual one?”*
- 9.13 We have no specific examples of such a phenomenon but are interested to know if there is any objective oversight of such matters aside from judicial review.



- 9.14 **Finding 9.4:** *“Centralising functions or providing more national guidance is often seen as a solution to inconsistency. However, inconsistency more often than not occurs because of different understandings or approaches of local officials working on the ground. Greater consistency is more likely to be achieved through sharing good practice and coordination between local authorities, which could be facilitated by relevant departments and ministries”*
- 9.15 This is agreed. Greater consistency can also be achieved by providing stronger national frameworks for implementation and adoption of regulation locally.
- 9.16 **Finding 9.5:** *“27 percent of business survey responses were actively dissatisfied with the regulatory services and approach of their local authorities, however there is considerable variation between industries”*
- 9.17 From the charts it can be seen that the agricultural sector seems less satisfied than the average. This is partly because agriculture has far greater interaction with councils than many other business sectors.
- 9.18 **Question 9.3:** *“What factors (other than the type of regulations most commonly experienced be different industry groupings and the size of businesses in these sectors) explain differences in the satisfaction reported by industry sectors with local authority administration of regulations?”*
- 9.19 Agriculture’s relative dissatisfaction can be explained mainly by the RMA having a particular impact on sectors that use land and water resources, such as agriculture. This is coupled by most farm businesses also being very small so the compliance costs (for RMA and other types of local regulation) are borne by the owner-operator. The frustration is also added to by the way local government is funded – predominantly through property value rates which results in a disproportionate burden being placed on farms.

## 10. CHAPTER 10: LOCAL MONITORING AND ENFORCEMENT

- 10.1 **Question 10.1:** *“Are risk-based approaches to compliance monitoring widely used by LAs? If so, in which regulatory regimes is this approach most commonly applied? What barriers to the use of risk-based monitoring exist within LAs or the regulations they administer?”*
- 10.2 We cannot provide an informed response to this question, however we believe that most councils struggle in this area for the reasons set out on page 151. As a result they can be overly risk averse. To be fair this isn’t just a problem for local government. Many central government agencies have these problems too.
- 10.3 **Finding 10.1:** *“Statutory timeframes for consent processing may have the unintended consequence of diverting resource away from other parts of the regulatory process, especially monitoring and enforcing regulatory compliance”*
- 10.4 The timeframes have been put in place to provide some oversight of local government regulatory efficiency, and in our view are one useful measure of the regulatory impact on businesses and communities. The concern that the targets are resulting in a misallocation of resources should be addressed at a resource level.

- 10.5 **Question 10.2:** *"The Commission wishes to gather more evidence on the level of monitoring that LAs are undertaking. Which areas of regulation do stakeholders believe suffer from inadequate monitoring of compliance? What are the underlying causes of insufficient monitoring? What evidence is there to support these as the underlying causes?"*
- 10.6 The Federation is not aware of particular cases where monitoring falls short although we do have concerns with inconsistent enforcement for example in the area of water quality and inadequate monitoring of standards that might drive regulatory requirements. Lack of consistency in how information is collected, used, and communicated means there is a role for central government to play.
- 10.7 Please refer to our comment at 2.15 as regards the funding of monitoring.
- 10.8 **Finding 10.2:** *"Local authorities need a wider range of enforcement methods to ensure they can always take a proportional approach to enforcement"*
- 10.9 Ensuring an enforcement response is scaled to the level of offence is an important principle. We would be concerned that additional enforcement powers are used appropriately and not provide a revenue source that unnecessarily increases enforcement activity.
- 10.10 Ultimately successful monitoring and communications with individuals can produce optimal outcomes without the necessity of enforcement or provide alternative intermediate paths to enforcement to ensure compliance without unnecessary pecuniary action.
- 10.11 **Question 10.3:** *"Which specific regulatory regimes could be more efficiently enforced if infringement notices were made more widely available? What evidence and data are there to substantiate the benefits and costs of doing this?"*
- 10.12 Infringement and abatement notices are already used in the RMA. As mentioned in paragraph 10.10 the problem comes where there appears to be little option available between infringement notice and prosecution. We also believe that prosecution under the RMA should not be a criminal matter.
- 10.13 **Question 10.4:** *"Is there sufficient enforcement activity occurring for breaches of the RMA, other than noise complaints? If not what other factors are limiting the level of enforcement that is occurring?"*
- 10.14 Our members experience zealous enforcement of regulations formulated under the RMA. See paragraphs 10.10 and 10.12.
- 10.15 **Question 10.5:** *"Should the size of fines imposed by infringement notices be reviewed with a view to making moderate penalties more readily available? What evidence is there to suggest that this would deliver better regulatory outcomes?"*
- 10.16 As per our previous comments we think there is a need for a more scaled approach to infringement as an alternative to prosecution.
- 10.17 **Questions 10.6, 10.7, 10.8, 10.9, and 10.10:** These questions are specific to liquor licensing and as such Federated Farmers has no comment to make on them.

