



Land Court of Queensland

Annual Report 2008–2009



LAND COURT OF QUEENSLAND

30 October 2009

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 second Annual Report on the operations of the Land Court for the year ended 30 June 2009.

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

Carmel MacDonald
President



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Introduction

This is the second independent annual report on the operations of the Land Court of Queensland. As explained in the first annual report, prior to the enactment of the *Land Court and Other Legislation Amendment Act 2007*, 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. The history of the Court is set out briefly in the previous annual report. As the Land Court has been in existence for over one hundred and ten years and no formal history of the Court has been written, it is proposed to document parts of that history in this and forthcoming annual reports. This report records the Membership of the Court since its inception.

Full Time Members of the Land Court from January 1885

The Land Board, consisting of two Members, was constituted by *The Crown Lands Act 1884*. The Land Court, consisting of three Members, was substituted for the Land Board by *The Land Act 1897*, as from 1 March 1898. *The Land Act and Other Acts Amending Act 1937* provided for the Governor in Council to designate one of the Members as President of the Land Court. The *Land Acts and Other Acts Amendment Act 1959* provided for the appointment of up to six Members, including the President.

The Land Court was preserved by the *Land Act 1962* and continued by s.521 of the *Land Act 1994*. The Land Court is now constituted by the *Land Court Act 2000*.

The full-time Members of the Land Court since inception are listed below:

Members

DESHON, Edward	01.01.1885	to	04.12.1889
SWORD, Thomas Stevenson	01.01.1885	to	06.02.1911
TULLY, William Alcock	04.12.1889	to	31.03.1901

HUME, Walter Cunningham	01.03.1898	to	30.06.1901
HEENEY, Francis Xavier	01.04.1901	to	31.01.1923
WOODBINE, Francis William	01.07.1901	to	06.02.1911
KIDSTON, William	07.02.1911	to	27.08.1919
WILSON, Walter Frederick	10.02.1911	to	25.10.1911
SCOTT, William James	02.11.1911	to	20.11.1913
SHANNON, Patrick William	05.01.1914	to	06.09.1937
HARDACRE, Herbert Freement	23.10.1919	to	07.03.1931
COYNE, John Henry	01.08.1923	to	12.06.1926
PAYNE, William Labatt	01.07.1926	to	19.12.1937
DESHON, Arthur Popham	23.07.1931	to	27.12.1946
SHAW, James Harry	15.02.1932	to	19.05.1944
CALLAGHAN, John Lawrence	22.06.1944	to	21.01.1952
STEWART, Charles Edward	01.01.1947	to	13.10.1953
McLEAN, William Malcolm	31.01.1952	to	28.08.1960
LUCY, John Patrick	09.11.1953	to	05.12.1959
WRIGHT, Percy Frederick	18.01.1960	to	31.01.1973
SMITH, Walter Frederick Gordon	18.01.1960	to	31.01.1973
HARVEY, John Percival	18.01.1960	to	10.05.1962
TENNANT, John Patrick	15.09.1960	to	09.04.1975
DODDS, Stuart	01.02.1961	to	31.07.1976
SUTHERST, Edward	11.05.1962	to	20.05.1972
McDOWELL, Gordon Ellison	11.09.1972	to	05.10.1978
BARRY, Daniel John	18.06.1973	to	28.07.1989
JOHNSTON, Melville Alexander	12.09.1974	to	15.07.1978
MILNE, Joseph Spence	01.02.1977	to	06.12.1978
CARTER, Charles Henry	28.08.1978	to	27.08.1994
HEFFERNAN, Brian	25.09.1978	to	08.09.1984
WHITE, Donald McAllister	<i>Acting</i> 30.08.1984	to	21.10.1984
	22.10.1984	to	17.07.1993
WENCK, Robert Edward	01.02.1990	to	31.01.2005
TRICKETT, James John	28.01.1992	to	26.07.1996
SCOTT, Robert Peter	05.06.1995	to	08.09.1995
	12.02.1996	to	
CARTER, Charles Henry	28.01.1997	to	28.01.2000
DIVETT, Neil Graham	28.01.1997	to	09.07.2005
MacDONALD, Carmel Anne Catherine	30.07.2001	to	31.07.2008
JONES, Richard Stephen	14.02.2005	to	
SMITH, Paul Anthony	21.09.2007	to	

