



Marine and Coastal Area (Takutai Moana) (Wardens) Regulations 2017

Rt Hon Dame Sian Elias, Administrator of the Government

Order in Council

At Wellington this 15th day of May 2017

Present:

Her Excellency the Administrator of the Government in Council

These regulations are made under section 118 of the Marine and Coastal Area (Takutai Moana) Act 2011—

- (a) on the advice and with the consent of the Executive Council; and
- (b) on the advice of the Minister of Justice given in accordance with subsection (2) of that section.

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Schedule 1

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Transitional, savings, and related provisions**Regulations****1 Title**

These regulations are the Marine and Coastal Area (Takutai Moana) (Wardens) Regulations 2017.

2 Commencement

These regulations come into force on the 28th day after the date of their notification in the *Gazette*.

3 Interpretation

In these regulations, unless the context otherwise requires,—

Act means the Marine and Coastal Area (Takutai Moana) Act 2011

appointment process means the appointment process required by regulation 5

duties means the warden's duties set out in these regulations

exemption means an exemption conferred under section 79(1)(c) of the Act on an individual in relation to a protected wāhi tapu or wāhi tapu area

functions means the warden's functions set out in section 80(2) of the Act

group means the customary marine title group referred to in regulation 5(1)

identification details means a person's name, address, and date of birth

prohibition or restriction means a prohibition or restriction that—

(a) is imposed under section 79 of the Act; and

(b) applies to a protected wāhi tapu or wāhi tapu area

protected wāhi tapu or wāhi tapu area means a wāhi tapu or wāhi tapu area that is recognised in—

(a) a customary marine title order that applies to the group; or

- (b) an agreement between the group and the responsible Minister.

4 Transitional, savings, and related provisions

The transitional, savings, and related provisions (if any) set out in Schedule 1 have effect according to their terms.

Appointment process, qualifications, and related matters

5 How wardens are appointed

- (1) This regulation applies if a customary marine title group decides to appoint a warden to promote compliance with a prohibition or restriction.
- (2) The group must have a process for appointing wardens.
- (3) The appointment process must—
 - (a) be fair and transparent; and
 - (b) be supported by the majority of the members of the group participating in the decision; and
 - (c) be consistent with these regulations; and
 - (d) be in writing.

6 Qualifications of wardens

- (1) A person is eligible for appointment as a warden if the person is a member of—
 - (a) the group; or
 - (b) any iwi, hapū, or whānau—
 - (i) to which the group is affiliated; and
 - (ii) that is named in the appointment process.
- (2) Before appointing a person as a warden, the group must be satisfied that the person—
 - (a) is of good character; and
 - (b) has an appropriate understanding of the warden's functions and duties; and
 - (c) has the skills and attributes necessary to carry out those functions and duties, including, but not limited to, the person's—
 - (i) standing in the community; and
 - (ii) written and oral communication skills; and
 - (iii) knowledge of the protected wāhi tapu or wāhi tapu area; and
 - (d) has the particular skills and experience specified under subclause (3) (if any).

- (3) If the group considers that the nature of the protected wāhi tapu or wāhi tapu area requires a person to have particular skills or experience, the group must specify those skills and experience in the appointment process.

7 Term of appointment of wardens

- (1) The group may appoint a warden for a term of up to 5 years.
- (2) An appointment may be renewed.
- (3) An appointment expires at the end of its term unless—
 - (a) the appointment is renewed before it expires; or
 - (b) the person resigns; or
 - (c) the appointment is cancelled due to incapacity or neglect of duty.

8 What letter of appointment must contain

- (1) When it appoints a warden, the group must give the warden a letter of appointment.
- (2) The letter must—
 - (a) state the term of the appointment; and
 - (b) state the warden's functions and duties; and
 - (c) state that the warden is responsible to the group for carrying out those functions and duties; and
 - (d) describe the boundaries of the protected wāhi tapu or wāhi tapu area; and
 - (e) state any prohibitions or restrictions and the reasons for them; and
 - (f) specify any individual who has an exemption and the conditions applying to the exercise of the exemption.
- (3) The letter must also state—
 - (a) the capacity in which the person is appointed (for example, as an employee or a volunteer, or in another capacity); and
 - (b) the hours during which the person is expected to carry out his or her functions and duties; and
 - (c) if the person is to be paid, the level of remuneration; and
 - (d) the arrangements for training and supervision.

9 Identification of wardens

- (1) The group must provide a warden with identification in the form of an identity card, a badge, or both.
- (2) The identification must clearly display the following information:
 - (a) the name of the warden:
 - (b) a photograph of the warden:

- (c) the name and contact details of the group;
- (d) the expiry date of the warden's appointment;
- (e) that the warden is appointed under section 80 of the Act.

Duties of wardens

10 Warden must advise of failure or likely failure to comply with prohibition or restriction

If a warden has reason to believe that a person is failing or is likely to fail to comply with a prohibition or restriction, the warden must—

- (a) advise the person of the prohibition or restriction; and
- (b) explain, if necessary, how the person is failing or is likely to fail to comply with the prohibition or restriction; and
- (c) after advising the person of the matters referred to in paragraphs (a) and (b), warn the person that if the warden has reason to believe that the failure is intentional, the warden must report the failure to a constable.

11 When warden must request identification details

If a warden has reason to believe that a person is intentionally failing to comply with a prohibition or restriction, the warden must—

- (a) ask the person to provide his or her identification details; and
- (b) explain to the person that, although it is not compulsory to provide those details to the warden, the warden must report to a constable the information described in paragraph (c)(i) and (ii); and
- (c) report to a constable as soon as practicable—
 - (i) the person's failure to comply with the prohibition or restriction; and
 - (ii) the person's identification details or any refusal by the person to provide those details.

12 Duties of warden in relation to information

- (1) A warden must keep, in a manner specified by the group, a record of a person's failure to comply with a prohibition or restriction.
- (2) A warden must, at the request of the group, make those records available to the group, but only to the extent that those records do not contain a person's identification details.
- (3) A warden must not disclose to any person, other than a constable, the identification details of any person referred to in regulation 10 or 11.

13 Warden must carry identification

A warden must carry his or her identification—

- (a) at all times when on duty; and
- (b) in a way that displays the information described in regulation 9(2).

Responsibilities of group

14 Responsibilities of group for wardens

The group is responsible for—

- (a) the management, and remuneration (if any), of its wardens; and
- (b) providing training and supervision, as required, to enable a warden to carry out his or her functions and duties.

15 Register and records group must keep

- (1) The group must keep and maintain—
 - (a) an up-to-date register of all people who are currently appointed as wardens; and
 - (b) up-to-date records of the information made available to the group under regulation 12(2).
- (2) Before the end of each financial year, the group must provide written records of the matters described in subclause (1) to the Ministry of Justice.

Schedule 1

Transitional, savings, and related provisions

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Part 1

Provisions relating to these regulations as made

There are no transitional, savings, or related provisions relating to these regulations as made.

Michael Webster,
Clerk of the Executive Council.

Explanatory note

This note is not part of the regulations, but is intended to indicate their general effect.

These regulations, which come into force on the 28th day after the date of their notification in the *Gazette*, are made under the Marine and Coastal Area (Takutai Moana) Act 2011. These regulations provide for the appointment of wardens by a customary

marine title group to promote compliance with a prohibition or restriction that applies to a protected wāhi tapu or wāhi tapu area.

Issued under the authority of the Legislation Act 2012.

Date of notification in *Gazette*: 18 May 2017.

These regulations are administered by the Ministry of Justice.