



BRIEFING

Cabinet paper and Supplementary Order Paper for the Self-contained Motor Vehicles Legislation Bill

Date:	14 April 2023	Priority:	Medium
Security classification:	In Confidence	Tracking number:	2223-3404

Action sought		
	Action sought	Deadline
Hon Peeni Henare Minister of Tourism	Note the Cabinet paper is due to be lodged on 27 April 2023 to be considered at Cabinet Legislation Committee on 4 May 2023. Agree to circulate the draft Cabinet paper and SOP to your Ministerial colleagues for consultation.	17 April 2023

Contact for telephone discussion (if required)				
Name	Position	Telephone		1st contact
Dale Elvy	Manager, Tourism Operations and Partnerships	04 831 9651	Privacy of natural persons	✓
Will Cosgriff	Senior Policy Advisor, Tourism Policy	Privacy of natural persons		
Adele Lonergan	Policy Advisor, Tourism System and Insights	04 901 2067		

The following departments/agencies have been consulted
Parliamentary Counsel Office (drafting of SOP), Ministry of Housing and Urban Development (homelessness)

Minister's office to complete:

- | | |
|---|--|
| <input type="checkbox"/> Approved | <input type="checkbox"/> Declined |
| <input type="checkbox"/> Noted | <input type="checkbox"/> Needs change |
| <input type="checkbox"/> Seen | <input type="checkbox"/> Overtaken by Events |
| <input type="checkbox"/> See Minister's Notes | <input type="checkbox"/> Withdrawn |

Comments



BRIEFING

Cabinet paper and Supplementary Order Paper for the Self-contained Motor Vehicles Legislation Bill

Date:	14 April 2023	Priority:	Medium
Security classification:	In Confidence	Tracking number:	2223-3404

Purpose

To seek your agreement to begin agency and Ministerial consultation on the draft Cabinet Paper (**Annex One**) that seeks approval to release a Supplementary Order Paper (SOP) (**Annex Two**) for the Self-contained Motor Vehicles Legislation Bill (Bill) that will:

- introduce the ability to extend the transition period by up to 24 months, by Order in Council, if necessary,
- create a legislative exemption from the freedom camping rules and requirements for those that are experiencing homelessness
- progress changes recommended in the Ministry of Business, Innovation and Employment's (MBIE) Departmental Report to the Economic Development, Science and Innovation Committee (Committee).

Recommended action

MBIE recommends that you:

- a **Note** the draft Cabinet paper seeks approval to release the SOP amending the Self-contained Motor Vehicles Legislation Bill in relation to the transition period, homelessness, and changes recommended by MBIE to the Committee.

Noted

- b **Note** the Cabinet paper is due to be lodged on 27 April 2023 to be considered at Cabinet Legislation Committee on 4 May 2023.

Noted

- c **Agree** to circulate the draft Cabinet paper and SOP to your Ministerial colleagues for consultation.

Agree / Disagree

- d **Note** we will work closely with your office on any changes arising from consultation.

Noted

e **Note** an updated departmental disclosure statement will be released alongside the SOP.

Noted



Dale Elvy
**Manager, Tourism Operations and
Partnerships**
Labour, Science and Enterprise, MBIE

14 / 04 / 2023

Hon Peeni Henare
Minister of Tourism

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Background

1. On 25 August 2022, the Self-contained Motor Vehicles Legislation Bill (Bill) was introduced to Parliament. The Bill had its first reading on 30 August 2022 and was referred to the Economic Development, Science and Innovation Committee (Committee) for consideration.
2. The Bill was discharged from the Committee on 2 March 2023 under Standing Order 303(3). The Committee did not provide any commentary or report on the Bill. As such, the Bill returned to the House unamended for its second reading, which commenced on 4 April 2023.
3. You are progressing an SOP for the Bill through the Committee of the whole House stage that will:
 - a. introduce the ability to extend the transition period by up to 24 months, by Order in Council, if necessary,
 - b. create a legislative exemption from the freedom camping rules and requirements for those that are experiencing homelessness
 - c. progress changes recommended in the MBIE Departmental Report to the Committee¹.

Cabinet Economic Development Committee has approved the SOP policy changes

4. On 29 March 2023, Cabinet Economic Development Committee (DEV) agreed that:
 - a. the ability to extend the current two-year transition period in the Bill, by Order in Council, for a maximum of 24 months be progressed, via SOP, through the Committee of the whole House stage [DEV-23-MIN-0037 refers].
 - b. a legislative exemption for those who reside in New Zealand, and are living in a motor vehicle or tent out of necessity be progressed, via SOP to the Bill, through the Committee of the whole House stage [DEV-23-MIN-0037 refers].
5. DEV subsequently invited you to issue drafting instructions to the Parliamentary Counsel Office (PCO) to give effect to the agreed policy decisions.

PCO has completed the SOP for Cabinet Legislation Committee

6. PCO has completed the SOP to be presented at Cabinet Legislation Committee (LEG) on 4 May 2023, which contains the amendments outlined in paragraph 3 above.

We worked with PCO to refine the homelessness exemption

7. Legal professional privilege
[Redacted]
8. Legal professional privilege
[Redacted]
9. The proposed exemption will cover people residing in New Zealand, who are staying in a motor vehicle or tent because they are unable to live in appropriate residential accommodation. This will encompass a broad range of circumstances that may lead to someone experiencing homelessness and protect these vulnerable people from receiving infringements for freedom camping offences.

¹ You do not need Cabinet approval for the changes recommended through the MBIE Departmental Report as these are addressing minor and technical changes that align with previous Cabinet decisions. The exception to this is the recommendation to introduce a new offence for failing to display the warrant card, which has already been agreed by Cabinet [DEV-22-MIN-0265 refers].

We have provided an updated departmental disclosure statement

10. On 12 August 2022, we provided an original departmental disclosure statement (disclosure statement) for the Bill for its introduction to the House. The disclosure statement seeks to bring together a range of information to support and enhance the Parliamentary and public scrutiny of the Bill.
11. We have provided an updated departmental disclosure statement that will accompany the SOP, attached as **Annex Three**. This updated disclosure statement reflects the amendments to the Bill made through the SOP.
12. You are not required to consult or comment on this disclosure statement.

We seek your approval to begin agency and Ministerial consultation

13. We will work closely with your office on any changes arising from consultation.
14. We seek your approval to begin agency and Ministerial consultation on the draft Cabinet paper (**Annex One**) and SOP (**Annex Two**) on either 17 or 18 April 2023.
15. To ensure the SOP has Cabinet agreement before the Committee of the whole House stage, we require consultation to be completed by Friday, 21 April 2023. The timelines we are working to are outlined in the table below.

Agency and Ministerial Consultation on Cabinet paper	Monday 17 or Tuesday 18 April 2023 (feedback due by Friday 21 April 2023)
Lodge Cabinet paper for LEG	27 April 2023
LEG considers Cabinet paper	4 May 2023
Cabinet considers Cabinet paper	8 May 2023
Committee of the whole House	9 May 2023 (the earliest it could be held)
Third reading	As early as the first sitting day after the Committee of the whole House

Next steps

16. We will work with your office to lodge the Cabinet paper for consideration at LEG on 4 May 2023.
17. We will provide you with separate briefings and talking points to support your attendance at LEG, Cabinet, Committee of the whole House, and the third reading.

Annexes

Annex One: Draft Cabinet Legislation Committee paper

Annex Two: Supplementary Order Paper

Annex Three: Updated departmental disclosure statement

Annex One: Draft Cabinet Legislation Committee paper

Attached as a separate document.

Annex Two: Supplementary Order Paper

Attached as a separate document.

Annex Three: Updated departmental disclosure statement

Attached as a separate document.



BRIEFING

Freedom Camping Regulations – outcome of public consultation and next steps

Date:	21 October 2022	Priority:	High
Security classification:	In Confidence	Tracking number:	2223-1370

Action sought		
	Action sought	Deadline
Hon Stuart Nash Minister of Tourism	Agree to provide feedback on the attached draft Cabinet paper and for MBIE to undertake agency consultation.	26 October 2022

Contact for telephone discussion (if required)				
Name	Position	Telephone		1st contact
Dale Elvy	Manager, Tourism Operations and Partnerships		Privacy of natural persons	✓
David Fraser	Senior Advisor, Tourism Operations and Partnerships	04 913 3949		

The following departments/agencies have been consulted

Minister's office to complete:

- | | |
|---|--|
| <input type="checkbox"/> Approved | <input type="checkbox"/> Declined |
| <input type="checkbox"/> Noted | <input type="checkbox"/> Needs change |
| <input type="checkbox"/> Seen | <input type="checkbox"/> Overtaken by Events |
| <input type="checkbox"/> See Minister's Notes | <input type="checkbox"/> Withdrawn |

Comments



BRIEFING

Freedom Camping Regulations – outcome of public consultation and next steps

Date:	21 October 2022	Priority:	High
Security classification:	In Confidence	Tracking number:	2223-1370

Purpose

This briefing:

- Provides a draft summary of submissions on the Freedom Camping Regulations Discussion Document (attached at Annex One)
- Seeks your feedback on the attached draft Cabinet Paper which seeks approval for regulatory policy decisions and issuing drafting instructions (attached at Annex Two)
- Recommends that you seek Cabinet agreement to consult on an exposure draft of the Regulations
- Recommends that officials begin agency consultation on the draft Cabinet Paper after incorporating your feedback.

Executive summary

The Self-Contained Motor Vehicles Legislation Bill (the Bill) enables regulations to set the technical details needed to implement the Government's freedom camping changes. Public consultation on the Freedom Camping Regulations Discussion Document (discussion document), which set out options for new regulations, concluded on 6 October 2022.

The Government is aiming for the new law to be in place before Summer 2023. In order to meet this date, Cabinet approval of policy proposals for regulations needs to occur prior to Christmas 2022. We propose going to Cabinet Economic and Development Committee (DEV) on 23 November 2022. Note that the final date for DEV is Wednesday 14 December 2022.

Recommended action

The Ministry of Business, Innovation and Employment (MBIE) recommends that you:

- a **Note** that MBIE undertook public consultation on the *Freedom Camping Regulations Discussion Document* between 6 September and 6 October 2022.

Noted

- b **Note** that we have attached a draft Summary of Submissions to this paper and will append a final version to the Cabinet paper at lodgement.

Noted

- c **Note** that we believe that the deeming provisions which we tested through consultation should be given effect through the Bill

Noted

- d **Note** that we propose to present the deeming amendment to the select committee as part of the departmental report
Noted
- e **Agree** to deem certifying plumbers as certification authorities and vehicle inspectors during the Bill's transition period.
Agree / Disagree
- f **Note** that releasing an exposure draft of regulations is a common step in the development of new regulations.
Noted
- g **Agree** to seek Cabinet agreement to grant you the discretion to release an exposure draft of the regulations for public consultation.
Agree / Disagree
- h **Note** that setting new regulations setting out infringement fee and fine levels could be brought forward to be in place for the 2023 FIFA Woman's World Cup.
Noted
- i **Note** that we will provide advice on the timing of regulations when we deliver advice on the departmental report.
Noted
- j **Note** that once we have incorporated your feedback we will undertake agency consultation on the draft Cabinet paper.
Noted
- k **Note** that you may wish to undertake Ministerial consultation concurrently with agency consultation
Noted

Dale Elvy
Manager, Tourism Operations and Partnerships
Labour, Science and Innovation, MBIE

21 / 10 / 2022

Hon Stuart Nash
Minister of Tourism

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Background

Self-Contained Motor Vehicles Legislation Bill and regulations

1. The Self-Contained Motor Vehicles Legislation Bill (the Bill) will improve the management of vehicle-based freedom camping by creating a robust regulatory system that central and local government can rely on to reduce the negative effects that freedom camping can have on the environment and communities. The Bill enables the Government to make regulations that would set out the technical detail needed to implement this system.

