



## BRIEFING

### Improving responsible camping - draft discussion document

|                                 |                 |                         |           |
|---------------------------------|-----------------|-------------------------|-----------|
| <b>Date:</b>                    | 28 January 2021 | <b>Priority:</b>        | High      |
| <b>Security classification:</b> | In Confidence   | <b>Tracking number:</b> | 2021-2038 |

| Action sought                                 |  |                 |
|---|--|-----------------|
|   | Action sought  | Deadline        |
| Hon Stuart Nash<br><b>Minister of Tourism</b> | <p><b>Forward</b> this briefing and attached draft discussion document to the Minister of Local Government, Minister of Transport and Minister of Conservation</p> <p><b>Provide</b> feedback on the draft discussion document</p> | 2 February 2021 |

| Contact for telephone discussion (if required) |                                 |             |                            |             |
|--|---------------------------------|-------------|----------------------------|-------------|
| Name   | Position                        | Telephone   |                            | 1st contact |
| Richard Davies                                 | Policy Director, Tourism Branch | 04 901 2059 | Privacy of natural persons | ✓           |
| Fraser Pearce                                  | Senior Advisor, Tourism Policy  | 04 897 5174 | Privacy of natural persons | ✓           |

| The following departments/agencies have been consulted  |
|---|
| Department of Internal Affairs, Department of Conservation, Ministry of Transport, Waka Kotahi New Zealand Transport Agency, Land Information New Zealand |

**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 Withdrawn           |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**



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### Purpose

To seek feedback on your draft discussion document to improve responsible camping in New Zealand. Three options are included in the draft discussion document:

1. Require vehicles with purpose-built sleeping facilities to contain a toilet.
2. Require freedom campers to use a vehicle with a toilet, unless they are staying at a site with toilet facilities.
3. Improve the regulatory tools for government land managers

The discussion document is attached as **Annex two**.

### Recommended actions

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

- a **Provide** feedback to MBIE on the draft discussion document  
*Agree/Disagree*
- b **Forward** the attached documents to the Minister of Local Government, Minister of Transport and Minister of Conservation  
*Agree/Disagree*
- c **Discuss** the draft discussion document with the Minister of Local Government, Minister of Transport and Minister of Conservation in the week beginning 8 February 2021  
*Agree/Disagree*
- d **Note** that MBIE will provide you with an updated discussion document, along with draft Cabinet Paper and Regulatory Impact Statement by 25 February 2021.

*Noted*

Richard Davies  
**Policy Director, Tourism Branch**  
Labour, Science and Enterprise, MBIE

28 / 01 / 2021

Hon Stuart Nash  
**Minister of Tourism**

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## Background

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1. On 13 December 2020 you directed officials to progress work on strengthening the regulatory system for vehicle-based responsible camping (2021-1738 refers). You instructed us to prepare a draft discussion document for public consultation which includes the option to ban the hire, lease and use of vehicles with purpose-built sleeping facilities which are not certified as self-contained.
2. At your meeting with officials on 26 January 2021, you gave further direction on the high-level timeframe and proposals to include in the draft discussion document and the 2021 Legislation Programme Bid (2021-2039 refers). You requested that the discussion document include consultation on:
  - a. how the Self-Contained Vehicle Standard (SCVS) could be strengthened (its administration and/or content); and
  - b. the scale of options for penalties, including vehicle confiscation.

## Draft discussion document

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3. A draft discussion document is attached for your feedback. The discussion document provides an overview of responsible camping in New Zealand as well as the SCVS, and invites feedback on:
  - a. Government's vision for responsible camping in New Zealand.
  - b. Three proposed options:
    - i. Require vehicles with purpose-built sleeping facilities to contain a toilet. Under this option the sale, lease and use of such vehicles would be prohibited if they are not certified as having a toilet. The requirement for a toilet could be achieved either through prescribing the requirements relating to a toilet (including potentially a fixed toilet) or specifying that the vehicle must meet the SCVS.
    - ii. Require freedom campers to use a vehicle with a toilet, unless they are staying at a site with toilet facilities. There would be exceptions: public conservation lands and regional parks, where freedom camping without a toilet is normal; and urban areas, where freedom camping is able to be managed through bylaws.
    - iii. Improve the regulatory tools for government land managers. This option could be implemented alongside either of the first two options or stand alone. It could entail:
      - higher penalties for infringements
      - creating a regulatory system for self-contained vehicles (register of vehicles, accreditation and auditing of issuing authorities and testing officers).
  - c. The SCVS, and whether the requirements for self-containment need to be higher.
  - d. Transition arrangements.

