

Hon. Mr. Herries.

NATIVE LAND AMENDMENT.

ANALYSIS.

<p>Title.</p> <p>1. Short Title.</p> <p>2. Repeal.</p> <p>3. Section 114 of principal Act amended.</p> <p>4. Section 139 of principal Act amended.</p> <p>5. Interpretation of wills of Natives.</p> <p>6. Assignment of leasehold estates in Native land. Repeal.</p> <p>7. Forfeiture of land acquired in violation of Part XII of principal Act.</p> <p>8. Section 209 of principal Act amended.</p> <p>9. Laying-out of roads on partitioned land.</p> <p>10. Land exchanged for Native land to become Native land.</p>	<p>11. Section 338 of principal Act amended.</p> <p>12. Section 346 of principal Act amended.</p> <p>13. Powers of Maori Land Board to sell land by public auction.</p> <p>14. Governor may declare a Native to be a European.</p> <p>15. Notice of applications for freehold orders to be given to the Under-Secretary for Crown Lands.</p> <p>16. Governor may declare land to be no longer subject to Part XIV or Part XV of principal Act.</p> <p>17. Miscellaneous amendments of principal Act. Schedule.</p>
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A BILL INTITULED

AN ACT to amend the Native Land Act, 1909.

Title.

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:—

1. This Act may be cited as the Native Land Amendment Act, 1912, and shall form part of and be read together with the Native Land Act, 1909 (hereinafter referred to as the principal Act).

Short Title.

2. (1.) Section fifty of the principal Act is hereby repealed.

Repeal.

(2.) When leave to appeal has been granted or an order of rehearing has been made under that section before the passing of this Act proceedings in such appeal or rehearing may be continued, and shall have the like effect as if that section was still in force.

3. Section one hundred and fourteen of the principal Act is hereby amended by adding the following paragraph thereto:—

Section 114 of principal Act amended.

“(f.) Until registered in pursuance of this section a partition order made in respect of land which is subject to the Land Transfer Act, 1908, shall affect only the equitable title thereto.”

4. (1.) Section one hundred and thirty-nine of the principal Act is hereby amended by adding to subsection one thereof the following proviso:—

Section 139 of principal Act amended.

“Provided that any child, whether of the deceased or of any other Native, shall be deemed for the purposes of this subsection to be the legitimate child of any parent from whom he is capable, according to Native custom, of inheriting Native freehold land by way of intestate succession.”

(2.) The foregoing proviso shall be deemed to have been contained in section one hundred and thirty-nine of the principal Act as from the coming of that Act into operation.

Interpretation of wills of Natives.

5. In the will of any Native who dies after the commencement of this Act the term "child" or any equivalent term shall be construed, unless a contrary intention appears from the will, as including any child capable in accordance with Native custom of inheriting Native freehold land from his parent by way of intestate succession. 5

Assignment of leasehold estates in Native land.

6. (1.) Nothing in Part XII of the principal Act shall prevent or be deemed to have prevented the assignment or subletting of a leasehold estate in Native land (whatever the area thereof) created before the commencement of that Act to any person who does not already, at the time when he so acquires an interest in that land, hold any other land (whether Native, European, or Crown land) exceeding nine thousand acres (calculated in accordance with that Part of the said Act) as the beneficial owner, lessee, or sublessee thereof, whether at law or in equity, and whether solely or jointly or in common with any other person. 10 15

(2.) Nothing in Part XII of the principal Act shall prevent or be deemed to have prevented the assignment or subletting of a leasehold estate in Native land (whatever the area thereof) created after the commencement of that Act to any person who does not already, at the time when he so acquires an interest in that land, hold any other land (whether Native, European, or Crown land) exceeding three thousand acres (calculated in accordance with that Part of the said Act) as the beneficial owner, lessee, or sublessee thereof, whether at law or in equity, and whether solely or jointly or in common with any other person. 20 25

(3.) This section shall be read together with and be deemed to be incorporated in Part XII of the principal Act. 30

repeal.

(4.) Section seventeen of the Native Land Claims Adjustment Act, 1911, is hereby repealed. 35

Forfeiture of land acquired in violation of Part XII of principal Act.

