



COVERSHEET

Minister	Hon Peeni Henare	Portfolio	Tourism
Title of Cabinet paper	Self-contained Motor Vehicles Legislation Bill – approval to progress with a Supplementary Order Paper relating to transition period and homelessness	Date to be published	23 August 2023

List of documents that have been proactively released		
Date	Title	Author
March 2023	<i>Self-contained Motor Vehicles Legislation Bill – approval to progress with a Supplementary Order Paper relating to transition period and homelessness</i>	<i>Office of Minister of Tourism</i>
29 March 2023	<i>Self-contained Motor Vehicles Legislation Bill - Proposed Supplementary Order Paper Relating to Transition Period and Homelessness DEV-23-MIN-0037 Minute</i>	<i>Cabinet Office</i>

Information redacted

YES

Any information redacted in this document is redacted in accordance with MBIE's policy on Proactive Release and is labelled with the reason for redaction. This may include information that would be redacted if this information was requested under Official Information Act 1982. Where this is the case, the reasons for withholding information are listed below. Where information has been withheld, no public interest has been identified that would outweigh the reasons for withholding it.

Some information has been withheld for the reason of Free and frank advice.

[In Confidence]

Office of the Minister of Tourism

Cabinet Economic Development Committee

Self-contained Motor Vehicles Legislation Bill – approval to progress with a Supplementary Order Paper relating to transition period and homelessness

Proposal

- 1 I am seeking Cabinet agreement to progress a Supplementary Order Paper (SOP) for the Self-contained Motor Vehicles Legislation Bill (the Bill) that will provide:
 - 1.1 the ability to extend the transition period by up to 24 months, by Order in Council, if necessary; and
 - 1.2 a legislative exemption from the freedom camping rules and requirements for those that are experiencing homelessness.
- 2 I will also be progressing a separate SOP that incorporates changes recommended in the Departmental Report to the Economic Development, Science and Innovation Committee (“Select Committee”). This SOP contains no significant policy decisions so does not need to be considered by DEV but will be considered alongside the SOP proposed in this paper at LEG.

Relation to government priorities

- 3 Improving the freedom camping system relates to the Government’s priorities as set out in the Speech from the Throne to support our tourism sector in its transition to a sustainable, low carbon, high skill and high wage industry. It also aligns with the Government’s direction for tourism – in particular, rebuilding tourism on a sustainable model, mitigating the negative impacts associated with tourism.

Executive Summary

- 4 The Bill will strengthen public trust in the freedom camping system by strengthening requirements for self-contained vehicles, supporting better enforcement, and creating a more consistent regime for freedom campers to follow. Overall, this will reduce the negative impact freedom camping can have on the environment and communities in which it occurs. The Bill was reported back to the House on 2 March 2023.

Transition SOP

- 5 The Bill currently contains a two-year transition period. At the end of the transition period, vehicles will need to be certified under the new regulatory system to be

considered self-contained. However, there is a risk there will be insufficient capacity in the regulatory system to certify the approximately 73,000 vehicles that may seek certification.

- 6 As such, I propose introducing an SOP that will build flexibility into the transition period. It will maintain the current deadline, but also enable the transition period to be extended by up to 24 months, by Order in Council, if necessary.

Homelessness SOP

- 7 The Bill does not contain specific provisions that address how the legislation will impact people experiencing homelessness. However, the policy objective is for the Bill not to penalise people who are staying in tents or vehicles because they are homeless, and this is included in the General Policy Statement.
- 8 In order to protect those experiencing homelessness, I am proposing a legislative exemption for those experiencing homelessness. The intent of this exemption is to clarify that people living in things like tents or vehicles because they have no other option for safe or suitable alternative, for example, are not “freedom camping”.

Background

What the Bill does?

- 9 Freedom camping is important to Aotearoa New Zealand, for both our people and our manuhiri, but change is needed so communities have confidence in the freedom camping system. We must practice kaitiakitanga by taking better care of our people and whenua. The Bill proposed by the Government will achieve these aims.
- 10 Specifically, the Bill seeks to improve the management of vehicle-based freedom camping by:
 - 10.1 introducing a national requirement for freedom campers staying in a vehicle on land managed by a local authority to use a certified self-contained vehicle, unless staying at a site designated by the local authority as suitable for freedom camping in non-self-contained vehicles;
 - 10.2 establishing a regulatory system for the certification of self-containment of vehicles, with the Plumbers, Gasfitters and Drainlayers Board (PGDB) providing regulatory oversight;
 - 10.3 requiring self-contained vehicles to have a fixed toilet; and
 - 10.4 strengthening the infringement regime and extending it to other Crown land (it already applies to land administered by Department of Conservation (DOC) and local authorities).

