



Native Land Act Amendment Act (No 2) 1878

1878

- Citation:** 42 V. No 40
Date of Assent: 2 November, 1878
Commencement: Date of Assent
- Repeal:** Repealed 1 October, 1886 by 1886, No 24
Amendments: –
Type of Legislation: Public
Subject: Maori Land Court: Structures & Jurisdiction
Survey Issues
Public Works
Govt Admin Specific to Maori/Maori Land
Compulsory Acquis & Transfer of Control
Validation
- Relevant Sections:**
- s2: When Native Assessor disagrees with the opinion of the Judge, a memorandum of Assessor's dissent to be entered in Court records.
 - s3: Court may recommend to Governor restrictions on alienability of any lands the subject of investigation.
 - s4: Native land held under Memorial of ownership or Crown Grant not to be mortgaged.
 - s5: Repeals s35 Native Land Act 1873, which had required service of notice of application to all tribes, hapu or persons believed to be interested.
 - s6: Preliminary inquiry required by s38 Native Land Act 1873 will not be necessary. All titles ordered without a preliminary inquiry shall not be invalidated.
 - s7: Court to have power to award either money or land to surveyor in payment of survey costs.
 - s8: Estates of persons under disability shall be dealt with under the Maori Real Estate Management Act 1867 and Maori Real Estate Management Act Amendment Act 1877, and trustees appointed shall have the power to sell or lease the land to private persons as well as to the Crown.
 - s9: Age of a minor to be determined by the NLCt and to be recorded on the Memorial of ownership.
 - s10: Time for application for rehearing to be limited to three months.
 - s11: On application of any Native owner, or other interested person, NLCt to determine the value and extent of any interest held by the applicant under Memorial of ownership, Crown grant or award,

Relevant Sections and Commentary continued over page



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or conveyance and make an order vesting any portion of the land in the applicant.

s12: Other officials may witness an alienation deed as if a Judge or Resident Magistrate as long as they are not involved in the transaction. Interpreter may not certify any deed interpreted by himself.

s13: In cases where a lessee is unable to pay the rent to the owners because a lessor is under legal disability, individual shares have not been ascertained, or the death of a lessor, the lessee may discharge his liability by paying the lease money into an account. The Court shall direct how the money shall be paid out.

s14: Period for right of taking roads and railways out of Native lands referred to in s106 Native Land Act 1873 [without compensation to owners] is extended to fifteen years from date of Crown Grant.

s15: Amends s71 Native Land Act 1873, by providing that when a survey map contains errors the NLCt may issue a temporary order which, when an approved map is received, may be changed to a final order by the Chief Judge without a further hearing.

Commentary: Sheehan described this Amendment as “a Bill for removing technical obstructions, and [it] goes in the direction of making the Act more workable for the public and private purchasers”. Sections 8, 11, 13 and 15 would seem to make it possible for purchasers to obtain title to portions of land even if they had not managed to purchase all the interests under the Memorial of ownership title and in the absence of an accurate survey plan. Section 6 recognises that the process of preliminary inquiry envisaged by the Native Land Act 1873 had not been implemented. Section 4 makes it unlawful to advance a loan as a mortgage over any land held by a Maori on a Memorial of ownership or Crown Grant. The Native Minister stated that it was better for Maori to obtain money by selling land rather than by mortgaging it. By denying Maori the freedom to use their lands as security, the Government is refusing to allow Maori control over and responsibility for their lands, as well as ensuring that alienation of land into the hands of settlers is the only means to deal with financial difficulty.

Cross Reference continued next page



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Cross Reference: NZPD vol 30 (1878) 945 - 946, 1224, 1226

AJHR (1891) Sess II G - 1a p.14

(Mackay's Unfinished Report Relating to Native Land Laws)

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) 11

Reported Court Cases:

Hami Tikitiki v. Assets Co. Ltd. (1899) (s.10): 18 N.Z.L.R. 226, G.L.R. 137

Buchanan v. Ngatuere (1885) (s.12): N.Z.L.R. 3, S.C. 255

Fabian v. Borough of Greytown North (1891) (s.14): 10 N.Z.L.R. 505

Moore v. Waitotara County Council (1893) (s.14): 13 N.Z.L.R. 65.