



# **LAND COURT OF QUEENSLAND**

**ANNUAL REPORT 2014-2015**

---



## LAND COURT OF QUEENSLAND

---

29 October 2015

The Honourable Yvette D'Ath  
Attorney-General and Minister for Justice  
& Minister for Training and Skills  
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 eighth Annual Report on the operations of the Land Court for the year ended 30 June 2015.

Yours sincerely

A handwritten signature in cursive script, reading 'Carmel MacDonald'.

**Carmel MacDonald**  
**President**

---

Registry:  
Postal Address:  
Phone: (07) 3247 9268  
Web: [www.landcourt.qld.gov.au](http://www.landcourt.qld.gov.au)

Level 8, 363 George Street, Brisbane Qld 4000  
GPO Box 5266, Brisbane Qld 4001  
Fax: (07) 3247 4635  
Email: [landcourt@justice.qld.gov.au](mailto:landcourt@justice.qld.gov.au)

---

# Contents

Introduction	1
History of the Land Court	1
A brief history of the role of Mining Wardens in Queensland	1
Retirement of the Honourable Justice John Muir	3
Retirement of the Judicial Registrar	4
Members and Judicial Registrar of the Land Court	5
Appointment of new Judicial Registrar	5
Jurisdiction	6
Legislative Changes	8
Land Court Caseload	9
Types of Cases	9
Land Court Workload 2014-15	11
Applications for Judicial Review	11
Land Appeal Court	12
Membership of the Land Appeal Court	12
Land Appeal Court Proceedings	12
Further Appeals	13
Case Management	13
Regional Hearings	14
Alternative Dispute Resolution	14
Preliminary Conference	15
Mediation	16
Land Court and Tribunal Registry	17
Retirement of Deputy Registrar Clare Gilbert	18
Publication of Court Decisions	18
Continuing Judicial Development	18
Assistance to Universities and the Professions	19
Moots	19
Internship - Final year law student	19
Publications and Lectures	20
Visits from Chinese Delegations	20
Library	20
Finance	21
Accommodation	21

# Introduction

This is the eighth 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

### A brief history of the role of Mining Wardens in Queensland

The jurisdiction of the Land Court was significantly expanded on 21 September 2007, when it assumed the mining jurisdiction of the former Land and Resources Tribunal. That Tribunal in turn had the mining functions of the former Queensland Mining Warden transferred to it in 2000. It is timely, therefore, to acknowledge and place on record the significant contribution that generations of Mining Wardens made to this State.

It is now just over 140 years since the office of the Mining Warden was established in Queensland. The Queensland *Gold Fields Act 1874* provided for the appointment of officers to be called Wardens who were to exercise the jurisdiction conferred upon them by that Act. It also provided for the Governor, by proclamation, to establish

“on any gold field one or more courts to be presided over and holden by a warden or warden and assessors and which shall be a court of record and shall have jurisdiction to hear and determine all actions suits claims demands disputes and questions which may arise in relation to mining”. (Section 31).

Previously, under Regulations made under the *Mineral Lands Act 1872*, Mineral Lands Commissioners were appointed and empowered to hold court within a mining district. The office of Mineral Lands Commissioner was abolished in 1898 and all existing Commissioners were appointed as Mining Wardens, thus amalgamating jurisdictions within mining fields and gold fields.

Early Queensland mining legislation closely followed the Victorian model. The first mining Act in the colonies was the Victorian *Mining Act* of 1852 which provided for the appointment of Gold Commissioners, with the power to enquire into disputes between miners and to settle them summarily. In 1853, the power of Commissioners was enlarged to award compensation for encroachment and trespass. Under the Victorian *Gold Fields Act* of 1858, the office of Warden of

the Goldfields was established with jurisdiction to decide titles to claims, encroachments and trespass, forfeiture and abandonment of leases, with the right to appeal to the District Courts of Mines. The decisions of Mr Justice Molesworth, the first judge of the Victorian Court of Mines, had a major impact on the mining laws, not only in that State, but throughout Australia. (This acknowledgement was made in *The Public Acts of Queensland 1828–1936: Volume 6*, Butterworth & Co., 1937, p. 424).

