



BRIEFING

Freedom Camping Bill – addition of procedural changes to drafting instructions

Date:	2 March 2022	Priority:	Medium
Security classification:	In Confidence	Tracking number:	2122-2662

Action sought		
	Action sought	Deadline
Hon Stuart Nash Minister of Tourism	Approve the addition of several procedural changes to the Freedom Camping Bill drafting instructions.	8 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	✓
Craig Hill	Principal Policy Advisor, Tourism Policy	-	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 Withdrawn |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



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Purpose

To seek your agreement to the addition of several procedural changes to the Freedom Camping Bill drafting instructions.

Executive summary

1. This briefing seeks your agreement to the addition of the following procedural changes to the Freedom Camping Bill drafting instructions:
 - a. Clarifying the ability of enforcement officers to issue infringement notices to the registered vehicle owner (such as a rental company) of a vehicle used in the commission of an infringement offence,
 - b. Enabling an enforcement officer who believes on reasonable grounds that a person has committed or is committing an offence to direct the person to give their email address,
 - c. Enabling regulations to prescribe maximum infringement fines of up to \$3,000 for new and existing infringement offences in the Freedom Camping Act 2011, and
 - d. Expanding the Plumbers, Gasfitters and Drainlayers Board's existing power to issue gazette notices to enable it to issue a self-containment certification inspection manual, which vehicle inspectors would need to comply with.

Recommended action

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

- a **Note** that, when agreeing to the proposed freedom camping changes on 27 October 2021, Cabinet authorised you to make decisions, consistent with the proposed changes, on any issues that arise during the drafting process [DEV-21-MIN-0219 refers].

Noted
- b **Note** that, in preparing the drafting instructions for the Freedom Camping Bill, officials have identified several procedural matters that should be addressed.

Noted
- c **Agree** to clarifying the ability of enforcement officers to issue infringement notices to the registered vehicle owner (such as a rental company) of a vehicle used in the commission of an infringement offence.

Agree / Disagree

d **Agree** to an enforcement officer who believes on reasonable grounds that a person has committed or is committing an offence to direct the person to give their email address, or to give the email address of any other person connected with the alleged offence.

Agree / Disagree

e **Agree** to amend the Act to enable regulations to prescribe maximum infringement fines of up to \$3,000 for new and existing infringement offences.

Agree / Disagree

f **Agree** to expand the Plumbers, Gasfitters and Drainlayers Board's existing power to issue gazette notices to enable it to issue a self-containment certification inspection manual, which vehicle inspectors would need to comply with.

Agree / Disagree

g **Note** that these additions will not delay the drafting of the Freedom Camping Bill.

Noted



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

02 / 03 / 2022

Hon Stuart Nash
Minister of Tourism

..... / /

Background

2. As you are aware, officials have been preparing drafting instructions for the Freedom Camping Bill (Bill), with the aim of issuing these to Parliamentary Counsel Office (PCO) by the end of February 2022.
3. When agreeing to the proposed freedom camping changes on 27 October 2021, Cabinet authorised you to make decisions, consistent with the proposed changes, on any issues that arise during the drafting process [DEV-21-MIN-0219 refers].
4. Through the preparation of the drafting instructions, officials have identified several issues with the Freedom Camping Act 2011 (the Act) that we recommend you agree to address through the drafting instructions.

Recommended Procedural Changes

Procedure for issuing infringement notices to the registered owners of vehicles used in the commission of offences

5. For the past 11 years, enforcement officers have issued infringement notices to vehicle owners, such as rental companies, where their vehicle was used in the commission of an infringement offence. This is usually done when the identity of the hirer is unknown at the time the offence is detected. For example, when the driver or hirer (as applicable) is not in or around the vehicle when an enforcement officer is on-site.
6. This common method of issuing infringement notices is clearly contemplated by virtue of the wording of sections 26, 29 and 30 of the Act. These sections:
 - a. enable proceedings to commence against a vehicle owner where their vehicle has been used in the commission of an infringement offence,
 - b. in the case of rental vehicles, explicitly provide for rental service agreements to provide for the hirer to agree to pay any infringement fee and associated costs incurred with an infringement notice issued to the rental company,
 - c. provide a process whereby a rental company can debit a hirer's credit card for costs associated with an infringement fee (including the fee, and associated costs, including additional administrative costs incurred by the rental company), and
 - d. provide a defence if the registered owner of the vehicle provides the contact details of the person in charge of the vehicle at the time the alleged offending – in which case the enforcement authority will re-issue the infringement notice to that person or not proceed any further.
7. This is the same approach used for parking infringements under the Land Transport Act 1998.
8. Notwithstanding this, on closer examination, section 27 of the Act, which deals with the issuing of infringement notices, is ambiguous about the issuing of infringement notices to the registered owners of vehicles used in the commission of an offence. Subsection (1) states that '*An enforcement officer who believes on reasonable grounds that a person has committed or is committing an infringement offence may serve an infringement notice on the person*'. It could be argued that this wording excludes the owner of a vehicle involved in the commission of an offence.
9. A significant number of infringements have been issued to vehicle owners over the past eleven years, and to our knowledge none have been challenged on the basis of the ambiguity in section 27.

