



Federated Mountain Clubs of NZ (Inc)

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Committee Secretariat
Local Government and Environment Committee
Parliament Buildings
WELLINGTON

Submission – Freedom Camping Bill

Submission of Federated Mountain Clubs of NZ (Inc)

About the Federated Mountain Clubs

Federated Mountain Clubs of New Zealand is the national association of over 100 mountain clubs, representing a total of over 16,000 individual members.

Federated Mountain Clubs' objectives are to promote:

- our clubs' activities
- training and safe use of the backcountry
- its preservation and sound management

We also work to protect rights of access to the countryside.

Our member clubs range from single interest groups to large alpine and tramping clubs whose members go tramping, mountaineering, skiing, canoeing, mountain-biking, hunting and walking. They are based in cities and small towns, from Whangarei to Invercargill. Clubs range in size from those with 15 - 20 members to clubs with over 1000 members.

Summary of Comments on the Freedom Camping Bill

We have an interest in the freedom camping. While the Bill is largely about camping near roads and the coast, it does impinge on back-country areas. It also impacts on the places people are first introduced to the outdoors.

We are deeply concerned that the Bill will have a negative impact on traditional kiwi recreationalists and will have little effect on the problem it is meant to fix. The Bill is laden with opportunities for unintended consequences, and needs significant work from this Committee if it is to pass.

We have provided detailed clause by clause suggestions in this submission, however in summary our concerns can be stated as:

- The Bill will not address its stated purpose, rather it will have a chilling effect on any kind of freedom camping, which will cause resentment among New Zealanders enjoying their own country responsibly, and limit peoples first experiences in the outdoors.
- The Bill creates and allows perverse incentives for Council's to place blanket bans on freedom camping and then to generate revenue by enforcing it on unsuspecting trampers and drowsy drivers.
- The Bill if enacted will crowd out non-regulatory options, including some that are working well such as the environmental care code.

The explanatory note of the Bill indicates that “The purpose of this Bill is to address the negative effects of freedom camping.”

Unfortunately the Bill does not achieve this purpose. It provides for blanket infringement fines for breach of any bylaw or rule by a local authority. The fines are heavy and no attempt is made to check whether the by-laws are reasonable or not.

The fines are not related to the nuisance or environmental impact of the breach. As an example, someone could be fined \$10,000 for being in a vehicle overnight. When in actual fact, any harm would be related to littering, damaging vegetation or careless disposal of toilet wastes. All of these are offences under other Acts.

What this Bill does is enable local Councils to impose blanket bans on freedom camping (and this is happening see footnote about the Kapiti Coast District Council on page 4. They can then retain any revenue that they generate from enforcing this blanket ban

Given the fiscal constraints in local government, this incentive will be irresistible, and because of this, if enacted, this Bill will create a regime that effectively prohibits freedom camping for the bulk of the population without taking a single step to address the harm that does exist.

We submit that by crowding out non-regulatory options the Bill will do more harm than good.

The Bill is a draconian regulatory response that cuts across non-regulatory options. In our view the Bill will not effectively resolve the stated problem and will merely build resentment among New Zealanders and especially the young. And worse, in the long term it will reinforce the alienation of the bulk of New Zealanders from the outdoors.

In our assessment the problems with toilet wastes and other impacts relate to:

- Increasing numbers of people travelling – our population has increased and the number of offshore visitors has increased even more.
- Fewer sites are available for camping – causes for this relate to restrictions on camping, increasing settlement and subdivision (especially along the coast), , road widening and coastal erosion have also removed many sites. Coupled with this has been closure of many formal camping grounds..
- The travelling public, especially if they are on holiday, will be spending time in scenic and other spots of interest. These day visitors as well as campers need toilets at these places and there is a general lack of toilets in many places. In addition, in many areas toilets get locked at sunset and unlocked between 7am and 9am. At night those needing a toilet have no facility available. Toilet wastes are not all from campers.
- Finally part of the problem is one of ignorance and an attitude of not considering others.

A more effective and rounded response to the problem of toilets wastes would recognise and address some of these problems instead of relying solely on penalties and regulation.