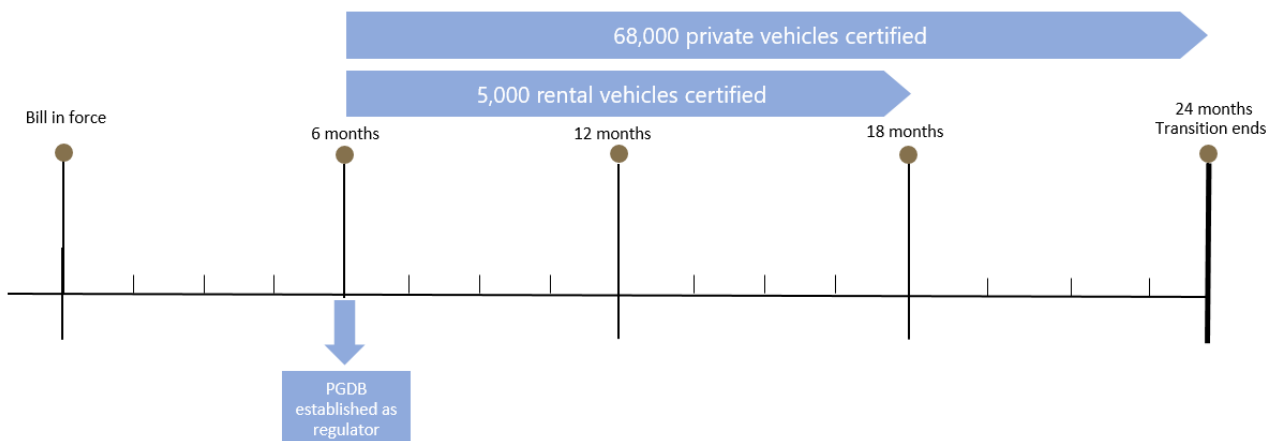
The transition period

- 11 In October 2021, Cabinet agreed that a two-year transition period is appropriate [DEV-21-MIN-0219]. After this, self-contained vehicles used for freedom camping will require a certificate of self-containment issued under the new regulatory system.
- 12 In October 2021, Cabinet also agreed that the transition period could be extended by Order in Council [DEV-21-MIN-0219]. At this time, Cabinet authorised the Minister of Tourism to approve changes consistent with the policy intent. The Ministry of Business, Innovation and Employment (MBIE) through discussions with the (then) Minister of Tourism, sought to balance the need to provide certainty for self-contained vehicles owners and other stakeholders, with ensuring there is sufficient time to process the current self-contained vehicle fleet before the old system is removed.
- 13 However, the Select Committee process and ongoing engagement with the sector has provided a better understanding of the risks associated with the two-year transition period. The most notable risk is whether there will be capacity in the system to certify all the self-contained vehicles that may seek certification in a relatively short space of time. To mitigate this risk, I propose that the transition period can be extended by Order in Council for up to 24 months.

How the transition period currently works in the Bill

- 14 During the transition period, vehicles certified through the existing voluntary standard or the new self-containment requirements will be considered self-contained. At the conclusion of the transition period, vehicles must be certified under the new self-containment requirements to be considered self-contained.
- 15 As mentioned earlier, there are an estimated 73,000¹ self-contained vehicles in New Zealand. Of these, 5,000 are rental vehicles and 68,000 are privately owned. A timeline of the current two-year transition period is displayed in Diagram 1 below.

Diagram 1 – transition timeline



¹ This figure is an estimate as there is no existing register of self-contained vehicles. It is also unknown what proportion of these will have portable toilets. Owners of vehicles with portable toilets may or may not chose to modify their vehicle to meet the new self-containment requirements. MBIE commissioned research found that approximately 85 per cent of domestic freedom campers who had a toilet in their vehicle had a fixed toilet.