7. If any person knowingly acquires any interest in Native freehold land contrary to the provisions of Part XII of the principal Act, then, notwithstanding the confirmation or registration of any instrument of alienation, and notwithstanding any of the provisions of the principal Act, the Supreme Court may in an action by the Attorney-General, in the name and on behalf of His Majesty the King, declare that the interest so acquired is forfeited to His Majesty; and the same shall thereupon vest in the Crown accordingly, subject, however, to all interests lawfully and in good faith and for value acquired by any other person before the commencement of such action. 35 40

Section 209 of principal Act amended.

8. (1.) Section two hundred and nine of the principal Act is hereby amended— 45

(a.) By omitting from subsection one thereof all words after the words "alienation is made," and substituting the words "in accordance with Part XVIII of this Act (relating to the powers of assembled owners)";

(b.) By repealing subsections two to eight of that section:

(c.) By repealing subsection ten of that section: 50

(d.) By adding the following subsection :—

5 “(13.) In computing the number of the owners of any Native land for the purposes of this section the successors of a deceased Native shall be computed as being one person only, until and unless a succession order has been made in respect of the interest of the deceased Native.”

10 (2.) When the precedent consent of a Maori Land Board has been given in accordance with that section before the passing of this Act any alienation in pursuance of that consent may be lawfully executed, completed, or confirmed in the same manner as if the said section remained in full force and effect.

15 9. (1.) When any Native freehold land has been partitioned, either before or after the commencement of this Act, in such manner that any subdivision thereof has no access to any public road, the Court may, if it thinks fit, on the application of any person interested, at any time thereafter, by order, lay out any road-line over any portion of the land so partitioned which is necessary to afford to any such subdivision access to a public road.

Laying-out of roads on partitioned land.

20 (2.) The effect of any such order shall be to empower and authorize the Governor, by Proclamation, at any time thereafter to proclaim as a public road any road-line so laid out by the order; and on the making of any such Proclamation the road-line shall thereupon become a public highway accordingly, and no compensation shall be payable in respect thereof to any person.

25 (3.) No road-line shall be so laid out or public road so proclaimed over any land which, at the date of the order or Proclamation, has already ceased to be Native freehold land.

30 (4.) The exercise of the power vested in the Governor under this section shall in no way restrict or affect the power of the Governor to lay out and take roads under Part XX of the principal Act.

35 10. When European land or any undivided share therein becomes vested in any Native for an estate in fee-simple, whether legal or equitable, by virtue of an order of exchange under Part VII of the principal Act, such land shall thereupon become Native freehold land, notwithstanding anything to the contrary in that Act.

Land exchanged for Native land to become Native land.

40 11. Section three hundred and thirty-eight of the principal Act is hereby amended as from the coming of that Act into operation by adding thereto the following subsection :—

Section 338 of principal Act amended.

45 “(4.) Notwithstanding the making of any partition order, whether before or after the commencement of this Act, the owners of the land so partitioned shall be deemed to remain the owners thereof within the meaning and for the purposes of this Part of this Act until the partition order has been registered either provisionally or finally under the Land Transfer Act, 1908.”

12. Section three hundred and forty-six of the principal Act is hereby amended by adding thereto the following paragraph :—

Section 346 of principal Act amended.

50 “(h.) That the Board shall be empowered to sell the land or any part thereof by public auction.”

13. (1.) On the confirmation of any such resolution as is referred to in paragraph (h) of section three hundred and forty-six of the principal Act, as amended by this Act, empowering the Board to

Powers of Maori Land Board to sell land by public auction.

sell land by public auction, the Board shall become, without further authority than the resolution, the agent of the owners for the time being to sell the said land or any part thereof accordingly, and to enter into all necessary contracts and to execute in the name of the Board all necessary instruments of alienation accordingly, and to exercise all other powers hereinafter conferred upon the Board in that behalf; and the owners shall not be competent to revoke the authority so conferred upon the Board. 5

(2.) Every instrument of alienation so executed by the Board for registration under the Land Transfer Act shall contain a statement or recital that the Board is duly authorized to execute the same as the agent of the owners under Part XVIII of the principal Act, and every such statement or recital shall be accepted by the District Land Registrar and by all Courts as sufficient *prima facie* evidence of the facts so stated or recited. 10 15

(3.) Except as against a person guilty of fraud, no contract or instrument of alienation so made or executed by the Board as the agent of the owners shall be invalidated by any breach or non-observance of the provisions of Part XVIII of the principal Act prior to the confirmation of the resolution by the Board. 20

(4.) A contract or instrument of alienation made or executed by the Board as the agent of the Native owners under this section shall not require confirmation under Part XIII of the principal Act, and shall not be subject to the requirements of the principal Act as to formalities of execution. 25

(5.) All land which the Board is so authorized to sell shall be sold by the Board by public auction after public notification in such manner as the Board thinks sufficient of the intention to offer the same for sale.

