



## Native Land Act 1873

**Citation:** 37 V. No 56  
**Date of Assent:** 2 October, 1873  
**Commencement:** 1 January, 1874

**Repeal:** Repealed 1 October, 1886 by 1886, No 24. However, most of the Act ceased to be in force from 1 October, 1880, being repugnant to 1880, No 38.

**Amendments:** **1874, No 15:** See separate record.  
*s13* repeals and replaces *s78*, no Crown grant included in any Memorial of Ownership to be issued until one month after expiration of time for rehearing. Legal estate to vest as from date of extinction of Native title.

**1874, No 75:** See separate record.

*s3* repeals and replaces the proviso to *s4*, proceedings commenced under any of previous repealed Acts now to continue and be perfected under the repealed Acts.

*s4* amends *s12*

*s5* repeals *s15*

*s6* amends *s19*

*s7* amends *s44*.

**1877, No 31:** See separate record.

**1878, No 1:** See separate record.

**1878, No 40:** See separate record.

*s5* repeals *s35*

*s14* extends time for taking roads (*s106*) by 5 years.

*s15* amends *s71*.

**1880, No 38:** See separate record.

**1881, No 18:** See separate record.

**Type of Legislation:** Public

**Subject:** Maori Land Court: Structures & Jurisdiction  
 Reserved Land  
 Survey Issues  
 Alienation of Maori Land  
 ToW/Principles of ToW reference  
 Public Works  
 Status of Land  
 Compulsory Acquis & Transfer of Control

*Relevant Sections continued next page*



- Relevant Sections:**
- Preamble:* refers to desirability of lessening the cost of surveying and alienating surplus Native land, creating a roll of Native land ownership, assuring sufficiency of land to Natives and securing permanent endowment lands.
- s3:* "Native" includes half-castes and their descendants by Natives. "Native Land" means land owned by Natives under their customs and usages.
- s4:* Repeals Native Lands Act 1865, Native Lands Act 1867, Native Lands Act Amendment Act 1868, Native Lands Act 1869, Native Lands Act Amendment Act 1870 except the parts containing the imposition and payment of duties. Also repeals s73 of the N.Z. Constitution Act 1852 (Imp) which had re-affirmed Crown pre-emption over land transactions with Maori. Proviso that proceedings commenced under any of the previous Acts are to be continued under the present Act.
- Constitution of Court*
- s5:* Native Land Court districts may be established.
- s6:* Governor in Council may proclaim areas to be exempt from this Act.
- s7:* Native Land Court established for the investigation of titles to Native land.
- s8:* Court to consist of Judges and Aboriginal Assessors as appointed by the Governor in Council.
- ss9 - 10:* Salaries and allowances.
- s11:* Interpreter to be attached to every district.
- s12:* Other officers may be appointed.
- s14:* One Judge empowered to Act.
- s15:* When the Judge requires, Native Assessors may sit in the Court but their agreement is not necessary for decisions.
- s16:* Administrative business to be performed by the Chief Judge.
- s17:* Judges and Assessors to make rules.
- ss18 - 19:* Court rolls to be kept to record the result of every investigation of title.
- s20:* Governor may declare that a case will not be tried and may stop surveys.
- Native Land and Reserves*
- s21:* District Officers to prepare a map of the lands in possession of the various hapu and tribes on date of signing of ToW and a map defining intertribal boundaries.

*Relevant Sections continued over page*



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s22: Each Court district to have a "Local Reference Book".

s23: Native Reserves Commissioner to furnish list of existing Native Reserves to be appended to the Local Reference Book.

s24: District Officer shall select, with concurrence of interested Natives, and then set aside reserves for the benefit of Natives in the district. Proviso that land not to be considered sufficient unless added together it equals an average of not less than 50 acres per head for every Native man, woman and child. Particulars of reserves to be approved by Governor in Council.

s25: Reserves to be surveyed.

s26: On completion of the survey of the reserve, application to be made by the District Officer to have the title investigated in the NL Ct.

s27: Investigation of title to reserve in open Court.

s28: On completion of inquiry, Memorial of ownership of the reserve to be issued, naming all the owners individually.

s29: Court Rolls extract on reserves to be sent to Native Minister.

s30: After six months Memorial of ownership to be gazetted with a notice that the land is inalienable except with the prior consent of the Governor in Council.

s31: Reserved land to be held by Native owners in accordance with Native custom and usage, requiring the consent of the Governor in Council for it to be subject to the operation of this Act.

s32: Nothing in this Part of the Act to interfere with existing powers to set aside land for the benefit of Natives.

