

Problems with the freedom camping regime

1. The freedom camping regime is designed to prevent and mitigate the primary harms occurring in unsuitable locations and it can be used to reduce the risk of secondary harms. The regulatory mechanisms in the legislation act upon the supply of available camping areas by:

- Identifying unsuitable locations and preventing camping, e.g. suburban areas
- Restricting the type of camping activity to minimise the risk of harms, e.g. maximum number of consecutive nights, self-contained vehicles only.

Because the regime acts on supply of available camping areas, the regime itself favours reducing supply to mitigate secondary harms. However reducing supply increases the risk of primary harms because it increases density, focusing the number of campers into a reduced number of locations.

The freedom camping regime also includes a New Zealand Standard for self-containment of motor caravans and caravans: NZS 5465:2001. The Standard sets out a basic standard for containment of waste water and solid waste to help provide a solution to the problems associated with the use of motor caravans and caravans in areas where there are no sewage or waste disposal facilities.

Overcrowding

2. Overcrowding observed during peak season may lead to overestimating the presence of campers. An influence on overcrowding is the highly seasonal nature of visitors to New Zealand. Although recent years have been consecutive record breakers for the country, New Zealand is still only ranked 60th internationally for total visitors per capita. However, a large portion of annual visitors are concentrated into a 3 or 4 month peak summer season. During peak periods, accommodation can see near 100% occupancy rates, while in the off season rates can drop back into the teens. Popular camping and hiking areas experience similar peaks. For example, the Tongariro Crossing receives 100,000 visitors annually, though in a single peak day 3,000 visitors can be on the trail¹⁶. It is not surprising that the focus on irresponsible freedom campers tend to be on overseas visitors since they are more likely to travel in the peak season than domestic travellers, such as 'grey nomads'.

Data from the NZMCA provided to the Far North Council taken from GPS monitoring, confirms that most visitors are travelling up and down a relatively small number of main State Highways. The number of non-commercial campers may not have increased so much as their concentration, accentuating the observed overcrowding. The Freedom Camping Bill Regulatory Impact Assessment (2011) states:

Comment [AW2]: This seems low. What's the reference for this fact?

¹⁶ Wright, 2016

There are three significant sources of demand, two of which are increasing:

1. **International tourists** – year on year tourist numbers are increasing. This increase is reflected in the demand for freedom camping areas. This demand is also lumpy and seasonal. Events can give rise to intense periods of high demand.
2. **Domestic tourists** – there is no evidence to suggest these volumes are changing.
3. **Internal displacement (homelessness)** – this appears to be a fast growing group which is adding unplanned demand and competing for public camping spaces.

Increasing demand when coupled with stagnant or reducing supply exacerbates the problem of concentration. Where demand outstrips supply this creates a problem of ‘offending out of necessity’.

4. **Problem 2 – offending out of necessity.** Where supply is constrained to a significant extent, campers may be faced with no legitimate viable alternatives. Constrained supply may force campers to choose between three undesirable options: break the law, incur commercial campsite costs, or suffer significant inconvenience, e.g. go to a site further away from their desired location.

While breaking the law carries a risk of a cost, i.e. infringement fee, the alternatives impose certain costs upon the camper. Where demand for camping areas exceeds supply, the incentives may favour breaching the regime. International campers that have hired vehicles for the purpose of camping may not have allocated budget to use alternatives to free sites.

If rental companies underplay the limited camping areas available in popular locations, especially for non-self-contained vehicles, campers may be unprepared. As night approaches, they do not have the local information, money, or understanding of enforcement risk, to choose an alternative that complies with the local bylaw.

The problem of regulating offending out of necessity is that it makes offenders out of people with low culpability for their breach. There are issues of natural justice where it is almost impossible to comply. They may have had limited options or had insufficient information to understand and appreciate their options. Their actions may not have given rise to any real harm or costs to the community, except for the breach of the regulations itself.

5. **Problem 3 – bylaws not suitable for homelessness and permanent ‘freedom camping’ living.**

There appears to be an increasing group of local people who are living temporarily and permanently in motor vehicles [also see problem 1(3) above]. This activity can cause primary and secondary harms, especially when vehicles are grouped together. People living in these vehicles are also at increased risk of harm from harassment and theft [see Christchurch example on page 15].

Comment [AW3]: This problem is mentioned at the top of this page, but is not elaborated further. If the focus of the review moves from ‘freedom camping’ to more general ‘camping in public places’ as per page 4, this aspect of public camping seems like an important one to address.

