

**PROPOSED AMENDMENTS TO THE TAKUTAI MOANA ACT**

**EFFECTIVE FROM TODAY**

This pānui outlines the decisions Cabinet has made to propose amendments to Section 58 of the Marine and Coastal Area (Takutai Moana) Act 2011 (the Act) and the impact of those changes on future and current customary marine title (CMT) applications.

Please read this pānui carefully.

**Background**

The Act sets out a durable framework to enable the legal recognition of Māori customary rights while ensuring the protection of the legitimate interests of all New Zealanders in the marine and coastal area.

Section 58 of the Act sets out the test that whānau, hapū and iwi groups must meet to determine whether they can be granted a CMT.

The Government considers that the Courts, in interpreting section 58, including the Court of Appeal's October 2023 decision in *Whakatōhea Kotahitanga Waka (Edwards) & Ors v Te Kāhui and Whakatōhea Māori Trust Board & Ors (Re Edwards)*, changed the nature of the test and materially reduced the threshold for the recognition of CMT.

The amendments to the Act will give effect to a commitment in the coalition agreement between the National Party and the New Zealand First Party to make clear Parliament's original intent, in light of the judgment of the Court of Appeal in the case *Re Edwards*.

The Government announced the proposed changes in a media statement today.

**Proposed Changes**

Cabinet has agreed to make the following changes:

- insert a declaratory statement that overturns the reasoning of the Court of Appeal and High Court in *Re Edwards*, and all High Court decisions since the High Court in *Re Edwards*, where they relate to the test for CMT
- add text to section 58 to define and clarify the terms 'exclusive use and occupation' and 'substantial interruption'
- amend 'the burden of proof' section of the Act (section 106) to clarify that applicant groups are required to prove exclusive use and occupation from 1840 to the present day; and
- make clearer the relationship between the framing sections of the Act (the preamble, purpose, and Treaty of Waitangi sections) and section 58 in a way that allows section 58 to operate more in line with its literal wording.

## Impact on CMT applications

**Cabinet also agreed that when the legislation is enacted the clarified section 58 test will be applied from the date of the policy announcement – 25 July 2024.**

Under the proposed changes, existing CMT decisions will continue to be recognised.

All undetermined takutai moana applications, through the Courts or the Crown engagement pathway, will be decided under the clarified test.

Undetermined applications include five High Court cases that have had, or are having, a hearing but where there are no judgments. The Government acknowledges that until Parliament legislates to amend the Act that the Courts are required to apply the Court of Appeal's decision. However, if Parliament enacts these amendments, any CMT awards made between today and the date of enactment would be overturned, and those cases would need to be reheard under the clarified test.

Te Arawhiti acknowledges the impacts of these proposed changes on your CMT application. If you are unsure of the impact on your takutai moana application, please contact our team at [takutaimoana@tearawhiti.govt.nz](mailto:takutaimoana@tearawhiti.govt.nz)

### What's not changing?

- The rights you are entitled to when you have CMT
- The test for Protected Customary Rights
- The Act's protection for public recreational use, navigation, access, and fishing.

### Seeking your views

**There is an opportunity for you to provide feedback on the proposed amendments by Thursday 15 August 2024.**

While the changes outlined in this pānui have already been approved by Cabinet, the Minister for Treaty of Waitangi Negotiations, Paul Goldsmith is inviting applicant groups for feedback on the proposed changes.

Attached is a letter from the Minister providing more details on the proposed changes.

Please email your feedback by Thursday 15 August to [takutaimoana@tearawhiti.govt.nz](mailto:takutaimoana@tearawhiti.govt.nz)

### Next steps

The Government currently intends to finalise the drafting of the Amendment Bill by mid-September so it can be introduced into Parliament and passed by the end of 2024.

The speed of this legislative process reflects the Government's desire to restore the section 58 to that intended by Parliament before more Court decisions are made on the basis of an inconsistent interpretation of the test.

If you have any other pātai, please contact our team at [takutaimoana@tearawhiti.govt.nz](mailto:takutaimoana@tearawhiti.govt.nz)

Nā mātau, nā Te Kāhui Takutai Moana, Te Arawhiti