

MĀORI LAND TRUSTS

Te Kooti Whenua Māori – Māori Land Court

For more information, go to maorilandcourt.govt.nz

Te Kooti Whenua Māori – Māori Land Court (MLC) is the New Zealand Court that hears matters relating to Māori land. The unique relationship between Māori and whenua is recognised by the MLC, and the records held by the Court form an invaluable part of the whakapapa of all Māori people. The MLC operates under the provisions of Te Ture Whenua Māori Act 1993.

The MLC deals with applications for new trusts, replacement trustees, variations to trusts, reviews of trusts and formal complaints, and receives trust reports and financial accounts. It does not administer trusts. Trusts must operate within the provisions of Te Ture Whenua Māori Act¹ and the Trusts Act 2019.

Types of trusts

Under Te Ture Whenua Māori Act, the MLC can constitute five types of trusts.

- **Ahu whenua trust**

This is the most common Māori land trust. It's designed to promote the use and administration of the land in the interest of the owners. These trusts are often used for commercial purposes.

- **Whenua tōpū trust**

This is an iwi²- or hapū³-based trust. It's designed to facilitate the use and administration of the land in the interest of the iwi or hapū. This type of trust is also used for receiving Crown land⁴ as part of any settlement. Ahu whenua and whenua tōpū trusts are land management trusts and generally involve whole blocks of land.

- **Kaitiaki trust**

A kaitiaki trust relates solely to an individual who is a minor⁵ or has a disability⁶ and is unable to manage their own affairs. This trust can include all of an individual's assets.

- **Whānau trust**

This is a whānau-oriented trust. It allows the whānau to bring together their Māori land interests for the benefit of the whānau and their descendants.

- **Pūtea trust**

A pūtea trust is a special type of trust that allows different owners of small and uneconomic shares to pool their land interests together for the benefit of their wider whānau and descendants.

To find out more about the types of trusts, **go online to** maorilandcourt.govt.nz/your-maori-land/trusts-and-incorporations

Setting up a trust

Landowners can set up a trust by holding a meeting, nominating trustees to manage their property interests and then applying to the MLC. The process is the same to set up each type of trust (except kaitiaki trusts) – the owners first need to have a meeting at which they:

- agree to set up the trust
- agree which blocks of land or shares should be included in the trust
- agree to the terms of the draft trust order⁸ which sets out the trustees' powers, rights and obligations
- nominate trustees
- take accurate minutes.

MLC application forms can be obtained from our offices, offsite clinics or from our website, **go online to** maorilandcourt.govt.nz/apply/fees-and-forms

To find out more about how to set up a trust, **go online to** maorilandcourt.govt.nz/your-maori-land/trusts-and-incorporations/creating-a-trust-or-incorporation

Types of trustees

Te Ture Whenua Māori Act recognises three types of trustees.

Responsible trustees are responsible for:

- carrying out the terms of the trust order
- administering and managing the business of the trust
- preserving the assets of the trust
- collecting and distributing the trust's income¹⁰.

1. See Part 12 of Te Ture Whenua Māori Act 1993.

2. The traditional Māori tribal hierarchy and social order made up of hapū (kin groups) and whānau (family groups), having a founding ancestor and territorial (tribal) boundaries.

3. A subtribe or kin group that is linked by a common ancestor.

4. Land (other than Māori customary land and Crown land reserved for Māori) that has not been alienated from the Crown for a subsisting estate in fee simple.

5. A person who has not yet reached the age of 20 years.

6. Physical or mental disablement that, in the opinion of the court, results in a person lacking, wholly or partly, the competence to manage their affairs in relation to their property.

7. A person(s) bound to deal with property on behalf of the owners or beneficiaries. The trustee becomes the legal owner when the order appointing them as trustee for the land is registered against the title. The beneficiaries are called the beneficial owners.

8. Common term for a trust order is a trust deed, which is the term used in the Trusts Act 2019.

9. A trustee who is responsible for the administration of the trust, whether or not the trust property is vested in that trustee.

10. Money that is derived from assets held and earnings (such as rent and interest) but not 'purchase money' (land converted into money).

Custodian trustees¹¹ are responsible for:

- gathering together and holding the assets of the trust
- investing funds
- disposing of assets
- signing documents as directed by the responsible trustees.

The assets of the trust are vested¹² in the custodian trustee where one is appointed. They are not responsible for administering the trust.

Advisory trustees¹³ give advice to the responsible trustees and are not responsible for administering the trust.

Trustees' duties

Trustees are bound by Te Ture Whenua Māori Act and the Trusts Act.

Their key duties are to maximise the assets and minimise the liabilities of the trust to the best of their ability and within the law. Their powers, rights and obligations are set out in the trust order. Trustees must carry out their duties within the terms and objectives of the trust, act honestly and for the benefit of beneficiaries¹⁴ of the trust.

Trustees must not spend money unnecessarily or without proper authority, as this is a breach of the trust order. If they do, the beneficiaries have the right to hold them personally liable for any financial loss brought about by their mismanagement. The beneficiaries can take a case to the MLC or the High Court. The Court regards any breach of trust as a very serious matter, and if trustees are found to be at fault, they can expect to pay for any losses that they have caused.

