

Amendments to the Marine and Coastal Area (Takutai Moana) Act 2011

October 2025: Questions and answers

What is the Takutai Moana (and the Act)?

Takutai moana refers to the marine and coastal area which is between the high tide line and 12 nautical miles out to sea.

The Marine and Coastal Area (Takutai Moana) Act 2011 (the **Act**) established a special category of land – the common marine and coastal area – neither the Crown nor any other person owns, or can own, the common marine and coastal area.

The Act provides for ongoing public access (except for the protection of wāhi tapu), fishing, and navigation in the common marine and coastal area.

The Act provides whānau, hapū and iwi Māori with the ability to seek legal recognition of their customary interests by applying for a customary marine title (CMT) or protected customary rights (PCR).

What is section 58?

Section 58 of the Act sets out the test that must be met to determine whether whānau, hapū or iwi groups can have their customary rights recognised through a CMT.

Applicant groups must prove that they hold the relevant area in accordance with tikanga and they have 'exclusively used and occupied' an area 'from 1840 to the present day without substantial interruption'.

What does a CMT provide whānau, hapū or iwi groups?

CMT recognises Māori customary interests in a specified area and provides a range of legal rights, including:

- a Resource management permission right – where the CMT-holder can give or decline permission for certain types of resource consents
- a conservation activity permission right
- the ability to apply for additional protections for wāhi tapu areas
- the prima facie ownership of newly found taonga tūturu
- the ownership of non-Crown minerals (excluding gold, silver, uranium and petroleum)
- the right to create a planning document for the management of the CMT area that places a range of obligations on local and central government.

Why has the Government amended the Act?

The Government considers the Courts' interpretation of the section 58 test changed the nature of the test and materially reduced the threshold for the recognition of CMT.

It also considers that while the Supreme Court's December 2024 judgment that the Court of Appeal was wrong in its interpretation was helpful, it was not sufficiently exacting. It is for Parliament to clarify the test, not the courts, given the significant rights at stake.

What are the amendments to the Act?

The test for CMT has been clarified by:

- adding text to section 58 to define and clarify the terms 'exclusive use and occupation' and 'substantial interruption' and to place increased weight on physical evidence of use and occupation
 - amending the 'burden of proof' (section 106) to clarify applicants carry more of the obligation to prove they have *exclusively* used and occupied the area from 1840 *without substantial interruption*
 - clarifying 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.
 - Overriding previous reasoning of the Courts on the CMT test and overturning decisions awarding CMT made after 25 July 2024.
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What does this mean for CMT applications?

- Existing CMT decisions made up to 24 July 2024 will continue to be recognised. (See rows 4, 5 and 6 of the amendment impact table below)
 - All undetermined takutai moana applications will be decided under the clarified CMT test.
 - The clarified test also applies to any court decisions made since the Government announced its policy on 25 July 2024. To ensure the test is applied consistently, seven cases will need to be re-heard.
 - The Government has ensured there is additional funding of up to \$15 million to contribute to re-hearing costs.
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Who can apply for the additional funding and when is it available?

If you are one of the groups in the seven cases that need to be re-heard, you can apply for financial assistance. This will be available from 1 July 2026 to 2028/29 inclusive. Financial assistance scheme settings for 2026/27, including re-hearing costs, will be announced in due course. If you have detailed pātai about things like funding for applicants or updating any CMT evidence you've already prepared, Te Tari Whakatau will be holding webinars in mid-November to help answer them. Details of these sessions will be available in the next few weeks or so.

Amendment impact on applicant group

		Applications/ High court Case	Location	Impact of amendment
1	Undetermined	All undetermined applications	Various	These applicant groups are impacted.
		Rongomaiwahine	Hawke's Bay	Applications will be determined under the provisions of amended test in the new Amendment Act.
		Area 1 (D'Urville Island)	Top of the South Island	
		Te Whānau a Apanui	Bay of Plenty	
2	Impacted (CMT awards made)	Wairarapa (1b)	Wairarapa	As the judgment has been or will be released from 25 July 2024, the Bill requires these cases to be re-heard under the amended test (in the new Amendment Act). Any decision to award CMT will be overturned.
		Inner Aotea Harbour	Aotea Harbour	
		Kāpiti-Manawatu (1a)	Kāpiti-Manawatu	
		Ruapuke Island	Foveaux Strait	
3	Impacted (CMT judgments pending)	Whangārei Coast	Tai Tokerau	
		Whangārei Harbour	Tai Tokerau	
		Re Ngā Pōtiki (2)	Tauranga	
4	Decided and under appeal	Re Edwards	Eastern Bay of Plenty	No impact
		Re Ngāti Pāhauwera	Hawke's Bay	Appeals will continue under the pre-amendment law (applying Supreme Court's December 2024 and August 2025 judgments).
		Tokomaru Bay 1 & 2	Tokomaru Bay	
		Wairarapa (1a)	Wairarapa	
5	Decided	Re Tipene	Titi Island	No impact because these were decided before 25 July 2024.
		Ngā hapū o Ngāti Porou Tranche 1 & 2	Tai Rāwhiti	
		Re Clarkson	Wairarapa	
		Re Ngā Pōtiki (1)	Tauranga	
6	Undetermined	Ngā hapū o Ngāti Porou future tranches	Tai Rāwhiti	No impact (will be decided under the pre-amendment law, applying Supreme Court's December 2024 and August 2025 judgments).