

SUBMISSION



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To: Inquiry into Regulatory Institutions and Practice
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Submission on: Inquiry into Regulatory Institutions and Practice: Draft Report

From: Federated Farmers of New Zealand

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SUBMISSION TO THE NEW ZEALAND PRODUCTIVITY COMMISSION ON DRAFT REPORT: *REGULATORY INSTITUTIONS AND PRACTICES*

1. INTRODUCTION

- 1.1 Federated Farmers welcomes the opportunity to provide this submission to the New Zealand Productivity Commission on the draft report *Regulatory Institutions and Practices*.
- 1.2 The Federation congratulates the Commission on producing a detailed and comprehensive draft report that is, like its earlier inquiry into local government regulation, a significant addition to the store of knowledge on regulation.
- 1.3 We agree with much of what is in the draft report. Rather than a detailed submission commenting on all 130 findings and 43 recommendations, and answering all 19 questions, this submission will make some general comments before making specific comments on the following issues: property rights, public and political culture, and a Regulatory Standards Bill.

2. GENERAL COMMENT

- 2.1 Federated Farmers generally agrees with the proposition that while New Zealand's regulatory system isn't broken it could be working more effectively.
- 2.2 As stated in our more comprehensive and detailed submission on last year's Issues Paper, the Federation has for many years advocated for better quality regulation and a lower burden of compliance. In any modern society a level of regulation is necessary, but we have long been concerned that poor regulatory quality has added significant costs to the productive sector and impeded its productivity with serious implications for our members' businesses and for the wider economy. We have also been particularly concerned about insufficient recognition let alone protection of private property rights.
- 2.3 The Commission has in its own words 'kicked the tyres' of our regulatory system, which it describes as 'enormous'. There are hundreds of regulatory regimes and thousands of government officials and inspectors who work in regulatory roles. We are unsurprised that the Commission has found that nobody is thinking of regulation as a system, and that there is little or no collection of information of what regulation is achieving, or checking whether it is working as well as it could. Inconsistent approaches make designing, running, and reviewing regulation harder than it should be.
- 2.4 In our view the regulatory system imposes excessive costs on business. As stated in our earlier submission, farmers consistently tell us that one of their biggest concerns (often bigger even than the exchange rate or the weather) is the burden of regulation and associated compliance costs. Even officials concede that there are many examples of legislation that has not met its intended objective, has had significant unintended consequences, or clearly lacks some of the key attributes of good legislation.
- 2.5 Despite its great importance, we know far less about regulation than we do about government taxation and spending. We are pleased, therefore, that the Commission is calling for the system to be 'led' by a senior minister to set strategic objectives for regulation and monitor progress against them. We

agree and we also agree that this would require better support from agencies like the Treasury and the State Services Commission.

- 2.6 However, the Commission needs to go further and recommend a legislative framework for regulatory quality. It is no coincidence that we know much more about government taxation and spending than we do about regulation. This is because the Public Finance Act has imbedded a strong framework for accountability and transparency in fiscal policy. The same can be said for the conduct of monetary policy under the Reserve Bank Act. The regulatory system needs an equivalent Act, which is why we have been such a strong proponent of a Regulatory Standards Bill. Yet the draft report is silent on this Bill, which is very surprising given the work (both private and public sector) that has gone into the concept over the years.
- 2.7 The Commission wants better monitoring of regulators and for staff to have the capability to be effective, not just as regulators but also so they are better able to identify risk and prioritise effort where it is really needed. We agree, but only if it goes hand-in-hand with a change in culture around risk and how best to respond.
- 2.8 Ultimately New Zealand's problems with regulation are worsened by public, media, and political 'angst' over real and imagined risks, accidents, and misdeeds. This angst has encouraged in both central and local government a culture of excessive risk aversion and a 'government knows best' mentality. Sadly, if this culture doesn't change it will be hard for any system improvements to make regulation work better. In fact it could make matters worse. Unfortunately there is no easy governmental 'fix' for this except courageous political leadership.

3. SPECIFIC COMMENT

- 3.1 Federated Farmers stands by the points raised in our more comprehensive and detailed submission on the Inquiry's Issues Paper. In this subsequent submission we wish to confine our specific comment to three key areas: property rights, regulatory culture, and the Regulatory Standards Bill.

