



## Native Land Court Act 1894

**Citation:** 58 V. No 43  
**Date of Assent:** 23 October, 1894  
**Commencement:** Date of Assent

**Repeal:** Repealed 24 December, 1909 by 1909, No 15  
**Amendments:** **1895, No 52:** See separate record.  
 s26 amends s17  
 s27 amends s46  
 s28 amends s62  
 s29 amends s65  
 s30 amends s67  
 s31 amends s117  
 s32 amends s118  
 s34 amends s117  
 s35 amends s120  
 s36 amends s120  
 s37 amends heading of Second Schedule  
 s56 amends s65  
 s63 repeals ss61 and 66  
 s69 repeals ss70 - 72 in so far as inconsistent with ss 91 - 95 of 1894, No 42 (Public Works Act).  
**1896, No 27:** See separate record.  
 s3 – NLCt suspended in the Urewera district.  
**1896, No 53:** See separate record.  
 s19 amends s65  
 s22 amends s68  
 s23 amends s121  
 s24 amends s2  
 s25 amends s38.  
**1898, No 11:** See separate record.  
 s3 refers to duties payable under Part III 1894 Act.  
**1899, No 30:** See separate record.  
**1901, No 65:** See separate record.  
 s41 amends s14(10), s39, s86, s110 and s117.  
 s46 deals with interest payable on survey liens.  
**1902, No 56:** See separate record.  
 s4 deals with exchanges of land under s14(3).

*Amendments to Relevant Sections continued next page*



1907, No 76: See separate record

s5 amends s62

s6 repeals s110.

1908, No 253: See separate record.

s33(2) repeals s44.

**Type of Legislation:**

Public

**Subject:**

Maori Land Court: Structures & Jurisdiction

Leased Land

Incorporations

Survey Issues

Public/Native/Maori Trustee

Alienation of Maori Land

Equitable Owners

Public Works

**Relevant Sections:**

**DIVISION I**

*Part I Interpretation*

s2: "Customary land" means land which immediately before this Act coming into operation is owned by Natives under their customs and usages, the owners having been ascertained by the NLCt,

"Native land" means land in the colony owned by Natives under their customs and usages, the title not having been ascertained,

"Claimant" means any person claiming to have acquired an interest in land,

"confirm any alienation" means that the alienation is in accordance with the law and the purchase money has been paid,

"Land" means land other than Native land owned by Natives or by Natives and Europeans jointly under any title,

"Native" includes half-castes and their descendants,

"Successor" means the person entitled to succeed according to Native custom, or if custom is not applicable according to New Zealand law.

s3: Title of any person to Native land or land shall be deemed "ascertained" under an order from the NLCt when the time for appeal has lapsed or a final order has been made on appeal.

*Part II Creation and Constitution of Court*

s4: NLCt constituted as in 1862, 1865, 1873, 1880 and 1886 Acts to continue.

s5: Court to consist of Judges and Assessors.

*Relevant Sections continued over page*



**Native Land Court Act 1894** *continued*

**s6:** Governor to appoint Judges and officers. Chief Judge to be a barrister or solicitor of the Supreme Court.

**s7:** Stipendiary Magistrates and Recorders may be appointed Commissioners and have the powers of a Judge.

**s8:** Governor may appoint Deputy Judge.

**s9:** Appointees to hold office during the Governor's pleasure.

**s10:** Salaries.

**ss11 - 13:** Records, Registers, Seal of Court.

**Part III Jurisdiction**

**s14:** NLCT has jurisdiction to:

- (1) investigate title to Native land according to Native custom,
- (2) determine relative interests and partition land,
- (3) effect exchanges of land between Natives or between Natives and the Crown,
- (4) determine succession,
- (5) grant probate and letters of administration,
- (6) impose restrictions on alienation and vary or remove them,
- (7) determine claims based on alienation and questions between conflicting claimants,
- (8) confirm alienations made by Natives,
- (9) restrain injuries to property which is before the NLCT,
- (10) determine equitable owners of land if Governor in Council so authorises. Orders not to take effect until laid before Parliament for 14 days. Jurisdiction not to apply to Native reserves, confiscated lands, or lands already sold,
- (11) apportion rents among owners,
- (12) award costs and require security for costs,
- (13) order trustees to furnish account of trusteeship (except Public Trustee),
- (14) vest land in entitled persons.