*Jurisdiction and Duties of the Court*

*Investigation of Titles*

s33: Surveys required prior to any investigation of title or partition.

s34: Any Native may apply to have their claim investigated by the Court. Application to include a description of the land, names of other persons interested, and if there are more than two claimants it must be signed by a least three of the claimants.

s35: Copy of application to be sent to each person or tribe named in the application.

s36: Notice of claims and sittings to be published in *Kahiti* and the *Gazette*.

s37: District Officers, Commissioners to ascertain if land under application has already been alienated to the Crown and, if so, the hearing shall be suspended.

*Relevant Sections continued next page*



s38: Judge to make preliminary inquiry and, if satisfied that the application is in good faith, to require a survey to be made.

s39: Applicants to guarantee that the cost of surveying will be paid either in money or by land transferred to the Crown.

s40: Public notice of sitting to be served on all those named in the application.

s41: Court to ascertain the title of the applicants and all other claimants.

s42: Judge may compel witnesses.

s44: Examination of witness to be carried out by presiding Judge without intervention of lawyers or agents, although claimants may select one of themselves as spokesman to conduct the case.

s45: If majority of claimants desire, NLCt to ascertain the amount of the proportionate undivided share that each owner is entitled to according to Native usage and custom. Proportions to be recorded in Memorial of ownership.

s46: Court may adopt voluntary arrangements between the claimants, recording the names of those consenting to the arrangement.

*Memorials of Ownership*

s47: Memorial of ownership to be entered on the Court Rolls declaring the names of all owners, their hapu and their proportionate shares.

s48: Condition annexed to each Memorial that owners have no power to sell or dispose except to lease for a term not exceeding 21 years.

s49: Sales may nevertheless occur where all owners agree to sell.

s50: Decisions of Court to be published in the *Gazette*.

s53: Memorials of ownership exempted from Stamp Duties Act 1866.

*Owners under Disability*

s54: Interests of minors and persons under disability to be recorded on Memorial of ownership.

s55: Those interests to be dealt with under the Maori Real Estate Management Act 1867.

*Succession*

s56: If Native owner dies during adjudication, persons entitled to succeed under Native custom to be inscribed on Memorial of ownership.

*Relevant Sections continued over page*



*Native Land Act 1873 continued*

*s57:* When a Native owner of land under Memorial of ownership or Crown grant dies intestate the Court may determine who, according to Native custom, shall succeed.

*Rehearing*

*s58:* Rehearing may be applied for within six months from date the decision was published. If Governor in Council orders a rehearing, the Court case will begin afresh.

*Sales and Leases – Partition*

*s59:* Where sole or collective owners desire to sell, NLCt to inquire whether survey and other costs have been paid, all owners assent and the transaction is in good faith. Sale transfers must be signed by all owners.

*s60:* NLCt to explain the effect of sale to the owners.

*s62:* Leases of land under Memorials of ownership must have assent and signatures of all owners.

*s63:* Judge may appoint receivers, from amongst owners or not, to receive rents. Lessee not responsible for the proper distribution of the rent.

*s64:* Receivers accountable to the Court.

*s65:* If some owners object to sale or lease, NLCt to ascertain dissenters and may, if the majority of owners desire, separate their interest by subdivision of the land as the Court thinks just.

*s66:* Court may further subdivide land awarded to dissenters provided they pay the costs of further subdivision.

*s67:* Partitioned land to be held under same tenure and customs as previously. If there are not more than 10 Native owners, however, they may apply for a Crown Grant changing their title to an English freehold title.

*s68:* New Memorials of ownership to be issued after partition.

*Surveys*

*s69:* Governor, at the request of Native claimants, may order surveys of Native Land.

*s70:* Inspector of Surveys to prepare survey regulations.

*s71:* Inspector of Surveys to approve map before Memorial of ownership shall issue.

*s72:* Native claimants to make written agreement of rate to be paid for survey and method of payment, being money or land.

*Relevant Sections continued next page*



s73: Provision for Court to order land to be transferred to the Crown in payment for surveys and other fees.

s74: Surveyors holding licenses under earlier Acts cannot now survey Native land without written authority of Inspector of Surveys.

*The Legal Estate, Registration, etc*

*Crown Grants*

s75: Upon the completion of a sale by the owners of land under a Memorial of ownership, NLCT to declare the land freehold. From that date, Native title to that land is extinguished and a Crown Grant may issue.

s76: A Crown Grant of such land to be as legally effective as any grant of waste lands or of land ceded by Native owners to the Crown.

s77: Court order vesting land in Her Majesty frees it from all Native titles, customs or usages.

s78: The legal estate of any Memorial of Ownership shall vest one month after the period for rehearing has expired.

s79: Crown grantees under the Acts repealed by this Act shall be deemed to have been tenants in common, not joint tenants, but the interest of each grantee is not deemed to be equal. This section not to apply to any grantees who have already alienated their land.

