



Native Equitable Owners Act 1886

1886

Citation: 50 V. No 16
Date of Assent: 30 July, 1886
Commencement: Date of Assent

Repeal: Repealed 23 October, 1894 by 1894, No 43
Amendments: 1888, No 37: See separate record.
s19 applies ss2 - 15 to land in the Bay of Plenty district to enable beneficiaries to become certified owners.
1889, No 32: See separate record.
s18 limits time for application under s2
s31 amends s5.
1893, No 22: See separate record.
ss2 - 3.

Type of Legislation: Public

Subject: Equitable Owners
Maori Land Court: Structures & Jurisdiction
Public/Native/Maori Trustee
Reserved Land

Relevant Sections: *Preamble:* Whereas Certificates of Title had been issued to Natives as absolute owners and in many cases those named were only intended to be trustees for their hapu.
s2: Natives claiming to be beneficially interested in land may apply to the NLCT to make inquiry as to the existence of any intended trust.
s3: NLCT may find there is no trust or, if there is a trust, declare who are the persons beneficially entitled.
s4: Persons declared to be beneficial owners shall be owners as tenants in common as if names were inserted on the CT or Crown Grant.
s5: Equitable owners cannot apply if land has already been sold by the named owners. Exception for land in the South Island sold to the Crown but no Native can question the title of the Crown. Leases not to be prejudiced. Lessees to pay rent to Public Trustee who will then distribute it to all parties beneficially entitled.
s6: NLCT may ascertain those entitled to land appropriated for Natives as part of the "Ngaitahu deed" and such land shall be dealt with under the Native Land Court Act 1880.

Relevant Sections and Commentary continued over page



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s7: NLCt may ascertain Natives entitled to the reserves set apart in the South Island and Stewart Island as authorised by Order in Council.

s8: Every CT granted by NLCt under this Act to contain a restriction on alienation and the land may not be leased for more than 21 years.

s9: NLCt may give effect to voluntary arrangements between named owners and other Natives.

s10: Court may appoint successor if beneficial owner has died.

s11: *s2* Native Land Division Act 1882 to be read as if the word "not" had been omitted from the 4th line. (That Act *will* apply to any Native reserve)

Commentary: Native Land Acts' Certificates of Title meant that in law the land belonged to the named Maori as absolute owners, even though it was often supposed that those named were kaitiaki or trustees for a wider group or a hapu. This had arisen from the application of the "ten owner rule" whereby owners could only have a maximum of ten names recorded on the Certificate of Title, and informal arrangements had often been made as to whose names would be on the title even though there were many more owners interested in the land. This Act tries to provide a remedy for the un-named owners by empowering the Court to investigate, and declare them beneficial owners of Native land as tenants in common. The Act was the result of hundreds of petitions that had come before the Native Affairs Committee which had found that it was powerless to act. Many reservations were expressed as to how the Act would work, and the possible complications and costs of reopening title investigations, however land which has been sold is excluded and leaseholders are protected by allowing them to pay the rent to the Public Trustee who can distribute it when all those involved are ascertained. Parata called it the "first Bill to do justice to the native people of the South Island" because the Native Land Court had not been able to operate in the South Island under the Native Land Court Act 1880. The Bill was originally designed to apply only to the South Island but was then extended to the whole country. The Waitangi Tribunal comments (Orakei Report) that the "Act did not restore tribal ownership however. It merely allowed more individuals to be included in the individualisation process."

Cross Reference continued next page



- Cross Reference:** NZPD vol 54 (1886) 141 - 142, 303 - 306, 322 - 327, 394 - 395
NZPD vol 55 (1886) 87 - 92, 474 - 475
NZPD vol 65 (1889) 449 - 451
AJHR (1886) I - 2 p.1
(Native Affairs Committee)
AJHR (1885) I - 2b pp.30 - 60
(Native Affairs Committee – Report on Native Land Disposition Bill)
AJHR (1891) Sess II G - 1a p.16
(Mackay's Unfinished Report Relating to Native Land Laws)
Waitangi Tribunal *Report of the Waitangi Tribunal on the Orakei Claim Wai 9* (Waitangi Tribunal, Wellington, 1987) 154
Reported Court Cases:
In re Horowhenua Subdivision No. 14 (1897): 16 N.Z.L.R. 53
In re Paparoa Block (1892) (s.2): 11 N.Z.L.R. 523
In re Pukeatua Block (1893) (ss.2, 5): 11 N.Z.L.R. 729
In re Piripiri Block (1892) (s.5): 10 N.Z.L.R. 629.