## 11. CHAPTER 11: THE COST IMPACT OF LOCAL GOVERNMENT REGULATION ON BUSINESSES

- 11.1 **Finding 11.1:** Delays in obtaining responses from local authorities, and the sequencing of multiple regulatory requirements and decisions by local authorities, can impose substantial holding costs on businesses.
- 11.2 This is certainly the case with respect to farm businesses and the development of farm businesses.
- 11.3 **Finding 11.2:** *“The Commission’s survey of businesses showed that almost three-quarters of businesses had at least some contact with local government through the regulatory process. Of those that did:*
- *39 percent report that local government regulation places a significant financial burden on their business.*
  - *Nearly half of respondents thought the time and effort involved in complying with local authority regulations is too large (and nearly half were neutral or disagreed) and 70 percent were dissatisfied with the fees charged.*
  - *‘Planning, Land Use, or Water Consents’ and ‘Building and Construction Consents’ have the greatest cost impact on businesses. Both of these local government regulatory areas are typically associated with new projects such as expanding or building something new.*
  - *Around 40 percent of surveyed businesses had contact with the local council over four or more separate regulatory areas.*
- 11.4 As stated in our submission on the Commission’s July 2012 Issues Paper the farming sector is suffering from ubiquitous regulation. Farmers have a high level of interaction with councils on all manner of regulations affecting their businesses, and bear significant risks arising from non-compliance. Federated Farmers is working collaboratively with some in local government with a view to achieving environmental outcomes with reduced regulatory impact.

## 12. CHAPTER 12: MAKING RESOURCE MANAGEMENT DECISIONS AND THE ROLE OF APPEALS

- 12.1 **Question 12.1:** *“Is the very low number of consents declined best explained by risky applications not being put forward, the consent process improving the applications, or too many low-risk applications needing consent?”*
- 12.2 In the Federation’s view there can be a rule making culture in councils. The ubiquitous regulation of recent years has resulted in rules capturing many low risk activities, such as tree trimming, small earthworks, requirements that sheds be painted a particular colour, etc.
- 12.3 The high number of consents approved indicate that there are many activities that should have had permitted status in first place – once considered on facts, easily granted.
- 12.4 In our experience individual businesses, doing cost-risk analysis of a venture or activity will seek alternative options or new locations when it appears that consent approval is not likely. They in effect take a “voluntary tackle” and choose not to enter a risky and potentially expensive process.

- 12.5 **Question 12.2:** *"Would different planning approaches lead to less revisiting of regulation? What alternative approaches might there be?"*
- 12.6 The lack of analysis of the effectiveness of rules in delivering on objectives can result in the imposition of further rules. More guidance may stem the flow.
- 12.7 Federated Farmers is hopeful that Government's proposed amendments to section 32 of the RMA - requiring consideration of economic costs, and trends towards more engagement with potentially affected parties in the planning development phase - may resolve some of these issues.
- 12.8 **Question 12.3:** *"What factors have the strongest influence on whether a District Plan or Regional Policy Statement are appealed?"*
- 12.9 Federated Farmers tends to appeal where rules are proposed for a specific reason, but the way they have been written catches other activities such as farming activities unintentionally. In our view this arises particularly from poor consultation, deficient section 32 analysis, and a lack of understanding of what normal and common farming activities are.
- 12.10 A significant factor is also that there is opportunity to have the hearing heard de novo. This enables considerations to be reheard by an impartial audience. The appeal process also allows appellants to not necessarily need legal representation or expertise when appealing. There is significant opportunity to front end the planning process to provide for greater community buy in and a more collaborative process. This will limit appeals on smaller matters.
- 12.11 **Question 12.4:** *"Overall, would it be feasible to narrow the legal scope of appeals?"*
- 12.12 Given the present regulatory environment Federated Farmers does not consider that narrowing the legal scope of appeals would be of assistance in reducing regulatory churn. It is important that stakeholders be in a position to appeal objectives, policies, methods and rules, as a form of protection from unintended consequences.
- 12.13 Environment Court is one effective check on the quality of regulation, although there is merit in investigating the scope of the appeal process with a view to giving greater consideration to "front ending" planning and consultation processes.
- 12.14 **Question 12.5:** *"Would it be feasible to narrow legal standing?"*
- 12.15 District and regional plans are intended to be of value to communities, and individual members should retain the right to be an appellant. The community should have access to this check given the significant potential impact of rules on livelihood.
- 12.16 In Federated Farmers' view the ability of individuals to join appeals as a section 274 party is an essential check, particularly where landowners' property is identified as affected, whether that be by way of maps or biological or ecological features giving rise to proposed rules.
- 12.17 We consider the scope of legal standing to be already sufficiently narrowed; for example the provisions against vexatious appeals and those identified to be motivated by trade competition.

