



Native Land Laws Amendment Act 1895

1895

Citation: 59 V. No 52
Date of Assent: 31 October, 1895
Commencement: Date of Assent

Repeal: Repealed 24 December, 1909 by 1909, No 15

Amendments: 1896, No 53: See separate record.

s27 amends s3

s28 amends s32

s29 amends s36

s31 amends s81.

1897, No 25: See separate record.

s2 gives interpretation of s13.

1899, No 30: See separate record.

1900, No 55: See separate record.

s27 amends s5.

1901, No 65: See separate record.

s42 amends s50 and repeals s44

s47 – concerns lessees under s70.

1903, No 92: See separate record.

s5 to apply in certain cases.

1904, No 49: See separate record.

s17 amends s17.

1907, No 76: See separate record.

s27 amends s6.

1908, No 253: See separate record.

s33(2) repeals s25.

Type of Legislation: Public

Subject: Maori Land Court: Structures & Jurisdiction

Alienation of Maori Land

Survey Issues

Leased Land

Validation

Incorporations

Public Works Public/Native/Maori Trustee

Relevant Sections: *Alienation*

s3: Land within limits of town district or borough, or blocks not exceeding 500 acres are exempted from s117 Native Land Court Act 1894 (Crown pre-emption) and may be alienated freely provided

Relevant Sections continued over page



Native Land Laws Amendment Act 1895 *continued*

the alienation is confirmed under s53 Native Land Court Act 1894. This section not to apply to land in Second Schedule of the 1894 Act (King Country).

s4: Governor may exempt lands from operation of s117 Native Land Court Act 1894 (Crown pre-emption) provided alienation is confirmed. Return of all applications to be laid before Parliament.

s5: No alienations may be confirmed by NLCt in favour of person holding more than the equivalent of 640 acres of first class land. Purchaser to make declaration – form in First Schedule.

s6: Dealings with holders of more than the legal acreage void.

s7: Alienation restriction may be removed for the purposes of a lease for up to 21 years without proof that the lessor has other land for his support. NLCt may confirm lease without such proof provided the rent is fair and it is in the interest of the Native to do so.

s8: Sections 3 - 7 of this Act are not to apply to alienation authorised under ss118 & 120 Native Land Court Act 1894 (incomplete transactions).

s9: Mortgagee sales to be by public auction.

s10: Land may not be sold for payment of survey charges until 3 months after the title has been ascertained.

s11: Rights and remedies against land owned by Natives in respect of debts incurred prior to passing of the Act to remain effectual.

s12: Section 117 Native Land Court Act 1894 (Crown pre-emption) not to apply to land taken for railway construction by the Wellington and Manawatu Railway Co. Title may be completed.

Confirmation of Alienations

s13: Confirmation order under the seal of the NLCt to be conclusive evidence of compliance with the Act.

s14: Before confirming a lease the NLCt shall ensure that the rent is adequate irrespective of any prior payment made.

s15: Lease made for a term longer than that allowed shall be valid if the result of a genuine mistake.

s16: Trust Commissioner, holding office under the Native Lands Frauds Prevention Act 1881 when that Act was repealed in 1894, may complete any proceedings commenced under that Act as if it had not been repealed.

Relevant Sections continued next page



Registration

s17: Persons entitled to land under orders of the NLCT may be registered as proprietors under the Land Transfer Act. Except for land acquired by the Crown, partition orders may be made only to a registered proprietor.

s18: Grantee of land named in Crown grant shall be entitled to a Land Transfer Certificate of Title. When CT issued, Grant cancelled.

s19: Partition orders made to Natives under the Tauranga District Lands Acts to confer rights to a Land Transfer CT or to a Crown Grant.

s20: Cancellation of Grants on subdivision made under *s90* Native Land Act 1873.

s21: Land Transfer CT may issue in place of Crown Grant on orders of Native Land Court.

s22: Lessee compelled (in order to obtain registration of the lease) to pay survey charges, Court fees, succession duties etc on behalf of Native owner, may deduct the sums paid from the rent provided that the deduction is not more than half of the rent payment.

s23: Certificate under *s67* Native Land Court Act 1894 (survey charges) may be registered against land so as to prohibit the Native owner from dealing with the land until the charges are fully paid.

s24: Instrument validated under the Native Land (Validation of Titles) Act 1893 may be registered without confirmation order.

Exchange

s25: No exchange may be made under *s14(3)* Native Land Court Act 1894 of less than the whole interest of any Native in any block.