Prior to separation of Queensland from New South Wales, a local mining court was established in Gympie. This was the first mining tribunal in what was to become Queensland, and was established under the provisions of the *Goldfields Act 1856* (New South Wales). This local court was replaced in 1874 by the Warden's Court.

With the consolidation of Queensland mining legislation in 1898, the Warden was given clear responsibility for matters relating to mining leases.

Under the Queensland *Coroners Act 1958*, the Warden was given jurisdiction in relation to any death in or about a mine site. In addition, the Warden conducted inquiries into serious or fatal accidents on any mining site in Queensland under the *Mines Regulation Act 1964* and the *Coal Mining Act 1925*.

The Wardens Court was usually constituted by one Warden (who was also a Magistrate) sitting alone. However, in fatal and accident inquiries the Warden was assisted by four reviewers experienced in the mining industry. In such matters, hearings were conducted as near to the accident site as possible.

Among the many coronial matters and inquiries presided over by Wardens were those relating to the disasters in the Moura district. Since 1975, there have been three mining disasters in that area with the loss of 36 lives: the Kianga Mine in 1975, Moura No. 4 Mine in 1986, and the most recent – Moura No. 2 mine – in 1994. In that disaster, eleven miners died as the result of an explosion on 7 August 1994.

The Moura No. 2 Fatal Accident Inquiry was presided over by Mining Warden and Coroner, Mr FW Windridge. He was assisted by "four persons having practical knowledge and skills in the mining industry who were not connected with the coal mine where the accident occurred". The report of the Inquiry was dated 18 December 1995.

The Wardens Court continued to inquire into serious and fatal accidents until the Court was abolished in 2001. However, the jurisdiction of the Wardens Court in relation to claims, compensation, and lease applications was transferred to the newly-created Land and Resources



Tribunal in 2000. Mr Frank Windridge, who had conducted the Moura No. 2 Inquiry, was appointed Mining Referee of the Land and Resources Tribunal.

In 2007 the jurisdiction of the Land and Resources Tribunal was transferred to the Land Court, where Mr Windridge continued in the role of Judicial Registrar until his retirement in 2008.

Mr Windridge was the last Mining Warden in Queensland. He commenced his judicial career as a Stipendiary Magistrate and Mining Warden at Longreach in 1983 and performed the roles of Mining Warden, Magistrate, and Coroner in that time. The recommendations in the Moura No. 2 Inquiry caused changes to training and licensing of coal miners in Queensland and continue to have a beneficial effect across all facets of large underground and open-cut mining operations.

Mr Windridge's judicial career and his extensive knowledge of the mining legislation and mining matters generally, were acknowledged in the Annual Report of the Land Court 2008 - 2009.

### **Retirement of the Honourable Justice John Muir**

The Honourable Justice JDM Muir, a Judge of Appeal, Supreme Court of Queensland, retired on 26 December 2014.

Justice Muir served as a Judge in the trial division of the Supreme Court of Queensland from 1997 until 2007 when he was appointed to the Court of Appeal. Justice Muir was a Member of the Land Appeal Court for the Southern District from 1998 to 2000.

The Land Appeal Court handed down many significant decisions during Justice Muir's term as a Member of the Court. Of particular importance were decisions relating to various aspects of the award of compensation for the compulsory acquisition of land including *Heavy Lex No 64 Pty Ltd v Chief Executive, Department of Transport* (2001) 22 QLCR 177 where the Land Appeal Court clarified the principles applicable to disturbance claims in compensation proceedings under the *Acquisition of Land Act 1967*. Justice Muir's judgment in that case continues to be frequently cited.

In addition during that period the Land Appeal Court dealt with many difficult cases relating to revenue valuations.

Justice Muir's guidance and legal acumen were a great asset to the Land Appeal Court during his period of office on that Court. We thank him most sincerely for his contribution and for his continuing support for the Land Court since that time.