**s15:** Jurisdiction may be extended by Order in Council to any matter affecting Natives' property.

**Part IV Practice and Procedure**

**General**

**s16:** Appointment of sittings and adjournment.

**s17:** The jurisdiction of the Court may commence upon the application of any person claiming an interest.

*Relevant Sections continued next page*



s18: Assessor to assist Judge under s14(1)(2)(4)(5) & (10) but the Assessor's agreement to the judgment is not necessary.

s19: Change of Judge or Assessor allowed.

s20: Counsel may only appear in Court with the Judge's assent.

*Evidence*

s21: Court may receive any testimony or evidence.

s22: Witnesses may be summoned.

s23: Penalty for disobeying summons.

s24: Witness in custody may be brought before the Court.

s25: Evidence may be taken before another Judge.

s26: Affidavits and affirmations.

s27: Court may authorise valuer to enter on any land.

Penalty for obstruction.

*Judgment Orders*

s28: Judgments etc. to be by order of the Court.

s29: Chief Judge may sign for retired or deceased Judge.

s30: Every order may be registered.

s31: Order to take effect from date it was made or from date directed by Court.

s32: Order may be issued in name of a deceased Native.

s33: Court may extend time limit fixed by an order.

s34: Plan or description of land to be in every order vesting land.

s35: Order under s14(9) (Payment of damages) may be filed in, and enforced as a judgment of, the Supreme Court.

s36: Age of minors to be stated on order.

s37: No amendment of statement of age shall invalidate anything done prior to the age being amended.

*Amendment*

s38: Any amendment to correct errors in proceedings or documents may be taken at any time whether applied for or not.

s39: Amendments may be applied for and made after title has been ascertained provided any alienation since made is not affected.

s40: Amendment may be made if surveyor recommends a deviation of the lines laid down by the Court.

*PART V Special Provisions Affecting Various Matters as to Which Jurisdiction is Conferred by this Act*

*Partition*

s41: Alienation of land completed by partition order shall be deemed to be confirmed.

*Relevant Sections continued over page*



Native Land Court Act 1894 *continued*

*s42:* Date of deed for purpose of assessing stamp duty.

*s43:* Trusts for interest of Native under disability to continue after land partitioned.

*Exchange*

*s44:* Exchange may be ordered if the Court is satisfied that each party will have sufficient land for their own support and that any payment necessary to balance the exchange has been made.

*s45:* Exchange orders to vest interests and specify money to make exchange equal. No confirmation order required.

*Succession, Probate, and Administration*

*s46:* Where a deceased Native has willed land to a person other than his successor the Court may order part of the land to the successor, or if it is necessary for his support, the whole of the land.

*s47:* Minors may not make wills.

*s48:* No succession order to issue in respect of land devised by will except as under *s46*.

*s49:* Title under succession orders.

*s50:* Public Trustee to be appointed trustee for successors who are minors.

*s51:* NLCT to have exclusive jurisdiction in probate and administration for estates of Natives. This section not to include children of half-castes and Europeans nor to apply to a will concerning land acquired from the Crown or Europeans.

*Restrictions on Alienation*

*s52:* Court may remove restrictions on alienation if at least one third of the owners agree and every owner has sufficient land left for his support. However, restrictions imposed prior to 30 August, 1888 may be removed only by the Governor on recommendation of the NLCT.

*Confirmation of Alienation*

*s53:* Court may confirm any alienation of land if –

- (1) the alienation is not –
  - (a) prohibited by law,
  - (b) contrary to equity and good conscience,
  - (c) in breach of a trust,
  - (d) contrary to alienation restrictions,
  - (e) paid for in alcohol or weapons,
  - (f) of land subject to the Native Land Purchases Act 1892 or the Native Land Purchase and Acquisition Act 1893,

*Relevant Sections continued next page*



- (2) (a) the title of the land has been ascertained,  
(b) the money due has been paid,  
(c) each Native alienating has sufficient land for his support and that each half-caste has a means of support,  
(d) a plan was attached to the deed and a statement explaining it in Maori was read before any Native signed,  
(e) signatures are witnessed.

*s54:* Judge may waive requirements of *s53(2)(d) & (e)* if non-compliance has not prejudiced any Native and if the Native has sufficient knowledge of English to understand the transaction.

*s55:* Deed not to be registered without a confirmation order.

*s56:* Deeds executed before this Act may be confirmed if in accordance with the law in force at the time.

*s57:* Indorsement by Trust Commissioner under Native Land Frauds Prevention Acts to be sufficient confirmation.

*Native Trusts*

*s58:* Land held in trust for equitable owners shall be subject to any existing lease, mortgage or contract for sale.

*Apportionment*

*s59:* Native lessors entitled to equal shares in rent until relative interests determined. Rents to be paid to Public Trustee in cases of dispute.