Public consultation on new freedom camping regulations has concluded

2. The Bill requires you undertake public consultation prior to the Government making regulations. This consultation occurred between 6 September 2022 – 6 October 2022.
3. As part of the consultation we held a webinar with the Tourism Industry Association's Responsible Camping Forum, which brings together industry and local government to discuss responsible camping matters of interest. We also conducted two public webinars which were open to all.
4. We asked for public feedback on the options contained in the discussion document. We received a total of 125 completed submissions on the Regulations, 42 of which were submitted on behalf of an organisation and 83 were from individuals.
5. A draft summary of submissions, which analyses feedback from submitters, is attached at **Annex One**. Several sections of this document are still being finalised, to include specific comments made by submitters, but the draft document provides a breakdown of the main data. We will provide you with a final summary of submissions before you take the attached draft Cabinet paper to DEV.

A draft Cabinet Paper has been prepared based on our preferred options

Our preferred regulatory proposals have been included in the attached draft Cabinet Paper

6. We have prepared a draft Cabinet paper that seeks agreement from DEV to policy proposals for freedom camping regulations and to the issuing of drafting instructions. The paper incorporates our preferred options for regulations. In most cases submitters supported our preferred options.
7. The table below illustrates where our preferred option was not supported by submitters, and our rationale for suggesting that you support it.

Regulatory proposal (MBIE preferred option)	Submitter response	MBIE Comment
Deeming plumbers as certification authorities and vehicle inspectors	Overall, submitters did not support the option to deem certifying plumbers as certification authorities and vehicle inspectors under the new regulations (47% disagree/strongly disagree v 27% agree/strongly agree). However, businesses and	A key theme from those who disagreed or strongly disagreed was that a person with a plumbing certification doesn't necessarily know how to inspect and certify a vehicle as self-contained. We discuss deeming options later in this paper.

	organisations were more supportive than opposed to this proposal.	
Self-containment documentation - Not having a generic identifier (e.g. not having a generic blue sticker)	<p>Submitters were split on whether or not the regulatory regime should include a generic identifier that signals a vehicle has been certified self-contained, like the current generic blue sticker. Neither option received a majority of support. although most business and organisations (including local government) agreed that it should be removed.</p> <p>Respondents were more supportive of MBIE's preferred option of not having a generic identifier than they were of the alternative option of retaining a generic identifier.</p>	We continue to consider that a generic identifier is not required because a vehicle's self-containment status will be able to be viewed by enforcement officers using the register of self-contained vehicles. Additionally, generic identifiers are easy to reproduce and risk undermining the integrity of your freedom camping changes.
Infringement fees and fines – a tiered approach to infringement fees with a maximum fine of \$800	<p>Submitters, overall, did not support either option for a tiered approach to infringement fees and fines.</p> <p>Submitters who were in favour of tiered infringement penalties were more supportive of MBIE's preferred option.</p>	We continue to believe that A maximum \$800 fee tier provides a proportionate response to relatively low-level offending.
Regulatory exclusions – no exclusions from regulatory requirements	<p>Respondents largely disagreed with our preferred option of there being no exclusions from regulatory requirements, although this was largely the view of individual submitters. Most groups and organisations (including local government) supported having no exemptions.</p> <p>Overall, submitters supported an exclusion from the fixed toilet requirement for smaller camping vehicles.</p>	<p>We note that territorial authorities and the NZMCA strongly supported our preferred option of no exclusions.</p> <p>We continue to consider that excluding specific vehicles in regulations would result in unnecessary complexity, make enforcement difficult and undermine the integrity of the regulatory system.</p>
Levy option of \$120 payable by owners of self-contained vehicles once every four years	<p>Respondents did not have a strong preference towards any of the levy options.</p> <p>However, the majority of respondents disagree/strongly disagree with the higher levy options (\$101 and a levy \$120 respectively), which can be reflects the costs that submitters will have to pay. Again this was the view of individual submitters, with many organisations not offering a view. The NZMCA, in particular, felt that a lower amount than was consulted on was appropriate with the government to make up any shortfall.</p>	<p>We note that a majority of submitters did not support any of the levy options.</p> <p>The \$120 option is the most expensive option, but, in our view, more likely to result in a smoother transition to the new regulated system. A review of the levy will occur 5 years after enactment.</p>

A set certification authority application fee	Respondents did not have a strong preference towards any option for the certification authority application fee, although the alternative option of a scalable fee received slightly more support than our preferred option.	We note that submitters were on balance slightly more supportive of the scalable fee. However, we note that the certainty of a set fee is more likely to incentivise people and organisations to become certification authorities and to incentivise the existing issuing authorities to transition to the new regulatory system.
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Deeming certifying plumbers as certification authorities and vehicle inspectors

8. The new self-contained vehicle system will require the majority of those currently working as issuing authorities and vehicle testers to transition if they wish to keep working in the sector in the following ways:
 - a. Issuing authorities will need to apply to become certification authorities. This means they need to meet the approval criteria and pay an application fee;
 - b. Vehicle testers will need to demonstrate to a certification authority that they meet competency requirements to be recognised as vehicle inspectors.
9. We do not know how many current issuing authorities and vehicle inspectors will make this transition, and whether the system will have the capacity to certify roughly 73,000 vehicles in 1.5 years under the new regulatory requirements.
10. We believe the best solution to reduce the risk of insufficient capacity, while the existing fleet of vehicles is being initially certified, is to deem certifying plumbers to be certification authorities and vehicle inspectors for the duration of the transition period. This is no change for them from being deemed under the voluntary Standard. This would enable them to facilitate the transition of the current fleet of vehicles.
11. Deeming would happen for the duration of the transition period, with no cost to the plumbers, enabling them to both do the work and develop their skills and processes to assess against the new regulatory requirements. Certifying plumbers could start testing and certifying vehicles under the regulatory requirements as soon as the first transition period comes into force (six months after the Bill receives the Royal assent).
12. Following the two-year transition, plumbers would need to apply to become certification authorities and meet vehicle inspector competency requirements, just like everybody else. This would ensure the Board can take action to remove would ensure the Board can take action to remove their accreditation if there are issues with performance¹.
13. This approach would require Cabinet agreement and an amendment to the Bill. We propose that you seek Cabinet's agreement to this proposal at DEV. This would enable us to present the required amendment to the Select Committee as part of the departmental report.

Further consultation on an exposure draft of new regulations is a common step

14. We recommend you consider releasing an exposure draft of the new regulations establishing the self-contained vehicles regulatory system in April 2023. These are highly technical new rules, for example the new technical requirements for self-contained vehicles, criteria for the appointment of certification authorities and competency requirements for vehicle inspectors, and fees and levies. We feel that they would benefit from additional consultation of a near-final draft before they are brought into force.

¹ If Plumbers were deemed indefinitely through the Act, the regulator could not remove their certification authority status unless they were also de-registered as plumbers.

15. Releasing an exposure draft is a common step in the development of regulations and there are a number of benefits to doing so, including:
 - a. It is a means to ensure that legislation accurately captures its intended policy intent and to test assumptions.
 - b. It can provide a level of comfort about the quality of the legislation, test its clarity and usability, check for unintended consequences, obtain detailed technical feedback, and check that it will 'work' as intended.
 - c. It can assist with obtaining stakeholder agreement on policy when agreement is dependent on how the legislation is actually drafted.
16. The drawback of undertaking further consultation is that it takes time. In this case, it would likely take at least two months to undertake consultation, analyse results, prepare additional drafting instructions, and finalise drafting changes. However, as set out in the timeframe below, consultation on draft regulations could occur, and the regulations could be in place, before Summer 2023.
17. Releasing an exposure draft requires agreement by Cabinet and this is sought alongside policy decisions. We recommend you seek that Cabinet agree to provide you with discretion to release an exposure draft of new freedom camping regulations before taking the final draft regulations to the Cabinet Legislation Committee. Taking this decision to Cabinet now would provide you with the flexibility to decide to undertake additional consultation next year should time permit.
18. We note that the drafting of new regulations setting out infringement fee and fine levels is straightforward. We do not think that an exposure draft consultation period is needed for these regulations. This would mean that these regulations could be made and be in force before the FIFA Women's World Cup (depending on the passage of the Bill).

Proposed timeframes

The Bill will be in place for the FIFA Women's World Cup and new regulations could be in place before Summer 2023

19. We think it is a good idea to bring the new infringement fees into law as soon as possible after the Bill receives the Royal assent.² This would mean that proportionate infringement fees could be issued to freedom campers before the Bill's second transition period begins and the self-containment regulations³ come into force.
20. Based on the current timelines set out below, it is likely that infringement fees and fines could be brought into force prior to the FIFA Women's World Cup. We need to confirm with our local government stakeholders that they would be ready to implement the new fee tiers shortly after the Bill is enacted.
21. While not required at this stage, you may wish to seek an in-principle decision from Cabinet now to bring infringement fee regulations into force earlier than the self-containment regulations. Ultimately, you will be able to finalise your decision about exactly when infringement regulations come into force when you take final regulations to be confirmed by Cabinet. We can continue to provide further advice to you on the timing of bringing infringement fee and fine regulations into force as the Bill progresses through the House.

² New regulations cannot come into effect until after the Bill is enacted.

³ By self-containment regulations, we mean the technical requirements for self-contained vehicles, criteria for the appointment of certification authorities, competency requirements for vehicle inspectors, format of self-containment documentation, and the levy and fee.

Key milestones

22. The table below provides you with the proposed timeframes for meeting the goal of having new regulations in place before Summer 2023.

Key milestone	Timing
Agency/Ministerial consultation	28 October – 11 November 2022
Final papers lodged with Cabinet Office	17 November 2022
Cabinet considers paper	23 November 2022 (DEV) 28 November 2022 (CAB)
Drafting instructions issued to Parliamentary Counsel Office	Late January 2023
PCO Drafting period	Late January to late April 2023
Bill enacted	Late May 2023
CAB approval of infringement fee and fine regulations	Early June 2023 (depending on progress of the Bill)
Consultation on Exposure draft of regulations	Late April to late June 2023
CAB approval of regulations	July 2023 (depending on progress of the Bill)
Regulations made by Governor-General	July 2023 (depending on progress of the Bill)
FIFA Women's World Cup	20 July – 20 August 2023
Regulations in force (six months after the Bill receives Royal Assent)	November 2023 (depending on progress of the Bill)

23. Subject to any feedback you may wish to provide to the paper we propose to undertake agency consultation between 28 October and 11 November 2022. We also recommend that your office undertake ministerial consultation at the same time as we start agency consultation. We consider that, barring any major issues arising during agency and ministerial consultation or the MBIE Regulatory Impact Assessment Panel process, you could take the Cabinet paper to DEV on 23 November 2022.

Key risks to timelines

24. The progress of the Bill through Parliament, Cabinet giving priority and agreement to regulatory policy and the Parliamentary Counsel Office drafting time, all have the potential to lengthen or reduce the timing of the milestones listed above. We will continue to work to the milestones and will continue to advise you on the timing of new regulations.

25. We note that taking policy decisions to Cabinet before the Bill is enacted may require you to return to Cabinet to seek additional decisions in the event that Parliament substantially amends the Bill's regulation-making powers. If this were to occur you would be obligated to consult on new regulatory policy options before making new regulations.