10. We seek your agreement that the ambiguity be addressed by more clearly providing enforcement officers with the authority to issue infringements to the registered owners of vehicles used in the commission of an offence.

Ability of enforcement officers to require that people to provide email addresses

11. Section 35 of the Act enables an enforcement officer who believes on reasonable grounds that a person has committed or is committing an offence may direct the person to give—
 - a. his or her full name, date of birth, full address, telephone number, and occupation; and
 - b. the full name, date of birth, full address, telephone number, occupation, and whereabouts of any other person connected in any way with the alleged offence.
12. Cabinet has agreed that infringement notices can be issued by email.
13. We seek your agreement that Section 35 should be amended to allow enforcement officers to require a person to provide their email address or the email address of any other person connected in any way with the alleged offence.

Prescribing maximum infringement fines of up to \$3,000 in regulations

14. An infringement fine is one imposed by a court where the person served an infringement notice challenges the notice in court or fails to pay the infringement fee and court proceedings must be brought against them. The amount of the infringement fine is determined by the court in accordance with sentencing principles.
15. It differs from an infringement fee, which is a fixed amount a person is immediately liable to pay upon being served an infringement notice.
16. Under the freedom camping changes agreed by Cabinet, infringement fees will move from being a standard \$200 fee to a tiered set of fees of up to a maximum of \$1,000. These will be set in regulations.
17. Current practice, in line with the Ministry of Justice's 'Policy Framework for New Infringement Systems' and Legislation Design Advisory Committee Guidelines, is for an Act to enable for the prescribing of maximum levels of both infringement fees and fines in regulations. The Freedom Camping Act 2011 does not however prescribe any infringement fine for the commission of an infringement offence.
18. While courts can impose an infringement fine in line with sentencing principles (for example, mitigating and aggravating factors), this situation isn't ideal. Without a statutory maximum fine to start applying sentencing principles, a Court may decide to start at the maximum \$1,000 penalty set out in the Act for an infringement offence. Following the application of sentencing principles, a fine issued by the court could end up being less than the infringement fee issued by an infringement notice. This would result in a penalty unproportionate to the harm caused by the offending.
19. We therefore recommend that Act be amended to provide for a regulation-making power for prescribing maximum fines up to a maximum of \$3,000. This would provide a clear maximum fine level to the Courts, from which to begin the application of sentencing principles. It would increase the likelihood that any infringement fine issued by the court would be proportionate to the harm caused by the offending. Providing for maximum fines will strengthen the freedom camping infringement system.
20. 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 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.

Enabling the Plumbers, Gasfitters and Drainlayers Board to issue a self-containment certification manual

21. The regulations under development will, among other things, set out the technical requirements that recognised vehicle inspectors will inspect in order to determine whether a vehicle is self-contained.
22. In discussions with a technical advisory group that we have established with the sector to develop the proposed regulations, there has been a call for 'mandatory guidance' that essentially spells out how vehicle inspectors will interpret the regulations, including a standard inspection checklist. The intention was for such guidance to sit below the regulations but have a legal status above that of voluntary guidance.
23. This has been discussed with the Plumbers, Gasfitters and Drainlayers Board (the Board). It noted that it already has the power to issue gazette notices under section 30 of the Plumbers, Gasfitters and Drainlayers Act 2006 (PGDA 2006). Such notices are able to set standards, requirements and terms and conditions around registration and licensing matters.
24. It is therefore, recommended that section 30 be expanded to enable the Board to issue gazette notices in relation to self-containment inspection matters, including the issuing of a vehicle inspection manual, which vehicle inspectors must comply with.
25. Section 33 of the PGDA 2006 requires that affected parties be consulted as part of the gazette notice making process. This should be amended to also apply to self-containment gazette notices. To mitigate any industry concerns about over-regulation by the Board, we would look to use the annual performance agreement that the Board has with the Minister for Building and Construction to direct the Board to develop the inspection manual in conjunction with an industry advisory group. Under section 34, the Minister must approve a notice before it is issued by the Board.
26. We will also make it clear that the inspection manual only sets the method for determining whether the vehicle meets the criteria for self-containment. It will assist vehicle inspectors to interpret the technical requirements in the regulations. The Board would need to ensure that the inspection manual remains aligned with the criteria for self-containment that are prescribed in the regulations, and which may change over time.

Next steps

27. Drafting instructions have recently been issued to PCO. If you agree that these procedural changes can be added to the Bill drafting instructions, officials will advise PCO accordingly.
28. It is possible that additional procedural matters will emerge over the next few months as the Bill gets drafted. We will brief you at that time if this is the case.