Existing bylaws and public services do not manage this group well, with few places to park, limits on nights spent at any one place, limited litter bin capacity, and few public toilets open at night. 'Homeless' campers may be caught by enforcement action under the Freedom Camping Act, which just moves them to a different location and adds to their existing financial burdens. This does not address the campers' needs or the effects on public areas generally.

Weak relationship between camping in a public place and secondary harms

5-6. The freedom camping regime treats all campers equally and is not capable of targeting problem campers. As such it is a blunt regulatory instrument with respect to the secondary harms which are targeted through specific offences under other regulations.

In general secondary harms are all illegal and specific disincentives are provided through separate regimes. The practicality of enforcing these regimes limits their effective use. The freedom camping regime is proactive and precautionary rather than the other regimes which respond to actual harms and would require costly surveillance to give effect to.

Problem 3 – mismatched perception. While international tourists may engage in some irresponsible and anti-social behaviour, the media and local authorities appear to be over reporting the frequency and scale of incidents. More typically concerns may be more closely related to the problem of concentration.

There is a public perception that there is a link between campers using a public space and harm, as opposed to other users causing harm through their use of a public space. In particular, there are sites that are being frequented by domestic campers and people who are homeless.

Regulatory ambiguity and accidental non-compliance

6-7. Regulatory regimes need to be clear to regulated parties. Camping regulation in New Zealand is complex. The complexity comes from two main variables: local variation in rules and people not knowing how to comply with the rules.

Problem 4 – Local variation in rules

There is a patchwork of regulatory regimes in place across New Zealand. There are multiple regulatory regimes capable of regulating camping in public places. Each is available under different circumstances and each allows for different enforcement practices. The Freedom Camping Act 2011 and Reserves Act 1977 provide specific bylaw making powers to control camping. The Land Transport Act 1996 and the Local Government Act 2002 provide general bylaw making powers that could be used to control camping.

Solution four - local variation in rules. Careful and comprehensive assessments should take place prior to a decision to adopt bylaws, including under section 155 of the Local Government Act 2002. What is the evidence of harms and benefits? What is the most appropriate regulatory mechanism to manage those harms? It is illogical to attempt to have a nationally consistent bylaw regime because the purpose of a bylaw is to adapt to fit local circumstances. A regional approach makes more sense than the current regime which changes within and across administrative boundaries. Adjacent areas with similar circumstances could adopt similar rules. This is possible under the current legislative framework, but requires policy leadership. However it must be acknowledged that even within regions there will be differences in the issues faced and the preferred approach for tackling the issues.

Solution five - not knowing how to comply. The legislative framework is ambiguous and complex. To simplify and rationalise this framework may be facilitated through analysis of the bylaw regimes more generally, of the interface of bylaws with primary legislation and of how bylaw enforcement occurs. The first step could be a consistent interpretation of the Road Code so that infringements fines are not issued unfairly.

The current approaches to the regulation of camping in public places appear to have been insufficiently evidence-based. It may be that regulation and punishment are being put ahead of a strategic approach to managing demand, increasing supply and reducing harm. The alternative is likely to be fewer visitors and less expenditure in the New Zealand economy. A proactive communications and engagement strategy with the tourism sector and councils will ensure there is more consistent messaging especially for international tourists with regards to freedom camping in New Zealand. Whilst there may be regional variance the key messages and signposting to sites for further local information should assist with compliance.

Solution six - effective implementation of NZS 5465:2001. Effective implementation of the Self Containment of Motor Caravans and Caravans Standard (NZS 5465:2001) can have a significant role in addressing problems in the freedom camping regime.

Ensuring that all private and rental vehicles used for freedom camping in New Zealand comply with the Standard would be a broad-brush mechanism to reduce impacts of freedom camping. Compliance with the Standard is currently confirmed by a self-containment certificate and mandatory display of the warrant on vehicles.

Including a clause on Standard NZ 5465:2001 in a common national bylaw, ensuring that vehicles used for freedom camping comply with the Standard, would clarify the compliance requirement and allow for more effective enforcement and consistent messages.

Comment [AW4]: This is an option suggested by our Senior Analyst on waste from freedom camping, that may benefit from further discussion and analysis. It ties in with a number of the other solutions, such as more information on how to comply, standardising variations in rules, and managing demand. It does not address people sleeping rough in cars. From an economic perspective, there would be fewer tourists in non-self-contained vans touring NZ because some will be less willing to pay to stay in camping grounds and so decide not to travel NZ this way. However these tourists are likely to spend less money in NZ anyway than those who hire or tour in self-contained vehicles.

The Standard will be reviewed soon. Revisions to the Standard will provide clarity for council enforcement officers where rental car agencies currently provide vehicles that do not comply with the Standard (i.e. have no containment or limited containment of waste).

Released under Official Information Act 1982