## Retirement of Judicial Registrar Mr BR O'Connor

The Judicial Registrar of the Land Court, Mr Barry Richard O'Connor, retired on 2 January 2015. Mr O'Connor was appointed Judicial Registrar in October, 2001 having acted in that position since April 2001. He was the first person to hold the position, which had been created under the *Land Court Act 2000*.

Prior to his appointment as Judicial Registrar, Mr O'Connor held a number of positions in the Department of Lands/Department of Natural Resources – Principal Legal Officer, Director, Government Lands and Legal Counsel. During that period Mr O'Connor also lectured in the Valuation Diploma course (1991-1994), completed an LLM at Queensland University of Technology (1995-1998) and prepared a Report which led to the enactment of the *Land Court Act 2000* and the *Land Court Rules 2000*.

The principal role of the Judicial Registrar is to conduct the Land Court's alternative dispute resolution (ADR) program, either by way of preliminary conference or mediation. It is widely recognized that the Court's ADR program has been very successful enabling the Court to manage its case load in an effective and timely manner and to the general satisfaction of litigants. The success of the role is largely due to Mr O'Connor who developed the requisite procedures to be adopted by the parties and applied his dispute resolution skills to deal quietly and unassumingly with a very large caseload.

Mr O'Connor also made a significant contribution to the work of the Land Court in other respects. As well as conducting the ADR program he carried out the following duties:

- determined compensation for the grant or renewal of mining leases under the *Mineral Resources Act 1989*;
- provided a review of major Land Court cases to the Annual Valuation conference conducted by the Property Law Institute, from 2002 to 2014;
- edited the Land Court reports 2001 - 2014;
- assisted in moots for students undertaking university valuation courses;
- developed the Court's intern programme for QUT law students and monitored the students' progress, from 2009 – 2014.

We thank Mr O'Connor wholeheartedly for his invaluable service in all these tasks. As the inaugural Judicial Registrar he established the position on firm foundations and developed it to the point where it is at the forefront of the services which the Land Court provides to litigants.

## Members and Judicial Registrar of the Land Court

<b>President</b>	Carmel Anne Catherine MacDonald BA, LLB, LLM
<b>Acting President</b>	Paul Anthony Smith BA, LLB (from 15 September 2014 to 24 October 2014)
<b>Members</b>	Paul Anthony Smith BA, LLB Wayne Lindsay Cochrane BEcon, B Ed, MSc William Angus Isdale LLB, MPubAdmin
<b>Part-time Member</b>	Mark Douglas Evans LLB (Hons) (from 17 August 2014 to 16 August 2016) reappointed pursuant to s 17 of the <i>Land Court Act 2000</i> )
<b>Judicial Registrar</b>	Barry Richard O'Connor LLB, LLM (on leave from 8 August 2014 - resigned 2 January 2015) Graham Joseph Smith LLB, Grad Dip Leg Prac, BBus, LLM, API, CPV (appointed 27 April 2015)

### Acting Judicial Registrars

Letitia Ann Farrell LLB, BBus(Acc) (Hons) (from 15 September 2014 to 21  
November 2014)  
Graham Joseph Smith LLB, Grad Dip Leg Prac, BBus, LLM, API, CPV (from  
24 November 2014 to 30 January 2015)

### Appointment of new Judicial Registrar

Mr Graham Joseph Smith was appointed Judicial Registrar of the Land Court from 27 April 2015. He had previously acted as Judicial Registrar from 24 November 2014 to 30 January 2015.

Mr Smith comes to the position of Judicial Registrar with qualifications, skills and professional experience that are ideally suited to the role. He is a solicitor of some 25 years standing who has practised extensively in the Land Court. He is also a certified practising valuer and a nationally accredited mediator.

We welcome Mr Smith to the Land Court and look forward to a long and productive working relationship with him.



