

Hon Paul Goldsmith

Minister for Treaty of Waitangi Negotiations

Proactive release – Marine and Coastal Area (Takutai Moana) (Customary Marine Title) Amendment Act

Date of issue: 2 June 2026

The following documents have been proactively released in accordance with Cabinet Office Circular CO (23) 04.

Some information has been withheld on the basis that it would not, if requested under the Official Information Act 1982 (OIA), be released. Where that is the case, the relevant section of the OIA has been noted and no public interest has been identified that would outweigh the reasons for withholding it.

No.	Document	Comments
1.	Marine and Coastal Area (Takutai Moana) (Customary Marine Title) Amendment Bill: Approval for Introduction <i>Cabinet paper</i> The Office for Māori Crown Relations: Te Arawhiti 19 September 2024	Some information has been withheld in accordance with the following sections of the OIA: <ul style="list-style-type: none">• section 9(2)(h) – legal privilege• section 9(2)(g)(i) – free and frank advice
2.	Marine and Coastal Area (Takutai Moana) (Customary Marine Title) Amendment Bill: Approval for Introduction <i>Cabinet Minute CAB-24-MIN-0375</i> Cabinet Office 23 September 2024	Some information has been withheld in accordance with the following sections of the OIA: <ul style="list-style-type: none">• section 9(2)(h) – legal privilege
3.	Section 58 MACA amendments: Bill of Rights Advice <i>Letter</i> Crown Law 30 August 2024	Some information has been withheld in accordance with the following sections of the OIA: <ul style="list-style-type: none">• section 9(2)(h) – legal privilege
4.	Introduction of Amendment Paper for Marine and Coastal Area (Takutai Moana) (Customary Marine Title) Amendment Bill <i>Cabinet paper</i> The Office of Treaty Settlements and Takutai Moana – Te Tari Whakatau 18 September 2025	Some information has been withheld in accordance with the following sections of the OIA: section 9(2)(h) – legal privilege
5.	Marine and Coastal Area (Takutai Moana) (Customary Marine Title) Amendment Bill: Introduction of Amendment Paper	Released in full

	<p><i>Cabinet minute LEG-25-MIN-0201</i> Cabinet Office 9 October 2025</p>	
6.	<p>Marine and Coastal Area (Takutai Moana) (Customary Marine Title) Amendment Bill: Introduction of Amendment Paper <i>Cabinet minute CAB-25-MIN-0354</i> Cabinet Office 13 October 2025</p>	<p>Some information has been withheld in accordance with the following sections of the OIA: out of scope</p>

IN-CONFIDENCE

LEGALLY PRIVILEGED IN-PART

Office of the Minister for Treaty of Waitangi Negotiations

Chair, Cabinet

Marine and Coastal Area (Takutai Moana) (Customary Marine Title) Amendment Bill: Approval for Introduction

Proposal

- 1 This paper seeks approval for the introduction of the Marine and Coastal Area (Takutai Moana) (Customary Marine Title) Amendment Bill (**the Bill**).

Policy

Previous decisions

- 2 On 8 July 2024, Cabinet agreed the approach to clarifying Parliament's intent for the test for customary marine title - section 58 of the Marine and Coastal Area (Takutai Moana) Act 2011 (the Act, the primary Act) [CAB-24-MIN-0256 Revised refers].
- 3 Cabinet agreed to amend the Act by:
 - 3.1 inserting a declaratory statement that specifically overturns the reasoning of the Court of Appeal and High Court in the *Re Edwards* case, as well as all High Court decisions since the High Court in *Re Edwards*, where they relate to the test for customary marine title;
 - 3.2 adding text to section 58 to define and clarify the terms 'exclusive use and occupation' and 'substantial interruption';
 - 3.3 amending the 'burden of proof' section of the Act (section 106) to clarify that applicant groups are required to prove exclusivity of use and occupation from 1840 to the present day; and
 - 3.4 making changes to the effect of the preamble, purpose, and/or Treaty of Waitangi sections of the Act to make clearer the relationship between these sections and section 58, in a way that allows section 58 to operate more in line with its literal wording.
- 4 Cabinet also agreed that any undetermined Customary Marine Title (CMT) applications at the date of announcement of the policy (including those which have already been heard by the High Court) would need to satisfy the clarified test. Cases where a decision has been issued will have any appeals and/or any necessary re-

hearings progressed under the current law. This means the Bill will have a retrospective application.

- 5 I announced the policy on 25 July 2024 and commenced a three-week submission process for whānau, hapū and iwi applicant groups to provide comment on the broad policy proposals.