*s60:* Public Trustee to pay out as Court directs.

*Part VI Survey*

*s61:* Judge may authorise survey of any land.

*s62:* Surveyor-General may authorise survey of Native land.

*s63:* Surveyor may enter on any land.

*s64:* Penalty for obstructing surveyor.

*s65:* NLCt may charge land by way of mortgage to secure payment of survey fees or may vest a portion of the land in fee simple to such person to discharge costs. Provision for Minister to pay amount claimed under mortgage and take an assignment in name of Surveyor-General. No mortgagee sale until 6 months after giving written notice.

*s66:* Up to 5% interest to be paid on cost of surveys.

*s67:* Survey fees owing before the coming into operation of this Act shall be protected.

*s68:* Survey charges may be discharged by payment to the Public Trustee and held in trust for persons determined by NLCt.

*Relevant Sections continued over page*



**Native Land Court Act 1894** *continued*

***Part VII Roads***

*s69:* If land has been divided into several parcels the Court may grant rights of private roads through parcels to provide access to a parcel. Application must be made within 5 years of partition.

*s70:* Governor may take up to 5% of Native land for public roads within 15 years of first issue of title.

*s71:* Land occupied by pa, village, cultivation or burial ground not to be taken, except as provided by Public Works Act 1882.

*s72:* Roads to vest in the Crown. When road runs along boundary between European and Maori land such road to be taken equally from both where practicable.

***Part VIII All Titles to Land to be under the Land Transfer Act***

*s73:* All land which has been through the NLCt (customary land) shall become subject to the Land Transfer Act and every owner shall be a fee-simple proprietor. NLCt orders of title to Native land to be sent to District Land Registrars who may issue a CT under the Land Transfer Act, and until CT issued may maintain a Provisional Register of existing NLCt CTs, Memorials, etc. Persons entitled to be registered proprietors entitled to a CT, but Registrar may retain any title on Provisional Register if more than 10 Native owners and need not issue separate CTs to Native owners as tenants in common. NLCt shall inquire into any question as to persons entitled to be registered, and may exercise any powers of amendment of any titles on Provisional Register.

*s74:* Alienation of an undivided share shall be deemed to be an alienation of a parcel awarded by partition order.

*s75:* Without prejudice to previous alienations, all land jointly held by Natives is declared to be held as tenants in common rather than joint tenants, apart from land where there has been a Supreme Court judgment in favour of a joint tenancy.

***Part IX Rights of the Crown***

*s76:* Nothing in this Act to limit the power of the Crown to acquire land from Natives, and any deed shall be given effect to notwithstanding any law in force to the contrary.

*s77:* Crown may be represented before Native Land Court.

*s78:* Application to define interests acquired by the Crown may be made to the Court.

*Relevant Sections continued next page*



*Part X Appeal*

*s79:* Native Appellate Court constituted.

*s80:* Officers of the Native Land Court to be Officers of Appellate Court.

*s81:* Appellate Court to have full jurisdiction and powers of Native Land Court.

*ss82 - 83:* Any person aggrieved by a decision of the Native Land Court may apply in writing to the Appellate Court.

*s84:* Appeals of decisions made under *s14(1),(2),(4),(5), & (10)* to be made within 30 days. Appeal of other decisions to be made within 14 days of oral pronouncement in Court.

*s85:* Chief Judge may order security for costs.

*s86:* Appellant to state grounds of appeal within 21 days of appeal notice.

*s87:* Appeal to be on grounds stated only.

*s88:* Court to consist of not less than two Native Land Court Judges.

*s89:* Sittings of Court.

*s90:* Appellate Court may uphold original decision which shall therefore be effectual, or may order the NLCT to issue another decision.

*s91:* Rehearings prior to this Act cannot be appealed against.

*s92:* Appellate Court may state case for opinion of the Supreme Court.

*s93:* Decision of Appellate Court to be final and conclusive on law and facts.

*s94:* Applications for rehearing made before this Act may be dealt with as an appeal.

*s95:* Assessor may be used by the Appellate Court but his agreement with the judgment is not necessary.

*Part XI Reference From Supreme Court*

*s96:* Supreme Court may refer question of Native custom or fact to the Native Land Court.

*ss97 - 98:* NLCT to transmit opinion to Supreme Court, which may refer it back.

*s99:* Procedure for determining question to be as provided by this Act.

*s100:* Opinion of NLCT or Appellate Court to be authoritative and binding on Supreme Court.