(6.) Subject to any restrictions prescribed by this Act or by regulations, all land so offered for sale shall be sold to the highest qualified bidder. 30

(7.) The Board in offering the same shall fix an upset price, and no land shall be sold below the price so fixed.

(8.) If any allotment so offered for sale is not sold, the Board may at any time thereafter sell the same by private contract to any qualified purchaser at a price not less than the upset price so fixed. 35

(9.) If any allotment is not so sold by private contract, the Board may, at any time after the expiry of three months from the day on which the same was offered for sale by auction, again offer the same for sale by public auction in accordance with the foregoing provisions either at the same or at any other upset price which the Board thinks fit, and so on from time to time as may be necessary. 40

(10.) Any such sale by public auction may be effected by the Board through the agency of any member, servant, officer, or agent thereof, anything to the contrary in the Auctioneers Act, 1908, notwithstanding. 45

(11.) The purchaser of any such land, whether by public auction or private contract, shall forthwith after the sale pay to the Board a deposit equal to *ten* per centum of the purchase-money. 50

(12.) On default in making this deposit, the contract may forthwith be cancelled by the Board or its authorized agent, and the land may either be sold to the next highest qualified bidder or may at any time thereafter be again offered for sale by public auction.

5 (13.) The Board shall prior to the sale cause to be prepared contracts defining the terms and conditions of sale and sufficient copies thereof for execution by every purchaser at the sale, and each purchaser at the time of payment of his deposit shall be required to sign a contract expressing such terms and conditions and describing
10 the land purchased by him.

(14.) Such terms and conditions shall in every case provide for payment by the purchaser of the balance of *ninety* per centum of his purchase-money by nine equal annual instalments, and for payment by him to the Board of interest in the meantime at the rate of *five*
15 per centum half-yearly upon all purchase-money for the time being remaining unpaid, but shall confer the right upon the purchaser to pay to the Board at any time the whole or any part or parts of the unpaid purchase-money.

20 (15.) Every contract shall contain such other terms and conditions consistent with this Act and the principal Act as the Board thinks fit.

(16.) Every such purchaser shall on, or before, or within fourteen days after, the completion of the contract of sale make and deliver to the Board a statutory declaration that he was on the day of the sale
25 legally qualified under Part XII of the principal Act to become the purchaser of the land, and that he is acquiring the land solely for his own use and benefit, and not directly or indirectly for the use or benefit of any other person.

30 (17.) If any purchaser makes default in completing the contract of purchase or in making the statutory declaration aforesaid, the Board may cancel the sale, and resell the land in accordance with the foregoing provisions in the same manner as if it had not already been offered for sale.

35 (18.) On any such cancellation the Board may forfeit all moneys already paid by the purchaser, or such part thereof as the Board thinks fit.

40 (19.) Every instrument of alienation executed in accordance with the provisions of this section by the Board as the agent of the owners shall have the same force and effect and may be registered in like manner as if it had been lawfully executed by all of the owners or their trustees and as if those owners or trustees had been fully competent in that behalf. The production of any certificate of title issued in respect of the land affected by the instrument of alienation shall not be necessary for the registration of that instru-
45 ment.

(20.) Subject to the provisions of Part XII of the principal Act, relating to limitation of area, any land which the Board has power to sell under this section may be sold either in one lot or in such subdivisational allotments as the Board thinks fit.

50 (21.) No such allotment shall be offered for sale unless it has access to a public highway.

(22.) For the purpose of providing such access the Board may lay off all such road-lines as are required over any part of the land which the Board is empowered to sell, and the Governor may proclaim as a road any road-line so laid off, and the same shall thereupon become a public highway accordingly, and no compensation shall be payable to any person in respect of any land so proclaimed as a road. 5

(23.) Where the Board lays off any such road-line it shall forthwith report to the Native Minister thereon, with a copy of the survey plan showing such road-line.