- 16 The transition period is crucial because it enables:
 - 16.1 the PGDB to establish itself as the regulator;
 - 16.2 people and organisations to apply to become certifications authorities, appoint vehicle inspectors and start certifying vehicles under the new regulatory regime; and
 - 16.3 time for the public to transition to the new system.
- 17 The Bill stipulates that, six months after enactment, the PGDB will have established itself as the regulator of the self-contained vehicle system and will therefore be able to exercise its regulatory functions. At that point, people and organisations can apply to the PGDB to become certification authorities and once approved, appoint vehicles inspectors.
- 18 The public will then be able to approach certification authorities to have their vehicles certified as self-contained.
- 19 18 months after enactment, rental vehicles must be certified under the new regulatory regime to be considered self-contained.
- 20 24 months after enactment, private vehicles must be certified under the new regulatory regime to be considered self-contained. This means there is an 18-month window where the approximately 73,000 self-contained vehicles must be certified before the Bill is fully implemented.

Risk of insufficient capacity in the system

- 21 There is a risk that there will be insufficient capacity of certification authorities and vehicle inspectors in the system.

Existing capacity in the system

- 22 It is difficult to accurately ascertain the capacity of the existing unregulated self-containment system. Based on data from the New Zealand Motor Caravan Association (NZMCA) and New Zealand Lifestyle Camping Ltd (NZLC), MBIE predict that capacity will have to increase substantially.

Table 1 – Current number of certifications undertaken by NZMCA and NZLC

Issuing authority	18-month average
NZMCA	24,000
NZLC	6,000
Total	30,000

- 23 NZMCA members own approximately 69 per cent of the self-contained vehicles in New Zealand.² MBIE does not have data on the number of self-contained vehicles NZLC members own. However, the cumulative average of NZMCA and NZLC certifications likely reflects the majority of the overall number of certifications in the system.
- 24 Although there may be some ability in the system to scale up, the cumulative average of 30,000 over 18 months falls well short of the 73,000 vehicles that may need to be certified.

Demand for certifications will not be steady

- 25 It will be up to the individual to decide when to seek certification. Because of this, I expect there will be a large volume of people who seek certification near the end of the transition period, as many existing certificates will not expire before the end of the transition period.
- 26 MBIE intend to work with the PGDB to ensure its communications mitigate the risk of this occurring. However, this is unlikely to mitigate the risk entirely.
- 27 In addition, there may issues if demand does not match supply in particular regions. For example, there may be relatively few certification authorities and/or vehicle inspectors in particular regions but significant demand for certifications.

Key dependency that could exacerbate risk

- 28 Existing issuing authorities may not apply to become certification authorities, may wait to apply, or it may take time for them to be approved by the PGDB. They may also need time to develop their certification processes before applying for approval.
- 29 MBIE has sought to mitigate this risk by recommending to the Economic Development, Science and Innovation Committee that certifying plumbers are deemed to be certification authorities and vehicle inspectors for the duration of the transition period. That means they can automatically begin certifying vehicles (without having to apply to the PGDB) if they wish to do so. This may assist with capacity to some extent, but MBIE is not confident that large numbers of certifying plumbers will choose to do this work.

Impact if a lack of capacity materialises

- 30 If a lack of capacity materialises there could be a considerable number of people who are unable to get their vehicle certified despite their vehicles meeting the new self-containment requirements. This will restrict their ability to freedom camp through no fault of their own. This would undermine the credibility of the system. Market forces may also drive up the cost of having vehicles modified and/or inspected.
- 31 Vehicles that are not self-contained will have other options such as staying at commercial campsites, some DOC sites and local authority areas deemed suitable for non-self-contained vehicles.

² NZMCA has outlined that their members own 50,400 certified self-contained vehicles. This is approximately 69 per cent of the estimated 73,000 vehicles.

32 If this occurred with the Bill in its current format, the only legislative approach available to Government to address it would be to amend the transition period in primary legislation. However, I consider this undesirable due to the time and effort associated with amending primary legislation as well as a waste of future House time.

Proposed SOP to address transition risks

33 To properly mitigate the risks outlined above I recommend progressing an SOP which will enable the transition period to be extended for a maximum of 24 months. The transition period would be extended by Order in Council. But even with an extension, the transition period must end no later than four years after commencement. I expect that if it is necessary to extend the transition period, this power will only be used once or at most twice.

34 This extension would apply to what is known in the Bill as “period 4”. During period 4, certain vehicles are deemed to be “self-contained.” These are vehicles that were already certified under the existing standard before commencement, and those vehicles that are certified under the modified standard in the first 12 months following commencement. However, period 4 does not apply to rental vehicles. And neither would the proposed extension.

