

// SUBMISSION



SELF-CONTAINED MOTOR VEHICLES LEGISLATION BILL

// Local Government New Zealand's submission on the Self-Contained Motor
Vehicles Legislation Bill

// OCTOBER 2022



Ko Tātou LGNZ.

Local Government New Zealand (LGNZ) provides the vision and voice for local democracy in Aotearoa, in pursuit of the most active and inclusive local democracy in the world. We support and advocate for our member councils across New Zealand, ensuring the needs and priorities of their communities are heard at the highest levels of central government. We also promote the good governance of councils and communities, as well as providing business support, advice, and training to our members.

LGNZ takes a national, whole of sector, and non-partisan perspective to reform and policy initiatives that relate to and promote community well-being.

This submission has been signed off by the local government members of the Responsible Camping Working Group: Mayor Jim Boulton – Queenstown Lakes District, Mayor Tim Cadogan – Central Otago District and Deputy Mayor Andrew Turner – Christchurch City.

Key Points

// LGNZ generally supports the proposals in the Bill. However, as we highlighted in our May 2021 submission to MBIE, a more comprehensive review of the Freedom Camping Act 2011 and alignment of policy is required for lasting progress. We'd like to see a provision included in the Act to require a review, which would also encompass a review of the effectiveness of the changes made by this Bill.

// For the Bill to achieve a more nationally consistent approach to freedom camping, signage requirements and funding support for councils and central government agencies to apply this signage will be necessary. Council district borders are generally invisible, and the use of consistent signage and colouring will assist people travelling around New Zealand.

// The amendments being proposed for LINZ land should be widened to also cover Waka Kotahi land. A wider review of consistency across all Crown and local authority land would also be beneficial.

// The Bill should treat freedom camping in tents (and other temporary structures) on local authority land in the same way the Bill treats freedom camping in a non-self-contained vehicle. If the Bill is to meet its policy objective of reducing the negative effects of freedom camping on communities and the environment, it needs to also extend to tents.

INTRODUCTION

Local Government New Zealand (LGNZ) welcomes the opportunity to submit on Self-contained Motor Vehicles Legislation Bill.

LGNZ generally supports the proposals in the Bill. The requirement for freedom campers using vehicles to have a certified self-contained vehicle when camping on local authority land, the introduction of new standards and a formal regime for self-contained vehicle certification will help councils to better manage the impact of freedom camping (particularly impacts from those who choose to freedom camp in vehicles) in our communities.

However, our submission seeks further amendments to the Bill to:

- achieve greater national consistency in addressing freedom camping issues
- improve the proposals in the Bill for Waka Kotahi and LINZ land
- restrict freedom camping in tents and temporary structures
- clarify the transitional provisions and post transition period for council bylaws
- further strengthen the offence and enforcement provisions in the Bill
- improve the provisions applying to rental car companies.

We discuss each of these areas in detail below.

SUBMISSION

A wider review of freedom camping and greater national consistency

LGNZ highlighted in its May 2021 submission to MBIE ("*Supporting Sustainable Freedom Camping*") that the proposals in that discussion document were a partial fix, and not the comprehensive review and alignment of policy that the Responsible Camping Working Group had recommended. We stand by this view that a more extensive review of the Freedom Camping Act is still required for lasting progress. We'd like to see a provision included in the Act to require a review, which would also encompass a review of the effectiveness of the changes made by this Bill.

We also see potential for the Bill to do more to achieve a nationally consistent approach to freedom camping. In addition to the improvements suggested in our submission, we also recommend that the Government investigates:

- Introducing signage requirements, through new regulations, to be applied by all councils and central government agencies where freedom camping occurs and/or is prohibited. Council

district boundaries are generally invisible, so consistent use of signage and colouring across the country will assist people travelling around New Zealand.

- Providing councils with funding support for signage once regulations have been enacted.
- Investing in systems that can better monitor freedom camping hotspots and providing additional funding mechanisms to assist councils with cleaning up after freedom campers, particularly those who do not get penalised through the infringement regime or abandon freedom camping vehicles and gear when they leave the country.
- How it can promote responsible camping and educate freedom campers about the changes being implemented in the Bill to grow public understanding and compliance nationwide.

Improve the Waka Kotahi and LINZ land proposals

LGNZ supports the inclusion of more publicly owned land within the scope of the Act, but sees inconsistencies in the Bill's proposals. We're concerned that councils are being relied on to regulate and provide enforcement of freedom camping on non-local authority land.