Background to the policy proposals implemented in the Bill

- 6 The Act as originally enacted struck a balance between a range of interests. The balance struck was the product of a prolonged national conversation, the work of an expert panel, and significant consultation with Māori and the public generally. The Act represented a political compact that was intended to be durable and to provide a basis for moving forward following the Foreshore and Seabed Act 2004, which the Act repealed.
- 7 An important premise of the balance struck in the Act was the test for CMT in s 58. That test includes two limbs, one focused on tikanga, and one focused on exclusive use and occupation absent substantial interruption. CMT is the highest form of statutory right recognised by the scheme. It confers on holders of CMT strong protections including a power to decline permission, on any grounds, to a wide range of activities otherwise permitted by resource consents, in the territory covered by CMT (the resource management permission right).
- 8 The Court of Appeal's interpretation of s 58 in *Re Edwards* effectively re-cast the s 58 test, rendering ineffective the second limb of the statutory test. This unanticipated change de-stabilises the balance struck by the Act. Specifically, on the Court of Appeal's interpretation, it is likely that a significantly greater proportion of the coastal and marine area would be designated CMT than if the second limb of the test in s 58 test were effective. The Bill restores Parliament's original intention that the second limb operates as a meaningful criterion for recognition of CMT, as was always contemplated by the plain and express terms of s 58.
- 9 By restoring the Act's original balance, these amendments secure important public interests, which would be unduly compromised if a larger proportion of the coastal and marine area were subject to the resource management permission right that runs with CMT, and the attendant uncertainties that right may create for otherwise permitted activities. These public interests include local and national economic development, which are particularly significant today given challenging economic conditions. An appropriately delineated test for recognition of CMT, as originally intended by Parliament, also serves to uphold the public interest in all New Zealanders having a say over the coastal and marine area. The Bill also provides legal certainty by putting beyond any doubt the legal test for recognition of CMT. This provides clarity now, rather than waiting for the Supreme Court to determine the outstanding appeal in *Re Edwards*. The appeal has not been heard, and there would inevitably be a delay before the judgment is delivered. This would lead to a significant period of uncertainty.
- 10 It will remain the case, as was always contemplated by the plain terms of s 58, that iwi, hapū and whānau will be able to establish CMT if they meet the legal requirements - including the test of exclusive use and occupation – and, if so, benefit

from the protections that run with CMT, which will remain as originally crafted. There are also a range of further protections for Māori cultural connection to the coastal and marine area within the Act, including protections for customary activities, and within other relevant statutory schemes, such as the Resource Management Act 1991.

Policy implementation through the Bill

- 11 I outline below how Cabinet's policy approvals are implemented in the Bill. I have made specific drafting decisions under delegated authority [CAB-24-MIN-0256 Revised refers] outlined at paragraph 7, 10, and 28.

Additions to the preamble - Clause 4

- 12 This clause inserts the background to these amendments into the primary Act's preamble. The preamble does not create or alter legal rights, but is one standard source of the meaning and intent of the legislation when interpreting specific provisions. It will be the most visible statement of the policy rationale for these changes and is included to communicate the reasoning and intended effect of the amendments. This is particularly important given the amendments are intended to overturn existing law.

Altering the current law interpreting the CMT test – Clause 6, new s 9A

- 13 The proposed new section 9A forms the declaratory statement that explicitly communicates that the amendments in this Bill alter the current law – i.e., the interpretation of the Court of Appeal in *Re Edwards*, and other cases.
- 14 I have made two additional drafting choices that should provide a clearer steer to decision-makers (either the Courts or the Minister for Treaty of Waitangi Negotiations) about what law is being altered:
- 14.1 To include, at Schedule 1AB, a list of the interpretational matters that the amendments impact; and
- 14.2 To include, at Schedule 1AB, a list of High Court and Court of Appeal judgments that have interpreted the test for CMT in a way that would be altered by the amendments in the Bill. The section also contains paragraph references and summaries of where specifically those judgments are inconsistent with the law as amended by the Bill.

Clarifying the relationship between the test for CMT and sections of the Act that support interpretation (the framing sections) – Clause 6, new s 9B

- 15 A key factor in the Court of Appeal's interpretation of the CMT test was what the Court considered was the difficulty reconciling the plain and literal wording of the test with the policy intent expressed in the framing sections of the Act (e.g., the purpose and Treaty of Waitangi references).
- 16 Cabinet agreed to alter how these framing sections relate to the CMT test, so that the test could operate more in line with the purpose and scheme of the Act as Parliament

viewed it at the time. This requires explicit drafting since the Legislation Act 2019 requires legislation to be read in light of its context and purpose.

17 The drafting approach taken here is:

17.1 s 9B(2) – to expressly require the CMT test provisions to be interpreted in a way that “promotes their purposes, application, and effect” as set out in the new section 9A; and

17.2 s 9B(3) – to clarify that the interpretational approach in 11.1 above prevails despite anything to the contrary in those framing sections.

18 This clearly directs decision makers to place greater weight on the specific words in the CMT test section rather than the framing sections in the Act and is intended to materially strengthen the CMT test.

Defining key terms from the CMT test – Clauses 7 to 9

19 The Bill inserts sections before section 58 to clarify the intended meaning of certain terms in the second limb of the test set out in section 58(1)(b) - namely that the applicant group must have exclusively used and occupied an area from 1840 to the present day without substantial interruption.

20 The interpretation of these terms was a key concern I had with the Court of Appeal’s reasoning in *Re Edwards*. The strength of these terms was ‘read down’ to the point where I consider applicants did not need to prove exclusivity through meaningful physical use and occupation over the whole period since 1840 but could rely on very broad inferences. The Court of Appeal also limited the scope of activities that could cause substantial interruption.

