



**Local Government
New Zealand**
te pūtahi matakōkiri

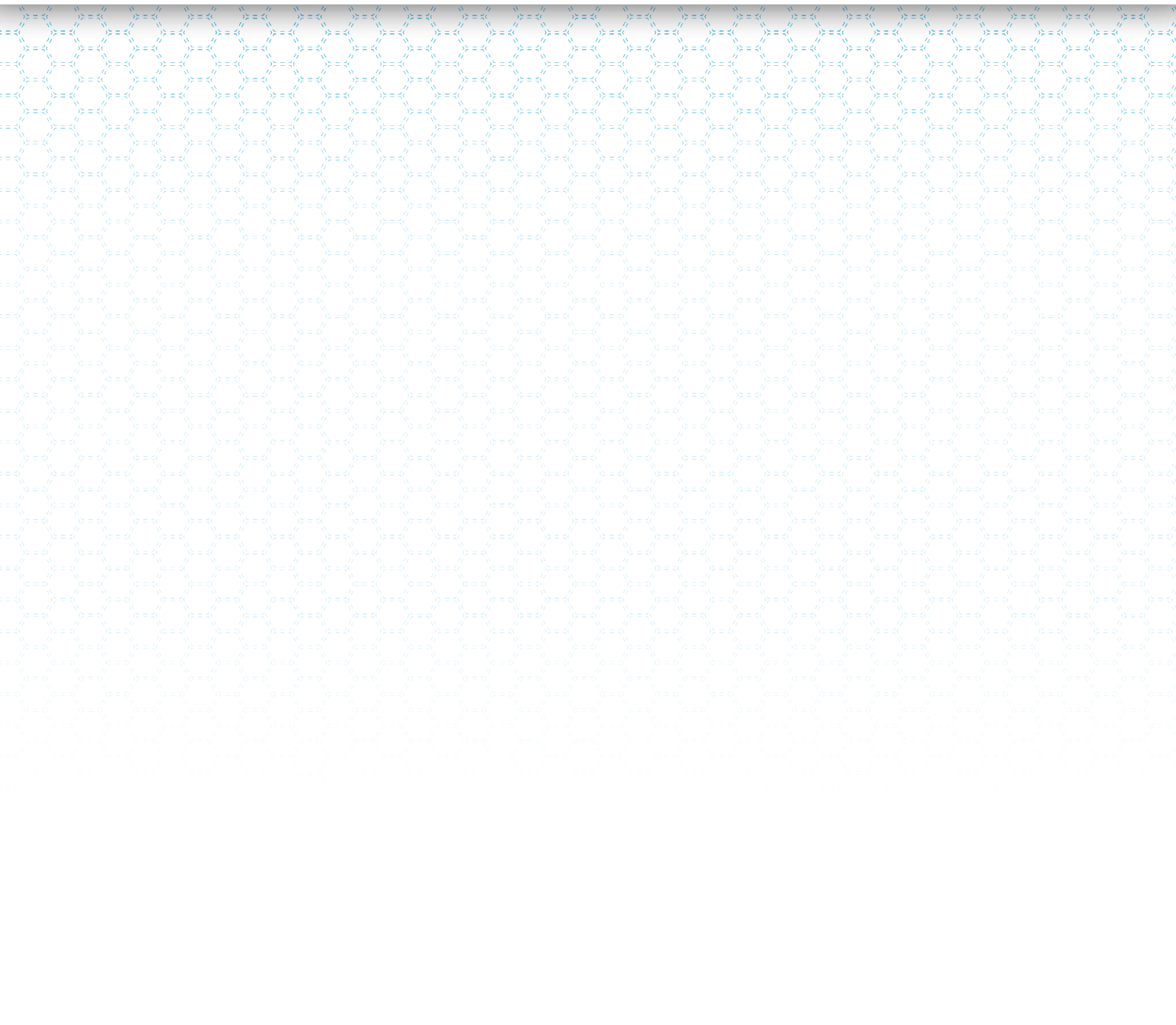


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Introduction

1. *Local Government New Zealand* (LGNZ) thanks the Local Government and Environment Committee for the opportunity to make this submission in relation to the Freedom Camping Bill 2011.
2. LGNZ makes this submission on behalf of the National Council, representing the interests of all local authorities of New Zealand.

It is the only organisation that can speak on behalf of local government in New Zealand. This submission was prepared following consultation with local authorities. Where possible their various comments and views have been synthesised into this submission.

In addition, some councils will also choose to make individual submissions. The LGNZ submission in no way derogates from these individual submissions.

3. LGNZ prepared this submission following:
 - an analysis of the Bill
 - analysis of all feedback from councils.
4. This final submission was endorsed under delegated authority by:
 - Lawrence Yule, President, National Council
 - Maureen Pugh, Zone 5 representative, National Council.
5. LGNZ wishes to be heard by the Local Government and Environment Committee to clarify the points made by this written submission as necessary.