Federated Mountain Clubs and trampers and climbers in general have long supported reducing the impacts of camping on the environment. Indeed minimum impact codes have been around some time and have long advocated 'carry out' for rubbish. On toilet wastes the codes are clear. In lower altitude areas, if no toilet is available the well known rule is to bury waste where it won't cause a problem (see the attached NZ Environmental Care Code). This Bill would make this practice an offence anywhere near a road or the coast for campers. The Bill, however, does not cover the same problem if the wastes are from those merely travelling through or on day visits.

We have a particular concern that the Bill will impact on remote road ends. Often our members arrive at these after travelling some distance and it is common practice to sleep at the road end to enable an early start. Because of the high likelihood that small councils will impose blanket bans this will no longer be allowed. This will have a significant impact on many tramping clubs who travel long distances on a Friday night before starting tramping on a Saturday morning. Commercial camping is not an option because of the hour of night that they usually arrive.

The Bill also duplicates existing provisions in the Local Government Act and in the various pieces of legislation relating to the public conservation estate. Both of these have by-law powers and infringement fines are able to be implemented under the Local Government Act. See for example, section 39 of the Local Government Act which provides for by-laws and section 48 of the Conservation Act.

We note the wide ranging offences and scope of infringement fines and other enforcement powers. As they are strict liability offences the onus is on the accused to prove the defence. The use of a strict liability offence seems disproportionate to the harm that may be caused. Especially, as people could be convicted where there is no damage.

Comment on Specific Clauses

Clause 5 – Meaning of freedom camp

This has a number of unsatisfactory sections. It refers to 'formed roads' and 'vehicle accessible areas'. Neither are defined in the Bill. We note that the 'formed road' need not necessarily be a public road controlled by the local authority. The wording could mean a private formed road that happens to be within 1 kilometre of the land in question. Vehicle accessible areas are also much wider than roads. Four wheel drive vehicles and quad bikes can access many areas, including up river beds for kilometres. These are not mapped (unlike Great Walks and legal roads that are mapped) so the spatial extent of freedom camping as covered by the Bill is not clear. The spatial extent is important as what is an offence in one area is not in other areas.

We submit that some limitation needs to be put on this otherwise camping will be very restricted, even in Southern Alps. The 1 kilometre exclusion zones mean that campers may not even be aware of the vehicle access that is almost a kilometre away.

A second concern relates to the definition. It is as wide as the definition of 'to camp', which is not defined in the legislation. This creates uncertainty. A drowsy driver stopping for a nap at night would probably be caught by the definition. The dictionary definition (Concise Oxford) of camping usually refers to overnight. At least this cuts out a child having a nap under a tent or shelter while a family is picnicking but it does not give clarity for the case where trampers arrive late (or even in the early hours) for a short sleep before heading off early.

We submit that "camping" be more tightly defined

Clause 11

While the wording of this section appears to be one where camping restrictions will be done for particular locations the practice of imposing a blanket ban in a district except for a few specified locations is also able to be done. The requirement to use the resource intensive Special Consultative Procedure may well encourage this latter approach as those camping are unlikely to be local residents. This trend is happening already and is clearly evident from those listed in Schedule 3.¹

Most councils seem to have opted out of making any provision for providing camping. In this context, we note that central government provides for campsites and the Department of Conservation has been asked to provide more coastal camping, especially in the north. This Bill will increase the need for this and it is hard to see how this can be delivered with a declining budget.

We submit that there should be some obligation on council to provide for freedom camping. This Bill merely provides penalties and enforcement powers for where freedom camping is prohibited.

Clauses 14, 15 and 16

We question the need for these clauses and question why are they necessary this year? Clause 14 is particularly open to problems. We believe that the authority will be delegated and we can see scope for highly variable implementation.

We also question whether a proliferation of signs will work. What happens for example when someone arrives at a site they have used before to find a hastily erected sign.

The approach cuts across existing planning processes for establishing no camping areas. The Conservation Act provides for a series of management plans and strategies that cover how places will be managed. This takes some important decisions outside of that framework and devalues the worth of the management regime.

We submit that clauses 14, 15 and 16 should be deleted.

Part 3

In our view this whole Part needs to be rethought. It appears to encourage the overuse of penalties, which as discussed earlier are not commensurate with the harm caused. This Part as currently drafted will cause significant dissatisfaction with the Bill.