## Penalties to include in draft discussion document

4. At your meeting with officials on 26 January, you indicated that you wanted the draft discussion document to include vehicle confiscation as an option for penalty for non-compliance. The document seeks feedback on what level infringement fees should be set at

and also asks whether the existing confiscation power in the Freedom Camping Act 2011 should have a lower threshold.

*The Freedom Camping Act 2011 allows for vehicle seizure*

5. Section 37 of the Freedom Camping Act 2011 (the Act) allows enforcement officers to seize and impound property in a local authority area or on conservation land:
  - a. if the property has been or is being used in the commission of an offence; and
  - b. if it is reasonable in the circumstances to seize and impound the property or it is necessary for public health and safety, to protect flora or fauna, to ensure access, or to prevent ongoing commission of the offence; and
  - c. if someone is in the vehicle at the time, the officer must give the person an opportunity to stop committing the offence
6. Any seized property must be returned if the property is, in the future, not likely to be used in any offence of the kind for which it was seized; and the owner has paid, or will pay, the costs associated with seizing, impounding, transporting and storing the property.

*Government would need to consider the proportionality of offending if it was to strengthen the penalty regime*

7. The Ministry of Justice guidelines on infringement schemes advises that consideration must be given to:
  - a. the level of harm involved in the offending
  - b. the affordability and appropriateness of the penalty for the target group
  - c. whether the proposed fee is commensurate with the infringement fees for other comparable infringement offences.

*Comparable penalties and infringement fees*

8. Confiscation of vehicles is generally limited to incidents involving danger to others (such as reckless driving, or drunk driving), or debt recovery. However, as noted above, the Act allows for vehicle confiscation in a relatively wide range of serious circumstances. Officials need to explore in more detail in what further circumstances vehicle confiscation would be considered a proportionate penalty. The discussion document asks whether it should be available as a penalty for non-compliant vehicles (under any of the options).
9. The Ministry of Justice guidance suggests that higher infringement fees (greater than \$1000) should be limited to deterring offending where a significant economic benefit can result for the offender, for example avoiding Road User Charges. It is possible the sale of vehicles may fall within this definition, and officials will seek further legal advice on this.
10. There are two other regimes that are worth considering when setting infringement fees:

| <b>Regime</b>            | <b>Infringement</b>                     | <b>Fine</b>  | <b>Primary driver for regime</b> |
|--------------------------|---|--------------|----------------------------------|
| Warrant of Fitness (WOF) | Vehicle without a current WOF           | \$200        | Safety                           |
|                          | Operating an unsafe vehicle of the road | Up to \$2000 | Safety                           |

|         |   |                                     |                        |
|---------|---|-------------------------------------|------------------------|
| Parking | Exceeding parking limit, not paying parking fee, parking in prohibited spaces | Varies significantly<br>\$10 - \$60 | Rationing,<br>Nuisance |
|---------|---|-------------------------------------|------------------------|

11. In terms of proportionality, failing to meet self-contained vehicle requirements and the potential nuisance that would create, would likely fall somewhere between the two regimes in the table above.

## Further information on the SCVS

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12. At your 26 January 2021 meeting with officials, you requested clarification about the minimum requirements for the SCVS, and whether a bucket could qualify as a toilet under the SCVS.
13. Under the SCVS, a vehicle that has a bucket for a toilet should not be certified by the testing officer as meeting the standard. However, as there is no register of certificates of self-containment, we are unable to determine whether some testing officers have inappropriately signed off such an arrangement.
14. The key minimum requirements of the SCVS are that the vehicle is:
- a. Equipped with a toilet that is adequately secured when travelling and is usable within the vehicle, including sufficient head and elbow room whenever required, even with the bed made up. The toilet must provide sufficient waste holding capacity for the occupants for a minimum of three days. The SCVS defines toilet types as follows:
    - i. cassette toilet – a fixed toilet with a removable holding tank
    - ii. composting toilet – a toilet that is an aerobic processing system to treat human waste, by composting. Where any waste water is separated it shall be via a black water tank
    - iii. efficiency flushing toilet – a toilet which is flushed by a small volume of water
    - iv. marine toilet – a fixed flushing toilet with a macerator pump, either manual or electrically operated
    - v. permanent toilet – a toilet that is permanently fixed inside the motor caravan
    - vi. portable toilet – a toilet with its own holding tank, the toilet is not fixed to the motor caravan.
  - b. Provided with a sealable solid waste container for rubbish
  - c. Fitted with water supply tank(s), having a capacity of not less than 4 L per person for a minimum of three days – transportable, individual containers are acceptable
  - d. Equipped with a sink
  - e. Provided with waste tank(s) to receive all the waste water from permanently installed fixtures, with corresponding capacity.
15. The SCVS also defines motor caravan and caravan. A motor caravan is a motor vehicle, which can be used as a place of abode, and contains facilities for cooking, eating, sleeping and washing, and is not a passenger service vehicle. A caravan is a structure defined for human habitation, capable of being moved from one place to another by being towed or transported on another vehicle.