Next steps

26. Once we have received your feedback on draft Cabinet paper, we will begin agency consultation on 28 October 2022.
27. We will provide your office with final versions of the Cabinet paper and Summary of Submissions following the conclusion of agency and Ministerial consultation ahead of lodgement with the Cabinet Office on 17 November 2022.

Annexes

Annex One: Draft Summary of submissions

Annex Two: Draft Cabinet paper

Annex One: Draft Summary of Submissions

Attached separately]

Annex Two: Draft Cabinet Paper

[Attached separately]



AIDE MEMOIRE

Freedom camping – update on 4 May 2023 Cabinet Legislation Paper

Date:	27 April 2023	Priority:	High
Security classification:	In Confidence	Tracking number:	2223-3549

Information for Minister(s)
Hon Peeni Henare Minister of Tourism

Contact for telephone discussion (if required)			
Name	Position	Telephone	1st contact
Dale Elvy	Manager, Tourism Operations and Partnerships	04 831 9651	<input checked="" type="checkbox"/>
Adele Lonergan	Policy Advisor, Tourism System and Insights	04 901 2067	

The following departments/agencies have been consulted
Waka Kotahi NZ Transport Agency, Ministry of Justice, Toitū Te Whenua Land Information New Zealand, Whaikaha Ministry of Disabled People, Department of Internal Affairs, Ministry of Transport, Department of Prime Minister and Cabinet, Housing and Urban Development, Te Puni Kōkiri, Ministry of Social Development, Kainga Ora, the Plumbers, Gasfitters and Drainlayers Board, and the Treasury.

Minister's office to complete:

- | | |
|---|--|
| <input type="checkbox"/> Approved | <input type="checkbox"/> Declined |
| <input type="checkbox"/> Noted | <input type="checkbox"/> Needs change |
| <input type="checkbox"/> Seen | <input type="checkbox"/> Overtaken by Events |
| <input type="checkbox"/> See Minister's Notes | <input type="checkbox"/> Withdrawn |

Comments



AIDE MEMOIRE

Freedom camping – update on 4 May 2023 Cabinet Legislation Paper

Date:	27 April 2023	Priority:	High
Security classification:	In Confidence	Tracking number:	2223-3549

Purpose

To provide you with:

- an update on the Cabinet Legislation Committee (LEG) paper - *Self-contained Motor Vehicles Legislation Bill: Approval to Release a Supplementary Order Paper*,
- a summary of the agency consultation,
- the updated Cabinet LEG paper and Supplementary Order Paper (SOP), and
- suggested talking points to support your discussion at LEG on 4 May 2023.

Dale Elvy
Manager, Tourism Operations and Partnerships
Labour, Science and Enterprise, MBIE

26 / 04 / 2023

Background

1. You are progressing an SOP for the Self-contained Motor Vehicles Legislation Bill (Bill) through the Committee of the whole House stage that will:
 - a. introduce the ability to extend the transition period by up to 24 months, by Order in Council, if necessary,
 - b. create a legislative exemption from the freedom camping rules and requirements for those that are experiencing homelessness,
 - c. progress changes recommended in the MBIE Departmental Report to the Economic Development, Science and Innovation Committee.
2. On 29 March 2023, Cabinet Economic Development Committee (DEV) agreed the policy changes to the transition period and homelessness [DEV-23-MIN-0037 refers]. You were subsequently invited to issue drafting instructions to the Parliamentary Counsel Office (PCO) to give effect to these agreed policy decisions.

3. PCO completed drafting the SOP on 14 April 2023, and you agreed to circulate the draft Cabinet LEG paper and SOP to your Ministerial colleagues for consultation. MBIE began agency consultation on the draft Cabinet LEG paper and SOP at the same time.

Agency consultation has now concluded

4. We consulted with 13 departments and agencies on the draft Cabinet LEG paper and SOP. **Annex One** has a table of any substantive feedback we received during agency consultation and how we have reflected this feedback in the updated Cabinet LEG paper and SOP.
5. Overall, the feedback was positive with changes suggested around the homelessness exemption.
6. **Annex Two** contains an updated version of the Cabinet LEG paper, which captures agency feedback and includes minor and technical edits. **Annex Three** contains the updated SOP.

We have further refined the homelessness exemption

7. The consultation version of the SOP included a carve-out in the Bill to protect people experiencing homelessness in the context of freedom camping, although this is framed as defining 'not freedom camping'. The exemption covers people residing in New Zealand, who are staying in a motor vehicle or tent because they are unable to live in appropriate residential accommodation.

Residential accommodation

8. We have included 'camping ground' in the non-exhaustive definition of 'residential accommodation'¹. We have made this change so people who live full time in a motorhome are only entitled to the homelessness exemption if they cannot stay at a camping ground and not simply that they have decided not to.
9. This change is consistent with the definition of 'residential accommodation' in section 2(1) of the Human Rights Act 1993, on which this definition is based.

Resides in New Zealand

10. The policy intent is that the exemption should not apply to those that are in New Zealand on holiday. Instead, it should only apply to those who reside in New Zealand.
 - a. We consider that there may be practical issues with determining whether someone who is in New Zealand on holiday is unable to stay in appropriate accommodation or not.
 - b. We also note that Stats NZ excludes tourists and travellers from its definition of homelessness².
11. The SOP originally achieved this distinction by listing the immigration status of people who could be considered as residing in New Zealand³. However, MBIE Immigration Policy raised concerns that this will not cover individuals who should be protected, such as a refugee who

¹ Residential accommodation includes accommodation in a dwelling house, flat, hotel, motel, boarding house, or camping ground.

² This definition is used for statistical purposes only.

³ Is a New Zealand citizen, is a permanent resident of New Zealand, is a resident of New Zealand, holds a temporary entry class visa to New Zealand that is a work visa (within the meaning of the immigration instructions).

has a claim that is still being processed. We also recognise that the exemption as originally drafted would be difficult for enforcement officers to interpret.

12. To resolve these concerns, we have refined 'resides in New Zealand' to only exclude a person who is in New Zealand on the basis of a visitor visa.

LEG will consider the Cabinet paper and SOP on Thursday 4 May 2023

13. To ensure the SOP has Cabinet agreement before the Committee of the whole House stage, we have previously advised that the Cabinet LEG paper and SOP should go to LEG on 4 May 2023. The timelines we are working to are outlined in the table below:

Lodge Cabinet paper for LEG	27 April 2023
LEG considers Cabinet paper	4 May 2023
Cabinet considers Cabinet paper	8 May 2023
Committee of the whole House	9 May 2023 (the earliest it could be held, noting we have a preparation meeting with you scheduled for 11 May 2023)
Third reading	As early as the first sitting day after the Committee of the whole House

14. **Annex Four** contains a set of talking points to support your discussion at LEG.

Next steps

15. We will work with your office to lodge the Cabinet LEG paper with the Cabinet Office by 10.00am Thursday 27 April 2023 for consideration by LEG on 4 May 2023.
16. We have a Committee of the whole House preparation session scheduled with you on 11 May 2023 and we will provide you with material for this in a separate briefing.

Annexes

Annex One: Feedback received during agency consultation

Annex Two: Updated Cabinet Legislation Committee paper

Annex Three: Updated Supplementary Order Paper

Annex Four: Talking points for Legislation Committee

Annex One: Feedback received during agency consultation

Department	Substantive feedback received	MBIE response
Toitū Te Whenua Land Information New Zealand	The reference to the New Zealand Railways Corporation Act 1981 should be moved from draft subclause 19B(1)(c) to a new subclause 19B(3)(c), as the responsibility for publishing a notice will sit with the LINZ chief executive.	<i>Agreed</i> Draft subclauses 19B(1) and 19B(3) have been amended to reflect this.
	Queried the reason for adding sub-clause 19BA(3)(b).	<i>Noted</i> This subclause is to ensure that the consultation waiver only applies the first time a notice is made in relation to that area of land.
	Highlighted that it may be difficult for an enforcement officer to assess whether a person is unable to live in appropriate residential accommodation and requested further guidance.	<i>Agreed</i> This feedback relates to the implementation of the Bill and MBIE is working on developing specific guidance for enforcement officers in relation to homelessness.
	Suggested the Bill mentions the Trespass Act 1980 as this is the main legislation that the Commissioner of Crown Lands and Chief Executive of LINZ take trespass action under.	<i>Noted</i>
Whaikaha Ministry of Disabled People	Suggest that the impact of the Bill's implementation on other aspects of vehicle modification, inspection and certification are monitored to ensure that is no adverse impact on disabled people.	<i>Noted</i> MBIE is considering this issue and will work with Whaikaha on how to best address this.

Annex Two: Updated Cabinet Legislation Committee paper

Attached as a separate document.

Annex Three: Updated Supplementary Order Paper

Attached as a separate document.

Annex Four: Talking points for Cabinet Legislation Committee

The Bill will address the negative impacts associated with freedom camping

- The Self-contained Motor Vehicles Legislation Bill will strengthen public trust in the freedom camping system by:
 - strengthening requirements for self-contained vehicles,
 - supporting better enforcement, and
 - creating a more consistent regime for freedom campers to follow.
- The Bill was recently discharged from the Economic Development, Science and Innovation Committee and the amendments considered by the Committee will be made at the Committee of the whole House, by way of SOP.
- In March, Cabinet Economic Development Committee agreed that two additional amendments be progressed via an SOP. These were:
 - the ability to extend the transition period, by Order in Council, for up to 24 months, if necessary, and
 - an exemption from the freedom camping rules and regulations for those experiencing homelessness.
- Today, I am seeking Cabinet's approval to release the SOP containing these amendments and the recommendations made to the Select Committee in the Departmental Report.

Homelessness

- The most significant part of the drafting of this SOP has been the exemption for those experiencing homelessness.
- Freedom camping is a voluntary activity, while homelessness is not. It is important that this vulnerable group is not further disadvantaged by the freedom camping reforms.
- The proposed exemption in the SOP creates a carve-out that will protect people experiencing homelessness from being penalised under the freedom camping rules, by defining 'not freedom camping'.
- The proposed exemption covers people residing in New Zealand⁴, who are staying in a motor vehicle or tent because they are unable to live in appropriate residential accommodation⁵.
- This will encompass the broad range of circumstances that may lead to someone experiencing homelessness.

⁴ This is a person other than a person who is in New Zealand on the basis a visitor visa (within the meaning of the immigration instructions).

⁵ Residential accommodation includes accommodation in a dwelling house, flat, hotel, motel, boarding house, or camping ground.



BRIEFING

Self-contained Motor Vehicles Legislation Bill – further homelessness advice

Date:	10 March 2023	Priority:	High
Security classification:	In Confidence	Tracking number:	2223-2922

Action sought		
	Action sought	Deadline
Hon Peeni Henare Minister of Tourism	Agree to one of the following options for approaching homelessness in the Self-contained Motor Vehicles Legislation Bill.	13 March 2023

Contact for telephone discussion (if required)				
Name	Position	Telephone		1st contact
Dale Elvy	Manager, Tourism Operations and Partnerships	04 831 9651	Privacy of natural persons	✓
Adele Lonergan	Policy Advisor, Tourism System and Insights	04 901 2067		

The following departments/agencies have been consulted
Ministry of Housing and Urban Development – Te Tūāpapa Kura Kāinga

Minister's office to complete:

Approved

Declined

Noted

Needs change

Seen

Overtaken by Events

See Minister's Notes

Withdrawn

Comments



BRIEFING

Self-contained Motor Vehicles Legislation Bill – further homelessness advice

Date:	10 March 2023	Priority:	High
Security classification:	In Confidence	Tracking number:	2223-2922

Purpose

To provide you advice on options for approaching homelessness in the Self-contained Motor Vehicles Legislation Bill.