***Local Government New Zealand* policy principles**

6. In developing a view on the provisions in this Bill we have drawn on the following high-level principles that have been endorsed by the National Council of LGNZ. We would like the Committee to take these into account when reading this submission.
 - **Local autonomy and decision-making:** communities should be free to make the decisions directly affecting them, and councils should have autonomy to respond to community needs.
 - **Accountability to local communities:** councils should be accountable to communities, and not to government, for the decisions they make on the behalf of communities.
 - **Local difference = local solutions:** avoid one-size-fits-all solutions, which are over-engineered to meet all circumstances and create unnecessary costs for many councils. Local diversity reflects differing local needs and priorities.
 - **Equity:** regulatory requirements should be applied fairly and equitably across communities and regions. All councils face common costs and have their costs increased by government, and government funding should apply, to some extent, to all councils. Systemic, not targeted funding solutions.

- **Reduced compliance costs:** legislation and regulation should be designed to minimize cost and compliance effort for councils, consistent with local autonomy and accountability. More recognition needs to be given by Government to the cumulative impacts of regulation on the role, functions and funding of local government.
- **Cost-sharing for national benefit:** where local activities produce benefits at the national level, these benefits should be recognised through contributions of national revenues.

Comments

GENERAL COMMENTS

7. LGNZ supports the Freedom Camping Bill 2011. We applaud the Government for its intention to provide councils with the tools necessary to manage the nuisance of freedom camping as it is manifesting in our communities.
8. The use of fit-for-purpose legislation sends a strong signal that the Government is taking freedom camping issues seriously. The solution proposed by the Freedom Camping Bill 2011 sends an even stronger signal that local authorities are the most appropriate unit of governance for managing the nuisance created by freedom campers on the land each council is responsible for. This approach is entirely consistent with LGNZ's policy principles (outlined above.)
9. LGNZ has been working closely with the government throughout the development of the Bill. As such, we are roughly satisfied with much of the contents of the Bill as it currently stands. However, we are aware that several of our member councils have submitted detailed suggestions that can help improve the clarity and effectiveness of the legislation.
10. *LGNZ recommends that the Committee carefully consider the specific legislative refinements submitted by individual councils when determining the contents of the final Act.*

BY-LAW INEFFECTIVENESS

11. As illustrated by Schedule 3 and Schedule 4, the majority of councils have already sought to manage camping on land they have been delegated the responsibility for administering. For these councils the Freedom Camping Bill 2011 can be simply interpreted as providing the tools necessary to reinforce the status quo.
12. Freedom camping is but one of many activities local government is responsible for managing via bylaws. The Freedom Camping Bill 2011 has largely become necessary not only for the need to encourage greater national consistency across and between managers of public land, but also as a result of the general ineffectiveness of bylaws made under the Local Government Act 2002 (LGA) as a means of regulating unwanted behaviours.
13. The LGA provides for regulations (under section 259) to be made prescribing breaches of bylaws that are infringement offences, along with an infringement fee. However, if no regulation is in place, breaches of bylaws under the LGA must either be prosecuted through the courts or ignored altogether. Prosecution is a time-consuming and costly enforcement tool, which renders prosecution inappropriate for all but the most significant of by-law breaches.

14. No regulations prescribing infringement offences have been promulgated since the LGA was passed in 2002. This is partly due to the wording of section 259 of the Act which is narrowly interpreted as requiring regulations to identify the specific clauses in each local authority bylaw where a breach is determined to be an infringement offence. It is neither practicable nor efficient to provide individual sets of regulations by order-in-council for each local authority as currently required by section 259.
15. As a result of both restricting access to infringements and the "heavy-handedness" of court proceedings, councils cannot adequately enforce their bylaws. Despite the existence of bylaws, some offences are going unchecked, and in instances such as freedom camping, have in fact worsened over time. While the Freedom Camping Bill 2011 will largely resolve this issue in regard to the nuisances associated with freedom camping, it leaves the larger problems relating to bylaw enforcement unresolved. This is creating significant and unnecessary economic, environmental and social costs for New Zealanders.
16. The limitations of section 259 are well-documented. In 2008, the Local Government Commission (as part of their review of the LGA) strongly criticised the lack of access to infringements for bylaw breaches. The Local Government Commission further recommended that regulations prescribing breaches of bylaws deemed to be infringement offences be made "as soon as practicable."¹ However, regulations are still to eventuate.
17. *LGNZ recommends that the Committee direct officials to investigate the potential benefits of (and options for) providing local authorities with more direct access to infringement offences for breaches of bylaws made under the Local Government Act 2002.*

