



Native Lands Act 1869

1869

- Citation:** 32 & 33 V. No 26
Date of Assent: 3 September, 1869
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- Repeal:** Repealed 1 January, 1874 by 1873, No 56 except:
(i) duties on alienation, repealed 1 January, 1874 by 1873, No 57,
(ii) any proceedings commenced under 1869 Act to be continued and perfected under that repealed Act (1874, No 75).
- Amendments:** 1870, No 74: See separate record.
s2 repeals s20.
- Type of Legislation:** Public
Subject: Maori Land Court: Structures & Jurisdiction
Alienation of Maori Land
Validation
- Relevant Sections:**
- s2: Certificate of Title to be dated on day of signature of presiding Judge and such day to be date of issue.
 - s3: Empowers the NLCT to fix in the CT a day on which the legal estate in land will vest under any Crown Grant. Cannot be prior to the CT's date.
 - s4: Contracts made after the date fixed in the CT shall not be void under s75 Native Lands Act 1865.
 - s5: Officer preparing Crown Grant shall insert date of vesting fixed by Court.
 - s6: All deeds executed after the date so fixed but before the issue of the Crown Grant to be validated.
 - s7: Form of certificate fixing date in Schedule.
 - s8: CTs to certain blocks of land in Auckland Province were dated subsequently to the NLCT order and meanwhile transactions had taken place so the Court is now empowered on application by affected persons to alter the date on Certificates and to fix a vesting date. Affected transactions deemed to be valid notwithstanding s75 Native Lands Act 1865.
 - s9: For purposes of s8 applications, the Chief Justice of the Supreme Court may sit in the NLCT and act as Chief Judge.
 - s10: Empowers NLCT to make conclusive determinations even if incidental matters arise concerning land dealings with Natives prior to 14 January, 1840.

Relevant Sections and Commentary continued over page



Native Lands Act 1869 *continued*

s11: Amendments to Native Lands Act 1867,

- amends *s6* by requiring survey plans to be deposited in the Court before CT is issued,
- amends *s8*, deposit of security for costs to be dealt with as the Court orders,
- replaces *s9* requirement for general rules on re-use of evidence previously heard with a discretion for Court to receive such evidence,
- repeals *s18* (CTs to be transmitted to Governor before issue) and *s19* (Governor may issue grants at once on signing certificates).

s12: In all grants under the Native Lands Acts, the grantees are to be tenants in common, not joint tenants, unless the grantees or their survivors have already sold the land.

s13: Testamentary orders already made by the NLCt shall be valid as if *s12* had been in the Native Lands Act 1865.

s14: Undefined shares of tenants in common not to be deemed equal, and every grant shall set out the proportion of interest of each grantee in the land. Shares deemed equal if the interests have already been purchased.

s15: Not lawful for less than a majority in value of the grantees of any land under the Native Lands Acts to alienate their interests.

s16: Lease and re-lease not to operate so as to evade duties payable on first purchase.

ss17 - 19: Payment of duties.

s20: Amends *s81* Native Lands Act 1865 so that the time limit for ordering a rehearing shall be three months instead of six months.

s21: Crown Grants to be prepared in Native Land Court office.

s22: Deeds by married Native women shall be valid as if signed by a single woman.

Commentary: This Act was introduced into the Legislative Council by Chief Judge Fenton. The Debates on the Bill give the following explanations of sections. Section 10, which gives the Court jurisdiction over transactions before 1840 is intended for cases where the block before the Court joins or runs into land subject to Old Land Claims. Section 12 specifies that grants of Maori land shall be held by owners as “tenants in common”. This means that when a grantee dies his/her interest in the land passes to his/her own successors. [With multiple-owned land held by “joint tenants”, on the other hand, all the property of a deceased passes to the other surviving owners.]

Commentary and Cross Reference continued next page



Section 15 means that the majority in value of owners must agree to an alienation before the land can be partitioned for such purposes. In regard to sections 8 and 9 the AJHR reports (1869, F - 6, F - 6a) contain evidence heard by the Native Affairs Committee in regard to disputed titles to land resulting from confusion over the dating of certificates and therefore the date of the vesting of the legal estate. Section 22 gives married Maori women property rights not possessed by married Pakeha women at the time. However, it is interesting to note that the right they are given is the right to sell their land.

- Cross Reference:** NZPD vol 5 (1869) 372 - 377
NZPD vol 6 (1869) 410 - 414, 808 - 810
AJHR (1869) F - 6, F - 6a
(*Select Committee on Native Lands Bill*)
AJHR (1871) A - 2
(*Memorandum by Sir William Martin*)
AJHR (1884) Sess II G - 2
(*Native Land Laws*)
AJHR (1891) Sess II G - 1a p.11
(*Mackay's Unfinished Report Relating to Native Land Laws*)
- 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

Cross Reference continued over page



Native Lands Act 1869 *continued*

- 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
R. 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. 2): 4 J.R. (N.S.) S.C. 59
Te Waka Kawatini v. Kinross (1879) (s.32): N.Z.L.R. 3, C.A. 97.