*Commutation of Native Title*

s80: Regardless of other provisions of this Act, where there are not more than 10 individual Natives owning any piece of land, they may apply to have their Native title extinguished and freehold tenure declared. A Crown Grant may then issue to them as tenants in common in undivided shares of defined proportions.

*Instruments of Disposition*

ss81 - 83: Registration of instruments of alienation. To be in duplicate with plan attached.

s84: In all mortgages involving Natives a condition is to be included that the mortgagee cannot sell up the property mortgaged. All previous mortgages to be read as if they included the above condition.

s85: No document of sale, lease, etc by a Native to a non-Native shall be valid unless it is fully explained to the Native. A clear statement of the transaction written in Maori must be certified by the interpreter and indorsed on the document which must be signed by the Native in the presence of a Judge or Magistrate and another adult male.

*Relevant Sections continued over page*



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**s86:** Married Native woman not to be examined provided her husband is party to the deed.

**s87:** Transactions about Native land made before freehold tenure is ordered by the Court shall be void except for contracts concerning flax or timber for less than 2 years.

**s88:** Judgments not to affect Native land.

*Past Transactions*

**s89:** Any grantee under any repealed Acts may now apply for a partition if no alienation has been made before this Act.

**ss90 - 91:** Cancellation of old grants.

**s92:** Where shares of land granted under any repealed Acts have been alienated, the purchaser or the remaining grantees may apply for a partition to have their respective shares determined and the land subdivided.

**s93:** Certificate by Court to define the allotment of shares.

**s94:** Court to be guided by equity and good conscience in regard to partitions under ss92 - 93. Decision of Court binding and conclusive except that any grantee or purchaser may, within six months of decision, apply for revision by the Supreme Court.

**s95:** Previous 3 sections not to apply to transactions completed prior to the Native Lands Act 1869.

**s96:** Leases made under Native Lands Act 1867 to be valid as if s73 Constitution Act had been repealed in 1865.

**s97:** No land comprised in any CT issued under Native Lands Act 1867 shall be alienated until subdivided under this Act.

**s98:** Lands under CTs issued under Native Lands Act 1867 may now be dealt with as land under Memorial of ownership, provided that all the registered owners agree with the transaction as well as the ten named owners.

**s99:** Validation of declarations made under s74 Native Lands Act 1865 or s32 Native Lands Act 1867 despite not being in the prescribed form.

*General Powers of the Court*

**s100:** Evidence given in previous cases may be adopted.

**ss101 - 102:** References from Supreme Court under Native Rights Act 1865.

**s103:** Questions of law may be referred from NLCt to the Supreme Court.

*Relevant Sections and Commentary continued next page*



*s104:* Judge may amend errors in proceedings of the Court up to the issue of the Memorial of ownership.

*Miscellaneous Provisions*

*s105:* Notification in the *Gazette* authoritative proof that Native title extinguished and that land ceases to be Native land.

*s106:* Land granted under any of the Native Lands Acts may be taken for roads or railway lines at the rate of not more than 5 acres per 100 acres for 10 years from date of a Crown Grant, except for land comprising a village, garden, burial site, etc. which may be taken only under the Land Clauses Consolidation Act 1863.

*s107:* Where agreements made by Land Purchase Commissioners are incomplete the NLCt may investigate and order the completion of the agreement, or partition out the interest of the Crown, or order the repayment of advances made to Native owners, or declare that the land has been ceded to the Crown.

*s108:* Agreements made prior to 1865 for the purchase of timber, flax etc growing on Native land, although invalid, may be recognised according to what is fair and reasonable. No agreement to be for longer than 25 years from the date of the Court order.

*ss109 - 111:* Land Claims Commissioner may request the NLCt to investigate Old Land Claims even though the applicant is not a Native.

*Fees*

*s112:* Governor to fix fees. Court may stay proceedings if fees remain unpaid.

**Commentary:** The workings of the Native Lands Act 1865 had resulted in numerous petitions and complaints regarding the way that Maori land transactions were dealt with in the Native Land Court (see Native Lands Fraud Prevention Act 1870 and Hawkes Bay Native Lands Alienation Commission Act 1872). This Act brought about four main changes:

- 1. Survey charges** – the Government would now advance the money necessary to pay for surveys, thus eliminating one of the initial impediments to bringing land to the Court. However, the Maori owners still remained liable for the survey charges and if they could not repay the money the Government could take land as payment.
- 2. District Officers** – to avoid the situation of claimants having to be aware of and attend Court hearings to have their interests

*Commentary continued over page*





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represented, the Minister for Native Affairs, Donald McLean, envisaged a system under which District Officers would investigate land ownership before cases came before the Court and eventually a nationwide record of hapu interests could be established for reference. This did not eventuate however, and it continued to be the case that the claimant initiating action through the Court had an advantage over others with interests in the land. Judges were also to make preliminary inquiries so that they did not have to rely only on the evidence produced in Court. This did not happen either, with Mackay giving as one of the reasons the fact that the Judges were not given the power to call Maori together for this purpose.

