

Protocol for referral of questions of tikanga under s 99, Marine and Coastal Area (Takutai Moana) Act 2011

Under the Marine and Coastal Area (Takutai Moana) Act 2011, where an application for a recognition order raises a question of tikanga Māori, the High Court may refer that question to the Māori Appellate Court for its opinion. This referral is to be made in accordance with s 61 of Te Ture Whenua Māori Act 1993. The opinion of the Māori Appellate Court is binding on the High Court.

There is no set procedure or rules for stating a case from the High Court to the Māori Appellate Court under s 99 of Marine and Coastal Area (Takutai Moana) Act 2011 and s 61 of Te Ture Whenua Māori Act 1993. However, the Chief High Court Judge and Chief Māori Land Court Judge agree that broadly the procedure to be followed in stating such a case should follow the relevant parts of:

- The rules set out for the stating of a case by any court to the High Court in Part 21 of the High Court Rules 2016; and
- The rules set out for the stating of a case to the Māori Appellate Court in Part 8 of the Māori Land Court Rules 2011.

In particular, the following practices set out within these rules will apply to the referral of a case from the High Court to the Māori Appellate Court:

1. A case stated by the High Court to the Māori Appellate Court must set out:
 - a. the circumstances leading to the statement of the case; and
 - b. the relevant facts and any documents necessary to enable the Māori Appellate Court to decide the question(s) of tikanga; and
 - c. where appropriate, the respective contentions of the parties with reference to the question(s); and
 - d. the question(s) on which the opinion of the court is sought.
2. Where the High Court sets out the respective contentions of the parties as to the question(s) to be answered, it will also attach all evidence provided by the parties in support of their position.
3. Where there have been hearings before the High Court and the evidence given has been recorded but not transcribed, the High Court may order, on any conditions it thinks just, that a transcript be made of all or any part of the evidence that was material to the issues specified in the case stated for inclusion alongside the case.
4. Before stating the case to the Māori Appellate Court, the High Court will serve a draft case on every party to the matter, or direct the parties to prepare a draft case, before finally settling the case stated. If the parties cannot agree on the matters to be set out in the case stated or the questions of tikanga to be determined, the dispute must be determined by the High Court judge.

5. The case stated will then be transmitted by the Registrar of the High Court to the Chief Registrar of the Māori Land Court.
6. The Māori Appellate Court may send a case back to the High Court for amendment either (a) to clarify the question of tikanga on which the opinion of the court is sought; or (b) to provide any further information necessary to enable the court to dispose of the questions in the case stated. Other than in this circumstance, once submitted the case stated may only be amended by the High Court to correct errors of fact.

In determining a case stated, the Māori Appellate Court may hold hearings and direct the parties to file any such additional evidence and submissions before it as may be necessary to determine the question(s) put to the Court.

In constituting the Māori Appellate Court to determine the case stated, the Chief Māori Land Court Judge may appoint one or two additional members of the Court with knowledge and experience of tikanga Māori pursuant to s 62 of Te Ture Whenua Māori Act 1993.

The Māori Appellate Court will aim to deliver its opinion within three months of either receiving the case stated, the receipt of additional evidence and/or submissions from the parties, or any hearing held in the matter, whichever is latest.

A certificate setting out the opinion of the Māori Appellate Court on the case stated shall be transmitted by the Māori Land Court Chief Registrar to the Registrar of the High Court in the appropriate registry pursuant to s 61(2)(b) of Te Ture Whenua Māori Act 1993.

DATED at Wellington this 11th day of October 2023

Susan Thomas
CHIEF JUDGE
High Court

Caren Fox
CHIEF JUDGE
Māori Land Court