Executive summary

The impact of the Self-contained Motor Vehicles Legislation Bill (Bill) on those experiencing homelessness was a key issue raised during the Select Committee process. The Bill does not contain specific provisions that address how the legislation will impact people experiencing homelessness. However, the policy objective is for the Bill not to penalise people who are staying in tents or vehicles because they are homeless, and this is included in the General Policy Statement.

In our Departmental Report, we recommended maintaining the current discretionary approach, as we consider it will achieve the best outcomes for those experiencing homelessness. Following the Bill being discharged by the Select Committee, you have asked for further advice on options for approaching homelessness in the Bill.

We still recommend continuing with the status quo. However, we have identified two possible legislative exemptions to protect those experiencing homelessness should you wish to introduce one. All approaches have notable trade-offs to consider.

- Option 1 provides an exemption for those who do not own or rent a house.
- Option 2 provides an exemption for those who have no other option.

If you want to introduce an exemption, Option 2 provides the most robust definition as it is specifically targeted at the group we are looking to protect, and the associated risks can be mitigated to some extent through guidance. We recommend that any exemption applies to the definition of freedom camp.

Subject to your decision, we will need to work with Parliamentary Counsel Office (PCO) to ensure the policy intent of the legislative exemption is reflected in the drafting of the Bill.

Recommended action

The Ministry of Business, Innovation and Employment recommends that you:

- Note** we recommended to the former Minister of Tourism to maintain the current discretionary approach to homelessness.
- Agree** to one approach to homelessness, following discussion with officials.
 - Status quo (MBIE recommends):** maintain the current discretionary approach.

Noted

OR

ii. **Option 1:** Exemption for those who do not own or rent a house.

iii. **Option 2 (MBIE preferred):** Exemption for those who have no other option.

Status quo / Option 1 / Option 2 / Discuss

c **Note** we recommend any exemption should apply to the definition of freedom camp.

Noted

d **Note** should you choose to progress an exemption, we will include this in the current Cabinet paper on the transition period and provide an updated draft to you in the week beginning 13 March.

Noted



Dale Elvy
Manager, Tourism Operations and Partnerships
Labour, Science and Enterprise, MBIE

Hon Peeni Henare
Minister of Tourism

..... / /

10 / 3 / 2023

Background

1. You have asked for advice on how best to approach the issue of homelessness in the Self-contained Motor Vehicles Legislation Bill (the Bill).

Data on homelessness

2. People experiencing homelessness often stay in vehicles and tents, and many local authorities report people experiencing homelessness being present at some freedom camping sites and in their districts. The most recent available data, the 2018 Severe Housing Deprivation Report shows 2,070 people living in a mobile dwelling and 1,347 living in an improvised dwelling (such as a tent). Additionally, a further 1,521 people were living at a campground.¹ Currently, freedom camping legislation relies on the application of discretion to avoid infringing homeless people

Current approach to homelessness

3. The Freedom Camping Act's definition of freedom camping covers the living conditions of those experiencing homelessness. Currently enforcement authorities use their discretion to avoid infringing people experiencing homelessness who may be in breach of freedom camping bylaws or notices, as recommended by Local Government New Zealand (LGNZ).²
4. As there is no evidence that this is not working as intended, the Government's policy position has been to support enforcement authorities to apply their discretion and not to issue infringement notices to people experiencing homelessness.

Officials re-examined whether to include an exemption for homelessness during policy formulation

5. In the lead-up to Cabinet taking policy decisions, officials explored the option of including an explicit exemption for those experiencing homelessness in the legislation. Officials did not recommend this option as the complex nature of homelessness means it would be difficult to practicably define. This could unintentionally cause further harm by requiring people experiencing homelessness to prove their living arrangements are due to a lack of access to safe and secure housing.
6. We sought advice from the Legislation Design and Advisory Committee on homelessness, who advised not to include an exemption for homelessness in the Bill, as powers and definitions of this nature are likely to be problematic and have unintended consequences. LDAC saw no immediate issues with the current approach of relying on the discretion of enforcement officers, noting many regulatory regimes rely on discretion.
7. As such, we recommend the Government continue supporting enforcement authorities in applying their discretion. This will include reviewing and reinforcing existing tools such as guidance and referral pathways.
8. In November 2021, Cabinet [DEV-21-MIN-0219 refers]:
 - Affirmed the Government's intent that people experiencing homelessness not be further disadvantaged by the introduction of the new freedom camping rule; and
 - Directed the Ministry of Business, Innovation and Employment, and Ministry of Housing and Urban Development, in consultation with the Ministry of Social Development, the Crown Law Office and other agencies as appropriate to:
 - i. ensure appropriate alignment with the Homelessness Action Plan;

¹ Dr Kate Amore et al. "Severe housing deprivation in Aotearoa New Zealand, 2018 June 2021 update, (University of Otago, June 2021) at page 32.

² Local Government New Zealand, Good practice guide for freedom camping (April 2018) 22-23

- ii. ensure there is appropriate guidance to support freedom camping enforcement authorities to continue applying discretion to avoid infringing people experiencing homelessness, and to provide information on suitable supports;
 - iii. report back to relevant Ministers on these matters.
9. Officials provided a report to Ministers on 18 November 2021 and 6 July 2022 on these matters [Briefings 2122-1610 and 2322-4122 refer].

We continued to examine the issue of homelessness as the Bill has progressed through Parliament

The Bill does not contain specific provisions to protect those experiencing homelessness

10. As drafted, the Bill does not contain specific provisions that address how the legislation will impact people experiencing homelessness.
11. A strict application of the current Act and the Bill means people staying in their vehicles due to homelessness could be subject to freedom camping rules and infringements.
12. We spoke to a number of social service organisations and local authorities who noted that people experiencing homelessness are unlikely to camp in places where they will be observed by others, such as freedom camping sites. Instead, they stay in remote areas away from enforcement officers. None of the organisations we spoke with had heard of instances where local authorities were issuing people experiencing homelessness with freedom camping infringements under the Act.

Submitters had concerns on the implications of this Bill on homeless people

13. The Select Committee public submissions process saw 79 submitters comment on the topic of homelessness, with the majority raising general concerns that the Bill would negatively impact those experiencing homelessness and further disadvantage them.
14. Submitters had divergent views on how the Bill should approach homelessness, which can be split into two categories:
 - those who agree with the current discretionary approach,
 - those who agree with the intent of the Bill but feel a legislative exemption would best achieve the intent.

Recommendation to Select Committee

15. We considered whether a legislative exemption was preferable in our Departmental Report.
16. On balance, we recommended maintaining the current discretionary approach, as we considered that it will achieve the best outcomes for those experiencing homelessness.
17. We considered defining 'homelessness' to be impractical given the complex nature and drivers of homelessness, and it has not been defined before in New Zealand legislation. We also note that any exemption will require individuals to prove they are homeless which is difficult and may be stigmatising.
18. To address submitters concerns, we recommended including a provision in the Bill that mandates a review of the impact of the reforms on homelessness two years from enactment. We recommended the review be the responsibility of the Minister of Tourism with support from relevant Ministers and agencies, and the Minister of Tourism will report the outcomes to the House.

Legislative exemption for homelessness

19. There are a range of reasons that could justify the inclusion of a legislative exemption. These benefits include:
- There is a lack of data about the current system, which makes it harder to assess how well it is working.
 - Those experiencing homelessness are less likely to complain to authorities if they are subject to unwarranted infringements by an enforcement officer.
 - The application of freedom camping laws varies widely between regions and providing consistency to this issue may be beneficial.
 - Some local authorities sought greater clarity on this issue through their submissions to the Select Committee.
20. Both options require the individual to be residing in New Zealand to be covered by the exemption. Most people experiencing homelessness will be residing in New Zealand. There is a risk if the exemption included people visiting New Zealand on holiday that it would be too difficult for an enforcement officer to determine the individuals' circumstances.
21. We have identified two possible options for a legislative exemption. The key distinction between them is the individual's reliance on a staying in a motor vehicle or tent out of necessity versus by choice.

Option 1: Exemption for those who do not own or rent a house

22. This exemption would cover people who:
- reside in New Zealand, and
 - do not own or rent a house.

Option 2: Exemption for those who have no other option

23. Introduce a legislative exemption to protect homeless people living in motor vehicles out of necessity. This exemption would cover people who:
- reside in New Zealand, and
 - are living in a motor vehicle or tent out of necessity.
24. Out of necessity means due to having no other option of suitable housing.

There are notable trade-offs associated with each option

25. The benefits and risks associated with each of the options we have identified is outlined in the table below:

	Benefits	Risks
Status quo: Maintaining the current discretionary approach	The current approach to assessing homelessness is well understood by enforcement officers and local authorities. Feedback from stakeholders (local authorities, social service organisations) is that the current	There is nothing in the legislation that says a person experiencing homelessness cannot be infringed. As such, it would be unlikely they could successfully defend an infringement in Court.

	system works largely as intended.	There is a risk of inconsistent approach to assessing homelessness by enforcement officers.
Option 1: Exemption for those who do not own or rent a house	<p>This will be easily understood by the public and enforcement officers.</p> <p>As the exemption is included in legislation a person that meets that definition could potentially defend the infringement in Court.</p>	<p>Risk that people could be stigmatised as they may have to discuss their housing arrangements in order to be exempt from an infringement.</p> <p>Some people experiencing homelessness would not meet the definition. For example, someone may own a house but cannot inhabit due to safety concerns.</p> <p>This option would also include people who chose to reside in vehicles exclusively even if they have the means to attain housing (national data suggests that there are around 6,000 people nationally who live in mobile dwellings, and not in a motor-camp). There is no strong policy rationale to exempt this group.</p> <p>People acting in bad faith could claim they do not own or rent a house. It would be difficult for an enforcement officer to ascertain whether this is true or not.</p>
Option 2: Legislative exemption for homelessness	<p>Specifically protects the vulnerable group (i.e. doesn't also include people who are living in their vehicles by choice).</p> <p>Provides protection for those who may own or rent a house and still be experiencing homelessness for a range of reasons (such as, a recent family breakdown).</p> <p>As the exemption is included in legislation a person that meets that definition could potentially defend the infringement in Court.</p>	<p>People acting in bad faith could claim they are camping out of necessity. However, compared to Option 1, it may be easier for an enforcement officer to determine people who are acting in bad faith.</p> <p>Ambiguity and consistency – it may be difficult for enforcement officers to determine 'necessity' based on an interaction with a person, and apply a consistent standard to others.</p> <p>Potentially, more likely to stigmatise people if they need to prove necessity (i.e. discuss the details of an abusive relationship, estranged family, no source of income).</p>

26. We've subsequently considered a range of possible legislative exemption options.³ There are two options outlined which we consider best achieve the desired outcomes. An overview of the options is outlined below.
27. Fundamentally, both options (a legislative exemption and the status quo) rely on the discretion of enforcement officers. They must make a judgement call about whether the rules ought to apply given a particular individuals circumstance, which is difficult.

Option 2 provides the most robust definition

28. Should you decide to include a legislative exemption to protect those experiencing homelessness we recommend Option 2 as this option is specifically targeted at the group we are looking to protect. Option 1 on the other hand would also exempt people who are choosing to live in their vehicles full-time despite having other options. There is no rationale to exclude this group from the freedom camping requirements.
29. Although there is a risk that Option 2 could stigmatise people who might have to prove the 'necessity' of their situation we think this risk can be mitigated to some extent through, for example, guidance to enforcement officers.

