



BRIEFING

Freedom Camping – alignment with right to adequate housing under the International Covenant on Economic, Social and Cultural Rights

Date:	6 July 2022	Priority:	Medium
Security classification:	In Confidence	Tracking number:	MBIE: 2122-4122 HUD: BRF21/22051327

Action sought		
	Action sought	Deadline
Hon Dr Megan Woods Minister of Housing Hon Stuart Nash Minister of Tourism	Note that officials advise that the approach to people experiencing homelessness in the Freedom Camping Bill is not in breach of International Covenant on Economic Social and Cultural Rights	11 July 2022
Hon Marama Davidson Associate Minister of Housing (Homelessness)	For your information.	N/A

Contact for telephone discussion (if required)				
Name	Position	Telephone		1st contact
Dale Elvy	Manager, Tourism Policy, MBIE	Privacy of natural persons	Privacy of natural persons	✓
Charlie Russell	Manager, Homelessness, HUD	Privacy of natural persons		✓
Will Cosgriff	Senior Policy Advisor, Tourism Policy, MBIE	Privacy of natural persons		-
Privacy of natural persons	Policy Advisor, Housing Needs and Responses, HUD	Privacy of natural persons		-

The following departments/agencies have been consulted
Ministry of Social Development, Kāinga Ora, Crown Law, Local Government New Zealand (in relation to the review of the Guidance)

Minister's office to complete:

Approved

Declined

Noted

Needs change

Seen

Overtaken by Events

See Minister's Notes

Withdrawn

Comments

BRIEFING

Freedom Camping – alignment with right to adequate housing under the International Covenant on Economic, Social and Cultural Rights

Date:	29 June 2022	Priority:	Medium
Security classification:	In Confidence	Tracking number:	MBIE: 2122-4122 HUD: BRF21/22051327

Purpose

To report back on how the proposed approach to those experiencing homelessness under the Freedom Camping Bill (the Bill) relates to the right to adequate housing under the International Covenant on Economic, Social and Cultural Rights (ICESCR).

Executive summary

On Wednesday 27 October 2021, the Cabinet Economic Development Committee (DEV) directed the Ministry of Business, Innovation and Employment (MBIE) and Te Tūāpapa Kura Kāinga – Ministry of Housing and Urban Development (HUD) to ensure that 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.

On 18 November 2021, HUD and MBIE provided you with a joint briefing [Briefing 2122-1610 refers] seeking your agreement to the approach for reviewing the guidance available to local authorities. When consulting on this briefing the Crown Law Office (Crown Law) suggested we explore whether the International Covenant on Economic, Social and Cultural Rights (ICESCR), specifically Article 11 which relates to the right to housing, should be considered in the context of the new rule (for example, whether the new rule engages consideration of the rights affirmed by the ICESCR).

Legal professional privilege

[REDACTED]

People experiencing homelessness could, at first glance, come within the Freedom Camping Act 2011 (the Act) definition of freedom camping and therefore be subject to its regulatory regime.¹ However, the current approach agreed by Cabinet [DEV-21-MIN-0219 refers] encourages enforcement authorities to apply appropriate discretion to avoid issuing infringement notices and direct the individual to support available. This focusses on the needs of individuals experiencing homelessness and also aligns with the Aotearoa New Zealand Homelessness Action Plan (Homelessness Action Plan).

Legal professional privilege [REDACTED] we do not consider that changes to the Bill are necessary based on New Zealand's obligations under the ICESCR.

¹ The Freedom Camping Act 2011 defines freedom camping as camping in specified areas using a tent or other temporary structure; a caravan; or a car, campervan, housetruck or other motor vehicle.

As previously agreed, we will review the guidance available to local authorities on how they can mitigate the risk that those experiencing homelessness are penalised under the Act and are instead provided appropriate support that meets their needs.