# Jurisdiction

The Land Court is a court of record of the State of Queensland and has wide ranging jurisdiction, unlimited as to amount, conferred by the Acts identified 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 and other resource 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 Court is not bound by strict rules of evidence. Land Court Members are judicial officers appointed by commission and have all 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 Division and the General Division. A Member of the Land Court may sit as a member of the Cultural Heritage Division or the General Division as nominated by the President.

Legislation giving the Land Court and Land Appeal Court jurisdiction as at 30 June 2015:

- *Aboriginal and Torres Strait Islander Communities (Justice, Land and Other Matters) Act 1984*
- *Aboriginal and Torres Strait Islander Land Holding Act 2013*
- *Aboriginal Cultural Heritage Act 2003*
- *Aboriginal Land Act 1991*
- *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 2010*

- *City of Brisbane Regulation 2012*
- *Environmental Offsets Regulation 2014*
- *Environmental Protection Act 1994*
- *Foreign Ownership of Land Register Act 1988*
- *Forestry Act 1959*
- *Fossicking Act 1994*
- *Geothermal Energy Act 2010*
- *Greenhouse Gas Storage Act 2009*
- *Housing (Freeholding of Land) Act 1957*
- *Land Act 1994*
- *Land Regulation 2009*
- *Land Court Act 2000*
- *Land Valuation Act 2010*
- *Local Government Act 2009*
- *Local Government Regulation 2012*
- *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*
- *Soil Conservation Act 1986*
- *State Development and Public Works Organisation Act 1971*
- *Sugar Industry Act 1999*
- *Surat Basin Rail (Infrastructure Development and Management) Act 2012*
- *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*
- *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 significant changes to the jurisdiction of the Land Court and Land Appeal Court occurred in 2014-15:

- The *Aboriginal and Torres Strait Islander Land (Providing Freehold) and Other Legislation Amendment Act 2014* came into force during 2014/2015. This Act amended the *Aboriginal Land Act 1991* and the *Torres Strait Islander Land Act 1991* by inserting new freeholding provisions and providing the Land Court with limited jurisdiction in relation to that process.

The *Aboriginal and Torres Strait Islander Land (Providing Freehold) and Other Legislation Amendment Act 2014* also repealed the *Aurukun and Mornington Shire Leases Act 1978* which had previously provided limited jurisdiction to the Land Court.

- The *Environmental Offsets Act 2014* and *Environmental Offsets Regulation 2014* became operational during the 2014/2015 financial year. The *Environmental Offsets Act 2014* introduced a coordinated state wide environmental offsets framework. The *Environmental Offsets Regulation 2014* confers a new jurisdiction on the Land Court to hear appeals where the administering authority does not agree with the offset proposals submitted by an applicant seeking to undertake a resource activity.
- On 1 October 2014 the provisions of the *State Development, Infrastructure and Planning (Red Tape Reduction) and other Legislation Amendment Act 2014* came into force. With respect to its effect on the Land Court, the Act repealed the *Racing Venues Development Act 1982*. The *Racing Venues Development Act 1982* had provided limited jurisdiction to the Land Court to determine the unimproved value of certain parcels of land earmarked for racing venues.
- During the 2014/2015 financial year the *Land Act 1994* and *Land Regulation 2009* were amended by the *Land and Other Legislation Amendment Act 2014* and the *Land Amendment Regulation (No 1) 2014*. Effectively the amendments transferred the jurisdiction to determine the purchase price for tenure conversions (such as applications to convert leasehold land to freehold) and the statutory authority to appeal to the Land Court over certain compensation decisions, from the *Land Act 1994* to the *Land Regulation 2009*.

The right to appeal to the Land Court against the allocation of rental categories has now been removed from both the *Land Act 1994* and the *Land Regulation 2009*.

- On 5 May 2015 Justice Philip McMurdo handed down his decision in the matter of *BHP Billiton Mitsui Coal Pty Ltd v Isdale and Others* [2015] QSC 107. His Honour found that referrals to the Land Court of applications for new or extended mining leases under the *Mineral Resources Act 1989* and *Environmental Protection Act 1994* were not proceedings but administrative functions

of the Court. Particularly His Honour noted that the Land Court does not make a final decision with respect to these referrals but makes a recommendation for the consideration of the applicable Minister.