If you choose to progress an exemption, we recommend that it apply to the whole Act

30. If you decide to progress a legislative exemption, we recommend that the definition of 'freedom camp' be amended to include the exemption for consistency. There are existing exemptions to the definition of freedom camping in the Act (for example, day trippers and people resting to avoid driver fatigue). This would mean the exemption applies to both tent-based and vehicle-based freedom camping.
31. This would mean people experiencing homelessness would not be liable for any offence applied to the activity of freedom camping. This would include most offences⁴ and penalties and be applicable to all land areas covered by the Act.
32. An alternative option would be to apply the exemption to specific rules and requirements in the Bill. This approach would imply that those experiencing homelessness are freedom campers. However, this is problematic as freedom camping is a voluntary activity, whereas homelessness is not.
33. In addition, this may add unnecessary complexity to the Bill which could cause confusion for the public and enforcement officers.

Implementation work is progressing to ensure timelines are met

34. The timelines for the Reforms have always been ambitious. To date, we have been progressing them on the assumption of a May 2023 enactment date for the Bill, and all associated Regulations being in place before the end of the year. This will enable some of the key elements of the Reforms to be in place prior to the FIFA Women's World Cup in July 2023, and the remainder before large numbers of international visitors return next Summer.
35. To meet this timeframe and progress the Bill as planned, an SOP with our amendments must first be submitted to DEV for approval, followed by LEG and then Cabinet. If approvals are granted through each of these stages, the SOP can be released. We are aiming to have the SOP considered on 29 March, moving on to LEG on 4 May and full Cabinet in early May 2023.

³ Such as exempting people based on the StatsNZ definition of homelessness and amending the definition of freedom camping to include a purpose of 'recreation' or 'holidaying'.

⁴ They will still be liable for offences relating to discharging a harmful substance on local authority or conservation land and interfering with an enforcement officer while they carry out their duties under the Act.

36. In the meantime, we continue to fund key implementation activities to ensure that they are operational when all of the regulations are in force [Briefing 2223-2190 refers]. The early design and build stages of the Register of self-contained vehicles are underway, and we are in the process of supporting the Plumbers, Gasfitters and Drainlayers Board with funds to establish its role as the regulator until it can recover them by the owners of self-contained vehicles (via a levy) and certification authorities (via a fee). Should we not achieve the dates outlined above for the SOP and Bill, we will provide you with further advice on the status of this work.

Next Steps

37. On 27 February 2023, you agreed to progress a Supplementary Order Paper (SOP) that will enable the current two-year transition period in the Bill to be extended by Order in Council for a maximum of 24 months [Briefing 2223-2665 refers]. On 2 March 2023 we provided you with a draft Cabinet paper to progress this SOP [Briefing 2223-2807 refers].
38. If you decide to make changes to the approach to homelessness in the Bill, we recommend that you include this policy change alongside the transition period issue in the draft Cabinet paper. We will provide you with an updated Cabinet paper on 13 March to enable Ministerial and Departmental consultation, ahead of lodgement on 23 March.
39. Subject to your decision, we will also need to work with Parliamentary Counsel Office (PCO) to ensure the policy intent of the legislative exemptions is reflected in the drafting of the Bill. PCO have advised us that they are currently focussing on only high priority work. We will keep your office advised on progress.



BRIEFING

Self-contained Motor Vehicles Legislation Bill – initial advice on ‘slide-on campers’

Date:	16 November 2022	Priority:	High
Security classification:	In Confidence	Tracking number:	2223-1850

Action sought		
	Action sought	Deadline
Hon Stuart Nash Minister of Tourism	Agree that no changes need to be made to the Bill to accommodate issues related to slide-on campers. Or Indicate which option(s) you wish officials to explore.	18 November 2022

Contact for telephone discussion (if required)				
Name	Position	Telephone		1st contact
Dale Elvy	Manager, Tourism Operations and Partnerships	04 831 9651	Privacy of natural persons	✓
Will Cosgriff	Senior Policy Advisor, Tourism Policy		Privacy of natural persons	

The following departments/agencies have been consulted
N/A

Minister’s office to complete:

- | | |
|---|--|
| <input type="checkbox"/> Approved | <input type="checkbox"/> Declined |
| <input type="checkbox"/> Noted | <input type="checkbox"/> Needs change |
| <input type="checkbox"/> Seen | <input type="checkbox"/> Overtaken by Events |
| <input type="checkbox"/> See Minister’s Notes | <input type="checkbox"/> Withdrawn |

Comments



BRIEFING

Self-contained Motor Vehicles Legislation Bill – initial advice on ‘slide-on campers’

Date:	16 November 2022	Priority:	High
Security classification:	In Confidence	Tracking number:	2223-1850

Purpose

To provide you with information on issues related to slide-on campers, and potential options that could address the issues raised.

Executive summary

As agreed by Cabinet in 2021, [DEV-21-MIN-0219 refers] the scope of the freedom camping reforms has been to introduce a regulatory system for self-contained vehicles.

Three submissions, including one from the New Zealand Motor Caravan Association (NZMCA), to the Select Committee on the Self-contained Motor Vehicles Bill (Bill) raised the issue of slide-on campers. A slide-on camper is a camper that is mounted on the back of a ute or flat-bed truck which can be removed at any time and used when detached from the vehicle (refer to the photograph in Annex One).

Slide-on campers are not considered ‘motor vehicles’ under the Land Transport Act 1988. The Bill only enables ‘motor vehicles’ to be certified as self-contained. As such, slide-on campers are unable to be certified, even if they would otherwise meet the requirements for self-containment.

Officials do not recommend any changes to the Bill to enable slide-on campers to be certified as self-contained. This is largely due to the fact that slide-on campers are uncommon in New Zealand and the potential that accommodating them could have unintended consequences.

However, officials have outlined two options that could be explored to enable slide-on campers to be certified as self-contained, should you wish.

Recommended action

The Ministry of Business, Innovation and Employment recommends that you:

- a **Note** that three submitters raised issues with the way slide-on campers are treated under the Bill.

Noted

- b **Agree** that no changes are need to the Bill as a result of the issues raised (Option One).

Agree / Disagree

Or

- c **Indicate** what options you would like officials to explore:

Option Two - enable the primary tow vehicle to be certified as self-contained Yes / No

Option Three - create a bespoke system for the certification of slide-on campers Yes / No



Dale Elvy
**Manager, Tourism Operations and
Partnerships**
Labour, Science and Enterprise, MBIE

16 / 11 / 2022

Hon Stuart Nash
Minister of

..... / /

Background

1. Oral submissions on the Self-contained Vehicles Legislation Bill (Bill) finished on the 10 November 2022, and we have concluded our analysis of submissions made to the Economic Development, Science and Innovation Select Committee.
2. Three submissions to the Select Committee raised issues with the way slide-on campers are treated under the Bill. These submissions were from the New Zealand Motor Caravan Association (NZMCA), New Motorhome and Caravan Forum and New Zealand Lifestyle Camping.

What is a slide-on camper?

3. A slide-on camper is a camper that is mounted on the back of a ute or flat-bed truck which can be removed at any time used when detached from the vehicle. See **Annex One** for an example of a slide-on camper.
4. Slide-on campers are not common in New Zealand. NZMCA highlighted in their submission that approximately 120 (or about 0.1%) of their 113,000 members own slide-on campers.

Issues raised about slide-on campers

Slide-on campers will not be able to be certified as self-contained

5. Since Cabinet agreement in 2021, the scope and focus of the freedom camping reforms has been to introduce a regulatory system for self-contained vehicles [DEV-21-MIN-0219 refers].
6. The Bill exclusively allows for the self-containment certification of motor vehicles, as defined in the Land Transport Act 1998 (LTA).¹ Slide-on campers are not 'motor vehicles' under the LTA.
7. Because slide-on campers are not motor vehicles, they will be unable to be certified as self-contained even if the slide-on camper theoretically meets the technical requirements for self-containment, such as having a fixed toilet.
8. This is primarily because slide-on campers, unlike vehicles, do not have a licence plate. The licence plate of a vehicle is what will be used to identify vehicles in the register of self-contained vehicles, which will be used for enforcement purposes.

What freedom camping rules apply to slide-on campers in the Bill

9. The rules that apply to slide-on campers will depend on whether the slide-on camper is mounted on a vehicle or has been demounted (free-standing) while freedom camping.
 - a. If the slide-on camper is demounted from the tow vehicle while freedom camping – then the individual is freedom camping using a 'tent or other temporary structure'.

¹ **Motor vehicle-** (a) means a vehicle drawn or propelled by mechanical power; and (b) includes a trailer; but (c) does not include—(i) a vehicle running on rails; or (ii)[Repealed] (iii) a trailer (other than a trailer designed solely for the carriage of goods) that is designed and used exclusively as part of the armament of the New Zealand Defence Force; or (iv) a trailer running on 1 wheel and designed exclusively as a speed measuring device or for testing the wear of vehicle tyres; or (v) a vehicle designed for amusement purposes and used exclusively within a place of recreation, amusement, or entertainment to which the public does not have access with motor vehicles; or (vi) a pedestrian-controlled machine; or (vii) a vehicle that the Agency has declared under section 168A is not a motor vehicle; or (viii) a mobility device

- b. If the slide-on camper is mounted on the tow vehicle while freedom camping – then the individuals is *using* a motor vehicle to freedom camp. However, as highlighted it will not be possible for a slide-on camper to be certified as self-contained.

Table One – what rules apply depending on how slide-on camper is being used

How slide-on camper is being used when freedom camping	Is the freedom camper using a 'tent / temporary structure' or 'vehicle'	What rules apply
Mounted on tow vehicle	Vehicle is being used to freedom camp	<p>The national requirement that a self-contained vehicle must be used when camping on local authority land applies.</p> <p>They will be able to freedom camp on Department of Conservation (DOC) land, unless explicitly prohibited, as the national requirement does not apply to DOC land.</p> <p>They may be able to camp on New Zealand Transport Agency (NZTA) or Land Information New Zealand (LINZ) land depending on the specific restrictions.</p>
Demounted / free-standing from tow vehicle	Tent / temporary structure is being used to freedom camp	<p>The national requirement for local authority land doesn't apply as they are not using a vehicle to freedom camp.</p> <p>Applicable bylaws may apply in certain local authorities that restrict the use of tents and temporary structures on local authority land.</p> <p>They will be able to freedom camp on DOC land, unless explicitly prohibited.</p> <p>They may be able to camp on NZTA or LINZ land depending on the specific restrictions.</p>

10. As highlighted above, the rules that apply will depend on the way in which the slide-on camper is being used. We suspect that slide-on camper owners will change their behaviour depending on the rules that apply to where they are staying to reduce the chance of non-compliance with freedom camping rules.

Options for consideration

11. There are three options to address the issues raised in relation to slide-on campers.

Option 1 – no changes to the Bill to account for slide-on campers

12. We do not recommend making changes to the Bill to account for slide-on campers.
13. As mentioned previously, this is primarily because slide-on campers are uncommon in New Zealand so the amount of people who may be impacted is small. In addition, those with slide-

on campers will be able to demount their camper from their vehicle so they are not subject to the requirements for vehicles to be self-contained.