21 These clauses amend the primary Act to clarify what was intended to be the scope of the second limb of the test, as is evident by its plain and literal wording:

Clause 7

22 s 57A(2)(b) – defines exclusive use and occupation as “both the intention, and the ability, to control the specified area, to the exclusion of others”. This sets out a relatively strong requirement for applicants to demonstrate an ability to control the area and exclude others’ use. This differs from the Court of Appeal’s interpretation which didn’t require exclusive use of the application area after 1840;

23 s 57B(b) and (c) – clarifies that substantial interruption can be the result of changes within the applicant group or activities of third parties that interrupt use and occupation. These sections also clarify (in subsection iii.) that interruption can be caused by activities regardless of whether these activities were legislatively authorised. This responds to, and negates, a key finding of the Court of Appeal;

Clause 8

24 s 58(1A) – clarifies for decision-makers that they can’t make inferences about the geographic scope, continuity or exclusivity of a group’s use and occupation without evidence of physical manifestations of that use (i.e., not from purely cultural or

tikanga associations that don't have a corresponding physical manifestation). This reflects similar provisions concerning protected customary rights in the current Act (see current s 51(2)(e)), and responds to concerns that decision-makers are drawing broad inferences from limited physical evidence of use and occupation;

Clause 9

- 25 s 59(1) - requires decision-makers to have particular regard to a list of matters when determining whether CMT exists. These matters are non-exhaustive but provide a clear indication of the kinds of activities that will be relevant in proving CMT. The “particular regard” wording is a strong test and is intended to ensure these and similar matters are front of mind for decision-makers when working through evidence of use and occupation;

Clarifying when CMT is unavailable because of past extinguishment – Clause 8, new s 58(5)

- 26 A discrete but related issue around proving CMT arose in the course of drafting the Bill. It relates to when CMT is not available because of the creation of other titles or interests which preclude CMT. Section 58(4) of the current Act provides that CMT does not exist if that title is extinguished as a matter of law.
- 27 The High Court in *Re Edwards* found that the vesting of the beds of navigable rivers in the Crown under the Coal Mines Act Amendment Act 1903 meant that CMT is not available in those areas.
- 28 The Court of Appeal in *Re Edwards* reversed this decision. The Court of Appeal considered that s 11(3), which divested the Crown and local authorities of any title in the CMCA, reversed historical extinguishments. This was not what was intended. Section 11(3) divests Crown and local authority of title in the common marine and coastal area but was not intended to reverse historical extinguishment of title. While the Act (in s 6) reverses any extinguishment of customary interests caused by the Foreshore and Seabed Act 2004, it was not intended to alter the legal effect of other historical events.
- 29 To restore the intended effects of ss 6 and 11(3), and to respond to findings in some other High Court cases, the proposed amendments provide an additional definition of extinguishment that focuses on the legal effect of historical acts. The Crown has consistently maintained that s 58(4) is intended to capture situations where customary interests have been extinguished through previous events, regardless of the fact that s 11 of the Act divested the Crown and local authorities of title to the takutai moana.
- 30 The proposed s 58(5) clarifies the intended effect of the existing s 58(4), which is that any prior extinguishment of CMT under the law (with the exception of extinguishment through the Foreshore and Seabed Act) prevents the award of CMT.
- 31 This was not a policy matter that was discussed in the Cabinet paper, but I consider it a worthwhile matter to clarify and one that is directly related to the operation of s 58.

Clarifying the burden of proof on applicants – Clause 10

- 32 The High Court in *Re Edwards* took a similar approach to that taken in other High Court judgments, requiring applicants to prove all the positive elements of the CMT

test, including that their use and occupation was exclusive and without substantial interruption. This was reversed by the Court of Appeal in *Re Edwards*, who found that applicants only needed to prove use and occupation itself, and the remaining elements of the test can be presumed to be met unless evidence to the contrary is brought by a third party. This reflects that ‘exclusive’ and ‘without substantial interruption’ are not explicitly included in s 106 of the Act on the burden of proof – notwithstanding s 98(2) of the Act clarifies that the Court must be satisfied that all aspects of section 58 are met.

- 33 The proposed amendment to s 106(2) inserts the full test from s 58 into the burden of proof section, requiring applicants to prove all the elements of the test for CMT. This amendment works with other amendments to ensure appropriate and sufficient evidence to prove CMT, as intended, is considered by decision-makers. It was noted in the Court of Appeal that ‘in practice little will turn on the burden of proving exclusivity and substantial interruption; where these issues are live, an applicant group may face an evidential burden to adduce evidence to ensure the evidence overall satisfies the statutory tests’¹.