**3. Reserves** – to guard against leaving Maori landless, inalienable reserves were supposed to be created of at least 50 acres per man, woman and child.

**4. Memorial of Ownership** – to replace the Certificate of Title system which, by only naming ten owners, was open to abuse, McLean instituted a Memorial of ownership on which was to be listed *every* owner and their proportionate share. A whole Block could not be sold without the agreement of every named owner, which made it very difficult to complete a purchase. McLean saw the Memorial of ownership as a way of protecting hapu interests by ensuring that every interested party was represented, however many commentators have suggested that it furthered the move towards individualisation of tenure as the owners were named as individuals (including unborn children) rather than as the hapu or iwi.

This system has also been criticised for failing to recognise the authority of chiefs and hastening fragmentation of ownership. According to later politicians, the Memorial of ownership would be the cause of much future legislation and litigation because it inconvenienced the prospective purchaser by requiring him to obtain the signature of *all* the owners, which became very difficult due to sheer numbers, geographical distance, and death and succession problems. This frequently resulted in blocks with incomplete purchase deeds and purchasers wanting to be able to obtain title to a partitioned area proportionate to the interests represented by the signatures obtained. Later legislation moved in this direction. When introducing the Bill, McLean said the principal features were “in the direction of ascertaining and more accurately defining the titles to tribal lands, mapping them out, and duly recording them.”

*Commentary and Cross Reference continued next page*



Although originally designed to make the Native Land Court more effective and to ensure that Maori understood the proceedings and implications, the many complicated (and often contradictory) provisions meant that the Judges could continue to manage the Court as they had done previously and many of the safeguards that McLean introduced failed to operate in practice. Mackay wrote in 1887 that many of the provisions had become dead letters as "in accordance with all previous experience in native affairs, the administrative branch of the Native Department, and the Native Land Court Judges did not work amicably, or in concert together." The repeal of Crown pre-emption as affirmed in N.Z. Constitution Act 1852 (Imp), s73 made explicit the implied repeal of that section by the Native Lands Acts 1862 and succeeding Acts. Authority to repeal that section of the Imperial Act by the Colonial Legislature had been granted by N.Z. Constitution Amendment Act 1863 (Imp). Note that although proceedings commenced under any of the repealed Acts were originally to be continued under the 1873 Act (s4), the Native Land Amendment Act 1874 provided instead that in such cases the proceedings shall be continued and perfected under the repealed Acts. During the Debate on this amendment Takamoana asked that the Native Land Court be abolished. A Parliamentary Report of 1885 indicated that the total acres of land sold to Pakeha after going through the Native Land Court since 1873 had been 1,107,727, for a total price of £326,965.

- Cross Reference:** NZPD vol 14 (1873) 604 - 621  
NZPD vol 15 (1873) 1367 - 1379  
NZPD vol 16 (1874) 937 - 939, 985 - 986  
NZPD vol 78 (1892) 506 - 509  
AJHR (1871) A - 2a  
(*Memorandum by Sir William Martin*)  
AJHR (1874) I - 3  
(*Native Affairs Committee*)  
AJHR (1883) G - 6  
(*Dealings with Native Lands*)

*Cross Reference continued over page*



**Native Land Act 1873** *continued*

AJHR (1884) Sess II G - 2  
(*Native Land Laws*)

AJHR (1885) G - 6  
(*Lands Passed through the Native Land Court and Purchased by Europeans*)

AJHR (1885) I - 2b pp.19 - 30  
(*Native Affairs Committee – Report on Native Land Disposition Bill*)

AJHR (1891) Sess II G - 1 pp.VIII - IX (*Rees Commission*),  
G - 1a p.13  
(*Mackay's Unfinished Report Relating to Native Land Laws*)

Ward A A *Show of Justice*  
(AUP, Canberra, 1974) 253 - 257

Butterworth G & Butterworth S *The Maori Trustee*  
(Maori Trustee, Wellington, 1991) 6 - 7

Waitangi Tribunal *The Te Roroa Report* Wai 38  
(Brooker & Friend, Wellington, 1992) 41, 139 - 142, 289

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) 9 - 11

Reported Court Cases:

There are numerous cases that refer to this Act, see Butterworths  
Annotations of New Zealand Statutes (Cases).