



LAND COURT OF QUEENSLAND

29 October 2010

The Honourable Cameron Dick MP
Attorney-General and Minister for Industrial Relations
Level 18, State Law Building
50 Ann Street
Brisbane QLD 4000

Dear Attorney-General

As required by s.77A(1) of the *Land Court Act 2000*, I provide you with the third Annual Report on the operations of the Land Court for the year ended 30 June 2010.

This Annual Report also includes a report on the operations of the Land and Resources Tribunal for that year, pursuant to s.77A(3).

Yours sincerely

A handwritten signature in black ink, appearing to read 'Samuel MacQuoid'.

President



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Introduction

This is the third independent annual report on the operations of the Land Court of Queensland. As explained in previous reports, prior to 2007/2008 the yearly report on the operations of the Land Court was incorporated into the annual report of the department then responsible for the financial administration of the Court.

The Land Court is currently established under the *Land Court Act 2000* which also provides for the constitution, composition, jurisdiction and powers of the Court.

History of the Land Court

The Land Court was first established in 1898. A brief history and compilation of full-time Members of the Court since its inception were set out in previous annual reports.

Inquiries conducted by the Land Court

With the passing of former Presidents, Mr Walter Smith in 2010, and Mr Dan Barry in 2009 and former Member, Mr Harry Carter in 2008, it is timely to pay tribute to the efforts of Presidents and Members of the Land Court in conducting inquiries into various aspects of land administration in Queensland.

Messrs Smith, Barry and Carter were appointed pursuant to s.37(2) of the *Land Act 1962* to conduct inquiries exercising the powers of a Commission under the *Commissions of Inquiry Act 1950*. However, it seems that Land Court Members have been undertaking inquiries since the Court was established: *Re Kingston* (1897) 1 CLLR 148; *Re Boldie* (1897) 1 CLLR 156; *Re Degilbo Proposed Resumption* (1900) 1 CLLR 226, are early examples of matters referred to the Land Court for inquiry and report.

The most comprehensive inquiry was that conducted by then President of the Land Court, Mr WL Payne OBE (later Sir William Payne CMG OBE), who on 6 September 1958 was appointed a Commission of Inquiry to inquire into and report on living areas and other matters relating to the administration of the Public Estates. The 1959 Report on Progressive Land Settlement in Queensland (the Payne Report) formed the basis for land administration policies until the Review of Land Policy and Administration in Queensland (the Wolfe Report) in 1990.

On 18 September 1969, then Member of the Land Court, Mr Smith was appointed under s.37(2) of the *Land Act 1962*, to inquire into and recommend in respect of sheep and cattle rental standards for grazing selections and pastoral leases. Mr Smith delivered his report in 1970.

On 20 November 1975, the President of the Land Court, Mr Smith as Chairman together with Messrs RL McClymont (grazier) and RW Wicks (farmer), were appointed a Committee of Inquiry to inquire into certain aspects of controlling and/or eradicating animal and vegetable pests which detrimentally affect the lands of Queensland.

The Committee's report was handed to the Minister for Lands on 25 November 1976.

On 31 March 1976, then Member of the Land Court, Mr Barry, was appointed under s.37(2) of the *Land Act 1962*, to inquire into and recommend in respect of cattle rental for grazing selections and pastoral leases. Mr Barry delivered his report on 13 September 1976.

Then on 15 June 1988, Member of the Land Court, Mr Carter, was appointed under s.37(2) of the *Land Act 1962*, to inquire into and recommend in respect of sheep and cattle rental standards for grazing selections and pastoral leases.

Mr Carter's report was delivered on 29 March 1989.

The periodic inquiries into the rental standards for grazing leases were no longer required following the enactment of the *Land Act 1944*. Rentals for all State leases are now based upon a percentage of the unimproved values of those lands.

However, the power still remains for the Minister to refer a matter concerning the administration of the Land Act to the Land Court for inquiry and report. Section 435 of the *Land Act 1994* provides:

- “(1) The Minister may refer a matter about the administration of this Act to the Court for inquiry and report.
- (2) The Minister may refer a dispute about the boundary of a term lease for pastoral purposes to the Court for decision, even if the Minister is not a party to the dispute.”

Death of two former Presidents

I regret to report the deaths of two former Presidents of the Land Court within three months of one another.

Daniel John Barry

Former President of the Land Court, Mr Daniel John Barry, died on 28 December 2009 at the age of 83.

Mr Barry was born in Mackay in 1926 and was educated at Tully and Nudgee College in Brisbane. He joined the Royal Australian Navy in 1943 aged 17 and served on H.M.A.S. Vendetta and H.M.A.S. Hobart during World War II.

After serving articles in Brisbane, Mr Barry practised as a Solicitor in Barcaldine and then in Blackall. He was later appointed Chairman of the Repatriation Tribunal, which made medical assessments of injured returned servicemen and determined their incapacity and entitlements.

Mr Barry was appointed as a Member of the Land Court on 18 June 1973 and as President of the Court on 29 July 1989. He retired on 17 July 1993 after 20 years of distinguished service as a judicial officer.