*Relevant Sections continued over page*





**Native Land Court Act 1894** *continued*

**Part XII Rules and Regulations**

**s101:** Chief Judge may make rules and regulations which shall be published in the *Gazette*.

**s102:** Fees to be paid to Public Account.

**Part XIII Miscellaneous**

*Interpreters*

**s103:** Governor may license interpreters.

**s104:** Governor may suspend or remove interpreter.

**s105:** Penalty for acting without a license.

*Stopping Supply of Liquor to Natives*

**s106:** Judge may order supply of liquor to be stopped during Court sittings.

**s107:** Penalty.

*Moneys of Natives Under Disability*

**s108:** Court may order Public Trustee to pay out money held by him for the maintenance, education or advancement of the beneficiary.

**s109:** Chief Judge may vary terms of trust.

*Chattels Transfer*

**s110:** Deeds for the transfer of chattels by a Native in the North Island shall be void unless in the form prescribed by s53 of this Act.

*Offences*

**s111:** Court may order prosecution for perjury.

**s112:** Penalty for insulting Judge or Court Officers.

**s113:** Mode of imposing penalty.

**Part XIV Repeal**

**s114:** Repeals Acts in the First Schedule (Native Lands Frauds Prevention Act 1881, Native Equitable Owners Act 1886, Native Land Court Act 1886, Native Land Act 1888, Native Land Court Act 1886 Amendment Act 1888, Native Lands Frauds Prevention Act 1881 Amendment Act 1888, Native Land Court Acts Amendment Act 1889, Native Lands Frauds Prevention Acts Amendment Act 1889, Native Land Laws Amendment Act 1890). Proceedings commenced under these Acts may be completed under them or under the provisions of this Act.

**s115:** Time limited by repealed Act to continue to run.

**s116:** Reference to repealed Act to be read as if it was to this Act.

*Relevant Sections continued next page*



## DIVISION II

### *Part I Alienation*

*s117:* Dealings with Native land by any person other than those acting for the Crown prohibited, except for dealings for land Natives have purchased from the Crown or acquired from other persons. Proviso that nothing to preclude the leasing of land in the Middle [South] Island.

*s118:* Exceptions to general rule in *s117*. Certain transactions commenced prior to the passing of the Act may be completed if Judge of NLCt satisfied with the circumstances. Purchaser to have 1 year to complete the transaction, provided that every purchase or lease shall be confirmed under *s53*. Land in the Second Schedule excluded (King Country).

*s119:* *ss5 - 7 Native Land Frauds Prevention Act 1881 Amendment Act 1888* shall not render invalid any lease of land under 10,000 acres.

*s120:* Holder of a valid lease, half of which has expired before the passing of this Act, to have one year to obtain a renewal for up to 14 years on terms approved by a NLCt Judge.

*s121:* Saving of existing power of sale rights.

### *Part II Native Land Administration*

*s122:* NLCt may, with the consent of the majority of owners, incorporate the owners of a number of adjoining blocks in respect of which the Crown has not acquired a right or interest.

*s123:* On incorporation a Committee may be nominated to administer the land.

*s124:* Appointment of a Committee to be by order of the Court.

*s125:* Three members to be a quorum.

*s126:* The Committee may alienate the land.

*s127:* Deed to be signed by at least two members of the Committee and the Commissioner of Crown Lands.

*s128:* Proceeds of alienation to be paid to the Public Trustee.

*s129:* Public Trustee, after deducting fees etc, to distribute proceeds among owners, or dispose of them for the benefit of the owners.

*s130:* Governor in Council may make rules and regulations.

### *Part III Jurisdiction*

*s131:* Conditions under which Native owners may alienate lands,

- (1) owner or majority of owners apply to Land Board,
- (2) applications forwarded to Governor who may consent if thinks sufficient land left for maintenance of Natives,

*Relevant Sections and Commentary continued over page*



Native Land Court Act 1894 *continued*

- (3) Land Board may dispose of land as if it were Crown land,
- (4) instrument of title to be registered and, on gazetting, the legal estate to vest in the Crown,
- (5) Governor may direct the Court to make any necessary inquiries.

*s132:* Money available for the purchase of Native lands may be spent on surveys or roads, or other purposes to make the land available for settlement.

*s133:* Money received by the Land Board on the disposal of Native lands to be,

- (a) used to repay expenditure under *s132*,
- (b) residue to be paid to the Public Trustee who shall distribute it to the owners in proportion to their shares without any further deduction.

*s134:* Land sold by the Land Board shall be by auction.

**Commentary:** This Act is divided into two parts, Division I deals with the working of the Native Land Court and Division II relates to the alienation and administration of Maori land.