(24.) The Native Minister may require the Board to construct and complete the roadway of such road-line out of the proceeds of the land subdivided for sale, and the Native Minister may from time to time direct the manner of such construction and completion, and the Board shall comply with every such requirement and direction. 10

(25.) A resolution under paragraph (h) of section three hundred and forty-six of the principal Act, as amended by this Act, may be passed in respect of land vested in a Bóard under Part XIV or Part XV of the principal Act, and all the provisions of this section shall extend and apply accordingly, notwithstanding anything to the contrary in either of those Parts. 15 20

(26.) A contract made by the Board as the agent of the owners under this section may be enforced by the Board by action or otherwise in its own name in the same manner as if the land so sold was vested in the Board in trust for the owners, and as if the contract had been made by the Board as trustee accordingly; and no such contract shall be enforceable by the owners on whose behalf it has been so made by the Board. 25

(27.) All purchase-money or other revenues received in respect of any land by the Board under this section shall be applied by the Board— 30

(a.) In defraying the costs and charges incurred by the Board in the execution of its powers and duties under this section :

(b.) In the discharge of all mortgages, charges, or incumbrances affecting the land : 35

(c.) In paying the residue thereof to the owners or other persons having any interest in the land in accordance with their respective interests.

(28.) This section shall be read together with and deemed part of Part XVIII of the principal Act (relating to assembled owners). 40

Governor may
declare a Native to
be a European.

14. (1.) The Governor may, by Order in Council, on the recommendation of the Court, declare any Native to be a European.

(2.) Such a recommendation shall be made only on the application of the Native, and notice of any such application shall be given by the Court to the Native Minister. 45

(3.) Any such application may be opposed by the Native Minister or by any person interested.

(4.) No such recommendation shall be made unless the Court is satisfied—

(a.) That the Native applying is acquainted with the English language, and is possessed of educational qualifications equal to the Fourth Standard as prescribed by the Education Act, 1908 : 50

(b.) That he has at the time of the application sufficient Native freehold land (either as tenant in fee-simple or as tenant for life), or sufficient European land (either as tenant in fee-simple or as tenant for life, or under a lease, the period of which is not less than twenty-one years), for his adequate maintenance, or that he is in the opinion of the Court able to earn an adequate maintenance by reason of some special profession, trade, or calling; or that he has any other income which in the opinion of the Court is sufficient for his adequate maintenance.

(5.) On the making of any such Order in Council the Native so declared to be a European shall to all intents and purposes, except as hereinafter provided, be deemed to be no longer a Native or a Maori within the meaning of the principal Act or of any other Act.

(6.) No such Order in Council shall operate retrospectively so as to affect the validity, legality, or operation of any contract, alienation, disposition, or other act, matter, or thing whatsoever prior to the making of the Order in Council.

(7.) (a.) The status as a Native or Maori of the wife or husband or child or other issue (whether born before or after the date of the Order in Council) of a Native so declared to be a European shall continue unaffected by the change of status of such last-mentioned Native, unless such wife, husband, child, or other issue shall at any time after the making of the Order in Council make application to the Native Minister to be declared to be a European.

(b.) Upon such application the Governor may, by Order in Council, on the recommendation of the Native Minister, declare such wife, husband, child, or other issue to be a European.

(c.) The provisions of the *preceding* subsections *five* and *six* of this section shall, and the provisions of the *preceding* subsections *one* to *four* inclusive of this section shall not, apply to an Order in Council made under this subsection.

(8.) Every person declared to be a European shall, notwithstanding the change of status, be entitled to succeed to Native land and to property of every kind as if he had continued to be a Native or Maori, and as if his status had not been changed; and all right of succession shall accordingly continue in and thereafter may accrue to him, and may be derived through him, as if he had continued to be a Native or Maori and as if his status had not been changed.

(9.) If any person declared to be a European dies intestate, the persons entitled to succeed to his property, real and personal, shall be such as would have been entitled to succeed thereto had he died a Native or Maori, and as if his status had not been changed in his lifetime.

(10.) A copy of any such Order in Council, certified under the hand of the Native Minister may be registered under the Land Transfer Act, 1908, against the title of any Native freehold land held by the Native affected by the Order.

(11.) No such Order in Council shall be at any time revoked.

(12.) An annual statement of all Orders in Council made under the authority of this section shall be laid before Parliament at the commencement of each session.

Notice of applications for freehold orders to be given to the Under-Secretary for Crown Lands.