Transitional arrangements – Schedule 1AA

- 34 This clause adds a detailed schedule to the primary Act that sets out the application of the changes from this amendment Act. This schedule implements Cabinet’s agreements around retrospectivity:
- 34.1 Schedule 1AA cl 3 - applicants who have proved the existence of CMT in the High Court by the date of the policy announcement (i.e., on or before 24 July 2024) will have their CMT orders, any appeals, and any necessary re-hearings progressed under the current law;
 - 34.2 Schedule 1AA cl 2 - any other applicants will be subject to the amendments from this Bill, including those who have had their applications heard but not decided; and
 - 34.3 Schedule 1AA cl 4 - any new High Court findings on applications in the interim period (between the date of announcement and the amendment Bill coming into force) will have no legal effect once the Bill comes into force and will need to be reheard.
- 35 The proposed clause 6 of Schedule 1AA clarifies that there is no entitlement to compensation for those impacted by the changes in the Bill. This is most relevant in the case where a decision around CMT is made in the interim period and thus overturned when the Bill comes into force. s 9(2)(h)
- 36 The net result of these amendments is to clarify how the test for CMT should be interpreted, in a way that restores the balance between the competing interests struck by the original Act, as reflected in the plain terms of s 58. In line with the literal

¹ *Whakatohea Kotahitanga Waka Edwards Ors v Te Kahui and Whakatohea Maori Trust Board Ors* 2023 NZCA 504 at [226].

wording of the current section 58, applicants will need to prove that they have had exclusive use and occupation from 1840 to the present day, and that this use and occupation was not substantially interrupted (regardless of the origin of that interruption). This will directly address the interpretational approach adopted by the Court of Appeal.

- 37 The reduced influence of the Act's framing sections on the CMT test and the clear alteration of the law established in prior cases is intended to help ensure that future interpretations are consistent with the restored test.

Key developments since Cabinet's policy decisions

- 38 The July paper anticipated two key developments. First, in August 2024, the Waitangi Tribunal conducted an urgent inquiry (WAI 3400) involving a total of 86 participants: 53 claimants and 33 interested parties who contest the proposed amendments. The urgent inquiry was split into two parts with stage one addressing policy decisions implemented through this Bill. Hearings for stage one of the urgent inquiry were held from 26-28 August 2024. Stage two, which addresses funding, is still to be allocated a hearing date.

- 39 The Waitangi Tribunal released its report on 13 September 2024. The Tribunal found that, in pursuing these amendments, the Crown breached Treaty principles by:

- 39.1 failing to appropriately consult Māori on changes that significantly affect their interests;
- 39.2 not having sufficient policy justification to support the amendments being necessary as proposed, given the significant interference with Māori; and
- 39.3 pursuing retrospective application, to the detriment of applicants who have already engaged in High Court hearings.

- 40 The Tribunal recommended the Crown give further consideration to the underlying issue it is seeking to resolve through the amendments, including whether adjustments to the resource management permission right might be a better way to address the Crown's concerns. It recommended that the proposed amendments be halted until meaningful engagement with Māori on that policy problem can be undertaken.

- 41 Secondly, as directed by Cabinet, on 25 July 2024 I wrote to whānau, hapū and iwi applicant groups signalling the beginning of a three-week consultation period, and specifically sought views on:

- 41.1 clarifying the definitions of 'exclusive use' and 'substantial interruption' in section 58;
- 41.2 changes to the framing sections of the Act (comprising the purpose, preamble and Treaty of Waitangi sections); and
- 41.3 any general views or concerns about proposed changes.

42 The deadline for responses was 15 August 2024. A total of 52 submissions were received. 47 of these were from applicant groups. Five submissions were received from non-applicant individuals or groups.

43 The 47 submissions from applicant groups represent a response rate of around 10%. Factors contributing to the low response rate may be the proposed changes involving complex legal issues, the limited timeframe to reply, and participation in parallel Waitangi Tribunal processes.

44 Five overarching themes were derived from the submissions:

44.1 opposition to changes to the Act;

44.2 lack of consultation, engagement and communication;

44.3 concerns with legal process and Treaty of Waitangi obligations;

44.4 specific concerns about the proposed amendments to the Act; and

44.5 impact on applicant groups, specifically related to retrospectivity and rehearings.

Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019

45 Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019 (the Ngāti Porou Act) imports the section 58 test from the primary Act for determining CMT in the Ngāti Porou area. However, the Ngāti Porou arrangements are different from those for other applicants as the Ngāti Porou Act gives effect to a Deed of Agreement entered into between Ngāti Porou and the Crown in 2008 and amended in 2017.

46 s 9(2)(h) [Redacted]

[Redacted]

[Redacted]

[Redacted]

47 s 9(2)(h) [Redacted]

s 9(2)(h) [REDACTED]

48 s 9(2)(h) [REDACTED]

49 s 9(2)(h) [REDACTED] I propose to introduce the Bill with no consequential amendment for the Ngāti Porou Act and I will undertake engagement with representatives of Ngāti Porou with a view to agreeing appropriate amendments to the Ngāti Porou Act which may include retaining the existing test. I will include any necessary changes to the Bill at select committee stage.

Risks

50 s 9(2)(g)(i) [REDACTED]

51 Cabinet weighed those risks against the importance of restoring the original balance struck in the plain terms of the Act, which was intended to be durable and provide a path forward, and the need to protect important public interests, which would be unduly compromised if the Government took no steps. The case for legislative reform is articulated in detail at paragraphs [6]-[10].

52 I consider the Bill is consistent with the legitimate expectations of all New Zealanders, and the key purposes of the Act.