We submit that fines need to be linked to the harm caused. On the face of it, s18(2) appears to have a more severe harm than s18(1) but has lower penalties. We would also question whether strict liability is appropriate.

¹ One example of this is the Kapiti Coast where the rules mean that “From February 7 next year, self-contained campervans will be permitted on a limited number of specified Council owned sites in the Kapiti Coast District. Any other form of freedom camping (such as vans which are not self-contained, or tents) will not be permitted on Council land.” (From the announcement of the new policy in 2010 – available on the KCDC website). Effectively, this is a blanket ban with an exception for expensive mobile homes in a limited number of locations. This is not a ‘freedom camping’ policy despite the name that KCDC have for it, rather it is a ban on freedom camping.

Clause 18 - Offences

As noted these are unnecessarily wide and are often ill defined. As an example:

What does “makes preparation to freedom camp” (in 18(1)(c) and (i)) actually mean. Given freedom camping includes sleeping in a car does this mean parking the car? Could it mean taking a tent out of a pack? In both of these cases this could just as easily be preparation for lunch. In the case of taking the tent out of a pack it could be so the person can access something that is underneath the tent. In our view 18(1)(c) is so open to interpretation that it should not be the grounds for an offence.

Clause 18(1)(h)(i) poses some special problems. One can freedom camp in remote areas on the public conservation estate. Camping in areas such as the south coast of Stewart Island and the coast south of Jacksons Bay fall into the definition of freedom camping when the camp is within one kilometre of the coast. In this circumstance the wording makes burying toilet waste an offence.

Our guess is the enforcement here will be less than perfect and the defences in clause 21 may apply. However, assuming that they do the whole Bill becomes a very long winded way of maintaining the status quo.

Interestingly, under clause 18(1)(c) and (h) no infringement fine is attached to leaving toilet wastes in the same areas when not freedom camping or when the waste is not ‘generated while freedom camping’. This is even when the waste is left unburied. This seems more than a little strange to us.

We submit that Clause 18(1)(h) should be reworked to implement rules in alignment with the NZ Environmental Care Code.

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Clause 20 – Infringement offences

We note that the Local Government Act in section 259 requires an Order in Council before an infringement fine applies to a particular by-law. This approach would seem to be more appropriate than the wording of this clause. We do not think all of the by-laws covered by this provision warrant the imposition of infringement fines.

A further issue will be enforcing any infringement fines. It is already difficult to collect other infringement penalties from those with no or few assets. These are the same people likely to freedom camp, often responsibly.

We submit that part 3 needs large amounts of work. It does not reflect good policy or legislative design.

Clause 21 – Defences

The defences seem wide but at the same time quite vague. Not only do they create uncertainty for all concerned they could result in the implementation of the Bill being quite discriminatory.

The wording of clause 21 gives our members some defences. We wonder however, how evenly they will be accepted. If I get caught out in the dark while tramping and decide to camp for the night rather getting in trouble in the dark at what point is this deemed ‘necessary to protect life or health’ or ‘when is it reasonable in the circumstances’ ((21(2)))?

Related to this does 'effects...were adequately mitigated' (21(2)(c) mean I've followed the Environmental Care Code or does it mean something more? The same questions could be asked by a tired motorist who stops for a quick nap.

Similar questions could be asked of the meaning of 20(3).

We submit that As above, part 3 needs large amounts of work. It does not reflect good policy or legislative design.

Clause 29 – Entitlement to infringement fees

Councils will be able to retain infringement fees but DoC will not. The intent seems to be to provide an incentive to enforce any rules. This is another reason why we believe that the Bill will end most freedom camping. We would have thought that the nuisance caused would be enough incentive for Councils to police their existing by-laws. Those that aren't enforced would seem to be of less interest to the Council.

In the case of DoC, if they are to undertake enforcement to the same level, there will be budgetary implications for them and other activity will need to be cut if enforcement is to increase.

We submit that the committee think very hard about the incentives that you are creating here, this is not the way to achieve the purpose of the Bill

Clause 33 - Information

This clause is draconian. It appears to set up a situation where an enforcement officer can demand information from someone and then impose an infringement fine if the information is not given. There appears to be no defence that the person does not have the information. It would seem obvious to us that in any group not everyone will know the full names of the others, let alone their proper addresses.