35 Rental vehicles would still have to be certified 18-months after enactment, as there are a comparatively modest number of rental vehicles (approximately 5,000). In addition, rental companies have existing relationships with issuing authorities (under the existing self-containment system) and greater purchasing power than individuals. As such, I expect rental vehicles will be able to have their vehicles certified in the required timeframe.

36 Before recommending the making of an Order in Council to extend the transition period, I consider the Minister of Tourism should turn their mind to whether the extension is necessary in order to enable vehicle owners to transition to the new regulatory regime.

37 When considering whether it is necessary to extend the transition, it would be beneficial for the Minister of Tourism to consider matters such as:

37.1 The number of vehicles certified;

37.2 The number of certification authorities and vehicle inspectors; and

37.3 The views of membership groups who represent freedom campers.

38 The Minister of Tourism should consider these matters, but they should not limit the Minister’s ability to recommend the extension. The Minister should be free to disregard any of these matters.

39 I note that MBIE will provide the Minister of Tourism with initial advice about whether an extension is necessary 18-months after enactment.

40 The recommended approach means that if there is sufficient capacity in the system to certify the self-contained vehicles then the transition to the new regulatory system will

happen in the two-year timeframe that Government is aiming for. But that there is flexibility built in, if required.

- 41 This flexibility also means that the transition period can be extended for a relatively short time if that is all that is required (for example, a six-month extension).
- 42 I consider a maximum 24-month extension (four-year total transition) is appropriate because existing self-containment certificates expire after four years.
- 43 I note that public communications will focus on the default two-year transition being the timelines for the reforms. This will mitigate the risk that the public will be disincentivised from seeking certifications on the assumption the transition will be longer than two years.

How homelessness is currently addressed in the Bill

- 44 People experiencing homelessness often stay in vehicles and tents, and many local authorities report people experiencing homelessness being present at some freedom camping sites and in their districts. The most recent available data, the 2018 Severe Housing Deprivation Report shows 2,070 people living in a mobile dwelling and 1,347 living in an improvised dwelling (such as a tent). Additionally, a further 1,521 people were living at a campground.³
- 45 The Freedom Camping Act 2011's (the Act) definition of freedom camping covers the living conditions of those experiencing homelessness.⁴ The Bill, as currently drafted, would not change this. Currently enforcement authorities are encouraged to use their discretion to avoid issuing infringement notices to people experiencing homelessness and instead direct them to appropriate social support services, as recommended by Local Government New Zealand (LGNZ).⁵
- 46 MBIE has previously advised the Select Committee that the status quo approach under the Act should be continued. MBIE explored the option of including an explicit exemption for those experiencing homelessness in the legislation. However, they did not recommend this option as the complex nature of homelessness means it would be difficult to practically define. Defining homelessness could cause further harm by requiring people experiencing homelessness to prove their living arrangements are due to a lack of access to safe and secure housing.⁶
- 47 However, I asked MBIE for further advice on the potential for a legislative exemption for those experiencing homelessness.
- 48 There are a range of factors that could justify the inclusion of a legislative exemption. These include:

³ Dr Kate Amore et al. "Severe housing deprivation in Aotearoa New Zealand, 2018 June 2021 update, (University of Otago, June 2021) at page 32.

⁴ Note, the definition of freedom camping would not cover those experiencing homelessness who are staying at commercial campgrounds.

⁵ Local Government New Zealand, Good practice guide for freedom camping (April 2018) 22-23

⁶ It should be noted that there is also a risk of harm associated with the discretionary approach if enforcement officers were to ask for proof of an individual's living conditions.

- 48.1 There is a lack of data about the current system, which makes it harder to assess how well it is working.
- 48.2 Those experiencing homelessness are less likely to complain to authorities if they are subject to unwarranted infringements by an enforcement officer.
- 48.3 The application of freedom camping laws varies widely between regions and providing consistency to this issue may be beneficial.
- 48.4 Some local authorities sought greater clarity on this issue through their submissions to the Select Committee.

Legislative exemption options to exempt those experiencing homelessness

- 49 There are two possible options for a legislative exemption that are outlined below.⁷ The key distinction between them is the individual’s reliance on staying in a motor vehicle or tent out of necessity versus by choice.
- 50 Both options require the individual to be residing in New Zealand to be covered by the exemption, which is the case for most people experiencing homelessness. There is a risk if the exemption included people visiting New Zealand on holiday that it would be too difficult for an enforcement officer to determine the individuals’ circumstances.