The process for LINZ land and Waka Kotahi/NZTA land that is made available for freedom camping is different. NZTA land needs to come within a council bylaw (if the council and NZTA agree) to be enforceable, while the proposals for LINZ land are similar to (but not the same as) those that already exist for DOC land.

The variation of rules for LINZ, DOC and Waka Kotahi land compared to local authority land is confusing for local authorities, let alone for the wider public and freedom campers.

LGNZ has the following concerns:

- The provisions for LINZ (and DOC) land prohibit freedom camping as a default, and both may allow freedom camping to occur via a notice issued by the Commissioner or Director-General. In contrast, Waka Kotahi has no power of its own and there are no controls or protections for Waka Kotahi land unless that land is included in a council bylaw.
- This proposal does not appear to recognise the work required to amend or make a bylaw to cover Waka Kotahi land. It is not simply a matter of getting written permission from Waka Kotahi. The requirements of section 11(2) will need to be met, followed by a special consultative procedure and then adoption by the council. This is time consuming and expensive, and it exposes the council to judicial review for its decision, not Waka Kotahi.
- Although any agreement between a council and Waka Kotahi can likely cover funding for the decision-making process and later enforcement activities, it is not clear what happens if there is no agreement to include Waka Kotahi land in a bylaw (or a council does not believe it meets the requirements of section 11(2)).

Councils should not be under an obligation to protect Crown land. There may be instances where it is desirable for councils and Waka Kotahi to work together to address land that appears to be under the same ownership, but this should not be the only option.

Provisions could remain in the Bill that Waka Kotahi land *may* be included in a council bylaw, but Waka Kotahi also need the power to manage and enforce freedom camping on their land themselves.

LGNZ's position is that, as a minimum, the amendments being proposed for LINZ land should be widened to also cover Waka Kotahi land. However, a wider review of consistency across all Crown and local authority land would be desirable (for example Kiwi Rail land).

Freedom camping in tents and temporary structures should be restricted

We believe that the Bill should treat freedom camping in tents (and other temporary structures) on local authority land in the same way the Bill treats freedom camping in a non-self-contained vehicle. The starting point should be that freedom camping in a tent or temporary structure is not permitted unless it is 'allowed' by a council in a bylaw (or under any other legislation).

Our view is that there is no fundamental difference between those who camp in vehicles that are not self-contained and those who camp in tents. If the Bill is to meet its policy objective of reducing the negative effects of freedom camping on communities and the environment, it needs to also extend to tents. The potential for damage to the environment is not because a freedom camper is in a vehicle, but because they do not have access to a toilet.

By amending the Bill so that councils can make bylaws for areas where freedom camping can occur in both vehicles that are not self-contained *and* tents, decisions on appropriate areas and restrictions for both of these types of freedom camping will be made by the body with the most relevant and up-to-date knowledge. We do not support providing blanket permission for freedom camping in tents on local authority land.

We accept that freedom camping in tents is something of a Kiwi tradition, particularly for those who go hunting, fishing and tramping. However, this more often occurs on DOC or LINZ land, and the features of most local authority land are different, particularly land located in residential areas. Councils, and the communities they serve, are best placed to determine the appropriate local authority land that can be used for freedom camping in tents (eg, where toilet facilities are available).

We recognise and support the intention of the Bill not to "penalise people staying in tents or vehicles because they are homeless". This intention is not being addressed by any amendments to the Act, but will continue to be addressed by council enforcement officers exercising enforcement discretion¹. We suggest that councils can decide appropriate areas for both non-self-contained

¹ See Ministerial briefing dated 18 November 2021: "Freedom camping - ensuring alignment with the Homelessness Action Plan and proposed approach to reviewing local authority guidance".

vehicle-based camping and tent-based camping, which will not penalise homeless people any further than the current proposals.

We also refer the Select Committee to our previous proposal, that the definition of freedom camping could state that it's an activity conducted by people for a temporary period for recreational purposes. Although this would still require enforcement officers to exercise judgment and discretion in determining whether freedom camping is occurring, a change to the definition of freedom camping would signal a much clearer intention not to penalise homeless people.

If no changes are made to the Bill in relation to freedom camping in tents and temporary structures on local authority land, it's likely we will see an unintentional increase in the use of tents. There may be those who deliberately use the distinction between non-self-contained vehicles and tents/ temporary structures as a way to get around these changes. Freedom campers on a budget will be able to park up and sleep in a cheap tent next to their vehicle, without any provision for being near a toilet or providing for their own toileting needs. In addition, at the end of their freedom camping experience their cheap tents are likely to be discarded rather than 'recycled', which can become another issue that councils must address.