General relationship and legal risk [LEGALLY PRIVILEGED]

53 s 9(2)(h) [REDACTED]

[REDACTED]

[REDACTED]

s 9(2)(h)

[REDACTED]

Impact analysis

- 56 A regulatory impact statement was not prepared for the original policy Cabinet paper. A supplementary analysis report has now been prepared and is attached to this paper.
- 57 The Ministry of Justice’s Regulatory Impact Assessment quality assurance panel has reviewed the *Supplementary Analysis Report (SAR) Takutai Moana: Clarifying section 58 of the Marine and Coastal Area (Takutai Moana) Act 2011* prepared by Te Arawhiti, and considers that the information and analysis summarised in the supplementary analysis partially meets the quality assurance criteria.
- 58 The SAR clearly sets out the problem definition, a range of options, and evaluation criteria. As stated in the SAR, the analysis is constrained by its narrow scope, limited timeframes, and lack of public consultation. While targeted consultation did occur, this was after Cabinet’s policy decisions had been made. The SAR identifies where the costs and benefits fall, and the significance of their impact, but time constraints mean these can’t be quantified and evidence is not available to support the judgements made.
- 59 The SAR makes good use of an analytical framework to support conclusions, although the criteria are not applied consistently throughout.
- 60 More time would enable engagement to understand the scale and significance of the problem and a more informed analysis of the options and their impacts. The Panel considers that the analysis is otherwise robust and can be relied upon.

Compliance

- 61 A departmental disclosure statement has been prepared and is attached to this paper.
- 62 The Bill complies with the principles and guidelines set out in the Privacy Act 2020.

The principles of the Treaty of Waitangi

- 63 As discussed at paragraphs 39 and 40 above, the Tribunal has found that pursuing this policy is a breach of the principles of the Treaty. In particular, the principles of:
- 63.1 good governance;
 - 63.2 partnership;
 - 63.3 tino rangatiratanga; and

70 I consider the proposed amendments are consistent with the rule of law. The policy intention is clearly stated in the explanatory note to the Bill. I am also satisfied that the amendments strike an appropriate balancing of the relevant Treaty interests with the interests of all New Zealanders.

71 I am proposing an abridged select committee process for this Bill of six weeks. This will provide some further opportunity for applicants and others to express views and influence the Bill.

International obligations

72 A detailed analysis of compliance with international obligations has not been undertaken. Potential inconsistency with the United Nations Declaration on the Rights of Indigenous Peoples (**UNDRIP**) was raised by claimants in the urgent Waitangi Tribunal inquiry. This is likely referring to Article 26 of the UNDRIP which affirms that indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired.

73 s 9(2)(h) [Redacted text block]

Consultation

74 I have addressed the targeted consultation with whanau, hapū and iwi applicant groups above.

75 The Ministry of Justice, Crown Law, and the Parliamentary Counsel Office were consulted on this paper. Crown Law and the Parliamentary Counsel Office were also involved in the development of the Bill. The Department of Prime Minister and Cabinet was informed.

Binding on the Crown

76 The primary Act binds the Crown. The amendments to the Act through this Bill does not impact the necessity for the Act to bind the Crown.

Associated regulations

77 No regulations will be needed to bring the Bill into operation.

Other instruments

78 The proposed Bill does not include any provision empowering the making of other instruments that are deemed to be legislative instruments or disallowable instruments.

Commencement of legislation

79 The Bill will come into force on the day after the date of Royal assent, but some provisions will have retrospective effect dating back to 25 July 2024.

Parliamentary stages

- 80 I propose this Bill be introduced into the House no later than 26 September 2024.
- 81 I propose the Bill be considered by the Justice Committee, for a period of six weeks. This will allow the Bill to progress through the remaining stages and enacted by December 2024.
- 82 This Bill holds a category two priority on the 2024 Legislation Programme – to be enacted by the end of the calendar year.

Proactive Release

- 83 I propose this paper be proactively released, noting that it may be subject in any case to ongoing discovery in the course of the urgent Waitangi Tribunal inquiry into the amendment proposals.
- 84 Sections of this paper are legally privileged and will be appropriately redacted.

Recommendations

I recommend that Cabinet:

- 1 **note** that the Marine and Coastal Area (Takutai Moana) (Customary Marine Title) Amendment Bill holds a category two priority on the 2024 Legislation Programme – to be enacted by the end of the calendar year;
- 2 **note** that the Bill clarifies the test for customary marine title, in order to alter the interpretation of the test as under the current law;
- 3 **note** the Attorney-General is required to consider whether there appears to be any inconsistency with the New Zealand Bill of Rights Act 1990 from any provision in the Bill and, if there is, bring this to the attention of the House at introduction;
- 4 **agree** to clarify, as part of these amendments, the situations under which customary marine title is extinguished as anticipated by s 58(4) of the primary Act;
- 5 **s 9(2)(h)**
[Redacted text]
- 6 **agree** to undertake engagement with representatives of Ngāti Porou with a view to agreeing appropriate amendments to the Ngāti Porou Act which may include retaining the existing test, with any necessary changes included in the Bill at select committee stage;
- 7 **approve** for introduction the Marine and Coastal Area (Takutai Moana) (Customary Marine Title) Amendment Bill, subject to the final approval of the government caucuses and sufficient support in the House of Representatives;

- 8 **agree** that the Bill be introduced by 26 September 2024;
- 9 **agree** that the government propose that the Bill be:
- 9.1 referred to the Justice Committee for consideration; and
- 9.2 enacted by December 2024.