Walter Frederick Gordon Smith AM BA LLB Hon FAPI

Former President of the Land Court, Mr Walter Frederick Gordon Smith, died on 9 March 2010 at the age of 87.

Apart from his five years of war service, Mr Smith served with the Department of Lands from December 1937 until he was appointed as a Member of the Land Court in 1960. During that time he served as an administrative officer and Deputy Registrar in the Land Court Registry, as a Land Court Advocate, as Secretary of the 1950/1951 Royal Commission on Pastoral Lands Settlement (Queensland) and as Secretary of the Land Administration Board (later Land Administration Commission).

Following war service with the Australian Army from 1941 to 1946 (during which he was Mentioned in Dispatches), Mr Smith returned to the Land Court Registry. Having been encouraged by the then President, Sir William Payne, to study law, Mr Smith graduated from the University of Queensland with degrees in Arts and Law. He was admitted to the Bar on 16 April 1952, the same day that his later colleague on the Land Court, Mr D.J. Barry was admitted as a solicitor.

After service as a Land Court Advocate, Mr Smith was appointed as Secretary to the Land Administration Board in 1957, and Secretary of the newly created Land Administration Commission in January 1960. He was largely responsible for the review and consolidation of the Land Acts which resulted in the *Land Act 1962*.

Mr Smith was appointed as a Member of the Land Court on 18 January 1960 and President of the Court on 1 February 1973. He retired on 28 July 1989.

Mr Smith's immense contribution to the Court and to the people of Queensland was recognised with his appointment as a Member of the General Division of the Order of Australia in 1989. He had previously been honoured by the valuation profession, being awarded an Honorary Fellowship of the Australian Institute of Valuers (later Australian Property Institute) in 1979.

The Members and Staff of the Land Court join me in offering our deepest condolences to the families of Mr Barry and Mr Smith.

Members and Judicial Registrar of the Land Court

President Carmel Anne Catherine MacDonald BA LLB LLM

Members Robert Peter Scott QDAH LLB (until 31 July 2009)
Richard Stephen Jones LLB (Hons) Cert Real Estate Val AAPI
(until 18 February 2010)
Paul Anthony Smith BA LLB
Wayne Lindsay Cochrane B Econ B Ed MSc (from 15 April 2010)
William Angus Isdale LLB MPubAdmin (from 15 April 2010)

Judicial Registrar Barry Richard O'Connor LLB LLM

Part-time Members (appointed pursuant to s.17 of the *Land Court Act 2000*):
Stephen Joseph Keim SC BA LLB (Hons) (from 8 April 2010)
Jean Hazel Dalton SC BA LLB (Hons) (from 8 April 2010)

Retirement of Mr Robert Peter Scott

On 31 July 2009, Robert Peter Scott QDAH LLB retired after almost 15 years as a Member of the Land Court.

Mr Scott served as an Acting Member of the Land Court from 5 June 1995 to 8 September 1995, before being appointed as a Member on 12 February 1996. Prior to his appointment, Mr Scott had been Deputy Director General of the Department of Lands, having previously held various executive positions in that Department, including many years as the Department's Senior Legal Officer, Chief Land Court Advocate.

Before being admitted to the Bar in 1978, Mr Scott had served as an agricultural extension officer and lecturer at the Popondetta Agricultural College in Papua New Guinea and in rural education. During his service as a judicial officer, Mr Scott presided over some of the longest and most contentious cases ever to come before the Land Court.

Mr Scott has made a most significant contribution to the Court and I wish to place on record my gratitude to him for his distinguished service as a judicial officer.

Appointment of Member to District Court

On 18 February 2010, Member of the Land Court Richard Stephen Jones was appointed as a Judge of the District Court.

Mr Jones was appointed as a Member of the Land Court on 14 February 2005. During the ensuing years Mr Jones presided over some of the major litigation before the Court and was a Member of the Land Appeal Court in a number of complex appeals. He also initiated various reforms to Court procedures and assisted with preparing annual volumes of the Land Court Reports for publication.

The Members and Staff of the Land Court join with me in thanking Mr Jones for his valuable contribution to the Court. We wish him every success in his continuing judicial career.

Appointment of two new Members

On 15 April 2010, two new Members were appointed on a full time basis to the Land Court. Wayne Lindsay Cochrane was appointed for a term of 15 years and William Angus Isdale for a term of two years.

Mr Cochrane and Mr Isdale were sworn in as Members of the Land Court by the Honourable Justice MJ White at a ceremony held in the Banco Court on 19 April 2010. The new Members

were formally welcomed to the Court by Justice White, President of the Land Court Mrs CAC MacDonald, the Honourable the Attorney General Mr Cameron Dick, the President of the Queensland Bar Association Mr Richard Douglas and the Deputy President of the Queensland Law Society Mr Bruce Doyle.

Wayne Lindsay Cochrane B Econ B Ed MSc

Mr Cochrane was admitted to the Queensland Bar in 1989. Prior to that date Mr Cochrane was a school teacher for 17 years, including 14 years at the Brisbane Boys Grammar School where he was appointed Master in charge of the Lower School .