In effect this decision cast doubt upon the applicability of many sections of the *Land Court Act 2000* and the Land Court Rules 2000 to referred matters, given that the bulk of these provisions apply to proceedings before the Land Court. In particular the applicability of section 35 *Land Court Act 2000* guaranteeing immunity to Judicial Officers was put in question

In a bid to clarify the situation, the *State Development and Public Works Organisation and Other Legislation Amendment Act 2015* was passed and assented to on 22 July 2015. This Act provided that the immunity provisions in the *Land Court Act 2000* apply to Judicial Officers whilst exercising administrative functions. The amendment Act also provides for new Rule and Regulation making powers for the Land Court to deal with its administrative functions.

## Land Court Caseload

As at 1 July 2014, there were 402 cases awaiting determination by the Land Court. During the reporting period, 593 new matters were filed in the Land Court registry. 666 matters were finalised with the result that there were 329 cases awaiting determination as at 30 June 2015.

The number of new matters filed in the Land Court this year (593) decreased by 105 or 15% as compared with the 2013-14 reporting year (698). The reduction was most marked in the valuation and acquisition areas which fell by 29% (152) and 70% (12), respectively. It is thought that the decline in valuation appeals was caused by general stability in property market valuations. Last financial year's 100% increase in acquisition matters was not repeated, perhaps because of a decline in new infrastructure projects.

Interestingly mining and environmental matters increased by 54% (59) and 62.5% (10) respectively this financial year when compared with last financial year. It would appear from this increase that mining companies are stepping up their activities.

## Types of Cases

### *Land Valuation Act 2010*

The unimproved or site value of land as determined under the *Land Valuation Act 2010* is 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 filed in the Land Court each year.



In 2014-15, 373 valuation appeals under the *Land Valuation Act 2010* were lodged in respect of the unimproved or site values of land throughout the State and 398 were finalised. Most valuation cases were resolved by or following alternative dispute resolution processes. Usually the more complex or contentious cases proceed to hearing.

### *Mineral Resources Act 1989*

These are referrals under the *Mineral Resources Act 1989* of applications and objections for mining tenements and claims for compensation relating to the grant or renewal of such tenements.

Determinations of applications for and objections to mining claims or leases can be complex and time consuming. One complex matter required several sitting weeks.

Many of the compensation cases were dealt with on the papers without an oral hearing.

During 2014-15, 167 matters were lodged under this legislation (an increase of 54%) and 193 were finalised.

### *Environmental Protection Act 1994*

These are objections and appeals in relation to environmental issues related to mining, petroleum and gas tenures. During 2013-14, 26 objections or appeals were lodged and 21 were finalised.

### *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 Schedule 1 of the *Acquisition of Land Act 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 matter usually involve complex town planning, engineering, quantity surveying and valuation issues, with evidence from expert witnesses in those and other specialist disciplines. In 2014-15, 9 claims for compensation were filed, while 32 were finalised. Hearing of compensation cases usually involves several days, with the more complex cases taking several weeks.



## Local Government Regulation 2012; City of Brisbane Regulation 2012

These regulations enable local authorities to classify land into different categories for the purpose of levying differential rates, and provide for appeals to the Land Court against decisions by local authorities about the categorisation of land.

There were 15 appeals filed in the reporting year, and 14 appeals were finalised.