The MLC is able to remove trustees if it is satisfied that the trustee has lost the capacity to act as a trustee or that their removal supports the proper function of the trust.

To find out more about trustees' duties, **go online to** maorilandcourt.govt.nz/your-maori-land/trusts-and-incorporations/trustees-duties

We also have a separate factsheet on trustees' duties. **Go online to** maorilandcourt.govt.nz/about-mlc/publications

Talk to our staff about our trustee training.

Administering the trust

Trustees are appointed to ensure that the landowners' interests are met. They should communicate regularly with the landowners and keep the Court up to date because landowners often make enquiries of the Court. Landowners appoint trustees to act on their behalf so should allow the trustees the opportunity to operate.

11. Holds the trust property, invests its funds and disposes of its assets, as the responsible trustees in writing direct; executes all documents and perform all such acts as the responsible trustees in direct writing.

12. A change of ownership of land gives the recipient of that interest the ownership and its associated rights (land may be vested in a trustee, or shares may be vested in another person).

13. See section 224 of Te Ture Whenua Māori Act 1993.

INFORMATION

Trusts must keep and share up-to-date and accurate information. Every trustee must keep a copy of the trust deed (trust order) and any variations to it. At least one trustee must hold all other core trust documents (such as property, financial and administrative records including trustees' decisions).

Trustees must also make basic trust information available to all beneficiaries (such as a list of the trust's beneficiaries, the name and contact details of trustees, and the appointment or removal of trustees). Trustees must also provide information about the trust to beneficiaries on request.

TAX ON TRUST INCOME

Different types of taxes may apply to trusts. The trustees should discuss the trust's tax liability with Te Tari Taake – Inland Revenue and/or their accountant.

Once created, the trust is a separate legal entity and is required to have its own IRD number. **To find out more**, visit ird.govt.nz

The Kaitakawaenga Māori business service is free and has been established to help meet the needs of Māori individuals, organisations and businesses.

RESOLVING PROBLEMS

Should problems arise, the owners and trustees should try and sort out the problems themselves to avoid legal action. If the problems cannot be resolved, the landowners can apply to the MLC to:

- try and resolve issues through mediation using the Court's dispute resolution service
- review the terms, operation or other aspects of the trust
- add, replace or remove trustees
- investigate the trust
- enforce the terms of the trust
- vary the terms of the trust
- terminate the trust.

An application to the MLC needs to be filed on the relevant application form and accompanied by the application fee, which is detailed on the form. Evidence supporting any allegations must also be filed.

More information

To find out more about Māori land trusts, **go online to** maorilandcourt.govt.nz/your-maori-land/trust-and-incorporations

Or you can visit your local MLC office or attend an offsite clinic. We have nine offices across Aotearoa New Zealand, which are open between 10am and 4pm on normal weekdays. You don't need to make an appointment. Contact details follow or **go online to** maorilandcourt.govt.nz/contact-us

Contact the Māori Land Court

The DX number is the postal address.

Taitokerau District	Level 3, Manaia House Rathbone Street, Whangārei 0110 DX Box AX10086, Whangārei Phone 09 983 9940 Email mlctaitokerau@justice.govt.nz
Auckland Information Office	Ground floor, Building B 65B Main Highway, Ellerslie Auckland 1051 DX Box EX10912, Auckland Phone 09 279 5850 Email mlctamakimakaurau@justice.govt.nz
Waikato-Maniapoto District	Level 2, BNZ Centre 354 Victoria Street, Hamilton 3204 DX Box GX10101, Hamilton Phone 07 957 7880 Email mlcwaikato@justice.govt.nz
Wairiki District	Hauora House 1143 Haupapa Street, Rotorua 3204 DX Box JX10529, Rotorua Phone 07 921 7402 Email mlcwaikato@justice.govt.nz
Aotea District	Ingestre House 74 Ingestre Street, Whanganui 4500 DX Box PX10207, Whanganui Phone 06 349 0770 Email mlcaotea@justice.govt.nz
Tākitimu District	Hastings District Court, 106 Eastbourne Street West, Hastings 4122 DX Box MX10024, Hastings Phone 06 974 7630 Email mlctakitimu@justice.govt.nz
Tairāwhiti District	Ngā Wai e Rua Building Cnr Reads Quay and Lowe Street Gisborne 4010 DX Box PX10106, Gisborne Phone 06 869 0370 Email mlctairawhiti@justice.govt.nz
Te Waipounamu District	Level 1, CJESP 20 Lichfield Street, Christchurch 8011 DX Box WX11124, Christchurch Phone 03 962 4900 Email mlctewaipounamu@justice.govt.nz
Office of the Chief Registrar/ Specialist Applications Team	Level 7, Fujitsu Tower 141 The Terrace, Wellington 6011 DX Box SX11203, Wellington Phone 04 914 3102 Email mlc.chief-registrars.office@justice.govt.nz