After his admission to the Bar, Mr Cochrane developed a practice devoted exclusively to land planning and environment and natural resources litigation. He appeared on numerous occasions before the Land Court and the Planning and Environment Court. Mr Cochrane was Counsel assisting the Commissioner, Mr GE Fitzgerald QC, in the Commission of Inquiry into the Future Management of Fraser Island.

William Angus Isdale LLB MPublic Admin

Mr Isdale was admitted to the Queensland Bar in 1980 and since that time he has worked as a government legal advocate in a range of jurisdictions at trial and appellate level, including the High Court.

Mr Isdale first appeared before the Land Court in 1983 and has extensive experience in this jurisdiction in valuation appeals, compulsory acquisition of land compensation claims and water licence appeals.

Jurisdiction

The Land Court is a court of record of the State of Queensland which has wide ranging jurisdiction, unlimited as to amount, conferred by the Acts in the table below.

The Court deals with a diverse range of matters relating to land and resources, including:

- ▶ the determination of claims for compensation for compulsory acquisition of land;
- ▶ appeals against statutory valuations for revenue purposes;
- ▶ appeals against a wide range of Ministerial and Departmental decisions under various Acts;
- ▶ disputes concerning mining activities throughout the State; and
- ▶ cultural heritage issues.

The Land Court hears and determines matters in a manner similar to the Supreme Court and District Court with some variations, as the procedure of the Court is governed by equity and good conscience and the strict rules of evidence do not apply. Land Court Members are judicial officers appointed by commission and have many of the powers of a Judge of the Supreme Court in exercising the Court's jurisdiction.

The Land Court is divided into two divisions, the Cultural Heritage and Indigenous Land Use Agreement Division and the General Division. A Member of the Land Court may sit as a member of the Cultural Heritage Division or General Division as nominated by the President.

Legislation giving the Land Court and Land Appeal Court jurisdiction:

- ▶ *Aboriginal and Torres Strait Islander Communities (Justice, Land and Other Matters) Act 1984*
- ▶ *Aboriginal Cultural Heritage Act 2003*
- ▶ *Aboriginal Land Act 1991*
- ▶ *Aborigines and Torres Strait Islander (Land Holding) Act 1985*
- ▶ *Acquisition of Land Act 1967*
- ▶ *Alcan Queensland Pty Limited Agreement Act 1965*
- ▶ *Amoco Australia Pty Limited Agreement Act 1961*
- ▶ *Austral-Pacific Fertilizers Limited Agreement Act 1967*
- ▶ *Biological Control Act 1987*
- ▶ *Breakwater Island Casino Agreement Act 1984*
- ▶ *Central Queensland Coal Associates Agreement Act 1968*
- ▶ *Century Zinc Project Act 1997*
- ▶ *City of Brisbane Act 1924*
- ▶ *Environmental Protection Act 1994*
- ▶ *Foreign Ownership of Land Register Act 1988*
- ▶ *Forestry Act 1959*
- ▶ *Fossicking Act 1994*
- ▶ *Geothermal Exploration Act 2004*
- ▶ *Greenhouse Gas Storage Act 2009*
- ▶ *Housing (Freeholding of Land) Act 1957*
- ▶ *Land Act 1994*
- ▶ *Land and Resources Tribunal Act 1999*
- ▶ *Land Court Act 2000*
- ▶ *Land Tax Act 1915*
- ▶ *Local Government Act 1993*
- ▶ *Local Government (Aboriginal Lands) Act 1978*
- ▶ *Mineral Resources Act 1989*
- ▶ *Nature Conservation Act 1992*
- ▶ *Offshore Minerals Act 1998*

- ▶ *Petroleum Act 1923*
- ▶ *Petroleum and Gas (Production and Safety) Act 2004*
- ▶ *Queensland Nickel Agreement Act 1970*
- ▶ *Racing Venues Development Act 1982*
- ▶ *Soil Conservation Act 1986*
- ▶ *State Development and Public Works Organisation Act 1971*
- ▶ *Sugar Industry Act 1999*
- ▶ *Survey and Mapping Infrastructure Act 2003*
- ▶ *Thiess Peabody Coal Pty Ltd Agreement Act 1962*
- ▶ *Torres Strait Islander Cultural Heritage Act 2003*
- ▶ *Torres Strait Islander Land Act 1991*
- ▶ *Transport Infrastructure Act 1994*
- ▶ *Valuation of Land Act 1944*
- ▶ *Water Act 2000*
- ▶ *Water Supply (Safety and Reliability) Act 2008*
- ▶ *Wet Tropics World Heritage Protection and Management Act 1993*
- ▶ *Yeppoon Hospital Site Acquisition Act 2006*

Legislative Changes

The following changes to the jurisdiction of the Land Court occurred during 2009/10:

- ▶ The *Mineral Resources Act 1989* was amended by the *Mines and Energy Legislation Amendment Act 2010*. Section 265 of the *Mineral Resources Act* has been amended with the result that uncontested mining lease applications lodged in the Department of Employment, Economic Development and Innovation after 21 April 2010 will no longer be referred to the Land Court for decision as to a recommendation for the grant of a lease.
- ▶ The *Survey and Mapping Infrastructure Act 2003* was amended by the *Natural Resources and Other Legislation Amendment Act 2010*. Section 126 of the *Survey and Mapping Infrastructure Act* now provides that the Land Court has jurisdiction to hear appeals against internal review decisions concerning declaration decisions by the chief executive as to the location of tidal and non-tidal (watercourse) boundaries.
- ▶ The *Land Act 1994* was amended by the *Natural Resources and Other Legislation Amendment Act 2010*. Schedule 2 of the *Land Act* now provides that the Land Court has jurisdiction to hear appeals against internal review decisions about declarations (by the chief executive) of land as former watercourse land.