Recommended action

The Ministry of Business, Innovation and Employment (MBIE) and Te Tūāpapa Kura Kāinga – Ministry of Housing and Urban Development (HUD) recommends that you:

- a **Note** that officials advise that the proposed freedom camping changes would not give rise to a breach of Article 11 of the ICESCR
Noted
- b **Note** that the proposed freedom camping changes and proposed approach to homelessness in the Bill could be included in future ICESCR reporting
Noted
- c **Note** that changes are not required to the Bill based on Crown Law’s consideration of New Zealand’s obligations under ICESCR
Noted
- d **Note** that reviewing the guidance available for local authorities on freedom camping will provide a further opportunity to limit the chance that those experiencing homelessness are subject to infringement notices under the Act
Noted



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

28 / 06 / 2022



Charlie Russell,
Manager, Homelessness,
Intelligence and System Direction, HUD

04 / 07 / 2022

Hon Stuart Nash
Minister of Tourism

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Hon Megan Woods
Minister of Housing

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Background

1. On Wednesday 27 October 2021, DEV agreed to the suite of freedom camping proposals put forward by the Minister of Tourism, Hon Stuart Nash, to ensure New Zealand has a sustainable freedom camping system [DEV-21-MIN-0219 refers].
2. DEV also directed MBIE and HUD to ensure alignment with the Aotearoa New Zealand Homelessness Action Plan (the Homelessness Action Plan) and to 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.
3. On 18 November 2021, MBIE and HUD provided you with a joint briefing [Briefing 2122-1610 refers] seeking your agreement to the approach for reviewing the guidance available to local authorities on how they can mitigate the risk that those experiencing homelessness are subject to infringement notices under the Freedom Camping Act 2011 (the Act).
4. In this briefing MBIE and HUD also highlighted that Crown Law had noted that we could explore whether the International Covenant on Economic, Social and Cultural Rights (ICESCR), specifically Article 11 which relates to the right to housing, should be considered in the context of the new rule (for example, whether the new rule engages consideration of the rights affirmed by the ICESCR).
5. We indicated that we would report back on Crown Law's comment relating to the ICESCR prior to Cabinet Legislation Committee consideration on the draft Freedom Camping Bill (the Bill).

Discussion

6. This discussion focuses on how the approach to those experiencing homelessness under the Bill relates to the right to adequate housing under the ICESCR.

Obligations under ICESCR

7. Article 11(1) of the ICESCR states that:
“The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent.”
8. Article 11 requires State parties to make efforts to realise the right to adequate housing, and the continuous improvement of living conditions. The UN Committee on Economic, Social and Cultural Rights, in General Comment No. 4, requires State parties to develop strategies and policies that prioritise the housing needs of the most vulnerable in society, and to adequately fund, monitor and enforce the implementation of their policies (Annex III, of ICESCR [11]-[17]).
9. In 2019, the UN Special Rapporteur on the right to adequate housing set out guidelines which outline key elements needed for the effective implementation of the right to housing under the ICESCR. One of these guidelines instructs states to repeal all laws and measures that criminalise or penalise people experiencing homelessness or behaviour associated with homelessness, such as sleeping or eating in public spaces.²

² <https://www.ohchr.org/en/special-procedures/sr-housing/guidelines-implementation-right-adequate-housing>

10. The Special Rapporteur visited New Zealand in February 2020. Their related report highlighted that:

The Special Rapporteur learned that many people avoided sleeping on the streets by living in their cars or camper vans, and that some lived in those conditions for many months, if not longer. These housing conditions are obviously grossly inadequate and non-compliant with international human rights law. The Special Rapporteur notes, however, that most people living in their vehicles are not criminalized for doing so. Persons who do not have access to adequate or affordable housing should not be persecuted or criminalized for resorting to the few possessions they have to shelter themselves. The Special Rapporteur learned that in some cities, unfortunately, those living vehicles or camping have been fined.

11. A relevant recommendation from that report stated that New Zealand should:

Refrain from adopting or implementing laws or by-laws that serve to criminalize homelessness, including living in cars, campervans or tents.

