



Native Lands Act 1867

- Citation:** 31 V. No 43
- Date of Assent:** 10 October, 1867
- Commencement:** Date of Assent
- Repeal:** Repealed 1 January, 1874 by 1873, No 56 except:
 i) duties on alienation, repealed 1 January, 1874 by 1873, No 57,
 ii) any proceedings commenced under 1867 Act to be continued and perfected under that repealed Act (1874, No 75).
- Amendments:** **1868, No 55:** See separate record.
 Amends s24, alters the duty payable by lessee of Native land.
1869, No 26: See separate record.
 s11 amends ss6, 8, 9, and repeals ss18 - 19.
- Type of Legislation:** Public
- Subject:** Maori Land Court: Structures & Jurisdiction
 Reserved Land
 Status of Land
 Alienation of Maori Land
 Confiscated Lands
 Survey Issues
- Relevant Sections:** s2: Native Lands Act 1866 repealed except where it is necessary to continue to support any matter completed under it.
 s3: Governor may sign by stamp.
 s4: Governor may suspend the Native Lands Acts in proclaimed districts, but this shall not prevent the collection of duties payable.
 s5: Notice of Court sitting to be published in *Kahiti* for one month.
 s6: In order to ensure accuracy in surveys an Inspector of Surveys to be appointed to certify all surveys received in evidence.
 s7: Interpreters under Native Lands Act 1865 must be those granted certificates by the Governor or the Chief Judge.
 s8: NLCT may order Native claimants to deposit money as security for the costs of the opponent of the claim.
 s9: Court empowered to make rules for the reception of evidence already heard in previous cases.
 s10: Notification published in the Gazette that Native title extinguished shall be conclusive proof that such title is extinguished.
 s11: Interpretation of "Native Reserve",
 (1) lands reserved by Maori on the cession of land to the Crown as specified in deed of cession,

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- (2) lands reserved for the benefit of Maori upon the sale by them of any lands including lands subject to the NZ Native Reserves Act 1856,
- (3) lands set apart for the benefit of Maori by any Commissioner appointed to investigate purchases of land from Maori by NZ Company,
- (4) lands reserved for the benefit of Maori by the NZ Company,
- (5) lands appropriated by Governor for the benefit or use of any Maori.

Proviso that Court has power to subdivide titles or interest in any Native reserve if referred to it by Governor.

s12: Every final Certificate of Title issued for land comprised in any Native reserve shall contain a recital that the land comprised in the CT is a Native reserve.

s13: Every Crown Grant of land comprised in any Native reserve shall have a provision stating that the land is inalienable by sale or mortgage or by lease for a period longer than 21 years.

s14: Governor in Council may consent to alienation of land so granted.

s16: Amends *s12* Native Lands Act 1865 by empowering the Judge to sit with one assessor instead of two.

s17: Amends *s23* Native Lands Act 1865, NLCt now to ascertain not only the right and title of applicant and other claimants but also the right and title of every other person or tribe interested in the claimed land whether a claimant or not. Where more than 10 people or a tribe/hapu have interests in the land, CT to be issued to not more than 10 persons but names and interests of all other persons to be registered in the Court. A recital to be put on the Certificate specifying this. After the CT ordered, lawful for majority of the group to apply to the NLCt to subdivide the land.

s18: CT to be transmitted to Governor.

s19: Governor may sign Certificate issued under *s43* Native Lands Act 1865 or may at once issue Crown Grant.

s20: NLCt shall append a report to every CT on whether or not it is proper for any restrictions on the alienability of the land to be imposed.

s21: Governor may adopt recommendation on alienation restrictions, which will be endorsed on CT.

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s22: Amends s46 Native Lands Act 1865 by clarifying that the word "therein" refers to the Crown grant and not to the Certificate.

s23: Amends s50 Native Lands Act 1865 so that "one" person rather than "five" may apply for a subdivision.

s24: Settling doubts as to duties to be paid on commencement of lease under s55 Native Lands Act 1865. Extending payment of duty over term of lease at 10% yearly on aggregate amount of rent. If payment in arrears, payment due immediately.

s25: Duties on first sales and within what period payable.

s26: Registration of deeds.

s27: Charge of not more than 6 pence per acre to be paid in addition to duties payable under s55 Native Lands Act 1865 to defray expense of examining surveys.

s28: Governor may alter fees fixed under s62 Native Lands Act 1865.

s29: Fees payable to valuers.

s31: Repeals and replaces s68 Native Land Act 1865, when surveyors' charges are not paid the Crown Grant, instead of being delivered to the surveyor, will not be registered or delivered to grantees until charges are paid.

s32: Amends s74 Native Lands Act 1865, execution of deeds for sale of Native land to be attested by the interpreter and any other adult male.

s33: Where Natives do not have the funds to pay survey and other costs and charges prior to issue of CT or Crown Grant, notwithstanding s73 Constitution Act, they may consent to have a charge placed on the land for the benefit of those who have advanced them the money. Form for giving consent (set out in First Schedule) to be attested by Judge or justice and interpreter.

s34: After such a charge is registered the CT or Crown Grant shall not be delivered to said Native without the consent of the lender of the money.

s35: If lender does not consent the Court may order that the Crown Grant may be delivered after the execution of a mortgage to the lender.

s36: Crown Grant and not CT to issue where land charged with moneys borrowed for costs of surveys etc.

s37: Governor may refer to NLCT the subdivision of, and other matters arising from, land given as compensation under New Zealand Settlements Acts or under Confiscated Lands Act 1867.

