



BRIEFING

Freedom Camping Regulations – Proposed Infringement Fees and Fines

Date:	16 March 2022	Priority:	Medium
Security classification:	In Confidence	Tracking number:	2122-2952

Action sought		
	Action sought	Deadline
Hon Stuart Nash Minister of Tourism	Approve the proposed infringement fees and fines be included in the Freedom Camping Regulations discussion paper	23 March 2022

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

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 Withdrawn |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 – Proposed Infringement Fees and Fines

Date:	16 March 2022	Priority:	Medium
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Purpose

To seek your agreement to the proposed infringement fees and maximum fines being included in the Freedom Camping Regulations discussion paper.

Executive summary

1. Officials are developing a discussion paper on proposed Freedom Camping Regulations. The aim is for the paper to be released for public feedback around the same time as the Freedom Camping Bill is referred to Select Committee.
2. This briefing considers a range of possible infringement fees and maximum fines, and recommends the inclusion of the proposed infringement fees and fines in the discussion paper.

Recommended action

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

- a **Note** that the Freedom Camping Bill will provide for regulations to set out the level of infringement fee and fine associated with each infringement offence.

Noted

- b **Note**, that MBIE proposes assigning offences to a fee tier as follows:

- a. \$800 - where actual damage or adverse impacts have occurred
- b. \$600 - where there is an intent to deceive
- c. \$400 – where there is a breach of national or local restrictions
- d. \$200 – administrative breaches.

Noted

- c **Note**, that MBIE proposes assigning maximum fines for infringement offences at triple the amount of the prescribed infringement fee.

Noted

- d **Agree** that the Freedom Camping Regulations discussion document include MBIE's proposed new fee and maximum fine for each existing and new infringement offence, as set out in Appendix One.

Agree / Disagree

e **Note** that you will receive further briefings on other key sections of the Regulations discussion document

Noted



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

16 / 03 / 2022

Hon Stuart Nash
Minister of Tourism

..... / /

Background

3. Officials are developing a discussion paper on proposed Freedom Camping Regulations. The aim is for the paper to be released for public feedback around the same time as the Freedom Camping Bill is referred to Select Committee. This timing will enable submitters to see the proposed regulatory system in its entirety, and allow for considered submissions to the Select Committee.
4. The discussion paper will cover the following:
 - a. Infringement fees
 - b. Technical requirements for self-containment certifications
 - c. Criteria for an organisation to be approved as a certification authority
 - d. Competency requirements for vehicle inspectors
 - e. Application process for certification authority approval
 - f. Format of the self-containment certificate and warrant card
 - g. Exemptions
 - h. Fees and levies
5. Your agreement will be sought on the details of each of these through a series of briefings, of which this is the first.

The Freedom Camping Act 2011 Infringement system and its limitations

6. As is common across the Statute Book, the Freedom Camping Act 2011 contains an infringement system. Infringement systems provide a proportionate response to low-level offending, which avoids the formality of court proceedings and does not impose a full criminal penalty – instead each offence includes a set infringement fee. The system is designed to complement criminal offences designed to address higher-level offending, such as intentionally preventing enforcement officers from carrying out their functions or duties, and discharging noxious substances on conservation land in a way that is likely to have a significant adverse effect.
7. Section 20(1) of the Freedom Camping Act 2011 sets out a series of infringement offences. These infringement offences range from freedom camping in a local authority area in breach of a prohibition or restriction made in a council bylaw to inappropriately depositing waste on conservation land. An enforcement officer may issue an infringement notice to anyone who commits an infringement offence, which requires the person to pay a fee of \$200.
8. Issues with the current system is that the infringement scheme is low, with fines all being \$200 irrespective of the offence committed, and low collection rates.
9. On 27 October 2021, the Cabinet Economic Development Committee agreed to a number of policy changes to strengthen the infringement system, including [DEV-21-MIN-0219 refers]:
 - a. moving away from a \$200 instant fine to a tiered scheme where the instant fine will vary depending of the seriousness of the offence (up to a maximum of \$1,000)
 - b. giving enforcement authorities the option of issuing infringement notices by email so that they get to the vehicle owner or hirer much quicker
 - c. reducing the payment period for infringements from 28 days down to 14 days so that fines get paid before an overseas visitor leaves NZ

- d. making rental companies liable for paying the fines where infringements are issued to them as the vehicle owner (rather than to the hirer) but with the ability for them to in turn recover the fine money from hirers.
10. Many of these changes will be made in a Freedom Camping Bill. Freedom Camping Regulations will set out the technical detail around the infringement system, most notably the level of the fee attached to each offence.
11. You recently received our paper on procedural changes to drafting instructions for the Freedom Camping Bill (Briefing 2122-2662) refers. One of the recommendations in that briefing is to amend the Freedom Camping Act to enable regulations to prescribe maximum infringement fines of up to \$3,000 for new and existing infringement offences. We note that you agreed to this recommendation, and so we would look to include maximum fine levels for each offence in the discussion document.