### Land Court Workload 2014-15

Types of Cases	Filed	Finalised	Active as at 30 June 2015
Land Valuation Act appeals	373	398	141
Valuation of Land Act appeals	Nil	2	Nil
Mineral Resources Act objections and compensation referrals	167	193	128
Environmental Protection Act objections and appeals	26	21	24
Acquisition of Land Act claims	9	32	23
Local Government Regulation appeals	15	14	11
Land Act appeals	Nil	4	Nil
Petroleum and Gas (Production and Safety) Act appeals	Nil	1	1
Water Act appeals	1	1	Nil
Other matters	1	Nil	1
<b>Total</b>	<b>593</b>	<b>666</b>	<b>329</b>

### Applications for Judicial Review

In *Dunn v Burtenshaw* (2010) 31 QLCR 156, the Land Appeal Court held that the Land Court's role in making a recommendation to the Minister about the grant of a mining lease, under the *Mineral Resources Act 1989*, is an administrative function. Accordingly, it was held by the Land Appeal Court, an appeal against such a recommendation does not lie to the Land Appeal Court because the recommendation is not a "decision" of the sort contemplated by s 64 of the *Land Court Act 2000*.

As a result of this decision, challenges to Land Court rulings and recommendations in respect of referrals under the *Mineral Resources Act* have been made in the Supreme Court, by way of application for judicial review. Two such applications were made in the reporting period.

## **Land Appeal Court**

The Land Appeal Court hears appeals from the Land Court and from the Land Tribunal established under the *Aboriginal Land Act 1991*. The Land Appeal Court also has limited original jurisdiction under the *Biological Control Act 1987* and the *Foreign Ownership of Land Register Act 1988*.

### **Membership of the Land Appeal Court**

The Land Appeal Court 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. By convention, the Supreme Court Judge 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.

The Land Appeal Court 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 pursuant to s 62(1) of the *Land Court Act 2000*. The Honourable Justice Peter Lyons was the Judge nominated for the 2013-14 financial year. The Central Judge, the Honourable Justice DVC McMeekin, the Northern Judge, the Honourable Justice DOJ North and the Far Northern Judge, the Honourable Justice JD Henry, are Members of the Land Appeal Court for those districts.

### **Land Appeal Court Proceedings**

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 for the evidence not previously being given.

There were 3 appeals lodged in the Land Appeal Court in 2014-15, compared to 9 appeals filed in 2013-14. Two of the appeals related to land in the Southern District and there was one appeal in the Far Northern District.

Nature of Appeals	2013-14	2014-15
Compensation ( <i>Acquisition of Land Act 1967</i> )	5	2
<i>Land Valuation Act 2010</i>	1	Nil
<i>Mineral Resources Act 1989</i>	1	1
<i>Water Act 2000</i>	2	Nil

Considering the number of matters dealt with by the Land Court each year, there are remarkably few appeals to the Land Appeal Court.

## Further Appeals

A party to a proceeding in the Land Appeal Court may apply for leave to 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 was one application for leave to appeal filed in the Court of Appeal during the reporting period.

Court of Appeal Filing Date	2013-14	2014-15
Applications for leave to appeal to Court of Appeal	2	1

One application for special leave to appeal (an acquisition of land case), has been filed in the High Court of Australia in the reporting period. The matter is *Moreton Bay Regional Council v Mekpine Pty Ltd* and the application for special leave to appeal is due to be heard by the High Court in the 2015/2016 financial year.

## Case Management

The Land Court has adopted a number of case management procedures:

- Appellants in revenue valuation appeals where the valuation is less than \$5 million are offered alternative dispute resolution through preliminary conferences. If the valuation is \$5 million or more, the appellant is generally only offered a preliminary conference by the Court in exceptional circumstances because the appellant will have had the opportunity to participate in an independently chaired objection conference, pursuant to the *Land Valuation Act 2010*. Preliminary conferences are usually conducted by the Judicial Registrar and have achieved considerable success (for further details, see below).

- Directions hearings are held in appropriate cases, with orders made seeking identification of issues, and the filing of expert reports addressing those issues.
- A court supervised mediation process is offered in the larger, more complex cases in an attempt to resolve or narrow the issues in dispute. This can result in substantial time and cost savings for the parties and the Court. Court supervised mediations may be conducted by a Member of the Court or the Judicial Registrar. If a Member convenes the mediation, that Member will not preside over any subsequent hearing of the matter, including an appeal to the Land Appeal Court.
- Each Member takes responsibility for case management of matters arising in specific geographical areas and conducts regular reviews of those matters.