We submit that at a minimum there should be a defence for people who don't know this information.

Clause 34 – Power to require someone to leave

The wording here is very open 'believes on reasonable grounds is committing or has committed an offence'. Given that 'makes preparation to camp' is listed as an offence and could mean anything this gives enforcement officer very wide powers to exclude people from conservation land. We do not think this is warranted based on the fact that the risk being run is they may sleep on a piece of land. It also runs counter to the New Zealand philosophy of free and open access to conservation.

We submit that this clause should be deleted

Clauses 35 and 36 Impoundment of property

The impoundment provisions seem to give little protection against unwarranted impoundment of property. The language appears to be borrowed from other legislation relating to things such as burglary. As we note above, quite innocent activity can be interpreted as preparation for a breach of this Bill. Impounding someone's car for stopping at a beach in the evening (just because someone thinks they might be getting ready to camp) seems unduly harsh to us.

We submit that this clause should be deleted

Conclusion

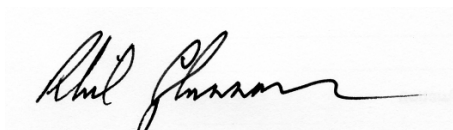
This Bill seems to us to be a very clumsy response to poor camping practice. We feel that the approach taken needs to be reconsidered. In our view a better response to the impact of freedom camping would involve:

- provision of adequate camping sites, and not just places for large expensive mobile homes
- encouraging cooperation and good camping behaviour
- improved provision of toilet and waste facilities
- controls on those activities and sites where there are problems.

The Bill as worded and with the approach currently being taken to by-laws by many councils, what will happen is that freedom camping in accessible sites will be effectively prohibited in New Zealand. Heavy handed enforcement will mean that only those who don't mind risking facing enforcement action will camp and hence the general level of conduct will drop. In short the title of the Bill is wrong – it is not a freedom camping bill but one that effectively ends it except in remote areas.

We wish to be heard.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Phil Glasson', written in a cursive style.

Phil Glasson
Secretary



NEW ZEALAND
environmental
CARE CODE

Check list

Protect plants and animals

- Treat New Zealand's plants and animals with care and respect. They are unique and often rare

Remove rubbish

- Litter is unattractive, harmful to wildlife and can increase vermin and disease. Plan your visits to reduce rubbish and carry out what you carry in. Reduce, re use and recycle your rubbish

Bury toilet waste

- Use toilets provided. In areas without toilet facilities, bury your toilet waste in a shallow hole well away from waterways, tracks, campsites, huts and carparks. Above the bushline, carry and use a poo pot

Keep streams and lakes clean

- When cleaning and washing, take the water and wash well away from waterways. Do not use soaps and detergents in lakes and streams; they are harmful to water-life and contaminate drinking water. Drain used water into the soil to allow it to be filtered. If you suspect the water may be contaminated, boil, filter, or chemically treat it

Help stop the spread of weeds and disease

- Vehicles, equipment, clothing and footwear spread weeds and diseases which can kill native plants and animals. Make sure all your equipment is clean. *Check, Clean and Dry*

Take care with fires

- Use a portable stove; they are less harmful to the environment and are more efficient than fires
- If you do use a fire, keep it small, use only dead wood and make sure it is out by soaking it with water and checking the ashes before leaving

Camp carefully and keep to the track

- When camping, leave no trace of your visit. Use toilets where provided
- By keeping to the track where one exists, you lessen the chance of damaging fragile plants and disturbing wildlife

Consider others

- People enjoy many different recreation activities in the backcountry. Respect the rights of others for quiet enjoyment of the natural environment

Respect our cultural heritage

- Many places in New Zealand have spiritual and historical significance. Treat these places with consideration and respect. Leave what you find

Enjoy your visit

- Protect the environment for your own sake, for the sake of those who come after you and for the environment itself

Toitu te whenua / Leave the land undisturbed

For more information about caring for the environment visit the DOC website: www.doc.govt.nz

For information about *Leave No Trace* courses, visit www.leavenotrace.org.nz



Department of Conservation
Te Papa Atawhai

New Zealand Government