15. It shall not be lawful for the Native Land Court to make any freehold order under Part IV of the principal Act unless notice of the application for that order has been given to the Under-Secretary for Crown Lands under the seal of the Court not less than *one* month before the making of the order. 5

Governor may declare land to be no longer subject to Part XIV or Part XV of principal Act.

16. (1.) When any land is subject to Part XIV or Part XV of the principal Act and is vested in a Maori Land Board accordingly the Governor may from time to time declare, by Order in Council, that such land or any part thereof shall no longer be subject to that Part of the said Act, and every such Order in Council shall take effect according to its tenor on the making thereof. 10

(2.) No such Order in Council shall be made until and unless the Governor is satisfied— 15

(a.) That the land comprised in the order is not subject to any lease, license, or contract of sale or other alienation :

(b.) That no moneys are charged on that land or on the revenues thereof in accordance with the principal Act or under any other authority. 20

(3.) On the making of any such Order in Council the Maori Land Board shall cease to possess or exercise in respect of the land comprised in the Order any of the powers conferred by Part XIV or Part XV of the principal Act (as the case may be), but the land shall nevertheless remain vested in the Board until a vesting order has been made and registered in accordance with the provisions hereinafter contained in that behalf. 25

(4.) On the making of any such Order in Council the Native Land Court shall have jurisdiction, on the application of the Minister or of the Maori Land Board, or of any person claiming to be one of the equitable owners of the land comprised in the Order, to ascertain and determine the equitable owners of that land, and to make an order (hereinafter called a vesting order) vesting the legal fee-simple of the land in the equitable owners so ascertained and determined in accordance with their respective interests. 30 35

(5.) Where the equitable ownership of any land so vested in a Maori Land Board is itself held in trust under any testamentary disposition or otherwise, the trustee in whom the equitable ownership is so vested shall be deemed for the purposes of the *last preceding* subsection to be the equitable owner of the land. 40

(6.) No such vesting order shall be invalidated or affected by the fact that it is made in favour of any equitable owner who is dead at the date of the order, and every vesting order so made in favour of a deceased person shall operate in favour of his successors in title. 45

(7.) Every trustee holding office under Part X of the principal Act in respect of any equitable interest in the said land shall continue to hold office in respect of the legal interest substituted therefor by any such vesting order.

(8.) The land included in any vesting order shall, if not already under the Land Transfer Act, 1908, become subject to that Act on the making of the order. 50

(9.) A duplicate of every such order shall on the sealing thereof be transmitted by the Chief Judge to the District Land Registrar of the district in which the land affected thereby is situated. If the land is situated in two or more districts, duplicates of the order shall
 5 be transmitted to the District Land Registrar of each such district, and shall by each such Registrar be dealt with so far as it relates to land in his own district in manner following.

(10.) On the receipt of any vesting order so transmitted the District Land Registrar shall embody the order in the Provisional
 10 Register as a folium thereof, and all the provisions of the Land Transfer Act, 1908, as to provisional registration shall apply accordingly.

(11.) When any vesting order has been so registered the legal estate of the Maori Land Board shall be divested, and the persons in
 15 whose favour the order has been made shall become the legal owners of the land in accordance with their respective interests as specified in the order.

(12.) The District Land Registrar may, in his discretion, retain any such title on the Provisional Register so long as the number of
 20 owners exceeds ten.

17. The principal Act is hereby amended in manner set out in the Schedule hereto.

Miscellaneous amendments of principal Act.

SCHEDULE.

Schedule.

MISCELLANEOUS AMENDMENTS OF THE NATIVE LAND ACT, 1909.

Number of Section affected.	Nature of Amendment.
Section 48, subsection (3)	... By omitting the words " Subject to the provisions hereinafter contained as to appeals by leave of the Chief Judge."
Section 51	... By omitting the words " or rehearings," and the words " or by," and the words " or rehearing," wherever these words occur.
Section 53, subsection (2)	... By inserting, after the words " Chief Judge," the words " or by the Judge presiding in the Appellate Court."
Section 54, subsection (2)	. By inserting, after the words " Chief Judge," the words " or of the Judge presiding in the Appellate Court."
Section 54, subsection (3)	... By omitting the word " proceedings," and substituting the word " provisions."
Section 334, subsection (5)	... By omitting the word " twenty-four," and substituting the word " twenty."