14. Although some local authorities will have bylaws that restrict the use of tents or temporary structures on local authority land, there remain options for those with slide-on campers such as DOC land, commercial campgrounds or areas where freedom camping is permitted in non-self-contained vehicles by bylaw.
15. There are two options that could be explored if we wanted to enable self-containment certification of slide-on campers (which are outlined below). However, both of these options would require making substantial changes to the Bill. Both would require establishing additional regulatory functions for this small group of vehicle users, including how they would be certified and recorded, as well as additional Plumbers, Gasfitters and Drainlayers Board (PGDB) processes and resources.
16. On balance, we think that the current approach under the Bill is preferable.

Option 2 – enable the primary tow vehicle to be certified as self-contained

17. Officials could explore enabling the primary tow vehicle (that is, the vehicle the slide-on camper is typically mounted on) to be certified as self-contained when it is carrying the slide-on camper.
18. For this to work in practice, the Bill would have to allow for both the register of self-contained vehicles and the self-containment warrant card to include the primary tow vehicles' number plate and indicate that the vehicle is self-contained only when the particular slide-on camper is mounted on the vehicle.
19. This option would mean that the slide-on camper would only be certified as self-contained when used with the particular tow vehicle. In practice, some people may use multiple vehicles to tow a slide-on camper at different times, which undermines the effectiveness of this option.
20. This option would require a number of other amendments to the Bill. For example, the Bill currently requires a vehicle to be equipped with a toilet which is permanently fixed to the vehicle. Technically, neither a slide-on camper, nor the toilet inside of the slide-on camper, is fixed to the vehicle. Amendments would need to allow for slide-on campers while being careful not to undermine the key aspects underpinning the self-containment of vehicles.
21. As this option relates to the self-containment of vehicles, these changes would not need Cabinet approval. However, given the substantial changes to the Bill which may have unintended flow on consequences, officials are unable to advise at this time about whether these changes could be recommended through the Departmental Report.

Option 3 – create a bespoke process and system for the certification of slide-on campers

22. Officials could explore the option of establishing a bespoke process for the certification of slide-on campers, which the NZMCA recommended in their submission. This would mean that the slide-on itself is certified as self-contained, rather than the primary tow vehicle.
23. A key feature of this option would be the creation of a unique identifier which could be affixed to the slide-on camper (in place of a number plate). The unique identifier could then be included in the register of self-contained vehicles. This additional process may increase the costs of the PGDB's regulatory role, which would then be passed onto the public through levies.
24. In addition to the associated costs, this option would also require substantial changes to the Bill. The Bill is fundamentally about the self-containment of *vehicles*, and the rules that apply to vehicles depending on whether they are self-contained or not. Enabling the self-

containment certification of something that is not a vehicle would result in substantial and consequential amendments.

25. In addition, Cabinet agreed that the Bill establish a regulatory system for self-contained vehicles. Extending the Bill to require the self-containment of structures that are not vehicles would move the Bill beyond its original Cabinet decisions. Cabinet agreement would need to be sought before this option for changing the Bill is proposed through the Departmental Report.

Next steps

26. If you wish, officials will explore options to enable slide-on campers to be certified as self-contained. If so, officials can provide subsequent advice about how these options could work and the process for recommending amendments to the Bill through the Departmental Report. Officials will need to work with PCO to understand the viability of making changes to the Bill to implement either option 2 or 3 through the Departmental Report.
27. Note, if changes to the Bill are not recommended through the Departmental Report, a Supplementary Order Paper at the Committee of the Whole House stage can be explored.
28. Officials will provide the Departmental Report to your office on 30 November 2022 for review.

Annex One: Example of a slide-on camper





AIDE MEMOIRE

Self-contained Motor Vehicles Legislation Bill – issues being resolved through the Departmental Report

Date:	11 November 2022	Priority:	Medium
Security classification:	In Confidence	Tracking number:	2223-1785

Information for Minister(s)
Hon Stuart Nash Minister of Tourism

Contact for telephone discussion (if required)				
Name	Position	Telephone		1st contact
Dale Elvy	Manager, Tourism Operations and Partnerships	04 831 9651	Privacy of natural persons	✓
Will Cosgriff	Senior Policy Advisor, Tourism Policy	Privacy of natural persons		

The following departments/agencies have been consulted

Minister's office to complete:

Approved

Declined

Noted

Needs change

Seen

Overtaken by Events

See Minister's Notes

Withdrawn

Comments



AIDE MEMOIRE

Self-contained Motor Vehicles Legislation Bill – issues being resolved through the Departmental Report

Date:	11 November 2022	Priority:	Medium
Security classification:	In Confidence	Tracking number:	2223-1785

Purpose

This paper highlights some of the key issues being raised through public submissions on the Self-contained Motor Vehicles Legislation Bill that officials intend to address through the Departmental Report.

Officials intend to discuss these issues with you on Monday 14 November 2022.

Dale Elvy
Manager, Tourism Operations and Partnerships
Labour, Science and Enterprise, MBIE

11 / 11 / 2022

Background

1. This aide-memoire provides information on the key issues raised by submitters on the Self-contained Motor Vehicles Legislation Bill (the Bill). It is split into three sections:
 - a. Two issues that require Cabinet approval to be resolved through the Departmental Report. If you wish to resolve these through the Departmental Report, then you will need to receive Cabinet approval at Cabinet Economic Development Committee (DEV) on Wednesday 16 November 2022 in order to meet the Select Committee timeframes. Note, if these issues are not resolved through the Departmental Report, then they may be addressed subsequently through a Supplementary Order Paper at the Committee of the Whole House stage,
 - b. issues that officials intend to resolve through the Departmental Report, subject to your approval, and
 - c. an update on homelessness.
2. We intend to discuss the above with you at the officials' meeting on Monday 14 November 2022.

Issues that require Cabinet approval to be resolved through the Departmental Report

3. Submitters have raised two issues related to offences within the Bill. Because these relate to the addition and removal of offences, Cabinet Office has advised that Cabinet approval is required ahead of making recommendations in the Departmental Report related to these issues.

Issue 1: offences relating to ‘making preparations to freedom camp’

4. There are a number of offences in the Freedom Camping Act 2011 (the Act) and the Bill that make people liable for ‘making preparations to freedom camp’ in certain circumstances. For example, in the Bill there is an infringement offence for making preparations to freedom camp on local authority land in breach of the national requirement that you must use a self-contained vehicle if freedom camping on local authority land.
5. The Clerk of the Committee has written to the Select Committee recommending that they seek advice from officials on these offences. In addition, 5 of the 15 local authorities¹ who submitted on the Bill raised issues with these offences as they are difficult to implement and suggested further clarification on the meaning of making preparations to freedom camp.
6. As such, officials are exploring whether these offences should be removed, clarified or left as is. Officials plan to discuss these offences with local authorities and will be able to provide you with an update when we meet on Monday.

Issue 2: adding an offence for failing to display a warrant card

7. The Bill requires owners of motor vehicles that have been issued with a certificate of self-containment to display a warrant card which shows that a vehicle is self-contained and other relevant information, such as how many people the vehicle is self-contained for. However, there is no associated offence for failing to display the warrant card.
8. This issue was raised by Local Government New Zealand and Christchurch City Council whose submissions recommended including an associated offence for failing to display a warrant card.
9. Officials agree with their recommendation as this will incentivise people to comply with the requirement to display the warrant. This will provide enforcement officers and the public an easy way to identify whether a vehicle is self-contained which supplements their ability to check the register of self-contained vehicles.

Issues that officials intend to resolve through the Departmental Report

10. This section highlights issues that officials intend to resolve, subject to your agreement, by recommending changes through the Departmental Report. This is not an exhaustive list as officials suspect there will be a number of minor issues which are not covered below.

¹ Local authorities who highlighted this issue were Auckland Council, Christchurch City Council, Dunedin City Council, Manawatu District Council and Taituarā – Local Government Professionals Aotearoa.

Issue 3: The default infringement fee of \$1000

11. The Bill sets out that the default infringement fee is \$1,000 unless reduced through Regulations. This means that all infringement notices will incur a \$1,000 infringement fee once the Bill is passed before the Regulations come into force.
12. Submitters have highlighted that an infringement fee of this level is unfair as it does not reflect the seriousness of some of the offences. Officials previously raised this issue with you [Briefing 2223-0622 refers].
13. Officials agree with submitters and are exploring options to ensure the infringement fee is set at a lower level for the period of time when the Bill is enacted but the Regulations are not yet in force.

Issue 4: requiring local authorities to review their bylaws before the end of the transition period

14. The Bill explicitly states that freedom camping bylaws continue to have legal effect during the transition period. However, once the transition period ends aspects of freedom camping bylaws that are inconsistent with the Bill will not have legal effect. This means that where bylaws designate areas as suitable for freedom camping in non-self-contained vehicles it will no longer be lawful to freedom camp in these areas in non-self-contained vehicles as this is inconsistent with the premise in the Bill that states freedom camping in local authority areas must be done in self-contained vehicles.
15. Local authorities have highlighted their opposition to this due to the cost and resourcing associated with reviewing and consulting on bylaws. The Act already requires council to review bylaws no later than 5 years after the date on which the bylaw was made, and then, no later than 10 years after the bylaw was last reviewed.
16. As such, officials consider that local authorities should continue to have legal effect after the transition period ends. Note, this will not prevent local authorities from reviewing their bylaw if they want to.

Issue 5: references to the existing standard for self-containment in bylaws

17. Local authorities have highlighted that some existing bylaws refer to the existing voluntary standard for self-containment. They have concerns that they would have to amend their bylaws to remove reference to the existing voluntary standard, requiring them to go through a costly public consultation process.
18. Officials are exploring options to enable councils to update their bylaws so that they are consistent with the new requirements for self-containment without triggering consultation requirements through an enabling provision in the Bill. A useful example is the Fire and Emergency New Zealand Act 2017 which enables a bylaw to be amended by resolution, publicly notified, without the need to consult.

An update on homelessness

19. This section provides an update on the work officials have been undertaking on the approach to homelessness under the Bill. At this stage, officials do not advise any changes to the Bill or the approach to homelessness more generally.
20. Officials have consulted with Ministry of Housing and Urban Development, Ministry of Social Development and Kainga Ora who support this approach.

Consultation with social service organisations

21. Officials have contacted a number of social service organisations and had some detailed discussions about the issue. What we heard was that those people who are experiencing severe housing deprivation are highly unlikely to camp in places where they will be observed by others, and none of the organisations we spoke with had heard of instances where local authorities were issuing them with freedom camping infringements. The best data we've been able to find is that were around 2,000 people living in their vehicles because they were experiencing homelessness in 2018.²

Options officials are exploring

22. Officials continue to explore options for a legislative exemption and how these would compare with the current discretionary approach. Currently, three possible options have been identified:

Option 1: Continue to apply the current discretionary approach under the Act, supported by Local Government New Zealand guidance.

Option 2: Do not define homeless but include an exemption for individuals who:

- a. permanently reside in New Zealand, and
- b. do not own or lease a house.

Option 3: Include an exemption for individuals experiencing homelessness using the Stats NZ definition of homelessness as a basis³.

23. We have outlined the pros and cons of each of the options below:

	Pros	Cons
Option 1	<ul style="list-style-type: none"> + Supports the Legislation Design and Advisory Committee's (LDAC) recommendation not to include an exemption power or definition of homelessness in the Bill (as powers and definitions of this nature are likely to be problematic and have unintended consequences). 	<ul style="list-style-type: none"> - The broader range of offences and higher penalties in the Bill compounds the negative consequences on an individual if they are wrongly penalised, which is potentially more likely to occur without an exemption.
Option 2	<ul style="list-style-type: none"> + Exemption is relatively clear. + Exemption will cover New Zealand residents who are experiencing homelessness. + Avoids the need to define homelessness in the Bill. 	<ul style="list-style-type: none"> - The exemption is broad which means it covers individuals who are living in a vehicle by choice (even if they have the means to attain housing)⁴.