Proposed Infringement Fees and maximum Fines

Changes agreed by Cabinet

12. On 27 October 2021, the Cabinet Economic Development Committee agreed to the introduction of a tiered system for freedom camping infringement fees, with tiers of \$200, \$400, \$600, \$800 and the maximum of \$1,000 [DEV-21-MIN-0219 refers].
13. This tiered system will replace the current system, where every infringement fee is \$200, irrespective of the severity of the infringement offence committed.
14. The proposed tiered set of infringement fees seeks to enhance deterrence and make enforcement more effective.

Considerations in assigning an offence to the appropriate tier

15. The approach we have taken in determining the right tier for each infringement offence has taken into account the Ministry of Justice's Policy Framework for New Infringement Systems, and Legislation Design Advisory Committee Guidelines.
16. We were also keen to align the proposed infringement fees with similar conservation-related infringement fees where possible. In particular, there are infringement offences (e.g. inappropriate disposal of litter/animal products and undertaking inappropriate activities in restricted or prohibited areas) in the Conservation (Infringement Offences) Regulations 2019 and the Reserves (Infringement Offences) Regulations 2019 that are similar to freedom camping infringement offences. To ensure alignment, we sought input from the Department of Conservation is developing the proposed infringement fees.

We are not proposing that the maximum \$1,000 be applied

17. We have opted to assign offences to a tier as follows for the purposes of the discussion document:
 - a. \$800 - where actual damage or adverse impacts have occurred
 - b. \$600 - where there is an intent to deceive
 - c. \$400 – where there is a breach of national or local restrictions
 - d. \$200 – administrative breaches.
18. We are therefore not proposing that any infringement fees be set at the \$1,000 maximum allowed under the Act. We want to encourage compliance rather than unduly penalising freedom campers. Our sense is that an instant \$1,000 fine is likely to be perceived as excessive and unfair, and potentially not be paid. We note that \$800 is also the highest

infringement fee under the Conservation (Infringement Offences) Regulations 2019 and the Reserves (Infringement Offences) Regulations 2019.

19. That said, we did consider making the existing criminal offence under Section 20(2) of the Freedom Camping Act an infringement offence, and assigning \$1,000 to it. This offence involves: *'discharging a substance in or on a local authority area or conservation land in circumstances where the discharge of the substance is likely to be noxious, dangerous, offensive, or objectionable to such an extent that it-*
 - (a) has, or is likely to have, a significant adverse effect on the environment; or*
 - (b) has caused, or is likely to cause, significant concern to the community or users of the area or land'.*
20. This offence differs from infringement offences in that it seeks to deter and, if necessary, punish serious non-compliance with obligations not to inappropriately dispose of noxious, dangerous, offensive or objectionable substances. A person convicted of this offence is liable to a fine of up to \$10,000. A conviction would also be entered on the person's criminal record. In addition, this offence is not a strict liability offence and requires a subjective assessment as to whether actual or potential harm was significant or not. As such, on balance, we consider that it should remain a criminal offence.

We are not proposing any infringement fees below the current \$200 fee

21. We are also not proposing that any infringement fees be set below the current level of \$200. We consider that this is a reasonable minimum infringement fee given the nature and seriousness of freedom camping infringement offences.

We are proposing to introduce new infringement offences for non-compliance with self-containment requirements

22. We also propose adding new infringement offences relating to minor non-compliance with self-containment obligations. The rationale for doing so is that the regulatory system for self-containment is new, and every regulatory system needs a set of appropriate sanctions to help deter, and also address, behaviour that breaches the rules. Providing a set of credible infringement offences and sanctions will strengthen the regulatory system for self-containment by ensuring that a breach of the obligations is subject to an appropriate penalty.
23. Parliamentary Counsel Office will determine whether the new infringement offences will be provided in the Bill or in Regulations. However, the fees associated for each infringement offence will be set out in Regulations. The types of non-compliance we think should be subject to an infringement offence are:
 - a. displaying a false or misleading warrant card
 - b. providing a false or misleading self-containment certificate to an enforcement officer
 - c. failing to provide the self-containment certificate when requested by an enforcement officer
 - d. failing to display the self-containment warrant
 - e. freedom camping with an expired self-containment certificate, warrant or sticker
 - f. freedom camping in excess of the maximum number of people specified on the self-containment certificate, warrant or sticker
 - g. freedom camping in a motor vehicle that is not self-contained in an area in which freedom camping can only occur in self-contained vehicles.

24. We propose including these infringement offences and an appropriate infringement fee in the discussion document. Similar to our discussions above on infringement fee tiers, we have suggested appropriate fees based on the relative level of harm associated with each infringement offence and to align with similar infringement regimes. We want to encourage compliance rather than unduly penalising freedom campers.

We propose consulting on a statutory maximum fine triple the level of the associated infringement fee

25. As noted in Briefing *Freedom Camping Bill – addition of procedural changes to drafting instructions* [Briefing 2122-2662 refers], we propose setting a statutory maximum fine at triple the level of the associated infringement fee.
26. While there is considerable inconsistency in how infringement offence provisions are drafted across the statute book, current best practice is to set a maximum infringement fine at triple the amount of the infringement fee. Maximum infringement fines are set significantly higher than infringement fees to dissuade persons served infringement notices from failing to pay the initial fee or from frivolously challenging the notice in court. As such, regulations would prescribe infringement fees of between \$200 - \$1000, and maximum infringement fines of between \$600 - \$3000 for individual offences.