Legal professional privilege

[REDACTED]

The proposed approach to homelessness in the Bill

17. The Bill prohibits freedom camping in certain areas. The Bill will require freedom campers staying in vehicles to use a certified self-contained vehicle, unless staying at a site designated by the local authority as being suitable for non-self-contained vehicles. The Bill will also introduce higher penalties through a tiered infringement system.
18. People experiencing homelessness could, at first glance, be subject to the freedom camping rules. If the Bill is passed, they would also be required to meet stricter vehicle regulations and could face higher penalties.
19. However, the approach agreed by Cabinet [DEV-21-MIN-0219 refers] encourages enforcement authorities to apply appropriate discretion to avoid issuing infringement notices to people experiencing homelessness and ensure they have access to information on available supports and services. This discretionary approach is the same approach currently taken under the Act.
20. This approach will involve Local Government New Zealand (LGNZ) reviewing the existing guidance and providing commentary in the Bill's Legislative Statement. This approach aims

to mitigate the risk that people experiencing homelessness are penalised under the Act and focusses on ensuring their needs are met.

21. The proposed Bill is being drafted on this basis. We note that this approach is also consistent with the Homelessness Action Plan which provides a guiding framework and broad package of actions to prevent and reduce homelessness in New Zealand [Briefing 2122-1610 refers].
22. Legal professional privilege MBIE and HUD do not consider further changes are required to the Bill based on New Zealand's obligations under the ICESCR.

Local Government New Zealand guidance review

23. The *Good practice guide for freedom camping* (the guidance) administered by LGNZ covers all aspects of freedom camping, including how to approach those experiencing homelessness. The guidance outlines that "councils should avoid using their freedom camping bylaws to move on people who are genuinely homeless". The guidance also highlights that good practice is to approach homelessness as a joined-up agency approach directing individuals to relevant support such as the Salvation Army or iwi social providers.
24. As mentioned, the Special Rapporteur said there have been instances of people experiencing homelessness being penalised. LGNZ has noted that it will review the guidance they administer and are open to working with government agencies as part of this process. The review of the guidance will consider how to mitigate the risk that those experiencing homelessness are penalised under the Act, and are instead provided appropriate support to address their needs. As part of this review, we will consider whether there is a need for other agencies to issue additional guidance.
25. MBIE has previously indicated that the review of the guidance would align with Select Committee process, however, MBIE now advises that it would be more appropriate to undertake the review after the Bill has progressed through the Select Committee process. This is because, in order to develop appropriate guidance, we need to know exactly what is included in the Bill as any changes at the Select Committee stage may alter the nature of the guidance.
26. The revised guidance relating to homelessness will need to be in place within six months of the Bill being passed, to coincide with regulations that give effect to the new regulatory system coming into force.
27. Notwithstanding the above, there is a risk that there will be criticism from the public that the Bill ostensibly penalises homelessness. This is particularly likely to arise through the Select Committee and Regulations Discussion Document submissions. MBIE will ensure any views expressed through submissions are addressed. We will ensure there is clear communication on this guidance so the rationale for the proposed approach is clear for those who will implement it.

Next steps

28. MBIE officials will provide support as the Bill progresses through the Select Committee process, particularly in relation to how those experiencing homelessness will be impacted by the Bill. This will be incorporated into departmental advice to the Select Committee.
29. MBIE and HUD officials will also provide an update to you on the steps taken to review the freedom camping advice related to homelessness following the Select Committee process.
30. This is one of seven freedom camping related briefings/aide memoires MBIE will provide the Minister of Tourism over the next few months, the others are:

- a. Approval for consultation: Self-Contained Motor Vehicles Legislation Bill and LEG paper [2122-4727 refers] – provided to Minister on 28 June 2022
- b. Freedom Camping – design for transition funding to councils [2122-2398 refers]
- c. Approval for lodgement: Self-Contained Motor Vehicles Legislation Bill [2122-4873]
- d. Talking Points for LEG Committee 28 July 2022: Self-Contained Motor Vehicles Legislation Bill Aide [2122-4895 refers]
- e. Introduction speeches – Self-Contained Motor Vehicles Legislation Bill [2122-5060 refers]
- f. Freedom Camping Regulations discussion document [2122-4548 refers].