Construction of Act

s26: *s17* Native Land Court Act 1894 (procedure for commencing jurisdiction) to be read subject to regulations.

s27: *s46* Native Land Court Act 1894 (providing for a successor excluded from a will) not to apply when testator has died prior to passing of the Act.

s28: Amends *s62* Native Land Court Act 1894, all surveys to be authorised by the Surveyor-General only.

s29: Amends *s65* Native Land Court Act 1894 by replacing Commissioner of Crown Lands with Chief Surveyor for certification of amount of survey charge.

Relevant Sections continued over page



Native Land Laws Amendment Act 1895 *continued*

s30: Amends s67 Native Land Court Act 1894, money due to Surveyor-General on behalf of the Crown.

s31: Nothing in s117 Native Land Court Act 1894 (Crown pre-emption) to restrict jurisdiction of NLCT or Appellate Court.

s32: Amends s118 Native Land Court Act 1894 by lengthening the time allowed to complete purchases to 2 years.

s33: Nothing in Native Land Court Act 1894 takes away the right of Natives to dispose of land by written will, subject to s46 of that Act (successor's right to sufficient land). No interest to pass by unwritten will or ohaki.

s34: Prohibition on acquiring land privately in s117 Native Land Court Act 1894 extended to acquiring land in satisfaction of bankruptcy.

s35: "lessee" in s120 Native Land Court Act 1894 (renewal of lease) shall include executors and administrators.

s36: Amends s120 Native Land Court Act 1894 by lengthening time allowed to complete leases to 2 years.

s37: Corrects heading of Second Schedule Native Land Court Act 1894 (King Country).

Procedure

Appeal and Appellate Court

s38: Seal of Appellate Court.

s39: Appeal may be withdrawn before the hearing.

s40: Native Land Court may dismiss appeal if deposit or fees are not paid.

s41: Appellate Court to have the same powers as the Native Land Court in case of non-payment of fees.

s42: Public Trustee may appeal against decision to appoint another person to be trustee of a minor. Requirement for a deposit may be waived in this case.

s43: Chief Judge may refer any question to the Appellate Court for the purposes of securing uniformity of decisions.

s44: Two months to state grounds of appeal.

s45: Time for giving notice of appeal.

s46: Appellate Court may annul or vary any decision of NLCT.

s47: Orders of incorporation and orders dismissing an appeal may not be appealed against.

Relevant Sections continued next page



Native Land Court

s48: Order under s14(9) Native Land Court Act 1894 (protecting property) shall be revokable.

s49: Applications may be referred to Court by Chief Judge for inquiry and report.

s50: Court may appoint administrator of personal estate of an intestate Native. No land interests to pass to the administrator.

s51: Court may remove and replace executor or administrator.

s52: Several parcels of land may be treated as one parcel on partition if the owners of each parcel are the same.

s53: Court may cancel partition and repartition the land if the first partition has not been surveyed.

s54: Court may refuse to partition land if it is not suitable for partition and may make temporary orders defining interests in the meantime.

s55: When land is partitioned the Court may apportion survey charges among the parcels.

s56: Amends s65 Native Land Court Act 1894 by making sales by mortgage in satisfaction of survey charges no longer subject to the provisions governing acquisition of Native land.

Jurisdiction

s57: In determining questions between Natives the Native Land Court is to be free from the interference of any superior Court other than the Appellate Court.

s58: Appellate Court to have power of Supreme Court to grant relief.

s59: Appellate Court to have supreme jurisdiction in questions between Natives relating to real or personal estate.

s60: Jurisdiction of NLCT or Validation Court may be proved in the Supreme Court if matter was between Natives only.

s61: Proceedings pending in Supreme Court not to be affected.

s62: Governor in Council may empower Appellate Court to deal with applications under s39 Native Land Court Act 1894 (amendments after title ascertained) in respect of succession orders. Application must be made within 3 years of date of order.

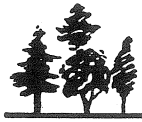
Roads and Survey

s63: Repeals ss61 (Judge may authorise survey) and 66 (interest on survey charge) Native Land Court Act 1894.

s64: No survey to be made without authority of Surveyor-General.

s65: Land vested in Surveyor-General (under s65 Native Land Court Act 1894) in satisfaction of survey charges to become Crown land.

Relevant Sections continued over page



Native Land Laws Amendment Act 1895 *continued*

s66: Unsatisfied charging orders may be exchanged for orders under *s65* Native Land Court Act 1894.

s67: Interest of 5% on cost of surveys may be allowed by the NLCt for not more than 5 years.

s68: Mortgagee entitled to repayment of fees paid by him for the purposes of completing security.

s69: Repeals all parts of *ss70 - 72* inconsistent with *ss91 - 95* Public Works Act 1894.