The transitional provisions and post transition period for Council bylaws require clarification

We support the inclusion of transitional provisions for existing bylaws in the Bill but recommend a number of changes be made to clause 7 of Schedule 1AA to ensure its effectiveness. Further thought is also needed in relation to council bylaws beyond the transitional period.

Amendments to clause 7

We recommend:

- Clause 7(1) of Schedule 1AA is revised to ensure that a bylaw that has been amended during the transitional period also remains in force, even though the amendments themselves may revoke or replace parts of the bylaw (either whole clauses or words within a bylaw clause).

If a clarification is not made then some councils, who need to review their bylaws during the transitional period, could find that a review followed by amendments to the bylaw (as provided for in section 13(4)), end up with a bylaw that does not have any force. (Consideration should also be given to putting a 'freeze' on bylaw reviews during the transitional period. Also see our submission regarding bylaw reviews in the next section.)

- Clause 7(2) of Schedule 1AA be amended to delete the words "permitted or authorised". Clause 7(2) could simply state "*...the following matters [regulated - or provided for] in these bylaws continue...*"

Existing freedom camping bylaws provide for restrictions (with conditions), and prohibitions. It is the Act that 'permits' all forms of freedom camping. Although restrictions in a bylaw could be regarded as 'authorising' freedom camping to occur in a certain way, the word 'authorised' is not the language used in the Act.

In addition, the effect of clause 7(3) of Schedule 1AA is not clear. We understand that if an existing freedom camping bylaw has an area restriction, with a condition that freedom camping in a non-self-contained vehicle can occur in that area (which is what clause 11A will also provide for), then that existing bylaw condition (and type of freedom camping) can continue by virtue of clauses 7(1) and (2) (until the end of the transitional period).

However, does clause 7(3) prevent a council making a new bylaw under clause 11A during the transitional period? We doubt that is the intention of clause 7(3) but that means the effect of Subpart 2 of Schedule 1AA overriding section 11A is unclear. The effect of this provision needs to be clarified for councils.

Specific provisions for bylaws after the transitional period

The Bill should clarify what happens to existing bylaws after the transitional period, as well as for bylaw reviews, both during the transitional period and after.

At present the Bill is silent on what happens to existing bylaws at the end of the two-year transitional period. There is no requirement that an existing bylaw must be reviewed during the two-year period (or after), but there is also no clear provision affirming that existing bylaws continue in force after the transitional period (and clause 7 of Sch 1AA may provide support for an argument that existing bylaws do not continue in force beyond the end of the transitional period).

Current position

At present section 13 of the Act requires councils to review a bylaw made under section 11 (and in future also a bylaw made under section 10A and 11A) 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. (Bylaws can also be reviewed and amended as required at any time.)

There will be a variety of dates in play as to whether councils are coming up to a five-year review or are now in a ten-year review cycle. There will also be councils that do not have freedom camping bylaws at all. Bylaw reviews have resourcing, timeframe and cost implications for councils.

Recommendations

LGNZ is happy to work with the Government to address this area in further detail. Our key concern is ensuring that any future requirements avoid unnecessary time or cost for councils. With this in mind we suggest the following amendments to the Bill:

- Inclusion of a provision to make it clear that existing bylaws also continue in force after the transitional period, until they are reviewed by a council in accordance with any existing timeframes (unless reviewed earlier, at the council's choice).

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- Provision for councils to defer the review of a freedom camping bylaw, by resolution, until the end of the transitional period.
 - To aid transition to the new terminology and the requirements in the Act for self-contained vehicles, councils could simply be required to insert the new self-contained vehicle definition in their bylaws without a requirement for consultation. There is precedent for this approach in clause 10 of Schedule 1AA of the Local Government Act 2002 (where councils were able to make necessary amendments to development contributions policy without consultation or formality).
 - Without this ability to adjust bylaws to reflect the transition periods and what constitutes compliance with self-containment requirements, there will be enforcement issues. Section 199 of the Fire and Emergency New Zealand Act 2017 contains a useful approach, enabling a bylaw to be amended by resolution, publicly notified, without the need to consult. This section of the FENZ Act also refers to inconsistencies between bylaws and the Act.