Annex One lists the proposed levels for infringement fees and maximum fines

27. The proposed infringement fees and maximum fines, and more detailed rationale, are set out in **Annex One**. We have assigned both existing and proposed new infringement offences to one of these tiers. The new offences, in red font, are subject to the Freedom Camping Bill being drafted so are only tentative at this stage. Please note that the current list is not necessarily final and may change during Bill drafting and subsequent departmental consultation.

We are however proposing creating disciplinary offences rather than infringement offences for certification authorities

28. Consideration was also given to introducing infringement fees for offences committed by certification authorities, such as issuing a false certificate. This is not preferred however, because such offences are more of a disciplinary nature given that certification authorities are approved by the Plumbers, Gasfitters and Drainlayers Board (PGDB).
29. The PGDB already has a range of disciplinary powers in section 106 of the Plumbers, Gasfitters and Drainlayers Act 2006, that it can apply plumbers who have been found to have committed a disciplinary offence. These include suspension, stopping re-approval for a set period, mandatory training, a fine of up to \$10,000, and ultimately, licence revocation. We propose that these same powers be able to be applied to approved certification authorities. We consider that this range of powers, which will be set out in the Freedom Camping Bill, will be more effective than solely relying on instant fines, as they will enable the Board to take proportionate enforcement action against non-compliant certification authorities.

Next steps

30. If you agree to these proposed infringement fees and maximum fines, officials will include them in the draft Freedom Camping Regulations discussion paper.
31. The Ministry of Justice will need to be consulted on the approach to infringement offences, fees and fines before the Bill goes to the Cabinet Legislation Committee. We plan to undertake this consultation following your feedback on this briefing, and discussions with Parliamentary Counsel Office about whether infringement offences will be in the Act or in Regulations.

32. Similar briefings on the other matters to be included in the discussion paper will be submitted to your office over the coming weeks.

Annex One – Proposed Infringement Fees

Offence	Current Fee	Proposed Fee	Proposed maximum Fine	Comments
<p>While freedom camping in a local authority area, interferes with or damages the area, its flora or fauna, or any other structures in the area</p> <p>While freedom on conservation land, interferes with or damages the area, its flora or fauna, or any other structures in the area</p>	\$200	\$800	\$2,400	<p>Causes actual harm</p> <p>Aligns with similar DOC infringement fees</p>
<p>While freedom camping in a local authority area, deposits waste in or on the area (other than into an appropriate waste receptacle)</p> <p>While freedom camping on conservation land, deposits waste in or on the area (other than into an appropriate waste receptacle)</p>	\$200	\$800	\$2,400	Causes harm
<p>Deposits waste, generated while freedom camping, in or on a local authority area other than into an appropriate water receptacle</p> <p>Deposits waste, generated while freedom camping, on conservation land other than into an appropriate water receptacle</p>	\$200	\$800	\$2,400	Causes harm
Refuses to give information when required to do so by an enforcement officer or gives false or misleading information	\$200	\$600	\$1,800	Intent to deceive
Displaying a false or misleading warrant card	NEW	\$600	\$1,800	Intent to deceive
Providing a false or misleading self-containment certificate to an enforcement officer	NEW	\$600	\$1,800	Intent to deceive
Freedom camping in a motor vehicle that is not self-contained in an area in which freedom camping can only occur in self-contained vehicles	NEW	\$400	\$1,200	Higher level offence – vehicle is not self-contained

Freedom camps in a local authority area in breach of any prohibition or restriction in a bylaw	\$200	\$400	\$1,200	Consistency with similar DOC infringement fees and with proposed new infringement offences
Freedom camps on conservation land in breach of any prohibition or restriction in a freedom camping notice	\$200	\$400	\$1,200	
Makes preparation to freedom camp in a local authority area in breach of any prohibition or restriction in a bylaw	\$200	\$400	\$1,200	Is not actually freedom camping but will breach a prohibition if it goes on to become freedom camping
Makes preparation to freedom camp on conservation land in breach of any prohibition or restriction in a freedom camping notice	\$200	\$400	\$1,200	
Freedom camping in excess of the maximum number of people specified on the self-containment certificate, warrant or sticker	NEW	\$400	\$1,200	Lower level offence, similar to breaching a restriction
Failing to provide the self-containment certificate when requested by an enforcement officer	NEW	\$200	\$600	Vehicle is self-contained but the certificate cannot be provided upon request so makes enforcement difficult
Failing to display the self-containment warrant	NEW	\$200	\$600	Vehicle is self-contained but the warrant sticker is not displayed so makes enforcement difficult
Freedom camping with an expired self-containment certificate, warrant or sticker	NEW	\$200	\$600	Lower level offence, depending on duration of expiry