Option 1: Exemption for those who do not own or rent a house

- 51 The purpose of this exemption would be to cover people who:
 - 51.1 reside in New Zealand, and
 - 51.2 do not own or rent a dwelling.

Option 2: Exemption for those who have no other option

- 52 The purpose of this exemption would be to cover people who:
 - 52.1 reside in New Zealand, and
 - 52.2 are living in a motor vehicle or tent out of necessity.

There are notable trade-offs associated with each option

- 53 The benefits and risks associated with each of the options and the status quo is outlined in the table below:

	Benefits	Risks
Status quo: Maintaining	The current approach to assessing homelessness appears to be well understood by most	There is nothing in the legislation that says a person experiencing homelessness cannot be issued with an infringement notice. As such, it

⁷ Note, the legislative exemption definitions have been included to demonstrate the policy intent but ultimately PCO will determine the best way to give legal effect to the policy intent.

<p>the current discretionary approach</p>	<p>enforcement officers and local authorities.</p> <p>Feedback from stakeholders (local authorities, social service organisations) is that the current system works largely as intended. However, there has been some anecdotal evidence of this not being the case.</p>	<p>would be unlikely they could successfully defend an infringement notice in Court.</p> <p>There is a risk of an inconsistent approach to assessing homelessness by enforcement officers.</p> <p>The discretionary carries a risk that people experiencing homelessness may be stigmatised if they have discuss their circumstances with enforcement officers.</p>
<p>Option 1: Legislative exemption for those who do not own or rent a dwelling</p>	<p>This will be easily understood by the public and enforcement officers.</p> <p>As the exemption is included in legislation a person that meets that definition could potentially defend the infringement in Court.</p>	<p>Risk that people could be stigmatised as they may have to discuss their housing arrangements in order to be exempt from an infringement notice. This may also have privacy implications.</p> <p>Some people experiencing homelessness would not meet the definition. For example, someone may own a house but cannot inhabit it due to safety concerns.</p> <p>The exemption would also apply to people who chose to reside in vehicles even if they have the means to own or rent a dwelling (national data suggests that there are around 6,000 people nationally who live in mobile dwellings, and not in a motor-camp⁸). For example, university students who are travelling in their break may be covered by the exemption.</p> <p>There is no strong policy rationale to exempt people who are choosing to reside in their vehicle if they have the means to own or rent a dwelling from the freedom camping requirements.</p> <p>People acting in bad faith could claim they do not own or rent a house. It would be difficult for an enforcement officer to ascertain whether this is true or not.</p>
<p>Option 2: Legislative exemption for those who are living in a motor vehicle or tent out of</p>	<p>Specifically protects the vulnerable group (i.e. doesn't also include people who are living in their vehicles by choice).</p> <p>Provides protection for those who may own or rent a house</p>	<p>People acting in bad faith could claim they are camping out of necessity. However, compared to Option 1, it may be easier for an enforcement officer to determine people who are acting in bad faith.</p> <p>Ambiguity and consistency – it may be difficult for enforcement officers to determine</p>

⁸ Of these 6,000 people some will have options to own or rent a dwelling a some will not, however, exact figures are not available.

necessity	<p>and still be experiencing homelessness for a range of reasons (such as, a recent family breakdown).</p> <p>As the exemption is included in legislation a person that meets that definition could potentially defend an infringement notice in Court.</p>	<p>‘necessity’ based on an interaction with a person, and apply a consistent standard to others.</p> <p>Potentially, more likely to stigmatise people if they need to prove necessity (i.e. discuss the details of an abusive relationship, estranged family, no source of income). This may also have privacy implications.</p>
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Option 2 is the recommended approach

- 54 Option 2 is the recommended option as it specifically targets the group I am looking to protect. Option 1 on the other hand would also exempt people who are choosing to live in their vehicles full-time despite having other options. There is no rationale to exclude this group from the freedom camping requirements.

- 55 There is a risk that Option 2 could stigmatise people who might have to prove the ‘necessity’ of their situation. As a result, it will make it even more important to ensure there is clear guidance for enforcement authorities to mitigate the risk of unintended consequences on those experiencing homelessness.

- 56 As such, I recommend that Option 2 be included in an SOP to be considered at the Committee of the whole House stage. MBIE will work with PCO to draft the SOP.