- 12.18 **Question 12.6:** *“What features of the by-law making process are distinct from the district plan-making process and how might you use practice under the one to improve the process under the other?”*
- 12.19 The significant difference is that district plans have the greater check and accountability through access to the Environment Court.

### 13. CHAPTER 13: LOCAL REGULATION AND MAORI

- 13.1 **Finding 13.1:** *“On the available evidence the current system for involving Maori in resource consent decisions does not appear to be working well for anyone, due largely to the costs and timeframes involved”.*
- 13.2 Federated Farmers agrees that there is dissatisfaction with council consultation and decision-making processes. We would observe though that this is not a problem that is confined to Maori.
- 13.3 **Question 13.1:** *“Are there any other ways that local authorities include Maori in decision-making that should be considered?”*
- 13.4 Other than those mentioned (i.e., Maori committees, joint management agreements, and statutory consultation), there is also the general submissions processes which will pick up Maori viewpoints. There have also been moves to including Maori representation on councils. The Federation has found Environment Bay of Plenty’s system of representation in this regard to be valuable.
- 13.5 **Questions 13.2, 13.3, and 13.4:** We do not have any comments to offer on the other questions posed in this chapter.

### 14. CHAPTER 14: ASSESSING THE REGULATORY PERFORMANCE OF LOCAL GOVERNMENT

- 14.1 **Finding 14.1:** *“Assessment of local government regulatory performance will have net benefits when it improves regulatory outcomes while minimising the cost of performance assessment. The key elements are:*
- *A good understanding of the steps that lead to regulatory outcomes;*
  - *Considering multiple dimensions of performance;*
  - *Adaptability to different regulatory regimes and local and national priorities; and*
  - *A focus on minimising assessment costs by considering the frequency, form and information requirements for performance reporting”*
- 14.2 This is agreed.
- 14.3 **Finding 14.2:** *“There is a crowded and disjointed regulatory performance reporting space for local government, driven by the combination of reporting requirements in the Local Government Act and the legislative reporting requirements for different forms of regulation”*
- 14.4 The Federation agrees with this finding. As mentioned in our comments on the Overview to this report the local government regulatory system is fragmented and haphazard.

- 14.5 **Finding 14.3:** *“There are several leading practices in relation to local government regulatory performance assessment, including:*
- *Auditor/local authority interaction;*
  - *SOLGM guidance material;*
  - *Local authority annual reports that have moved away from transactional performance measures toward outcome-based, impact-based, and service-based measures;*
  - *International Accreditation NZ auditing processes for building control authorities; and*
  - *Ministry for the Environment biennial RMA performance survey”*
- 14.6 This is agreed.
- 14.7 **Question 14.2:** *“Is there a sufficient focus on regulatory capabilities in local government planning and reporting under the Local Government Act?”*
- 14.8 There is an insufficient focus on capability in the Act, although local authorities are able to use their discretion as to method to manage according to their capabilities. Capability, in our view, should form part of a protocol guiding the devolution and decentralisation of regulatory functions and be a consideration in revenue sharing when functions are reallocated from taxpayer to ratepayer.
- 14.9 **Finding 14.4:** *“The value of performance assessment is likely to be impaired at present as a result of a lack of balance in what is measured, insufficient focus on assessment of performance information, a potential weakness in the accountability framework as it relates to capability, and potential inconsistencies in the way regulatory performance is assessed across regulations”*
- 14.10 We agree with these findings.
- 14.11 **Questions 14.1, 14.3, and 14.4:** We do not have any comment to make on these questions.

## 15. ABOUT FEDERATED FARMERS

- 15.1 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.
- 15.2 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.