Land Court Caseload

As at 1 July 2009, there were 1,230 cases awaiting hearing before the Land Court. During the reporting period, 514 new matters were filed in the Land Court registry. 1,381 matters were finalised by the Court with the result that there were 363 cases awaiting determination as at 30 June 2010.

The majority of cases not heard as at 1 July 2009 were appeals against valuations for revenue purposes made by the Department of Environment and Resource Management. Revenue valuations are unimproved valuations made under the *Valuation of Land Act 1944* and are used by various authorities for local government rating, and the assessment of State land tax and rentals on State leasehold land. The outstanding cases consisted of a large number of appeals against valuations of major shopping centres and Brisbane Central Business District properties where the parties had requested that the matters remain in abeyance pending the outcome of a test case appeal to the Court of Appeal. This appeal was finalised by the Court of Appeal in December 2009.

During the reporting period, there was a significant decrease in the number of new valuation appeals filed in the court registry as compared with recent years. Land valuations for revenue purposes are usually issued annually by the Department of Environment and Resource Management. No annual valuations were issued during 2009 as part of the State Government's financial relief package and as a result, there was a reduction in the number of valuation appeals lodged in the Court.

The unusually high number of matters finalised by the Court in 2009/2010 is largely accounted for by the special mediation programme initiated by the Court which is described in the following section.

Temporary appointment of Mediators

The *Valuation of Land and Other Legislation Amendment Act 2010* was enacted on 12 March 2010 and came into immediate effect. Whilst the provisions of the Act retrospectively changed the definition of "unimproved value" as it applied to land valuations made under the *Valuation of Land Act 1944*, the amending legislation allowed for existing appeals to be dealt with under the relevant provisions of the *Valuation of Land Act 1944* as they stood prior to the enactment of the amending legislation, provided the appeals were decided on or before 30 June 2010.

To ensure that parties had the opportunity to have their appeals dealt with in accordance with the legislation in place at the time the valuations were made, Mr John Trickett, the former President of the Land Court, and Mr Robert Scott, a former Member, were appointed to act as mediators from April to the end of June 2010. While most of the mediations were conducted in Brisbane, Mr Trickett and Mr Scott also travelled throughout Queensland. Approximately 500 Valuation of Land Act matters were successfully resolved during that period as a result of the special mediation programme, mediations conducted by the Judicial Registrar and finalisation of hearings .

I thank Mr Trickett and Mr Scott for their invaluable contribution to this process.

Types of Cases

Valuation of Land Act 1944

Since the enactment of the *Land Act 1994*, when unimproved values became the basis for the assessment of rents for State leasehold land as well as for the assessment of local government rates and State land tax, appeals against these valuations comprise the largest number of cases each year.

In 2009/10, 152 revenue valuation appeals under the *Valuation of Land Act 1944* were lodged in respect of the unimproved values of land throughout the State and 1,092 were finalised. Most valuation cases were resolved by or following alternative dispute resolution processes, including the matters resolved under the special mediation programme described above. The cases that proceeded to hearing were usually the more complex or contentious. Although some hearings were completed in less than one day, it is not unusual for such hearings to occupy several days and even weeks.

Acquisition of Land Act 1967

The determination of compensation following the compulsory acquisition of land is an important part of the Land Court's jurisdiction. Land is compulsorily acquired for various public purposes set out in the Schedule to the *Acquisition of Land 1967*, by various "constructing authorities" ranging from State Government departments and local authorities to statutory authorities authorised to take land.

Compensation cases that proceed to hearing after negotiations between the parties fail to resolve the matters usually involve complex town planning, engineering, quantity surveying and valuation issues, with evidence from expert witnesses in those and other specialist disciplines. In 2009/10, 40 claims for compensation were filed, while 29 were finalised. Hearing of compensation cases usually involves several days, with the more complex cases taking several weeks.

Land Act 1994

The *Land Act 1994* provides for appeals to the Land Court against a range of Ministerial and Departmental decisions set out in Schedule 2 of that Act. However, all appeals commence with an internal review within the Department of Environment and Resource Management. Only those cases that are not resolved by that process proceed to the Land Court.

In 2009/10, five Land Act appeals were filed in the Land Court, and three were finalised. The number of Land Act matters fluctuates from year to year, but the relatively low numbers reflect the success of the internal review process. Only the more complex matters now proceed to hearing.