- 57 This will likely be achieved by amending the Act to clarify that people who, due to homelessness, are living in motor vehicles or tents are not freedom camping within the meaning of the Act. There are existing legislative exemptions in the Act (for example, day trippers and people resting to avoid driver fatigue).

- 58 This would mean people experiencing homelessness would not be liable for any offence applied to the activity of freedom camping and limit local authorities’ ability to use freedom camping bylaws to restrict where those experiencing homelessness may camp. This would include most offences⁹ and penalties provided for in the Act and be applicable to all land areas covered by the Act. However, offences in other legislation, such as damaging flora and fauna under the Conservation Act 1987, or Reserves Act 1977 may still apply.

- 59 The proposed SOP that incorporates the Departmental Report recommendations will also include a proposal for a two-year review on the impact of the reforms on those experiencing homelessness. This will help ensure that the legislative exemption is not having negative consequences for those experiencing homelessness.

Financial Implications

- 60 There are no direct financial implications associated with this proposal.

⁹ They will still be liable for offences relating to discharging a harmful substance on local authority or conservation land and interfering with an enforcement officer while they carry out their duties under the Act.

Legislative Implications

61 The proposed SOP will be considered at the Committee of the whole House stage.

Impact Analysis

62 A Regulatory Impact Statement (RIS) was prepared by MBIE in accordance with the necessary requirements and was submitted at the time that Cabinet approved the policies relating to the legislative reform programme [DEV-21-MIN-0219]. MBIE's review panel considered the analysis partially meets the quality assurance criteria. This rating was due to the limited evidence of the degree of harm from vehicle-based freedom camping compared to other causes.

63 The RIS has been published on MBIE's website.

Human Rights

64 There are no inconsistencies with the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993 associated with this proposal.

Consultation

65 The following agencies have been consulted: Parliamentary Counsel Office; Department of Prime Minister and Cabinet; Ministry of Housing and Urban Development; Department of Internal Affairs; Department of Conservation; Ministry of Social Development; Kainga Ora; Land Information New Zealand; New Zealand Transport Agency; Ministry of Justice; and The Plumbers, Gasfitters and Drainlayers Board.

66 The following agencies have also been informed: Te Puni Kokiri; and Treasury.

Associate Minister of Housing (Homelessness) comment

67 The Associate Minister of Housing (Homelessness) raised this issue after the introduction of the Bill and has been consulted on the approach in this paper. She strongly agrees with the need for an express exemption for people living in vehicles and tents because of a lack of suitable housing. She notes that some organisations which support homeless people have raised the concern that freedom camping requirements are being applied under current council bylaws¹⁰. Free and frank opinions

Proactive Release

68 I will make a determination about when to proactively release this Cabinet paper and the associated minute to the public based on how the Bill progresses through the House.

¹⁰ <https://www.stuff.co.nz/national/131399805/freedom-camping-fines-unfair-for-homeless-living-in-cars>

Next steps

- 69 Subject to your agreement, MBIE will work with PCO to draft the SOP for consideration at LEG on 4 May 2023 alongside the proposed SOP that incorporates changes recommended in the Departmental Report.
- 70 This timeframe is necessary in order to achieve my aim of having the Bill and the Regulations that set infringement fees in force ahead of the FIFA Women's World cup in July 2023.

Recommendations

The Minister of Tourism recommends that the Committee:

- 1 **note** there are substantial risks about whether the new freedom camping regulatory system will have sufficient capacity to cope with the number of self-contained vehicles that will need to be certified during the transition period;
- 2 **agree** that the ability to extend the current two-year transition period in the Bill, by Order in Council, for a maximum of 24 months be progressed, via Supplementary Order Paper, through the Committee of the whole House stage;
- 3 **note** the policy objective is for those experiencing homelessness not to be penalised under the freedom camping rules;
- 4 **note** the existing definition of freedom camping covers the living conditions of those experiencing homelessness but enforcement officers are encouraged to apply discretion and not infringe people experiencing homelessness;
- 5 **agree** that a legislative exemption for those who reside in New Zealand, and are living in a motor vehicle or tent out of necessity be progressed, via Supplementary Order Paper, through the Committee of the whole House stage; and
- 6 **note** a separate Supplementary Order Paper incorporating the recommendations in the Departmental Report will also be progressed.

Authorised for lodgement

Hon Peeni Henare

Minister of Tourism