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s38: All lands referred to in s83 Native Lands Act 1865 shall be excluded from operation of Native Lands Acts until 31 December, 1868, but agreements may be referred to NLCt by Governor.

s39: In cases where land has been granted partly or wholly in consideration of the grantee having had a child with a Native woman out of wedlock, and such grantee has died intestate after having subsequently married and had more children, the NLCt may determine whether such child is entitled to succeed to the land granted.

s40: Governor may refer claims made to land in Manawatu Block to NLCt. 2nd Schedule describes land from Deed of Sale 13 December, 1866.

s41: s82 Native Lands Act 1865 to be repealed as to land in Manawatu Block not included in the above deed.

Commentary: The main change from the Native Lands Act 1865 is that the name of all owners must be recorded by the Court, in addition to the not more than 10 owners named on the Certificate of Title. This was intended to prevent the 10 named "owners" selling the land on their own behalf without consultation and without dividing the proceeds of the sale among all the owners. According to the Rees Commission the ten named owners on the front of the Certificate could control leasing and rents without the agreement of the rest of the owners and Mackay wrote "The Supreme Court and the Court of Appeal have decided that a lease made by the ten owners is good in law, and if they fail to pay to the 'Registered Owners' their fair proportion of the rent, the latter have remedy against them, but not against the lessee". Chief Judge Fenton refused to implement the policy of naming all owners on the back of the CT and he continued to issue CTs to not more than ten named owners as if they were the only ones with a claim to the land. He felt that the Native Land Court should be eliminating communal ownership, (see the 1868 Debates below for description and comment on Fenton's actions). During the debates Richmond said that one principle of the Act was to "enable the Government to put some sort of restrictions upon alienating Native lands" and the Court is therefore required to recommend whether or not alienation restrictions should be imposed. The Governor no longer has the power to direct the application of money from the alienation of reserves, but he can still make restrictions differing from those recommended by the Court.

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Other changes include a decrease in the number of Assessors (justified as a cost saving measure), and the power for survey costs to be charged against the land before Certificates of Title are delivered. Section 10 on extinguishment of Native title was "to prevent the re-opening of every title in the whole colony" and caused a debate in the House about cases where the Crown purchased land from the wrong owners and the rightful owners will not now be able to take their claims to the NLCT. In regard to section 24, Richmond said "It was considered inconvenient to make payments annual as the machinery of the Land Court would be at an end before twenty one years were over, and considering how far the duties and fees under the Act fell short of meeting the expenses of administration, it was well, if possible, to get in the duties rapidly". In regard to the exclusion of the Manawatu Block in section 40, the 1869 Debate reference provides a description of the history of transactions over that Block.

- Cross Reference:** NZPD (1867) 1135 - 1139, 1120 - 1121, 1188 - 1189
 NZPD vol 4 (1868) 229 - 231
 NZPD vol 5 (1869) 372 - 375
 AJHR (1871) A - 2a
(Memorandum by Sir William Martin)
 AJHR (1884) Sess II G - 2
(Native Land Laws)
 AJHR (1891) Sess II G - 1
(Rees Commission on Native Land Laws), G - 1a p.10
(Mackay's Unfinished Report Relating to Native Land Laws)
 Ward A A *Show of Justice* (AUP, Canberra, 1974) 216 - 217
 Waitangi Tribunal *Report of the Waitangi Tribunal on the Orakei Claim* Wai 9 (Waitangi Tribunal, Wellington, 1987) 32 - 35, 153
 Boast R "In re Ninety Mile Beach Revisited: The Native Land Court and the Foreshore in New Zealand Legal History" (1993) 23 VUWLR 152
 Mackay J *Our Dealings with Maori Lands; or, Comments on European Dealings for the Purchase and Lease of Native Land and Legislation thereon* (Kidd & Wildman, Auckland, 1887) 8 - 9

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Reported Court Cases:

- N.Z. Native Land Settlement Co. v. Hirini Whanga* (1890): 9 N.Z.L.R. 399
Cook County Council v. Rawiri Hinaka (1893): 11 N.Z.L.R. 778
Baldwin v. Wellington and Manawatu Railway Co. Ltd. (1895): 14 N.Z.L.R. 259
Murimotu Block (1879) (s.17): O.B. & F. (S.C.) 24
Ani Waata v. Grice (1883) (s.17): N.Z.L.R. 2, C.A. 95
Te Raihi v. Grice (1886) (s.17): N.Z.L.R. 4, C.A. 219
Seymour v. MacDonald (1887) (s.17): N.Z.L.R. 5, C.A. 167
Seymour v. Apiata (1888) (s.17): 6 N.Z.L.R. 331
Paraone v. Matthews (1888) (s.17): 6 N.Z.L.R. 744
Apiata v. Seymour (1888) (ss.17, 20, 21): 7 N.Z.L.R. 60
Matthews v. Paraone (1889) (s.17): 7 N.Z.L.R. 528
In re Land Transfer Act; Ex parte Dickson (1890) (s.17): 8 N.Z.L.R. 492
Ropiha Tamararo v. N.Z. Native Land Settlement Co. Ltd. (1891): (s.17) 9 N.Z.L.R. 573
In re Piripiri Block (1892) (s.17): 10 N.Z.L.R. 629
Takerei v. Shrimpton (1902) (s.17): 21 N.Z.L.R. 416, 4 G.L.R. 496
Reg. v. Sutton (1884) (s.24): N.Z.L.R. 3, S.C. 135
Kawatini v. Kinross (1878) (s.32): 3 J.R. (N.S.) S.C. 149
Meihana Takihu v. Kinross (1878) (s.32): 4 J.R. (N.S.) S.C. 59
Te Waka Kawatini v. Kinross (1879) (s.32): N.Z.L.R. 3, C.A. 97.