Land Tax Act 1915

Land tax appeals were generally in respect of the liability of land to land tax and the entitlement to exemptions and concessions. Appeals to the Land Court under the *Land Tax Act 1915* were abolished on 30 June 2009 by the *Revenue and Other Legislation Amendment Act 2009*. After that date, land tax appeals lie to the Supreme Court under the *Taxation Administration Act 1991*. Transitional provisions inserted into the *Land Tax Act* by the *Revenue and Other Legislation Amendment Act* provide that, for appeals filed in the Land Court prior to the commencement of that Act, the Land Court may continue to hear and decide a matter where the hearing had commenced prior to that Act coming into effect (s.70(1) and (2)) or, where the hearing had not begun at the date of commencement, the taxpayer may apply for the appeal to be transferred to the appropriate Court or Tribunal (s.70(3) and (4)). During 2009-10, five land tax appeals were finalised under this transitional provision, completing the Land Court's workload with respect to its jurisdiction under this legislation.

Mineral Resources Act 1989

These are applications under the *Mineral Resources Act 1989* for mining tenements and claims for compensation relating to the grant of such tenements. Most of these cases were dealt with on the papers without an oral hearing. However, the more complex matters required several sitting days.

During 2009-10, 284 applications were lodged under this legislation and 222 were finalised.

The amendment of s.265 of the Act means that uncontested mining lease applications lodged after 21 April 2010 in the Department of Employment, Economic Development

and Innovation will no longer be referred to the Land Court. This will probably affect the number of matters filed in this Court in the next reporting period.

Environmental Protection Act 1994

These are environmental objections to mining tenure applications. During 2009-10, 23 objections were lodged and 13 were finalised.

Petroleum Legislation

Six appeals were lodged under the *Petroleum and Gas (Production and Safety) Act 2004* during 2009-10 and nine were finalised.

Cultural Heritage Legislation

One application was brought pursuant to the *Aboriginal Cultural Heritage Act 2003* in respect of cultural heritage matters. Three matters were successfully resolved.

Court workload 2009-10

Types of cases	Filed	Disposed
Revenue Valuation Appeals	152	1092
Compensation Claims Land Acquisition	40	29
Land Act Appeals	5	3
Land Tax Appeals	0	5
Cultural Heritage	1	3
Mining Applications and Compensation Claims	284	222
Environmental Protection Objections	23	13
Petroleum Matters	6	9
Other mining matters	3	5
Total	514	1,381

Land Appeal Court

The Land Appeal Court hears appeals from the Land Court and is constituted by a Judge of the Supreme Court and two Members of the Land Court, other than the Member whose decision is under appeal. It also hears appeals from the Land Tribunals established under the *Aboriginal Land Act 1991* and the *Torres Strait Islander Land Act 1991*. The Land Appeal Court has limited original jurisdiction under the *Biological Control Act 1987* and the *Foreign Ownership of Land Register Act 1988*.

The Land Appeal Court traditionally sits at Brisbane, Rockhampton, Townsville and Cairns, the headquarters of the four Supreme Court districts in Queensland. From time to time the Chief Justice nominates a Supreme Court Judge to act as a Member of the Land Appeal Court for the Southern District. The Honourable Justice P. Lyons was the Judge nominated for the 2009-10 financial year. The Central Judge, the Honourable Justice D.V.C. McMeekin, the Northern Judge, the Honourable Justice K.A. Cullinane AM, and the Far-northern Judge, the Honourable Justice S.G. Jones AO, were Members of the Land Appeal Court for those districts.

A party to a proceeding in the Land Appeal Court may appeal a decision of that Court to the Court of Appeal on the ground of error or mistake in law or jurisdiction. Further appeal could lie to the High Court of Australia, but only with special leave. There are very few appeals against the decisions of the Land Appeal Court.

Appeals to the Land Appeal Court are by way of rehearing, usually on the record of the Court below. The Land Appeal Court has power to admit new evidence, but only if the Court is satisfied that such evidence is necessary to avoid grave injustice and that adequate reason can be shown why the evidence was not previously given. By convention, the Supreme Court Judge Member presides, but all Members of the Land Appeal Court sit as equals and the decision of the majority is the decision of the Land Appeal Court.

There were 11 appeals lodged in the Land Appeal Court in 2009-10, compared with six appeals in 2008-09. Considering the number of matters dealt with by the Land Court each year there are remarkably few appeals to the Land Appeal Court.

Nature of Appeals	2008-09	2009-10
Compensation (<i>Acquisition of Land Act 1967</i>)	1	5
<i>Other</i>	0	1
<i>Mineral Resources Act 1989</i>	1	3
<i>Petroleum Act 1923</i>	2	0
Revenue valuations (<i>Valuation of Land Act 1944</i>)	1	2
<i>Water Act 2000</i>	1	0

During the reporting period, eight of the appeals related to land in the Southern Land Appeal Court District and three concerned land in the Far Northern Land Appeal Court District.

	2008-09	2009-10
Appeals to Court of Appeal	5*	1

* Includes 4 related matters.

