



Native Lands Act 1862

- Citation:** 26 V. No 42
- Date of Assent:** 6 June, 1863
- Commencement:** Reserved for Her Majesty's assent (15 September, 1862). Proclamation confirming assent (6 June, 1863). Proclamations bringing Act into force in various districts (19 April, 16 August & 18 August, 1864). Proclamation bringing Act into force in whole Colony (29 December, 1864).
- Repeal:** Repealed 30 October, 1865 by 1865, No 71
- Amendments:** 1864, No 14: See separate record.
- Type of Legislation:** Public
- Subject:** ToW/Principles of ToW reference
Maori Land Court: Structures & Jurisdiction
Status of Land
Alienation of Maori Land
Reserved Land
Public Works
Survey Issues
- Relevant Sections:**
- Preamble:* Sets out the policy of defining Native ownership of land in terms as near as possible to the ownership of land according to British law. Refers to ToW and waiver of Crown pre-emption.
- s2:* All lands over which Native title has not been extinguished shall be dealt with under this Act after owners ascertained according to Native custom.
- s3:* No rights of Natives in respect of land will be recognised in any Court until a Certificate of Title is issued.
- s4:* Courts established for purpose of determining owners of Native land.
- s5:* Every NLCT to be presided over by a European magistrate.
- s6:* Governor may make rules for regulation of sittings.
- s7:* Tribes or individual Natives may apply to the Court to ascertain and define ownership.
- s8:* Governor to confirm the proceedings of the Court.
- s9:* Governor may require a portion of land described in CT to be reserved for the benefit of the Native owners.
- s10:* Governor may restrict the alienation of any reserves so created.
- s11:* Copy of reservation Grant to President of Court.
- s12:* CT issued in favour of tribe or individual who has applied to Court, subject to any reservation.

Relevant Sections continued over page



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s13: No CT issued until survey of land completed.

s14: CT conclusive.

s15: CT issued to not more than 20 persons and signed by the Governor to have the same force as a Crown Grant.

s16: Regulations for registration of CTs.

s17: Persons named in CT as owners may dispose of their interest by sale, lease, exchange.

s18: Governor may issue Crown Grants in exchange for CTs.

s19: On first sale of land, the purchaser to pay a 10% duty and on each subsequent sale the purchaser shall pay a 4% duty.

s20: Partition and subdivision of CT land so as to individualise title on application by tribe or individual to the Court.

s21: If CT granted to tribe or community, they may request Governor to make regulations and plans for settlement of Native lands.

s23: In those regulations Reserves may be made for Public purposes useful to Native proprietors.

s24: Crown Grants giving effect to those regulations.

s25: Regulations may provide for land to be sold, leased etc. with the money to be used for the benefit of the Native inhabitants.

s26: Custody of monies raised.

s27: Governor may take for roads up to 5% out of lands purchased from Natives.

s28: Native owners may request Governor to arrange survey of Native land. Survey to be paid for out of Native Fund and repaid by owners.

s29: No penalty under Native Land Purchase Ordinance for leasing or occupying CT land.

s30: Contracts made for the purchase or lease of Native land prior to the issue of CT shall be void.

s31: This Act not to apply to Manawatu Block and the Land Orders and Scrip Act 1858 continues to apply in that Block.

s32: Agreements for cession of territory already entered into may be completed, and this Act not to apply.

s33: Act not to interfere with settling of Old Land Claims relating to transactions prior to 14 January, 1840.

s34: Act not to interfere with acquisition of land by the Crown through purchase or cession.

s35: "Native Lands" means land over which Native title not extinguished.

Relevant Sections and Commentary continued next page



s36: Act to come into operation in Districts proclaimed by Governor.

s37: Act reserved for Queen's assent and not to come into force until Proclamation confirming assent.

Schedule: describes Manawatu Block.

Commentary: The Native Lands Act 1862 is the first piece of legislation to establish the Native Land Court, although it was rarely used and was soon superseded by the Native Lands Act 1865. It sets up a system which, on the face of it, was to ascertain and assimilate Maori communal ownership into a form recognised by English law. However, in reality it was a settler driven piece of legislation initiated to combat Maori reluctance to alienate tribal land. The Treaty of Waitangi is cited in the preamble and while it is said that the waiver of Crown pre-emption is in favour of Maori, the aim of the settlers was to facilitate the more speedy acquisition of Maori land.

A Court is to be established of local chiefs in each district under the chairmanship of a Pakeha magistrate, to ascertain Native title and issue a Certificate of Title in favour of the relevant tribe, community or individual, prior to the sale of land. Dillon-Bell said, in the Debates, "we desire, subject to proper safeguards, that the Natives themselves should be empowered to ascertain and define their own titles; and we therefore propose to constitute Courts which, after a proper survey, a careful inquiry, and confirmation of the proceedings by the Governor, shall have the power of certifying who, according to Native custom, are the owners of any land." Investigation of titles however, did not prevent the Crown from acquiring uninvestigated land by purchase or cession. The Governor (rather than the Governor in Council) is given wide powers, he may confirm (or otherwise) orders of the Court, make reservations, and proclaim where the Court shall operate.

The waiver of the Crown right of pre-emption was confirmed by a Proclamation of 6 June, 1863 and heralded a system of direct purchase between Maori and private purchasers. The reason advanced by the Government for this was that the previous Crown practice of purchasing land at low prices and then selling it on to settlers at higher prices had meant that Maori were now distrustful of selling land to the Government, with Dillon-Bell saying "We believe that by asserting this principle [private purchase] we shall do more than the whole course of our policy for the last twenty years has done

Commentary and Cross Reference continued over page



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to remove the secret causes of jealousy and distrust which have been at work in the Native mind, and which are the acknowledged sources of the Maori King movement." In regard to the Government land purchase system Mantell, a former land purchase Commissioner, said "he soon perceived it was a very dirty business, which he would never have entered upon had he known its nature beforehand". The Act first came into force in April 1864 in the Kaipara district where there were Native Land Court sittings presided over by Judge Rogan. These hearings led to large blocks of tribal land (eg Paparua Block and Pukeatua Block) being awarded to a single individual. [Note: Mackay's 1891 Report inaccurately dates confirmation of the waiver of pre-emption as 17 May, 1865.]

- Cross Reference:** NZPD (1861 - 1863) 608 - 624, 627 - 638, 642 - 654, 682 - 695, 715 - 717
 AJHR (1891) Sess II G - 1a pp.6 - 7
 (*Mackay's Unfinished Report Relating to Native Land Laws*)
 Ward A A *Show of Justice*
 (AUP, Canberra, 1974) 150 - 153, 180 - 181
 Orange C *The Treaty of Waitangi*
 (Allen & Unwin, Wellington, 1987) 162 - 163
 Waitangi Tribunal *Report of the Waitangi Tribunal on the Orakei Claim* Wai 9 (Waitangi Tribunal, Wellington, 1987) 28 - 35
 Reported Court Case:
In re Paparua Block (1892) (s. 12): 11 N.Z.L.R. 523.