Miscellaneous

s70: Valid leases of land acquired by the Crown from Natives for settlement may be brought to an end compulsorily with compensation for lessee under Public Works Act 1894.

s71: In case of dispute, money held by lessees and others belonging to Natives may be paid to the Public Trustee.

s72: Public Trustee to hold the money until the NLCt directs how it shall be distributed.

s73: Amends *s3* Native Land (Validation of Titles) Act Amendment Act 1894, Validation Court Judge no longer has to be a barrister or solicitor of Supreme Court, but application may be made for a case to be heard by one who is.

s74: Repeals *s6* Native Land (Validation of Titles) Act Amendment Act 1894 (stay of proceedings in any other Court).

s75: Validation Court may remit fines payable on Stamp Duties on deeds.

s76: Clerk or Interpreter of NLCt may act in Validation Court.

s77: Applications under *s118* Native Land Court Act 1894 (incomplete purchases) where the applicant has not paid necessary fees shall be deemed abandoned.

s79: Validation of acts done by NLCt Judges under Native Land (Validation of Titles) Act 1892 and Native Land Court Certificates Confirmation Act 1893 as if Judges had been duly authorised.

s80: Amends Maori Real Estate Management Acts 1867 and 1888 so that when a minor turns 21 the estate held in trust shall vest in him without a formal conveyance.

s81: Application for probate or administration must be made, with will attached, within 2 years of the death. In the case of land that has been sold by an appointed successor application, with will attached, must be made within 3 months of the death.

Relevant Sections and Commentary continued next page



s83: Nothing in this Act or Native Land Court Act 1894 shall prevent mortgages contracted before the passing to the 1894 Act from being renewed. Provided that the mortgage is subject to confirmation by the Court.

s84: Public Trustee may advance money to corporate body of Native owners to road, survey and utilise land. Loan to be a charge over the land.

Commentary: After re-imposing Crown pre-emption in 1894 this Act now allows Maori to sell their land privately in certain cases – if the land is within a town district or borough, or if the block, as partitioned before this Act, is less than 500 acres. As well as this section 4 gives the Governor power to approve applications to waive pre-emption. The acreage limit in section 3 and the limit on the amount of land a person may hold under sections 5 & 6 are part of the general Liberal Government's policy that large landholdings by individuals should not be allowed. The provisions are to protect the interests of potential small land owners (Pakeha) rather than to limit the amount Maori may sell. The Native Land Court Act 1894 which prohibited private land dealings gave time for lease or sale transactions to be completed but did not allow time for mortgages to be finalised. This Act provides that the Native Land Court may issue a confirmation order for any one contracting a mortgage prior to 1894 (see Native Land Laws Amendment Act 1896 and Native Land Laws Amendment Act 1897) for which provision Heke congratulated the Government as, without the power to alienate their land, Maori were not able to raise funds. Section 13 provides that a confirmation order issued by the Native Land Court shall be conclusive, but in 1897 it was decided that this power went too far. It had been intended that in investigating transactions the Judges would act as Fraud Prevention Commissioners, however, in practice the Judges confirmed transactions as long as they were in line with s117 Native Land Court Act 1894 without investigating whether they were fraudulent or otherwise invalid (see Native Land Laws Amendment Act 1897). The time allowed to complete transactions commenced prior to the 1894 Act is extended by this Act from 1 year to 2 years. The decisions of the Appellate Court in cases between Maori are made absolutely final so that Maori are denied the option of taking cases to the Supreme Court. Note that section 7 provides for the first time that

Commentary and Cross Reference continued over page



Native Land Laws Amendment Act 1895 *continued*

Maori may alienate land without proving that they have sufficient other land for their support, but only in the case of leasing the land. A note by ex-Chief Judge Fenton, in the *Brett's Colonists' Guide*, says "This Act is of as intricate a character as the previous ones, and it is strongly advised that no operations should be made under it except under legal advice. It contains eighty-four sections, and it is impossible to furnish an intelligible summary of it"!

Cross Reference: NZPD vol 87 (1895) 409

NZPD vol 90 (1895) 577

NZPD vol 91 (1895) 408 - 410, 454 - 455

NZPD vol 99 (1897) 550 - 577

AJHR (1896) G - 7

(Applications under Section 4)

AJHR (1898) G - 6

(Native Land Laws Amendment Acts)

Burdon R King Dick: A Biography of Richard John Seddon
(Whitcombe and Tombs, Christchurch, 1955) ch.10

Brett's Colonists' Guide Third Edition

(Brett Printing and Publishing, Auckland, 1902) 986

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