Authorised for lodgement

Hon Paul Goldsmith

Minister for Treaty of Waitangi Negotiations

Proactively released by the Minister for Treaty of Waitangi Negotiations



Cabinet


Minute of Decision

This document contains information for the New Zealand Cabinet. It must be treated in confidence and handled in accordance with any security classification, or other endorsement. The information can only be released, including under the Official Information Act 1982, by persons with the appropriate authority.

Marine and Coastal Area (Takutai Moana) (Customary Marine Title) Amendment Bill: Approval for Introduction

Portfolio Treaty of Waitangi Negotiations

On 23 September 2024, Cabinet:

- 1 **noted** that the Marine and Coastal Area (Takutai Moana) (Customary Marine Title) Amendment Bill (the Bill) holds a category two priority on the 2024 Legislation Programme (to be enacted by the end of 2024);
- 2 **noted** that the Bill clarifies the test for customary marine title, in order to alter the interpretation of the test as under the current law;
- 3 **noted** that the Attorney-General is required to consider whether there appears to be any inconsistency with the New Zealand Bill of Rights Act 1990 from any provision in the Bill and, if there is, bring this to the attention of the House at introduction;
- 4 **agreed** to clarify, as part of these amendments, the situations under which customary marine title is extinguished as anticipated by section 58(4) of the Marine and Coastal Area (Takutai Moana) Act 2011;
- 5 **s 9(2)(h)**

- 6 **agreed** to undertake engagement with representatives of Ngāti Porou with a view to agreeing appropriate amendments to the Ngāti Porou Act, which may include retaining the existing test, with any necessary changes included in the Bill at select committee stage;
- 7 **approved** for introduction the Marine and Coastal Area (Takutai Moana) (Customary Marine Title) Amendment Bill [PCO 26100/4.0], subject to the final approval of the government caucuses and sufficient support in the House of Representatives;
- 8 **agreed** that the Bill be introduced by 26 September 2024;

9 **agreed** that the Government propose that the Bill be:

9.1 referred to the Justice Committee for consideration;

9.2 enacted by December 2024.

Diana Hawker
for Secretary of the Cabinet

Proactively released by the Minister for Treaty of Waitangi Negotiations



30 August 2024

Te Arawhiti: The Office for Māori Crown Relations
The Justice Centre
19 Aitken Street
SX10111
Wellington 6011

Attention: Matthew Andrews

Tēnā koe Matthew

Section 58 MACA amendments: Bill of Rights Advice
Our Ref: FOR432/326

1. **s 9(2)(h)**
[Redacted text block]

- [Redacted text]
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IN-CONFIDENCE

LEGALLY PRIVILEGED IN-PART

Office of the Minister for Treaty of Waitangi Negotiations

Cabinet Legislation Committee

Introduction of Amendment Paper for Marine and Coastal Area (Takutai Moana) (Customary Marine Title) Amendment Bill

Proposal

- 1 This paper seeks approval to introduce into the House an Amendment Paper to amend the Marine and Coastal Area (Takutai Moana) (Customary Marine Title) Amendment Bill (**the Bill**).

Policy

- 2 The Bill amends the test for Customary Marine Title (CMT) under the Marine and Coastal Area (Takutai Moana) Act 2011 (**the Act**). It has been developed in accordance with the coalition agreement between the National Party and the New Zealand First Party to amend the Act to make clear Parliament's original intent for the CMT test in light of a judgment of the Court of Appeal.
- 3 The Bill was introduced to the House in September 2024 [CAB-24-MIN-0375 refers] and reported back from the Justice Committee in December 2024. Progress was paused while Ministers considered a Supreme Court judgment issued in December 2024 which directly addressed matters in the Bill.¹ On 4 August 2025 Cabinet agreed to proceed with the Bill [CAB-25-MIN-0259 refers].
- 4 An Amendment Paper is required to adjust the Bill:
 - 4.1 because the Supreme Court issued its judgment after the Bill was introduced and the High Court has issued several judgments in other relevant proceedings;² and
 - 4.2 to give effect to Ministers' decision that the Bill will not apply to the Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019.

¹ *Whakatōhea Kotahitanga Waka (Edwards) v Ngāti Ira o Waioweka, Ngāti Patumoana, Ngāti Ruatākenga and Ngāi Tamahaua (Te Kāhui Takutai Moana o ngā Whānau me ngā Hapū o Te Whakatōhea)* [2024] NZSC 164 [2 December 2024].

² The additional High Court proceedings now mean the retrospective provisions in the Bill will overturn four awards of CMT, totalling approximately 341 kilometres (up from three awards totalling approximately 280 kilometres when Cabinet agreed to progress the Bill).

- 5 The original policy for the Bill was agreed by Cabinet in July 2024 [CAB-24-MIN-0256 Revised refers].
- 6 A second Supreme Court judgment relevant to the Bill was released on 15 August.³ Having received advice from officials, I do not consider that any substantive changes to the Bill or the Amendment Paper are required in light of the second Supreme Court judgment (although I have asked for further policy advice on broader implications of that judgment).

