

Takutai Moana Pānui

5 August 2025

Customary marine title test to be clarified

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

The Government will continue to progress an amendment to the Marine and Coastal Area Act 2011, to clarify Parliament's test for customary marine title.

In September 2024 the Government introduced a Bill to amend the test for customary marine title in the Act. This is because 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 recognising CMT.

On 5 December 2024, the Justice Select Committee reported the Bill back to the House recommending that the Bill be passed. Also in December 2024, a Supreme Court judgment determined the Court of Appeal was wrong in its interpretation of the test for CMT.

Having now considered the Supreme Court decision, the Government has decided to proceed with the Bill because it considers the Supreme Court decision does not provide enough clarity on Parliament's intention for the

test and is not sufficiently exacting given the significant rights at stake.

If passed, the Bill will clarify the test for CMT by:

- overturning the reasoning of all decisions since the High Court in *Re Edwards* (including the Supreme Court's December 2024 decision), where they relate to the test for CMT.
- defining and clarifying the terms 'exclusive use and occupation' and 'substantial interruption' in section 58.
- clarifying the burden of proof for applicants in the Court pathway to show they have *exclusively* used and occupied the areas they claim from 1840 to the present day *without substantial interruption*.
- clarifying how other parts of the Act (the preamble, purpose, and Treaty of Waitangi sections) affect the test to allow section 58 to operate more in line with its literal wording.

Cabinet agreed that when the legislation is enacted the clarified section 58 test will be applied from 25 July 2024.

The Government announced the proposed changes in a [media statement](#) today.

Impact on CMT applications

Under the proposed changes, existing CMT decisions made up to 24 July 2024 will continue to be recognised.

From 25 July 2024 all takutai moana applications or determinations, through the Courts or the Crown engagement pathway, will be decided under the clarified test.

If passed, the clarified test will apply to any court decisions made since the Government announced its policy on 25 July 2024.

To ensure the clarified 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 the costs of applicants whose applications will need to be re-heard.

Timing of re-hearings will be up to the High Court.

See the table on page 3 for more details about the amendment impact on applicant groups.

Te Tari Whakatau acknowledges the impacts of these proposed changes on CMT applications.

If you are unsure of the impact on your takutai moana application, please contact our team at takutaimoana@whakatau.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 in CMT areas.

Next steps

The Government expects the Bill to be passed by the end of October.

If you have any other pātai, please contact our team at takutaimoana@whakatau.govt.nz

For more information, go to:
[Amendments to Marine and Coastal Act 2011: Questions & Answers](#)

Amendment impact on applicant groups

	Applications/ High court Case	Location	Impact of amendment (if Parliament enacts the proposed amendments)
Undetermined	All undetermined applications through the High Court or Crown engagement	Various	These applicant groups are impacted. Applications will be determined under the provisions of amended test in the new Amendment Act.
Impacted (CMT awards made)	Wairarapa (1b)	Wairarapa	As the judgment has been or will be released from 25 July 2024 , the Bill if passed will require 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	
Impacted (CMT judgments pending)	Whangārei Coast	Tai Tokerau	
	Whangārei Harbour	Tai Tokerau	
	Re Ngā Pōtiki (2)	Tauranga	
	Ruapuke Island	Foveaux Strait	
Decided and under appeal	Re Edwards	Eastern Bay of Plenty	No impact because these were decided before 25 July 2024.
	Re Ngāti Pāhauwera	Hawkes Bay	Appeals will continue under the pre-amendment law (applying Supreme Court's December 2024 judgment).
	Tokomaru Bay 1 & 2	Tokomaru Bay	
	Wairarapa (1a)	Wairarapa	
Decided	Re Tipene	Titi Island	No impact
	Ngā hapū o Ngāti Porou Tranche 1 & 2	Tai Rāwhiti	
	Re Clarkson	Wairarapa	
	Re Ngā Pōtiki (1)	Tauranga	
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 judgment).