IMPROVING RECOVERY RATE OF INFRINGEMENT FINES

18. The last remaining element needed to create a robust and lasting regulatory framework for managing the nuisance associated with freedom camping is improving the recoverability of infringement fines once they are issued. This is of particular importance for recovering fines from overseas-based offenders.
19. Under the Freedom Camping Bill 2011 infringement fines can be issued against a vehicle. If a rental service vehicle (as defined in the Land Transport Act 1998) is used in the commission of an offence, the fine will be attributable to the holder of the rental service licence responsible for that vehicle. However, under clause 21 (5) of the Freedom Camping Bill, the rental service licence holder has access to the owner liability defences available under section 133A (4) of the Land Transport Act 1998. In practice these defences see infringement fines routinely distributed back to the issuing council even though a ready payment recovery mechanism (via credit card deduction) is routinely available to rental vehicle owners.
20. Recovering fines from an overseas hirer is not a straight-forward task. The first step is for a council to attempt to contact the person who was in charge of the vehicle used in the commission of the offence, based on the details provided by the holder of the relevant rental vehicle licence. At this point the hirer is given 28 days to pay. If no payment is received after 28 days a reminder notice is then issued. An additional 28 days to pay is given from the date this second reminder notice was sent.

¹ Review of the Local Government Act 2002 and Local Electoral Act 2001, Local Government Commission, July 2008, page 100.

21. If payment is still not forthcoming, a council now has to make one of two choices: lodge the infringement with in the District Court (imposing a filing fee of \$30.67) or simply write it off. Anecdotal evidence suggests that the vast majority of local government infringements are abandoned at this point in time.
22. Unpaid infringements lodged with the Courts simply pass the problem from local government on to central government. Information obtained by an Official Information Act request to the Ministry of Justice show that as at 31 March 2011, \$504,419,798 is currently owed in unpaid vehicle offences to local authorities and the Police. This figure excludes the additional and significant cost of tickets that have already been written off.
23. An infringement regime is only an effective deterrent if fines are recoverable from those committing the offence in question. Providing rental vehicle companies with a defence from liability under the Freedom Camping Bill 2011 will significantly reduce the effectiveness of infringements as a deterrent for undesirable camping behaviours.
24. There is a simple and equitable way of improving the recoverability of infringement fines that will require only two minor amendments to the Bill. The first is an explicit declaration under clause 21 (5) that the defence outlined in section 133A (4) (a) (i) does not apply if a rental service vehicle (as defined in the Land Transport Act 1998) is used in the commission of an offence.²
25. This will remove the ability of a rental vehicle company to simply pass the fine back to the prosecuting authority (either local government or the Department of Conservation.)
26. However, under the current wording of section 9.5 (2) of the Land Transport Rule: Operator Licensing 2007, the holder of the rental service licence would not be able to deduct the infringement from a hirer's credit card for offences issued under the Freedom Camping Bill 2011. To prevent this unfair situation from arising, a consequential amendment will also be required to this Rule. This could be achieved by including a new provision 9.5 (2) (c) explicitly identifying an offence made under the Freedom Camping Act to be an offence.
27. Implementing both of the proposed amendments will create an equitable way of recovering infringement fines from the hirers of rental vehicles. As rental vehicle companies are also already entitled to recover the actual costs of processing the infringement,³ it will also significantly reduce wasted effort by local authorities, the Department of Conservation and the Courts.
28. *LGNZ recommends that the Committee incorporate the amendments outlined above into the Bill to substantially improve the recoverability of infringement fines.*

² (4) It is a defence to proceedings taken against a person under subsection (1)(b) or (c) if—

- (a) the person proves that, at the time the alleged offence was committed,—
 - (i) he or she was not lawfully entitled to possession of the vehicle (either jointly with any other person or individually)

³ 9.5(7) The holder of a rental service licence may charge an administration fee, which must be specified in the rental service agreement, to cover the cost of debiting the hirer's credit card.

Conclusion

29. LGNZ is generally supportive of the intent and provisions included in the Freedom Camping Bill 2011. Subject to minor tweaks we believe it can be used to broadly create an effective and lasting regulatory environment for managing the nuisance created by freedom camping, while maintaining the benefits of this activity.
30. Enforcement is only one aspect of successful management of freedom camping. LGNZ is a committed member of the Freedom Camping Forum and will continue to be an active participant in national education and coordination efforts in the future.
31. LGNZ thanks the Local Government and Environment Committee for the opportunity to comment.

Recommendations

32. LGNZ makes the following recommendations:
 - That the Committee carefully consider the specific legislative refinements submitted by individual councils for improving the clarity and effectiveness of the final legislation.
 - That the Committee direct officials to investigate the potential benefits of (and options for) providing local authorities with more direct access to infringement offences for breaches of bylaws made under the Local Government Act 2002.
 - That the Committee seek to improve the recoverability of infringement fines by:
 - i. Explicitly declaring under clause 21 (5) that the defence outlined in section 133A (4) (a) (i) of the Land Transport Act 1998 does not apply if a passenger service vehicle is used in the commission of an offence; and
 - ii. Including a consequential amendment to the Land Transport Rule: Operator Licensing Rule 2001 which adds a new provision 9.5 (2) (c) explicitly identifying an offence made under the Freedom Camping Act to be considered an offence under the Rule.



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