Although Division I is largely a consolidation of the previous legislation governing the Court there are several important changes. The term "customary land" is used for the first time in NLCT legislation, but note that in this Act it refers to land that *has passed through the NLCT* while "Native land" is Maori land the title to which has not yet been ascertained by the NLCT – what we would refer to today as "customary land". Seddon said that the Act was supposed to simplify proceedings of the Court, and it is structured in a clearer manner in that all the jurisdictions of the Court are specified in section 14, and later sections (in Part V especially) specify how those jurisdictions are to be exercised. Applications to the Court for investigation need only be made by one person claiming an interest in land. Applicants need not be Maori. Surveys are taken under Government control and the Surveyor-General can authorise surveys without the consent of owners. The costs are to be charged on the land and unpaid survey fees can incur a 5% interest charge. These sections relating to surveys caused Heke to seek to have the Bill reserved for Royal Assent by the imperial authorities in the hope that it might be disallowed as contravening the Treaty of Waitangi. The Native Land Court is now given exclusive jurisdiction over probate and succession matters concerning the estates of Maori.

*Commentary continued next page*



Section 46 allows the Court to overrule a will with respect to bequests of land interests, and is designed by the Government to counteract death-bed wills made under 'unfair influence'. The power to remove restrictions on alienation is given to the Court rather than the Governor and only requires the consent of two-thirds of the owners, with no provision for partitioning out the interests of those who do not consent. For the period 1894 - 1904, 446 applications for the removal of restrictions were approved (AJHR 1905). This Act is the first to provide for exchange of land between Maori with the aim of combining interests into more workable units, Parata supports exchange for South Island Maori, whose holdings were too small. The Native Lands Frauds Prevention Acts are repealed and section 53 provides that the Court (rather than the Commissioner) shall now investigate the fairness of alienations before confirming them. The procedure for appeal is changed with the establishment of the Native Appellate Court. The decision of this Court is to be final as the Government wanted to stop cases going to the Supreme Court (and therefore adding to uncertainty of titles). Note that under s84 a shorter time is given to apply for an appeal against a decision which might involve Crown or European interests. Section 73 changes the system of title registration so that all Maori land the title to which has been through the Native Land Court is now given the status of freehold land subject to the Land Transfer Act. Thus land held under a Native Land Court Certificate of Title or Memorial of ownership issued prior to 1886 now is to become land held under the normal Certificate of Title for general land.

Division II relates to the alienation and administration of Maori land. The most important provision is the resumption of Crown pre-emption under section 117, which was supported by Carroll but opposed by Heke because it allowed the Government to pay less than market value for Maori land. According to the Debates, petitions with 5953 signatures had been presented against the resumption of pre-emption. If Maori want to sell land it is to be done through the Land Boards in each Land District which will dispose of the land in the same manner as Crown lands. There are exemptions from pre-emption. Maori may still deal privately with land they have acquired from Europeans and the Crown, but not land granted by the Crown to Maori. One year is given to allow purchases commenced before

*Commentary and Cross Reference continued over page*



## Native Land Court Act 1894 *continued*

this Act to be completed, but those made in the area in the Second Schedule (the King Country) will not be confirmed because the Crown wanted to obtain land for railway purposes in that region. Provision is also made for the formation of incorporations, which was already taking place on the East Coast, and Pere says that Maori wanted to farm land instead of sell it.

After the Act came into force, Taiaroa reported that Maori had been complaining that they could not deal privately with their land and the Government was offering prices far below market value.

**Cross Reference:** NZPD vol 86 (1894) 370 - 389, 462 - 480, 592 - 594, 651 - 657, 865, 977 - 981

NZPD vol 87 (1895) 409

AJHR (1894) I - 3 p.9  
(*Native Affairs Committee*)

AJHR (1901) G - 2  
(*Orders in respect of Kaiwaitau & Waikouaiti*)

AJHR (1902) G - 2  
(*Orders in respect of Waikouaiti Township Reserve*)

AJHR (1905) G - 4  
(*Applications respecting...*)

Waitangi Tribunal *Report of the Waitangi Tribunal on the Orakei Claim Wai 9* (Waitangi Tribunal, Wellington, 1987) 154 - 155

Brooking T *'Busting Up' The Greatest Estate of All: Liberal Maori Land Policy, 1891 - 1911* NZJH, 26 (April, 1992) 78 - 98

Salmond J *Notes on the History of Native-Land Legislation* (Public Acts of NZ Reprint, 1908 - 1931, Vol VI) 87 - 94

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