## Regional Hearings

Although based in Brisbane, the Land Court also sits in regional areas of Queensland. Normally, a matter is dealt with in the district where the land the subject of the dispute is located. During 2014-15, the Court sat on 41 days outside Brisbane at the following centres:

- |                   |               |
|-------------------|---------------|
| • Atherton        | • Mareeba     |
| • Bowen           | • Maryborough |
| • Cairns          | • Mt Isa      |
| • Charters Towers | • Rockhampton |
| • Clermont        | • Southport   |
| • Coolangatta     | • Toowoomba   |
| • Dalby           | • Townsville  |
| • Gatton          | • Warwick     |
| • Georgetown      | • Yeppoon     |
| • Mackay          |               |

## 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 the 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. 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 *Land Valuation Act 2010* except in cases where the valuation is \$5 million or more. In those cases, the parties should have already participated in an objection conference process (chaired by an independent chairperson) in accordance with the legislation.

Preliminary conferences are generally not offered in cases with complex compensation issues or questions of law, or where there is need to consider detailed technical evidence, as 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 or the Judicial Registrar (see below).

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 the Judicial Registrar who has extensive experience in dispute resolution. Although preliminary conferences may also be conducted by a Member, that Member may not, without leave of the parties, preside over a hearing of the same matter. 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 the 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 all parties.

During the year, the Court conducted 179 preliminary conferences. 249 cases were finalised in 2014-15 as a result of conferences held during this and the previous reporting period.

## **Mediation**

Court supervised mediation is a process by which the parties participate, together with the assistance of a judicial officer, in systemically isolating disputed issues in order to develop options leading to a settlement. The Court does not consider that it is appropriate to offer case appraisal by a Member, in which a neutral evaluator attempts to assess the relevant strengths and weaknesses of each party's case and offers 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 monetary amounts. Court supervised mediations are conducted by a Member of the Court or the Judicial Registrar.

Thirty-five cases were mediated by Land Court Members or the Judicial Registrar and 12 matters settled as a result of Court supervised mediations held in this and the previous reporting year. A further 12 matters were finalised in this period as a result of court ordered mediations which were carried out externally. Even where settlement was not achieved, the issues were narrowed in most cases resulting in substantial resource benefits for the parties and the Court.

If a mediation is unsuccessful, the parties retain the right to have the matter 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.

## Land Court and Tribunal Registry

The Registrar of the Land Court, Deputy Registrars and other officers of the registry provide administrative support to the Land Court. The Registrar is responsible for the budget, resource management and administrative functions of the Court. The Registrar is also charged with keeping 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:

<b>Registrar:</b>	Mr Kevin Hayden
<b>Senior Deputy Registrar:</b>	Mr Jeffrey Hobson
<b>Senior Case Manager/ Office Manager:</b>	Ms Betty Lippiatt
<b>Deputy Registrars:</b>	Mr Chris De Marco (commenced 29 September 2014) Mrs Clare Gilbert (resigned 25 July 2014) Ms Diane Blewett Ms Elaine Yuille LLB (commenced 22 September 2014) Mr Gregory Grodecki LLB, Grad Dip Leg Prac
<b>Administrative Officers:</b>	Ms Glenda Jones Ms Terri Bastiani Ms Margaret Christison
<b>Research Officer:</b>	Ms Letitia Farrell LLB (Hons), BBus(Acc) (Hons) (maternity leave from 24 April 2015) Mr Chris Korab BA, JD, Grad Dip Leg Prac (acting appointment from 4 May to 26 June 2015) Mr Peter O'Sullivan LLB (Hons), BEcon (acting from 29 June 2015)

## **Retirement of Deputy Registrar Clare Gilbert**

Deputy Registrar Clare Gilbert retired on 25 July 2014.

Clare commenced her public service career in the State Reporting Bureau in 1968. She was appointed as an Administration Officer of the Land Court in 1995 and then as a Deputy Registrar in 2008 in which role she assisted the former President, Mr JJ Trickett, until 2009. In recent years, Clare was Deputy Registrar to Mr B O'Connor, the former Judicial Registrar of the Court.