Substantial interruption and unlawful activities

- 7 In the course of drafting the Amendment Paper, a policy question emerged not covered by Cabinet's previous decisions. Section 58 requires CMT applicants to have exclusively used and occupied the area without 'substantial interruption'.
- 8 The 2023 Court of Appeal judgment held that substantial interruption can only be caused by activities expressly authorised by legislation. The Supreme Court in the first *Re Edwards* judgment considered that interpretation too narrow, saying only unlawful activities must be disregarded.
- 9 The Attorney General and I consider the Supreme Court interpretation to be appropriate and consistent with Parliament's original intent. I therefore propose that the Bill clarify that substantial interruption of exclusive use and occupation can only be caused by activities with authorisation by or under any legislation or otherwise lawfully. I am confident that this will not re-open Treaty settlements because settlement legislation takes a broad approach to defining the claims settled. Decision-makers under the Act will still be able to consider whether lawful Crown actions (such as confiscations) substantially interrupted a CMT applicant's exclusive use and occupation.

Impact analysis

- 10 The Ministry for Regulation has determined that this proposal is exempt from the requirement to provide a Regulatory Impact Statement on the grounds that it has been addressed by existing impact analysis [CAB-24-MIN-0375 refers].

Compliance

The principles of the Treaty of Waitangi

- 11 Cabinet has previously been advised that the Waitangi Tribunal has found that pursuing this policy is a breach of the principles of the Treaty of Waitangi [CAB-24-MIN-0375 refers].

The New Zealand Bill of Rights Act 1990 [LEGALLY PRIVILEGED]

- 12 The Amendment Paper does not materially alter the policy the Bill gives effect to. The Attorney-General's assessment of the Bill as introduced is that it does not appear

³ *Whakatōhea Kotahitanga Waka (Edwards) v Ngāti Ira o Waioweka, Ngāti Patumoana, Ngāti Ruatākenga and Ngāi Tamahaua (Te Kāhui Takutai Moana o ngā Whānau me ngā Hapū o Te Whakatōhea)* [2025] NZSC 104 [15 August 2025].

inconsistent with the rights and freedoms contained in the New Zealand Bill of Rights Act 1990.

Disclosure statement requirements

- 13 A departmental disclosure statement was prepared for the introduction of the Bill. The Amendment Paper does not require a further disclosure statement as it does not significantly alter the policy the Bill gives effect to.

The Privacy Act 2020

- 14 The Amendment Paper complies with the principles and guidelines set out in the Privacy Act 2020.

International obligations

- 15 A detailed analysis of compliance with international obligations has not been undertaken. s 9(2)(h)

Legislation Guidelines

- 16 Cabinet has been previously advised the Legislation Design and Advisory Committee holds concerns about how the Bill relates to the 2021 Legislation Guidelines [CAB-24-MIN-0375 refers].

Consultation

- 17 The Ministry of Justice, Crown Law, Te Puni Kōkiri, the Treasury, the Ministry for Regulation and the Parliamentary Counsel Office were consulted on this Cabinet paper and the Amendment Paper. The Department of Prime Minister and Cabinet was informed. The Justice Committee considered submissions on the Bill from 6,692 parties and recommended some minor amendments which Cabinet has accepted [CAB-25-MIN-0259 refers].

Binding on the Crown

- 18 The primary Act binds the Crown. The Crown will continue to be bound by the amendments to the Act through the Bill, including the Amendment Paper.

Associated regulations

- 19 The Amendment Paper will not require regulations to be brought into operation.

Other instruments

- 20 The Amendment Paper does not include any provision empowering the making of other instruments that are deemed to be legislative instruments or disallowable instruments.

Definition of Minister/department

- 21 The Amendment Paper does not contain a definition of Minister, department (or equivalent government agency), or chief executive of a department.

Commencement of legislation

- 22 The Bill will come into force on the day after the date of Royal assent, but some provisions will have retrospective effect dating back to 25 July 2024. Cabinet has previously been advised that these provisions are exceptional but are required to meet the Government's objective of having applications determined against the same test. As at 18 September, this would mean that four judgments awarding customary marine title delivered after that date will be overturned and will need to be reheard.

Parliamentary stages

- 23 The Bill has been reported back from the Justice Committee. I expect it will complete the remaining stages by the end of October. I propose the Amendment Paper be tabled during Committee of the whole House.
- 24 This Bill holds a category 3 priority on the 2025 Legislation Programme – to be passed by the end of 2025.

Proactive Release

- 25 I intend to proactively release this paper within 30 business days after the Amendment Paper has been introduced subject to any necessary redactions.