² StatsNZ has identified that in 2018 there were 2,070 severely housing-deprived people living without shelter in **mobile dwellings**. - StatsNZ, Housing in Aotearoa: 2020, page 102
<https://www.stats.govt.nz/assets/Uploads/Reports/Housing-in-Aotearoa-2020/Download-data/housing-in-aotearoa-2020.pdf>

³ Note, Stats NZ has defined homelessness for statistical purposes. "Homelessness is defined as a living situation where people with no other options to acquire safe and secure housing are: without shelter, in temporary accommodation, sharing accommodation with a household, or living in uninhabitable housing."
<https://www.stats.govt.nz/assets/Uploads/Retirement-of-archive-website-project-files/Methods/New-Zealand-definition-of-homelessness/nz-definition-homelessness-2015-update.pdf>

⁴ Note, the 2018 Census found that there were 5,892 mobile dwellings not in a motor camp.

	<ul style="list-style-type: none"> + Sends a strong signal. 	<ul style="list-style-type: none"> - Requires individuals to prove they meet this definition which may be stigmatising and difficult in practice. - There is a risk NZ residents will be able to rely on the exemption in bad faith. For example, if someone falsely claims they do not own or lease a house, it would be difficult for the enforcement officers to ascertain if this is true.
Option 3	<ul style="list-style-type: none"> + Exemption will cover New Zealand residents who are experiencing homelessness. + Definition has credibility as it has been developed by a government working group. + Appropriate inclusions and exclusions list has already been developed. + Sends a strong signal. 	<ul style="list-style-type: none"> + Homelessness is complex in nature and difficult to define, making it difficult for enforcement officers to evaluate a situation. + Has not been defined before in NZ legislation. + Requires individuals to prove they meet this definition which may be stigmatising and difficult in practice.



BRIEFING

Self-contained Motor Vehicles Legislation Bill – Potential Supplementary Order Papers

Date:	17 February 2023	Priority:	Medium
Security classification:	In Confidence	Tracking number:	2223-2665

Action sought		
	Action sought	Deadline
Hon Peeni Henare Minister of Tourism	<p>Agree to progress a Supplementary Order Paper which will enable the current two-year transition period in the Bill to be extended by Order in Council for a maximum of 24 months.</p> <p>Agree not to progress a Supplementary Order Paper about rental companies' liability for infringement fees incurred by hirers.</p>	22 February 2023

Contact for telephone discussion (if required)				
Name	Position	Telephone		1st contact
Dale Elvy	Manager, Tourism Operations and Partnerships	04 831 9651	Privacy of natural persons	✓
Jon Lyall	Principal Advisor, Tourism Operations and Partnerships	Privacy of natural persons		
Will Cosgriff	Senior Policy Advisor, Tourism Policy	Privacy of natural persons		

The following departments/agencies have been consulted
Parliamentary Counsel Office

Minister's office to complete:

Approved

Declined

Noted

Needs change

Seen

Overtaken by Events

See Minister's Notes

Withdrawn

Comments



BRIEFING

Self-contained Motor Vehicles Legislation Bill – Potential Supplementary Order Papers

Date:	17 February 2023	Priority:	Medium
Security classification:	In Confidence	Tracking number:	2223-2665

Purpose

To seek your agreement to potential Supplementary Order Papers (SOP) for the Self-contained Motor Vehicles Legislation Bill (Bill). In particular:

- to amend the Bill, to provide the ability to extend the transition period by up to 24 months by Order in Council if necessary, and
- to agree not to progress an SOP in relation to rental companies' liability for the infringement fees incurred by hirers.

Executive summary

Transition period

The Bill currently includes a two-year transition period. At the end of this period vehicles must be certified under the regulatory regime to be considered self-contained. We consider there is a risk that there could be insufficient capacity in the new self-containment certification system to certify the estimated 73,000 vehicles that may seek certification.

As such, we recommend you seek to amend the Bill at the Committee of the whole House, via an SOP to enable the transition period to be extended by Order in Council for a maximum of 24 months if necessary.

Rental companies' liability for infringements incurred by hirers

When international visitors who hire rental vehicles receive infringement notices they have often left the country before they are aware of or have paid their infringement fee. We highlighted to the previous Minister of Tourism that we would provide further advice about how to address this in the light of New Zealand Bill of Rights Act 1990 concerns raised on a previous approach to this issue [Briefing 2122-4895 refers].

We considered a number of legislative options, which may help address this issue. On balance, we consider that the issue can be effectively addressed through non-legislative ways. Queenstown Lakes District Council has an arrangement in place with a number of rental companies, which has addressed the issue of low collection rates. We intend to explore how this approach can be scaled up and used by other councils.

Plumbers, Gasfitters and Drainlayers Board (PGDB) notice-making powers

The Bill enables the PGDB to issue guidance by notice, on approval by the Minister of Tourism, and following targeted consultation with stakeholders. The guidance will be in the form of an inspection manual which will help vehicle inspectors determine whether a vehicle's self-containment system facilities are fit for purpose.

This power comes into force six months after enactment. We consider that this may cause an unnecessary delay in the in the certification of vehicles.

As such, we intend to provide advice about bringing these particular powers into force sooner, at the time that the self-containment Regulations are made by Order in Council. Note, no amendment to the Bill is required to facilitate this.

Recommended action

The Ministry of Business, Innovation and Employment recommends that you:

- a **Note** there are substantial risks about whether the new freedom camping regulatory system will have sufficient capacity to cope with the number of vehicles that will need to be certified during the transition period.

Noted

- b **Agree** to progress a Supplementary Order Paper which will enable the current two-year transition period in the Bill to be extended by Order in Council for a maximum of 24 months.

Agree / Disagree

Either

- c **Agree** not to progress a Supplementary Order Paper about rental companies' liability for infringement fees incurred by hirers.

Agree / Disagree

Or

- d **Agree** we develop a further legislative option to address this issue.

Agree / Disagree

- e **Note** we will provide further advice if we find that the non-legislative options for addressing this issue cannot be scaled up effectively.

Noted

- f **Note** we will provide further advice about bringing the PGDB notice-making powers into force by Order in Council.

Noted



Dale Elvy
Manager, Tourism Operations and Partnerships
Labour, Science and Enterprise, MBIE

17 / 2 / 2022

Hon Peeni Henare
Minister of Tourism

..... / /

Transition period

Background

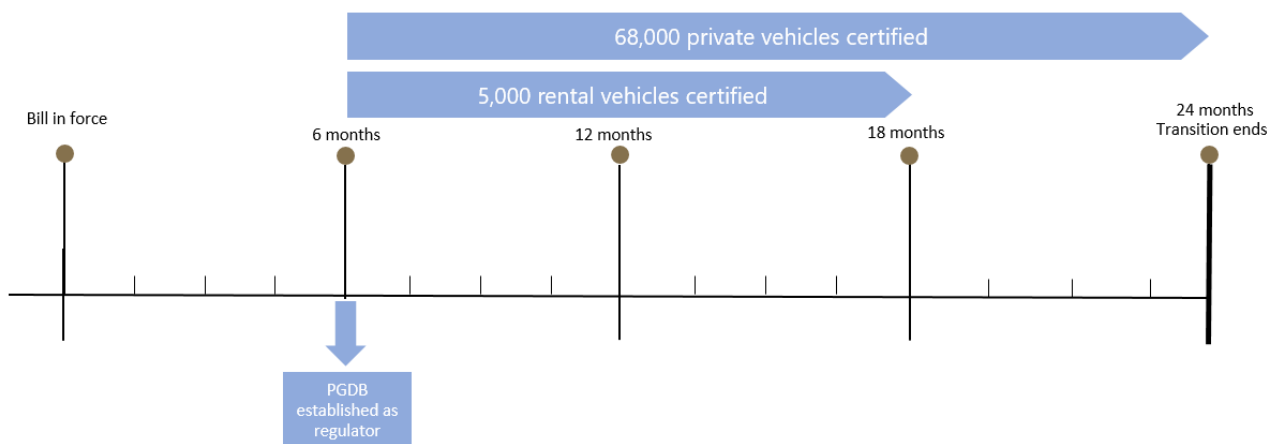
1. The Bill currently includes a two-year transition period. The transition provides for a smooth and timely transition to the new regulatory system.
2. In 2021, we advised a three-year transition period would be appropriate [Briefing 2122-0321 refers]. On balance, the Government decided a two-year transition was appropriate because they wanted to ensure a timely transition to the new regulatory regime, which would mean the benefits of the new regime would be realised sooner.
3. We also note that the Legislation Design and Advisory Committee considered that a two-year transition period was ambitious and insufficient for similar regulatory regimes.
4. The Select Committee process and ongoing engagement with the sector has continued to highlight risks associated with trying to certify approximately 73,000 vehicles under the new regulatory regime over an 18-month period. The most notable risk is whether there will be capacity in the system to certify such a large number of vehicles in a relatively short space of time.

How the transition currently works

5. During the transition period, vehicles certified through the existing voluntary standard *or* the new self-containment requirements will be considered self-contained. At the conclusion of the transition period vehicles must be certified under the new self-containment requirements to be considered self-contained (see **Appendix One** for a detailed table on transition milestones).
6. In 2021, we estimated there were 73,000 self-contained vehicles in New Zealand.¹ Of these, 5,000 are rental vehicles and 68,000 are privately owned.
7. The transition period is crucial because it enables:
 - a. the PGDB to establish itself as the regulator,
 - b. people and organisations to apply to be certifications authorities, appoint vehicle inspectors and start certifying vehicles under the new regulatory regime, and
 - c. time for the public to transition to the new system.

¹ This is an estimate as there is no existing register of self-contained vehicles. It is also unknown what proportion of these will have portable toilets. Owners of vehicles with portable toilets may or may not chose to modify their vehicle to meet the new self-containment requirements. MBIE commissioned research found that approximately 85 per cent of domestic freedom campers who had a toilet in their vehicle had a fixed toilet. However, this figure was substantially lower for international visitors who hired a vehicle or used their own vehicle.

Diagram 1 – transition timeline



8. The Bill assumes that six months after enactment, the PGDB will have established itself as the regulator of the self-contained vehicle system and will therefore be able to exercise its regulatory functions. At that point, people and organisations can apply to the PGDB to become certification authorities and, once approved, appoint vehicles inspectors.
9. The public will then be able to approach certification authorities to have their vehicles certified as self-contained.
10. 18 months after enactment, rental vehicles must be certified under the new regulatory regime to be considered self-contained.
11. 24 months after enactment, private vehicles must be certified under the new regulatory regime to be considered self-contained. This means there is an 18-month window where the approximately 73,000 self-contained vehicles must be certified before the Bill is fully implemented.

Risk of insufficient capacity in the system to certify vehicles

12. There is a risk that there will be insufficient capacity in the system to certify the approximately 73,000 self-contained vehicles in the 18-month window.

Existing capacity in the system

13. It is difficult to accurately ascertain the capacity of the existing unregulated self-containment system. Based on data from the New Zealand Motor Caravan Association (NZMCA) and New Zealand Lifestyle Camping Ltd (NZLC) we predict that capacity will have to increase substantially.

