



Native Succession Act 1881

- Citation:** 45 V. No 16
- Date of Assent:** 19 September, 1881
- Commencement:** Date of Assent
- Repeal:** Repealed 1 October, 1886 by 1886, No 24
- Amendments:** 1882, No 27: See separate record.
s4 amends s3.
- Type of Legislation:** Public
- Subject:** Maori Land Court: Structures & Jurisdiction
- Relevant Sections:**
- s2: "Native" includes half castes and their descendants by Natives. "Native land" is land to which title has been determined by the NLCT. "Hereditaments" means land held under a Crown derived title.
- s3: NLCT may appoint successors for any Native owning Native land or hereditaments who dies without a will. For Native land the Court to be guided by Native custom or usage; for hereditaments the Court shall assume Native marriages are valid and then be guided by the law of New Zealand.
- s4: If Native makes an informal written will, Court shall make orders as nearly as may be in accordance with it.
- s5: Court to grant certificate as to who is entitled to succeed to land interests.
- s6: Personal property also to be succeeded to in accordance with informal will.
- s7: Court may grant certificate of succession to personal property according to Native usage or custom.
- s8: Certificate to state who may be granted letters of administration of the estate.
- s9: Rules on letters of administration and stamp duty to apply to certificates.
- Commentary:** Extends the "jurisdiction of the NLCT in the estate of deceased Natives" so that the NLCT may appoint successors. When determining succession of Maori land the Court "shall be guided by Native custom or usage". When determining succession of hereditaments (land held under title derived from the Crown) NLCT to assume that traditional Maori marriages are valid and then to be guided by "the law of New Zealand". The Act assumes that

Commentary and Cross Reference continued next page



once Maori hold land under a title derived from the Crown, then Maori should be willing to accept New Zealand (English) laws in other matters. This means that land held under Crown Grant is not disposed of according to Maori custom. For example, Ngatata points out in the Debates that a deceased wife's property would go to her husband rather than her children. (In 1882, however, the Act was amended so that hereditaments would descend by Native custom). Ngatata also says that wills made orally just before death [ohaki] should be respected as well as informal written wills. The Court may also make awards relating to personal property, such as bank deposits.

Cross Reference: NZPD vol 38 (1881) 176 - 178, 389 - 390

Reported Court Cases:

Pahoro v. Cuff (1890) (s.3): 8 N.Z.L.R. 751

In re Henare Whakatau Uru v. Hohepa Te Rangi (1904) (s.5): 24 N.Z.L.R. 390, 7 G.L.R. 16.