Case Management

With such a large caseload and few Members, the Land Court has adopted a number of case management procedures:

- ▶ Mediations involving revenue valuation appeals were conducted on a large scale with the appointment of two part-time mediators between April and June 2010.
- ▶ Appellants in all revenue valuation appeals are offered alternative dispute resolution through preliminary conferences. These conciliation conferences are usually conducted by a Judicial Registrar and have achieved considerable success.
- ▶ Callovers have been replaced with efficient file allocation procedures.
- ▶ Directions hearings in appropriate cases, with orders made seeking identification of issues, and the filing of expert reports addressing those issues.
- ▶ Test cases where there are large numbers of similar matters. Following the determination of those test cases, the parties are expected to confer. Expedited hearings are held where no settlement is reached.
- ▶ Each Member takes responsibility for case management of all matters arising in specific geographical areas and conducts regular reviews in respect of those matters.

Regional Hearings/Videoconferences

Although based in Brisbane, the Land Court also sits in regional areas of Queensland. During 2009-10, the Court sat on 79 days outside Brisbane at the following centres:

- ▶ Atherton
- ▶ Barcaldine
- ▶ Beaudesert
- ▶ Blackall
- ▶ Cairns
- ▶ Charleville
- ▶ Coolangatta
- ▶ Cunnamulla
- ▶ Emerald
- ▶ Gatton
- ▶ Georgetown
- ▶ Goondiwindi
- ▶ Ipswich
- ▶ Mackay
- ▶ Mareeba
- ▶ Moranbah
- ▶ Mossman
- ▶ Rockhampton
- ▶ Roma
- ▶ Toowoomba
- ▶ Townsville
- ▶ Winton

Land Court Videoconferences

The Land Court conducted its first hearings by videoconference during the year. For many years it has been common for parties to attend at direction hearings by telephone, but hearings have always been held in person.

In March 2010, the Court conducted two hearings by videoconference with a link to Brisbane, one from the Mareeba Courthouse and the other from the Emerald Courthouse.

At that time, for logistical and other reasons including availability of the parties, the hearings could only proceed if conducted by videoconference.

Alternative Dispute Resolution

As an alternative to its adjudicative role, the Land Court also provides Alternative Dispute Resolution (ADR) processes by a Judicial Officer: either a Member or a Judicial Registrar.

Preliminary Conference

A preliminary conference is essentially a conciliation process, not merely a preliminary meeting. It is “preliminary” only in the sense that it precedes any adjudication of a matter. The conference is designed to identify the issues in dispute, discuss those issues and attempt to reach an agreement. Negotiations are conducted on a “without prejudice” basis to encourage frank and forthright discussions. The term “preliminary conference” is preferred to “conciliation conference”, as it indicates that if no agreed outcome is reached, the matter can proceed to hearing and adjudication.

Preliminary conferences are offered to all parties in appeals against valuations under the *Valuation of Land Act*. They are generally not offered in cases with complex compensation issues or questions of law, or where there is need to consider detailed technical evidence. Such cases do not lend themselves to the conference process. However, the parties in a growing number of such cases are seeking mediation by a Member of the Land Court.

The Court will convene preliminary conferences only where parties to a dispute agree to pursue that option. In rare cases, even though the parties request a preliminary conference, the Court will elect to hear a matter, usually in locations infrequently visited by the Court. Failure to resolve such a matter by preliminary conference would result in the Court having to revisit the centre.

Most preliminary conferences are conducted by a Judicial Registrar with extensive experience in dispute resolution. There are too few Members of the Land Court for two Members to be potentially precluded from hearing an appeal to the Land Appeal Court. Nevertheless, a Member will conduct preliminary conferences in certain circumstances. For example, a Member who is hearing cases in a regional centre may, as an adjunct, conduct a limited number of preliminary conferences in that centre, avoiding the expense of a Judicial Registrar also visiting the centre.

The adoption of the preliminary conference process has resulted in considerable resource savings for the Land Court. The standard preliminary conference takes much less time than a Court hearing, following which additional time would be required for judgment writing. The majority of preliminary conferences result in settlement and an outcome which is acceptable to both the parties.

During the year, the Court conducted approximately 300 preliminary conferences.

Mediation

Court supervised mediation is a process by which the parties participate, together with the assistance of a Judicial Officer, in systematically isolating disputed issues in order to develop options leading to a settlement. As with preliminary conferences, mediations are conducted on a “without prejudice” basis. The Court has not to date offered case appraisal, in which a neutral evaluator attempts to assess the relevant strengths and weaknesses of each party’s case and offer an opinion as to the likely outcome.

Where parties elect to pursue mediation, the Court will usually adopt that option. Mediation is generally confined to the larger more complex cases, including those involving substantial amounts. Mediation is usually conducted by a Member of the Court or the Judicial Registrar, trained in mediation.

If a mediation is unsuccessful, the parties retain the right to have the matters heard and determined by the Land Court. Where a Member conducts a mediation which does not lead to a settlement, that Member cannot subsequently hear the matter. Neither that Member, nor the Member who subsequently heard the matter, can be a Member of the Land Appeal Court, if there is an appeal. Neither the Land Court Member hearing the matter nor the Land Appeal Court has access to any of the materials presented at the mediation other than by the agreement of the parties.

During the year, 125 matters outside the special mediation program were mediated by a Land Court Member or the Judicial Registrar. Resource benefits were substantial saving the Court and parties considerable time and expense.