The President and Members of the Court place on record their great appreciation of Clare's hard work and professional service to the Court.

## **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. The Land Court Reports (known as the Crown Land Law Reports from 1859 to 1974) extend back to the first constitution of the Court in 1898. .

Almost all decisions of the Land Appeal Court and Land Court since 1990 are available online at:

[www.landcourt.qld.gov.au/decisions.asp](http://www.landcourt.qld.gov.au/decisions.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](http://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 attended legal and professional conferences and seminars.

In July 2014 Mr Cochrane attended the Australian Environmental Law conference in San Sebastian, Spain.

Mrs MacDonald attended the International Bar Association annual conference in Tokyo from 19 – 24 October 2014.

In June 2015 Mr Paul Smith attended an international mediation conference in Salzburg, Austria and later attended the Upper Tribunal (Lands Tribunal) Royal Courts of Justice in London and the Supreme Court of Denmark in Copenhagen.

Members used their allowances for these continuing education and development purposes.

Mr O'Connor, Mr Graham Smith and Ms Letitia Farrell attended the annual conference of the Australian Property Institute on the Gold Coast in November 2014.

## **Assistance to Universities and the Professions**

### **Moots**

During the year, Mr Paul Smith presided over moots held as part of the Queensland University of Technology (QUT) Shine Torts Moot competition.

### **Internship – Final 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 2015. The internship and associated evaluation count as an elective unit towards the law degree. Whilst at the Land Court, the student was mentored by the Research Officer and Judicial Registrar.

The Land Court has been participating in the QUT internship program since 2010. It has proven to be most worthwhile for the student, the QUT supervisors and the Court.

## **Publications and Lectures**

In July 2014, Mr O'Connor, as Judicial Registrar, presented a paper to the Australian Property Institute reviewing major valuation and related cases from the previous 12 months.

In August 2014 Mr Paul Smith delivered a paper on the Jurisdiction of the Land Court at a Land Access Forum in Brisbane.

In June 2015 Mr Paul Smith chaired a session and delivered a paper on mediation at the international mediation conference he attended in Salzburg.

## **Visits from Chinese Delegations**

On 4 September 2014 and 4 December 2014 the Land Court hosted two separate delegations from China. The delegations were from the Shanxi Provincial Department of Land Resources and the Guangxi Land Resource and Mining Council. Members Smith, Cochrane and Isdale met with both delegations and provided information about Queensland's Crown land system, valuation of land and related taxes, and how cases relating to mining and land interests are determined by the Land Court.

## **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 library committee comprising Mr Paul Smith, Mr Graham Smith, the Registrar, the Research Officer and the Librarian supervise the library collection and co-ordinate the preparation and printing of the volumes of the Land Court Reports, of which the Judicial Registrar is the editor.



## Finance

The funding for the Land Court is provided by the Queensland Government through the Department of Justice and Attorney-General. 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 2014-15 financial year are shown in the table below. The expenses exclude Members' salaries and allowances which are appropriated separately.

<b>Operating Expenses 2013-2014</b>	<b>\$</b>
Employee Expenses	1,038,430
Supplies and Services	408,307
Depreciation and amortisation	3,721
<b>Total Operating Expenses</b>	<b>1,450,459</b>

## Accommodation

The Land Court is located in the Brisbane Magistrates Court building, 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.

---

Land Court of Queensland  
Annual Report  
2014-2015

Land Court of Queensland  
Level 8, 363 George Street  
Brisbane QLD 4000  
Australia  
GPO Box 5266  
Brisbane QLD 4001

Email: [landcourt@justice.qld.gov.au](mailto:landcourt@justice.qld.gov.au)  
Website: [www.landcourt.qld.gov.au](http://www.landcourt.qld.gov.au)  
Telephone: (07) 3247 9268  
Facsimile: (07) 3247 4635

---