Recommendations

- 26 The Minister for Treaty of Waitangi Negotiations recommends that the Cabinet Business Committee:
- 1 **note** that the Marine and Coastal Area (Takutai Moana) (Customary Marine Title) Amendment Bill (**the Bill**) was:
 - 1.1 introduced to the House on 24 September 2024 and reported back from the Justice Committee on 5 December;
 - 1.2 paused to enable Ministers to consider a decision of the Supreme Court which directly addressed matters in the Bill; and
 - 1.3 currently holds a category 3 priority on the 2025 Legislation Programme – to be passed by the end of 2025;
 - 2 **note** that the Bill amends the test for customary marine title in accordance with a coalition agreement between the National Party and the New Zealand First Party;
 - 3 **note** that on 4 August 2025 Cabinet agreed to progress the Bill [CAB-25-MIN-0259 refers];

- 4 **note** an Amendment Paper is required to reflect the fact the Supreme Court and the High Court have issued relevant judgments since the Bill was introduced, and to give effect to Cabinet's decision that the Bill will not apply to the Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019;
- 5 **agree** that the Amendment Paper clarify that decision-makers can only take into account lawful activities when considering whether those activities have contributed to substantial interruption of exclusive use and occupation;
- 6 **authorise** the Office of Treaty Settlements and Takutai Moana – Te Tari Whakatau to work with the Parliamentary Counsel Office to develop drafting to give effect to the decision in recommendation 5 before the Amendment Paper is tabled in the House;
- 7 **approve** for introduction the Marine and Coastal Area (Takutai Moana) (Customary Marine Title) Amendment Paper (attached as Appendix 1), subject to the final approval of the government caucuses and sufficient support in the House of Representatives; and
- 8 **agree** that the Amendment Paper be introduced and the Bill complete the remaining parliamentary stages (Second Reading, Committee of the whole House, and Third Reading) by the end of October 2025.

Authorised for lodgement.

Hon Paul Goldsmith
Minister for Treaty of Waitangi Negotiations



Cabinet Legislation Committee

Minute of Decision

This document contains information for the New Zealand Cabinet. It must be treated in confidence and handled in accordance with any security classification, or other endorsement. The information can only be released, including under the Official Information Act 1982, by persons with the appropriate authority.

Marine and Coastal Area (Takutai Moana) (Customary Marine Title) Amendment Bill: Introduction of Amendment Paper

Portfolio Treaty of Waitangi Negotiations

On 9 October 2025, the Cabinet Legislation Committee:

- 1 **noted** that the Marine and Coastal Area (Takutai Moana) (Customary Marine Title) Amendment Bill (the Bill) was:
 - 1.1 introduced to the House on 24 September 2024 and reported back from the Justice Committee on 5 December 2024;
 - 1.2 paused to enable Ministers to consider a decision of the Supreme Court, which directly addressed matters in the Bill; and
 - 1.3 currently holds a category 3 priority on the 2025 Legislation Programme (a priority to be passed by the end of 2025);
- 2 **noted** that the Bill amends the test for customary marine title in accordance with the Coalition Agreement between the National Party and the New Zealand First Party;
- 3 **noted** that in July 2025, the Cabinet Social Outcomes Committee agreed to progress the Bill [SOU-25-MIN-0096];
- 4 **noted** that an Amendment Paper is required to reflect the fact the Supreme Court and the High Court have issued relevant judgments since the Bill was introduced, and to give effect to Cabinet's decision that the Bill will not apply to the Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019;
- 5 **agreed** that the Amendment Paper clarify that decision-makers can only take into account lawful activities when considering whether those activities have contributed to substantial interruption of exclusive use and occupation;
- 6 **authorised** the Office of Treaty Settlements and Takutai Moana – Te Tari Whakatau to work with the Parliamentary Counsel Office to develop drafting to give effect to the decision in paragraph 5 before the Amendment Paper is tabled in the House;
- 7 **approved** the release of the Amendment Paper [PCO 26100-2/1.20], subject to the final approval of the Government caucuses and sufficient support in the House of Representatives;

8 **agreed** that the Amendment Paper be released, and the Bill enacted, in October 2025.

Tom Kelly
Committee Secretary

Present:

Hon David Seymour
Rt Hon Winston Peters
Hon Paul Goldsmith
Hon Judith Collins KC (Chair)
Hon Dr Shane Reti
Hon Todd McClay
Hon Simon Watts
Hon Nicole McKee
Hon James Meager
Stuart Smith, MP
Todd Stephenson, MP
Jamie Arbuckle, MP

Officials present from:

Officials Committee for LEG
Office of the Leader of the House
Office of the Attorney-General

Proactively released by the Minister for Treaty of Waitangi Negotiations



Cabinet

Minute of Decision

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Report of the Cabinet Legislation Committee: Period Ended 10 October 2025

On 13 October 2025, Cabinet made the following decisions on the work of the Cabinet Legislation Committee for the period ended 10 October 2025:

Out of scope	[Redacted]	[Redacted]
[Redacted]	[Redacted]	[Redacted]
[Redacted]	[Redacted]	[Redacted]

LEG-25-MIN-0201	Marine and Coastal Area (Takutai Moana) (Customary Marine Title) Amendment Bill: Introduction of Amendment Paper Portfolio: Treaty of Waitangi Negotiations	CONFIRMED
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Out of scope	[Redacted]	[Redacted]
[Redacted]	[Redacted]	[Redacted]
[Redacted]	[Redacted]	[Redacted]
[Redacted]	[Redacted]	[Redacted]

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Out of scope

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Rachel Hayward
Secretary of the Cabinet

Proactively released by the Minister for Treaty of Waitangi Negotiations