Table 1 – Number of certifications

Issuing authority	12-month average	18-month average
NZMCA	16,000	24,000
NZLC	4,000	6,000
Total	20,000	30,000

14. NZMCA members own approximately 69 per cent of the self-contained vehicles in New Zealand.² We do not have data on the number of self-contained vehicles NZLC members own. However, we can assume the cumulative average of NZMCA and NZLC certifications likely reflects the majority of the overall number of certifications in the system.
15. Although there may be some ability in the system to scale up, the cumulative average of 30,000 over 18 months falls well short of the 73,000 vehicles that may need to be certified.
16. It is also worth highlighting the significant uncertainty around our estimate of 73,000 vehicles. There is currently no register of self-contained vehicles (which is something the Bill will address). This means the actual number of self-contained vehicles could be significantly higher or lower.
17. It is also unclear what proportion of vehicle owners will modify their vehicles to meet the new self-containment requirements. Modification will extend the time it takes for those vehicle owners to have their vehicle certified.³

Demand for certifications won't be steady

18. It will be up to the individual to decide when to seek certification. Because of this, we expect there will be a large volume of people who seek certification near the end of the transition period. This is because many existing certificates won't expire before the end of the transition period.
19. We will work with the PGDB to ensure their communications mitigates the risk of this occurring. However, this is unlikely to mitigate the risk entirely.
20. In addition, there may be issues if demand does not match supply in particular regions. For example, there may be relatively few certification authorities and/or vehicle inspectors in particular regions but significant demand for certifications.

Key dependencies that could exacerbate risk

21. There are two areas where the risk of insufficient capacity could be exacerbated. In particular:
 - a. the PGDB may not be ready to act as regulator six months after enactment, and
 - b. existing issuing authorities may not apply to become certification authorities, may wait to apply, or it may take time for them to be approved by the PGDB. They may also need time to develop their certification processes before applying for approval.
22. We are seeking to mitigate this risk by recommending to the Select Committee that certifying plumbers are deemed to be certification authorities and vehicle inspectors for the duration of the transition period. That means they can automatically begin certifying vehicles (without having to apply to the PGDB) if they wish to do so. This may assist with capacity to some extent, but we are uncertain how many certifying plumbers will choose to do this work.
23. We will continue work to mitigate the risks highlighted above and will inform you if we see any risks materialising. In particular, we will work closely with the PGDB to assess their progress and readiness to become the regulator and consider actions to support this if necessary.

² NZMCA has outlined that their members own 50,400 certified self-contained vehicles. This is approximately 69 per cent of the estimated 73,000 vehicles.

³ After modifying their vehicles, some vehicle owners will have to get their vehicle certified through the low volume vehicle certification process before seeking self-containment certification.

Impact if risk of a lack of capacity materialises

24. If the risks materialise there could be a considerable number of people who are unable to get their vehicle certified despite their vehicles meeting the new self-containment requirements. This will restrict their ability to freedom camp through no fault of their own. This would undermine the credibility of the system.
25. Vehicles that are not self-contained will have other options such as staying at commercial campsites, some DOC sites and local authority areas deemed suitable for non-self-contained vehicles.
26. If this occurred with the Bill in its current format, the only legislative approach available to Government to address it would be to amend the transition period in primary legislation. However, we consider this undesirable due to the time and effort associated with amending primary legislation as well as a waste of future House time.

Recommended approach

27. To properly mitigate the risks outlined above we recommend progressing a Supplementary Order Paper (SOP) which will enable the transition period to be extended by Order in Council for a maximum of 24 months. This will only relate to the self-containment certification and other key aspects of the reforms will come into force as planned (refer to **Appendix One** for a detailed description of this).
28. We recommend that this extension applies only to private vehicles. Rental vehicles would still have to be certified 18-months after enactment. This is because there are a comparatively modest number of rental vehicles (approximately 5,000). In addition, rental companies have existing relationships with issuing authorities (under the existing self-containment system) and greater purchasing power than individuals. As such, we expect rental vehicles will be able to have their vehicles certified in the required timeframe.
29. The recommended approach means that if there is sufficient capacity in the system to certify the self-contained vehicles then the transition to the new regulatory system will happen in the two-year timeframe that Government is aiming for. But that there is flexibility built in, if required.
30. This flexibility also means that the transition can be extended for a relatively short time if that is all that is required (for example, a six-month extension).
31. We consider a maximum 24-month extension (four-year total transition) is appropriate because existing self-containment certificates expire after four years.
32. We note that communications will focus on the default two-year transition to give the best chance of meeting this timeframe. This will mitigate the risk that the public will be disincentivised from seeking certifications because they assume the transition will be longer than two years.
33. Subject to your agreement, we will need to work with Parliamentary Counsel Office to draft this SOP. We will provide subsequent advice to you if there are any issues giving effect to this policy change through the Bill.

Indicative timeline for Supplementary Order Paper

34. Subject to your agreement, we intend to work to the timeline outlined below:

Draft Cabinet Paper	Week beginning February 20
Agency and Ministerial Consultation Cabinet Paper	Week beginning February 27
DEV Cabinet Committee	March 8
PCO begin drafting SOP	From March 8
Cabinet	March 13

35. We will work with your office to ensure that the timeline outlines above aligns with the Parliamentary process. In particular, we will need to ensure the SOP has been agreed by Cabinet before the Committee of the whole House stage. If timeframes allow, you may also wish to raise the SOP during your Second Reading speech.

	Earliest possible date	Estimated date (as signalled in previous briefings)
Second Reading	March 14	March 27
Committee of the Whole	March 16	April 12

Potential SOP on rental companies' liability

Background

36. There are difficulties associated with recouping infringement fees incurred by international visitors who hire rental vehicles. Often, the hirer will have left the country before being aware of or paying their infringement fee, which can lead to poor collection rates.
37. This was a particular issue raised by the Parliamentary Commissioner for the Environment in their 2021 report.⁴ It is an issue that has been raised frequently, particularly by local authorities, including during the Select Committee process.
38. We previously advised the Minister of Tourism that we would provide further advice on rental companies' liability for infringement fees incurred by hirers [Briefing 2122-4895 refers].

How do infringements currently work when a rental company is involved?

39. Under the existing Freedom Camping Act 2011 (and the Bill), where a rental company is served an infringement notice as the registered owner of a vehicle, they have two options:
- accept liability and on-charge the hirer for the infringement fee plus an additional administration fee (provided this is included in the rental services agreement), or
 - make a statutory declaration to the enforcement authority stating that it was not in control of the vehicle at the time of the offence. The statutory declaration includes details of the hirer and their contact details. The enforcement authority will then transfer liability to the hirer, and issue a new infringement notice.

⁴ *Not 100% – but four steps closer to sustainable tourism* February 2021, Parliamentary Commissioner for the Environment <https://pce.parliament.nz/publications/not-100-but-four-steps-closer-to-sustainable-tourism/>

40. In practice, we have heard that rental companies tend to opt for the statutory declaration (b. above). However, this process takes time which may mean the hirer has left the country without being made aware and/or paying the infringement fee. This can lead to low collection rates.

How the Bill approached this issue before introduction

41. Before introduction, the draft Bill proposed that rental companies would be liable for infringement fees incurred by hirers. In effect, this would mean they are unable to complete the statutory declaration (b. above).
42. However, there were significant issues raised about the consistency of this approach with the New Zealand Bill of Rights Act 1990 (NZBORA). As the rental company did not actually commit the act leading to the offence, they would be unable to provide a defence even if reasonable doubt exists about the offence occurring. Due to these concerns the previous Minister of Tourism agreed to remove the relevant provisions and revert to the status quo (outlined in paragraph 39) [Briefing 2122-4895 refers].

We have considered whether an alternative legislative amendment is justified

43. We explored a number of alternative legislative amendment that could address the issues, two of which are outlined below:

Legislative option 1

44. Introducing a new offence that would penalise a rental company that failed to take certain steps to facilitate the payment of the infringement fee. These actions include forwarding the infringement notice (and reminder notice) to the hirer and attempting to debit their credit card.
45. However, this type of offence may be difficult to enforce as it will often not be obvious whether or not the rental company has taken the required steps. In addition, we consider there are non-legislative options that may more effectively address the issue of low collection rates.

Legislative option 2

46. Introducing a requirement that rental companies must pass on the credit card details of a hirer to the relevant local authority in the event the hirer receives an infringement notice. This would have to be incorporated into the rental companies' terms and conditions. There would be an associated offence for failing to do so. However, this option carries privacy concerns that would have to be explored further.

Non-legislative option

47. Queenstown Lakes District Council (QLDC) has entered into a Memorandum of Understanding (MOU) with Tourism Holdings Limited (THL) and Jucy Group Limited. This MOU is included in Local Government New Zealand's *Good practice guide for freedom camping*.⁵
48. The MOU involves QLDC enforcement officers promptly emailing infringement notices that are issued to hirers to the relevant rental company. This means that when the hirer returns the vehicle the rental company is aware of the infringement notice and can encourage the hirer to pay it.

⁵ *Good practice guide for freedom camping* April 2018 Local Government New Zealand
<https://www.lgnz.co.nz/assets/Uploads/c9f26c9f6e/45954-LGNZ-Freedom-Camping-good-Practice-Guide-WEB2.pdf>

49. We spoke with QLDC and THL who both advised that the process works well. QLDC advise that their non-collection rate for overseas hirers who hire rental vehicles is between 1-7 per cent on average per year.
50. We are exploring how this process can scaled up and used by other councils. As a first step, we intend to invite QLDC and THL to speak to the Tourism Industry Aotearoa freedom camping forum to explain the process and their success.

Conclusion

51. On balance, we think there are sufficient non-legislative options that can address this issue. However, if you wish we can explore legislative options further and provide subsequent advice about this SOP. If that is what you decide, we will work with your office to ensure that legislative timelines through the House accommodate this.

PGDB notice-making powers

52. The new self-contained vehicle regulatory system requires the Minister of Tourism to make regulations setting out the technical requirements that vehicles must meet to be certified as self-contained.
53. The PGDB will issue guidance in the form of an inspection manual designed to help vehicle inspectors determine whether a vehicle's self-containment system facilities are fit for purpose. Without it, vehicle inspectors may struggle to certify a vehicle.
54. The Bill enables this guidance to be made by notice, on approval by the Minister of Tourism, and following targeted consultation with stakeholders. The particular notice-making power comes into effect six months after enactment, or earlier by Order in Council.
55. We note that waiting until six months after Royal Assent for the particular provisions to come into force would mean a delay of around three months before the inspection manual could be brought into force.⁶ Operational guidance will also likely flow from this. This would lead to a delay before vehicle inspectors and certification authorities could begin to inspect vehicles and issue vehicle certifications under the new standards.
56. We propose enabling the notice-making provisions to come into force by Order in Council at the same time Regulations establishing the technical requirements for self-contained vehicles are made.⁷ This would enable the PGDB to begin consulting on a vehicle inspection manual and provide it for approval by the Minister of Tourism as soon as possible after the technical requirements are confirmed.
57. We will provide you with further advice on this at the same time we brief you on taking Regulations to Cabinet.

Next steps

58. Subject to your agreement, we will prepare a Cabinet Paper seeking agreement to the Supplementary Order Paper enabling the transition period to be extended by Order in Council for up to 24 months.
59. We will provide advice about bringing the PGDB notice-making powers into force by Order in Council.

⁶ This is because the PGDB could not exercise its notice-making power and conduct consultation until after the provision comes into force. Once the Minister of Tourism agreed to the notice, it would not come into force until 28 days after being notified in the *Gazette*.

⁷ These regulations are scheduled to be made in August 2023.

60. We will provide material to support you with your Second Reading speech. In addition, we will provide your office with some Q&A's to assist public communications.

Appendix One – Explanation of transition period (based on May enactment)

Freedom Camping Transition Period – Key Milestones