Land Court and Tribunals Registry

The Registrar of the Land Court, Deputy Registrars and other officers of the registry staff provide administrative support to the Land Court. The Registrar is responsible for the budget and resource management and administrative functions of the Court. The Registrar is also charged with keeping the minutes of the proceedings and records of the decisions of the Land Court and performing all the functions given to the Registrar under the *Land Court Act 2000* or any other Act. The Land Court registry is under the control of the Registrar.

The registry staff are:

Registrar: Ms Katie Stride BA LLB MPub Ad

Acting Registrars: Mr Peter Brandon (31 August 2009 to 8 January 2010.)

Mr Kevin Hayden (12 March 2010 to 1 April 2010)

Mr Kenneth Wells (from 6 April 2010)

Officer Manager: Ms Nerida Mead BA

Senior Deputy Registrar: Mr Kevin Hayden

Senior Case Manager: Ms Betty Lippiatt

Deputy Registrars: Mr Rai Laaja

Mrs Clare Gilbert

Mr Jeffrey Hobson

Ms Diane Blewett

Administrative Officers: Ms Glenda Jones

Ms Terri Bastiani

Mr Tony Cameron (until 7 October 2009)

Ms Margaret Christison

Ms Keren Plowman

Part-Time Administrative Officers: Ms Alison Templeton (until 22 October 2009)

Ms Heather Clarke (until 22 October 2009)

Research Officer: Ms Saskia Vanderbent BA JD (Hons) GDLP

Departure of registry officers

Part-time administrative officers Ms Alison Templeton and Ms Heather Clarke, who were employed to prepare transcripts of Land Court proceedings, left the Court on 22 October 2009. A departmental decision to centralise court transcript services in the State Reporting Bureau resulted in Ms Templeton's and Ms Clarke's departure from the Land Court. Each was offered employment in the State Reporting Bureau which Ms Templeton accepted. Ms Clarke decided to retire.

The Members of the Land Court were genuinely disappointed to lose the services of these outstanding officers. Ms Templeton had been with the Court since 1983, Ms Clarke since 2002. Prior to 2002, Ms Clarke had worked at the Court for an extensive period of time from the 1960s to the 1980s. During those years, both officers carried out their duties with exceptional diligence, skill and accuracy and completed transcripts were made available in a very timely fashion. It was a pleasure to have them as part of the registry team and they are greatly missed.

The Members and Staff join with me in thanking Ms Templeton and Ms Clarke for their sterling service to the Court and we wish them well for the future.

Case support officer Tony Cameron resigned on 7 October 2009. Mr Cameron joined the registry staff of the Land and Resources Tribunal on 21 January 2002. With the transfer of most of the jurisdiction of the Land and Resources Tribunal to the Land Court in 2007, Mr Cameron became a staff member in the Court registry.

I thank Mr Cameron for his valuable contribution to the work of both registries during his years of service.

Publication of Court Decisions

Major decisions of the Land Appeal Court and Land Court are published in annual volumes of the Queensland Land Court Reports with head notes.

All decisions of the Land Appeal Court and Land Court are available online at:

www.landcourt.qld.gov.au/decisions/recent.asp

Selected decisions of the Land Appeal Court and Land Court are reported in the Local Government and Environment Reports of Australia, as well as being available online at:

www.austlii.edu.au/databases.html.

Continuing Judicial Development ---

Each Member of the Land Court is provided with allowances which are to be used for the purposes of continuing judicial education and development. During the year, the Members made use of these allowances to attend legal and professional conferences and seminars.

Mr Smith was a visiting guest lecturer at Palacky University, Olomouc, Czech Republic in April 2010. He was also a visiting guest lecturer at Azov Regional Institute of Management, Berdyansk, Ukraine and Lugansk State University of Internal Affairs, Lugansk, Ukraine in May 2010. Mr Smith was appointed a Visiting Professor to each of those Universities.

In June 2010, Mr Smith presented a paper on mediation at the 6th Biennial Symposium on Arbitration and Mediation conducted by the Centre for International Legal Studies in Salzburg, Austria.

Members used their jurisprudential and/or expense of office allowances for these continuing education and development purposes. No expense was incurred by the Land Court.

The Judicial Registrar, Mr O'Connor, attended the annual conference of the Australian Property Institute in October 2009, the Mining Industry State of the Sector seminar in November 2009, and the annual conference of the Queensland Environmental Law Association in May 2010, as well as various other seminars in Brisbane.

Assistance to Universities and the Professions

Moots

During the year, as in previous years, the Members, Judicial Registrar, and research officer presided at Moots between students of Queensland and Interstate Universities.

The Land Court also made its Court rooms available for a Moot between students of the University of Queensland and the Queensland University of Technology. Mr O'Connor (Judicial Registrar) and Ms Vanderbent (Research Officer) provided assistance to the QUT team in their preparation for the moot. Former Land Court President Mr Trickett (who had presided at the moot for several previous years) provided similar assistance to the UQ team.

With the assistance of industry experts, Mr Jones presided over that Moot and the subsequent Interstate Moot that was held in Brisbane between the winner of that Moot and the University of Technology Sydney.

