



Native Rights Act 1865

1865

- Citation:** 29 V. No 11
Date of Assent: 26 September, 1865
Commencement: Date of Assent
- Repeal:** Repealed and re-enacted 1908, No 126
Amendments: 1894, No 43: See separate record.
supersedes s3.
- Type of Legislation:** Public
Subject: Govt Admin Specific to Maori/Maori Land
Status of Land
Maori Land Court: Structures & Jurisdiction
- Relevant Sections:**
- s2: Maori deemed natural born subjects of Her Majesty whether born before or after New Zealand became a dependency of Great Britain.
 - s3: All Courts of law deemed to have jurisdiction over persons and property of the Maori people and over titles to land held under Maori custom and usage.
 - s4: Unextinguished Native title to land shall be determined according to Maori custom.
 - s5: Where any action involves questions of Native title, the Judge shall direct the issues to be tried in the NLCT.
- Commentary:** By declaring Maori to be natural-born subjects of the Queen, colonial laws and courts were to have jurisdiction over Maori customary land. This Act was designed to work in conjunction with the Native Lands Act 1865 so that the Supreme Court would have "authority over all persons and property, but in the case of the titles to land held under the Maori proprietary tenure, sending down any case to the Native Land Court for trial". Although the Act does not explicitly refer to it, this Act may be understood as an enactment of the third article of English text of the Treaty of Waitangi, guaranteeing Maori the rights and privileges of British subjects. However it also declared *all* Maori to be British subjects and thus subject to English and colonial law, even though the Treaty of Waitangi was not universally adhered to and many Maori were engaged in active opposition to British sovereignty at that time. In regard to section 5, Mackay wrote in 1887 "This Act is still in law, but I am unable to cite any case to which it has been applied".

Cross Reference continued over page



Native Rights Act 1865 *continued*

Cross Reference: NZPD (1864 - 66) 321 - 326

Ward A A *Show of Justice* (AUP, Canberra, 1974) 184

Mackay J *Our Dealings with Maori Land; or, Comments on European Dealings for the Purchase and Lease of Native Land and Legislation thereon* (Kidd & Wildman, Auckland, 1887) 6

Reported Court Cases:

Wi Parata v. Bishop of Wellington (1877): 3 J.R. (N.S.) S.C. 72

Horomoana v. Drower (1878): 4 J.R. (N.S.) S.C. 104

Hohepa Wi Neera v. Bishop of Wellington (1902): 21 N.Z.L.R. 655,
5 G.L.R. 349

Nireaha Tamaki v. Baker (1901) (ss.3, 4, 5): [1901] A.C. 561

Winiata Te Wharo v. Davy (1893) (s.5): 12 N.Z.L.R. 502.