Property Rights

- 3.1 Federated Farmers notes finding 6.12 of the draft report that states:

*There is a range of legal constraints on the exercise of discretionary decisions. In particular, there are strong protections where those decisions intrude on the civil and political rights enshrined in the New Zealand Bill of Rights Act 1990. **However, New Zealand is unusual in not acknowledging or protecting private property rights** [our emphasis].*

- 3.2 The Federation has been frustrated by the lack of commitment by successive governments to remedy this situation, despite opportunities to do so in the mid-2000s with the Private Members' Bill of Rights Amendment Bill and more recently the Government's Regulatory Standards Bill.
- 3.3 However, while it is pleasing that the Productivity Commission has made this finding, we find it curious that the draft report makes no recommendation to

better acknowledge or protect private property rights. We strongly urge this oversight to be rectified in the final report.

- 3.4 Recommendation: Federated Farmers recommends that the Productivity Commission include a recommendation in its final report on the need to acknowledge or protect private property rights.**

Public and Political Culture

- 3.5 Chapter 7 of the draft report discusses regulator culture and makes a number of findings including that there is evidence of risk-averse culture, poor communication, inability to learn from experience, and resistance to change. While we agree with all of these problems, we note that the draft report makes no recommendations on how to remedy problems with regulator culture.
- 3.6 Furthermore, issues of culture go much deeper than within the regulators. As stated in paragraph 2.8 above, a real underlying problem (and a growing problem) is a culture (and not just within the public sector) of risk aversion, 'government knows best', and 'government must act' that permeates society and is expressed in the media and in political debate. The leaky buildings saga, the Canterbury earthquakes, and the Pike River tragedy have all swung the regulatory pendulum in favour of more regulation rather than less regulation or even the status quo. While public concern is understandable the risk is that the pendulum will swing too far.
- 3.7 Federated Farmers fears that in such an environment the concept of individual responsibility and the use of market-based solutions will be increasingly displaced by regulation as a first-response when it should be a last-resort. Improvements to regulatory institutions and practices while necessary could have the unintended consequence and perverse outcome of making it easier for governments to regulate and grow the regulatory burden rather than ease it.
- 3.8 Federated Farmers acknowledges that there are no easy fixes to changing this culture, especially in an MMP political environment where governments follow public opinion rather than lead it and come under pressure in the wake of high profile disasters to ensure they don't happen again. In such cases it would require considerable courage and willingness to burn political capital to say 'enough' rather than doing something that is more politically expedient.
- 3.9 Recommendation: Federated Farmers recommends that the Productivity Commission should consider and formulate recommendations for dealing with and, if possible, changing the public and political culture.**

Regulatory Standards Bill

- 3.10 As mentioned in our submission on the Issues Paper and reiterated above, Federated Farmers is a strong supporter of a Regulatory Standards Bill as we see it having an important role in improving the regulatory environment. Although the Bill has not been passed and indeed it has been languishing for some time, a lot of work has gone into the concept since it was first mooted in 2001, both from the private sector and from within the public sector, including considerable attention from a Regulatory Responsibility Taskforce. The Taskforce, which was appointed by the Government, produced what we considered to be a high quality report.

3.11 It was therefore a considerable surprise for us to find that the draft report lacks any discussion on both the Bill and the Taskforce which developed and refined it. Regardless of people's views on the Bill it has been a significant part of the regulatory policy landscape. Federated Farmers believes that this oversight should be remedied by including an even-handed discussion of the Bill, including its background and history, its pros and cons, and an assessment of whether it could assist in improving regulatory institutions and practices.

3.12 Recommendation: Federated Farmers recommends that the Productivity Commission include more discussion in its draft report on the Regulatory Standards Bill and the Regulatory Responsibility Taskforce.

4. ABOUT FEDERATED FARMERS

4.1 Federated Farmers is a member based organisation that represents farmers and other rural businesses. Federated Farmers has a long and proud history of representing the needs and interests of New Zealand's farmers.

4.2 The Federation aims to add value to its members' business. Our key strategic outcomes include the need for New Zealand to provide an economic and social environment within which:

- Our members may operate their business in a fair and flexible commercial environment;
- Our members' families and their staff have access to services essential to the needs of the rural community; and
- Our members adopt responsible management and environmental practices.