Internship – First year law student

As part of the QUT Law School internship program, the Land Court hosted a final year law student (on an unpaid basis) in first semester 2010. This internship and associated report counts as an (elective) unit towards the law degree. It proved to be most worthwhile for the student, the QUT supervisor and the Court.

Publications and Lectures

Mrs MacDonald contributed to the 2010 edition of *Real Property in Queensland*.

Mr Smith provided lectures on justice and ethics at several foreign universities.

Mr O'Connor presented a paper to the Australian Property Institute reviewing major valuation and related cases from the previous twelve months.

Ms Vanderbent published papers in the Queensland Environmental Practice Reporter.

Visit from Chinese taxation dignitaries

In November 2009, the Land Court hosted a visit by 23 officials from the Liaoning Local Taxation Bureau, People's Republic of China. The group were studying land tax systems within Australia. Mrs MacDonald, Mr O'Connor and former President Mr JJ Trickett explained the Queensland system of land tax and the role of the Land Court in determining appeals about the unimproved value of land, on which the assessment of land tax is based.

Library

The Land Court has established and maintained an extensive specialist library which contains many historical volumes not available electronically. The library is an essential tool to the efficient and effective performance of the Land Court.

The library is maintained by part-time Librarian, Ms Helen Bannerman BA(Hons), Grad Dip Lib Sc, who also maintains a register of the Court's judgments. A small library committee comprising Mr Jones (until his appointment to the District Court), Mr O'Connor, the Registrar, Research Officer and Librarian co-ordinate the preparation and printing of the volumes of the Land Court Reports, of which the Judicial Registrar is the editor. The Land Court Reports in bound volumes extend back to the first constitution of the Court.

Case Management System

As identified in last year's Annual Report, the implementation of a new case management system, known as Caseworks, was successfully completed in December 2009. Until that date, the registry staff were entering data in Caseworks and two other systems previously used by the Land Court and the Land and Resources Tribunal.

The amalgamated database indicates that there was incorrect information in previous reports. The Court's caseload as at 30 June 2008 was stated as 990 matters awaiting determination. That figure did not include 107 matters from the former Land and Resources Tribunal's jurisdiction. A further 143 matters, in various categories, were not included in the caseload figure of 980 as at 30 June 2009. It is likely that a number of contributing factors led to this situation:

- ▶ Caseworks was not fully implemented until December 2009 and was undergoing testing at the time of the previous and current reporting periods.
- ▶ Multiple case management systems were operating during the 2007-08 and 2008-09 financial years after the merge of the Land Court and the Land and Resources Tribunal.
- ▶ These case management systems did not integrate with each other and each required case file information to be manually extracted.

Extensive work has been undertaken by the registry to ensure the accuracy of this year's data.

Finance

The funding for the Land Court is provided by the Queensland Government through the Department of Justice and Attorney-General. The various financial statements are included in the Annual Report of that Department.

As with the Judges of the Supreme and District Court, the salary and allowances of the Members of the Land Court are provided for by the *Judicial Remuneration Act 2007*.

The operating expenses of the Land Court for the financial year 2009-10 are shown in the table below. The expenses exclude Members' salaries and allowances which are appropriated separately.

Operating expenses 2009-2010	\$
Employee Expenses	1,292,724
Supplies and Services	585,174
Depreciation and amortisation	31,283
Total Operating Expenses	1,909,181

Accommodation

In October 2009, the Land Court relocated from level 9, 259 Queen Street to the Brisbane Magistrates Court, 363 George Street, Brisbane. The registry and courtrooms of the Land Court are situated on level 8 and the Members' Chambers are located on level 9.

The premises are far more suitable to the needs of the Land Court than the previous accommodation and access is more convenient for members of the Bar and many other legal professionals. The relocation has also led to a significant reduction in the Supplies and Services expenditure (rent) of the Court.

Report on the Operations of the Land and Resources Tribunal 2009-2010

Under s.77A(3) of the *Land Court Act 2000*, each annual report of the Land Court must include a report on the operations of the Land and Resources Tribunal for the year the subject of the report, until the expiry of the *Land and Resources Tribunal Act* on 31 December 2011.

From 21 September 2007, the *Land Court and Other Legislation Amendment Act 2007* transferred the jurisdiction of the Land and Resources Tribunal to the Land Court, with one exception concerning applications for mining tenements made prior to 31 March 2003 where native title may exist. The Land and Resources Tribunal is an alternative state body under the *Native Title Act 1993* (Cth) empowered to deal with such applications. The Land and Resources Tribunal is continued in existence until 31 December 2011 for the limited purpose of dealing with such applications. The Governor-in-Council may appoint persons, including Land Court Members, to act as presiding or non-presiding members to allow this remaining jurisdiction to be exercised.

No applications under these provisions have been lodged in the Court in the period under review. However, one matter that was previously lodged with the Land and Resources Tribunal remains outstanding. Although the Court has been advised by the parties that the matter has settled, section 666 of the *Mineral Resources Act 1989* has not been complied with and deeds of settlement have not been executed by all the parties or provided to the Court or Mining Registrar. It is anticipated that this matter will be finalised in the next reporting period