Other issues identified that will need further consideration are:

- If an existing bylaw already provides for freedom camping in vehicles that are not self-contained in certain areas, do those provisions need to be a bylaw made under s11A?
- Freedom camping in vehicles that are not self-contained has to be actively permitted in the future. Therefore if an existing bylaw does not include any relevant provisions, or a council does not have a freedom camping bylaw at all, what provisions should be made? Should it be left to the community to lobby their council, or should councils be required to consider whether or not to make a bylaw under section 11A within a certain time period after the Act comes into force?

Strengthening the offence and enforcement provisions

LGNZ supports the new offences introduced by the Bill, but the following issues need to be addressed to further strengthen the Bill:

- **Proposed new section 20C** now makes it an offence to display an altered or fraudulent warrant card, but there is no new offence for failing to display a warrant card or have a self-containment certificate in the vehicle. It is a requirement to do so in new section 87Y of the Plumbers, Gasfitters, and Drainlayers Act, but there is no offence in that Act either. We understand it's intended there will be an infringement fee for a 'failing to display' offence in the new Regulations, but there needs to be an offence provision that aligns with this.
- **Proposed new section 20E** on penalties means that until the Regulations come into force to set out specific fine levels for different offences, the default fine is increased to \$1000 from the current \$200. We note the explanatory note to the Bill incorrectly describes this as '*continues to be \$1000*', but the current penalties provision in the Act (section 23) states the

current infringement penalty is \$200 (it is section 43 that provides that possible regulations can set fines up to \$1000). LGNZ recommends that section 23 remains in force until the new tiered infringement regime in the new Regulations are in force. This will provide consistency during the transitional period and be easier for councils to enforce.

- **Schedule 1AA should be amended** to include that any warrant issued under new section 87X of the Plumbers, Gasfitters, and Drainlayers Act also provides proof that a vehicle is a certified self-contained vehicle for the purposes of any existing bylaw that relies on the display of a warrant under the existing standard as proof of certification.

During the transitional period, council enforcement officers will continue to enforce freedom camping breaches under current bylaws (through clause 7 of schedule 1AA, and the continuing offence provision in s20(a)). If a current bylaw defines a certified self-contained vehicle as one that complies with the existing standard, and evidence of this is through the display of a warrant under the existing standard, then a vehicle displaying a warrant card under the new regulations does not comply with the bylaw. In the last 12 months of the transitional period there will be an increasing number of new warrant cards, and although it seems unlikely enforcement action would be taken, this point can be clarified by an amendment to Schedule 1AA.

- **The infringement offence of depositing waste should be amended.** The existing offence of depositing waste could be improved by expanding it to include “depositing or leaving rubbish, waste, recycling, equipment or other things”. The word waste does not cover the range of things that are left at campsites that Councils have to clean-up or dispose of, including recycling (glass, cans and plastic bottles), broken camping equipment or other things being left behind.
- **The Bill (or Regulations) should provide for equivalent infringement offence provisions for Reserves Act bylaw camping offences** so there is consistency in managing camping activities on different types of local authority land. While an infringement notice can be issued for camping in a breach of a bylaw made under the Freedom Camping Act, there is no infringement offence for camping in breach of a bylaw made under the Reserves Act, even though the activity being regulated is the same. This lack of consistency causes frustration and confusion for council officers and the public.

Provisions applying to rental car companies

We’re concerned that the changes in the Bill relevant to rental car companies do not go far enough. There is no clear incentive for rental car companies to charge a hirer’s credit card for an infringement, despite the Act providing for this.



Although New Zealand Bill of Rights Act issues have been cited in relation to the failure to include any liability transfer provisions in the Bill, we're concerned that this matter has not been sufficiently investigated. The self-contained vehicle requirements may result in a smaller pool of rental vehicle hirers breaching certification requirements, but there will still be freedom campers in self-contained vehicles that breach other bylaw or Act requirements.

Rental car companies have no difficulty in ensuring toll charges or speeding fines are charged to vehicle hirers. If rental car companies do not take the same approach with freedom camping fines, options are needed for fee recovery from these companies so councils are not left 'out of pocket' for their enforcement of freedom camping.

Carefully crafted offence provisions, or a mandatory levy to be paid by rental car companies in relation to each self-contained vehicle they own, would both avoid Bill of Rights Act issues, but help to ensure council enforcement of freedom camping can be cost neutral.

CONCLUSION

LGNZ thanks the Economic Development, Science and Innovation Committee for the opportunity to submit on the Self-contained Motor Vehicles Legislation Bill. We welcome the opportunity to work with the Government on the recommendations and issues raised in our submission. For further information or if we can be of any assistance, please contact charlotte.mckay@lgnz.co.nz.