16. The Responsible Camping Working Group has not advised of any widespread concerns with the SCVS. However, it has previously advised government that the administration and government support of the SCVS could be strengthened. The Working Group noted that improvements could include increasing penalties and introducing a national database for self-contained vehicles.

## **Other agencies' views**

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17. We have held preliminary discussions about the options we have included in the draft discussion document with the Department of Conservation, Department of Internal Affairs, Ministry of Transport, Waka Kotahi | New Zealand Transport Agency and Land Information New Zealand.
18. The agencies have expressed reservations about option 1, and have not indicated any views about option 2. DIA and DOC support option 3, as this aligns very closely with the recommendations of the Responsible Camping Working Group.
19. A particular reservation about option 1 raised by the Ministry of Transport and Waka Kotahi is that the transport regulatory system, and Waka Kotahi as the regulator, are not the appropriate means for regulating self-containment of vehicles. They note that the transport regulatory system is restricted to safety.

## **Public Consultation**

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20. In order to meet your preferred timeframe, we recommend a four-week consultation period, across March and April 2021. The public consultation will likely include:
  - a. email and paper submissions
  - b. an online form, which will support submissions analysis
  - c. public meetings at locations in New Zealand which experience high numbers of freedom campers
  - d. targeted meetings with key stakeholders including industry, local government and user groups
  - e. Māori groups.
21. Further information on public consultation will be included in a future briefing to you.

## **Next steps**

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### **Upcoming meetings**

22. We recommend circulating this briefing and the draft discussion document to your ministerial colleagues with an interest in this policy issue (Ministers of Local Government, Transport, and Conservation), and discussing it with them during the week of 8 February 2021. These Ministers have an interest in the legislation which the regulatory proposals could amend.
23. You are also attending a Responsible Camping Working Group meeting on 11 February, which we will provide an event briefing for.
24. Both meetings would provide you with the opportunity to further test your policy proposals.

## **Updated materials for public consultation**

25. We will provide you with an amended discussion document, draft Cabinet paper and Regulatory Impact Statement by 25 February 2021. This would see you undertaking any further ministerial consultation and providing final directions to officials in the subsequent days, and the papers being lodged with Cabinet Office on 4 March for Cabinet Economic Development Committee on 10 March. The detailed timeline is attached at Annex One.
26. We will also use the weekly report to update you on any minor amendments or queries relating to the draft discussion document.

## **Annexes**

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Annex one: Timeline

Annex two: Draft Discussion Document

## Annex One: Timeline

|                        |  |
|------------------------|--|
| Week of 25 January     | Minister receives draft discussion document by Thursday 28 January and circulates to Ministerial colleagues  |
| Week of 1 February     | Ministers review draft discussion document   |
| Week of 8 February     | Ministerial meeting (Tourism, Local Government, Transport, Conservation)<br>Minister of Tourism meeting with Responsible Camping Working Group (Scheduled for 11 February)<br>Minister provides direction to officials about any amendments he wishes to make to draft discussion document |
| Week of 15 February    | Officials to: <ul style="list-style-type: none"> <li>• amend discussion document as required</li> <li>• circulate, with draft Cabinet paper, to agencies for inter-agency consultation – feedback by end of week</li> </ul>  |
| Week of 22 February    | Minister receives draft Cabinet paper, updated draft discussion document and regulatory impact statement by Thursday 25 February   |
| Week of 1 March        | Minister reviews documents and consults with colleagues; directs officials to make any necessary amendments<br>Cabinet paper and draft discussion document lodged Thursday 4 March   |
| Week of 8 March        | DEV Cabinet Committee Wednesday 10 March   |
| Week of 15 March       | Cabinet<br>Minister press statement and release of discussion document for four-week period of public consultation   |
| Mid-March to mid-April | Officials (and Minister, if you agree) hold targeted and public consultation meetings  |
| Week of 12 April       | Public consultation concludes  |
| Mid-April to mid-May   | Officials to undertake submissions analysis  |
| Late May               | Officials to provide advice to the Minister and seek direction for Cabinet paper seeking final policy decisions  |
| June                   | Cabinet makes final policy decisions<br>Drafting instructions issued to PCO  |
| June – August          | Drafting by PCO and BORA vet   |
| September              | LEG Cabinet Committee  |
| September              | Introduction of the Bill and first reading (assumes priority)  |
| October - November     | Select Committee   |
| December               | Enactment  |
| 2022                   | Regulations developed and commence   |



**Annex Two: Draft Discussion Document**

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