Presidents

Payne, William Labatt	20.12.1937	to	5.9.1960
WRIGHT, Percy Frederick	15.9.1960	to	31.1.1973
SMITH, Walter Frederick Gordon	1.2.1973	to	28.7.1989
BARRY, Daniel John	29.7.1989	to	17.7.1993
WHITE, Donald McAllister	18.7.1993	to	10.11.1995
TRICKETT, James John	27.1.1996	to	31.7.2008
MacDONALD, Carmel Anne Catherine	1.8.2008	to	

Death of Mr Charles Henry Carter LFAPI

I regret to report the death of former Member of the Land Court, Mr Charles Henry (Harry) Carter LFAPI on 20 August 2008.

Mr Carter was appointed as a Member of the Land Court on 28 August 1978 after a distinguished career in the valuation profession, both in the public and private sectors. He was President of the Queensland Division of the Australian Property Institute in 1974 and 1975. For his services to the profession, Mr Carter was made a Life Fellow of the Institute in 1996.

As a Member of the Court, Mr Carter sat on a number of important cases and made a most significant contribution to the work of the Land Court, and the Land Appeal Court.

Mr Carter retired on 27 August 1994 after sixteen years on the Land Court bench. However, he was persuaded to return for a further period of three years from 1997 to 2000.

The Court expresses its condolences to Mr Carter's family.

Members and Judicial Registrars of the Land Court

President James John Trickett BA LLB FAPI FRICS (until 31 July 2008)
Carmel Anne Catherine MacDonald BA LLB LLM (from 1 August 2008)

Members Robert Peter Scott QDAH LLB
Carmel Anne Catherine MacDonald BA LLB LLM (until 31 July 2008)
Richard Stephen Jones LLB (Hons), AAPI, Cert. Real Estate Val.
Paul Anthony Smith, BA LLB

Judicial Registrars Barry Richard O'Connor LLB LLM
Francis William Windridge (until 16 July 2008)

Part-time Members (appointed pursuant to s.17 of the *Land Court Act 2000*):

Stephen Joseph Keim SC BA LLB (Hons) (until 9 May 2009)
Jean Hazel Dalton SC BA LLB (Hons) (until 9 May 2009)

Retirement of President

On 31 July 2008, the President of the Land Court, James John Trickett, BA LLB FAPI FRICS retired after sixteen and a half years on the Land Court bench, including twelve and a half years as President.

Mr Trickett was appointed as a Member of the Land Court on 28 January 1992, having previously been Valuer-General for Queensland since 1983. He was appointed President of the Land Court on 27 January 1996.

During Mr Trickett's stewardship as President, the *Land Court Act 2000* and the *Land Court Rules 2000* were enacted. For the first time in its history, the Court was established under its own Act rather than under the legislation governing the administration of State land. This reflected the changing broader role of the Land Court in the judicial process of the State.

Another very significant development during Mr Trickett's presidency was the transfer of almost all of the jurisdiction of the Land and Resources Tribunal to the Land Court in September 2007. The jurisdiction of the Land Court was expanded to include matters arising under mining and petroleum legislation, and cultural heritage and Indigenous land use agreements under cultural heritage legislation.

Mr Trickett's leadership of the Land Court consolidated and enhanced the reputation of the Court. On behalf of the Members and staff of the Land Court, I wish to place on record our most sincere thanks to Mr Trickett for his outstanding contribution to the Land Court both as a Member and long standing President.

Retirement of Judicial Registrar

16 July 2008 saw the retirement of Mr Frank Windridge. Mr Windridge began his judicial career when appointed as stipendiary magistrate and mining warden at Longreach in 1983. He later moved to Mt Isa as magistrate and warden from 1983 to 1988 and then became magistrate and warden at Brisbane from 1988 to 1990. In 1990, Mr Windridge's duties changed with the passing of the *Mineral Resources Act 1989* which converted the mining warden to a full-time role. He held one of two positions in Queensland and after the retirement of the northern warden, he was sole mining warden for the State of Queensland. Under the legislation which abolished the warden's jurisdiction and created the Land and Resources Tribunal, Mr Windridge was appointed mining referee of the Tribunal. After the functions of that Tribunal were merged with the Land Court in 2007, Mr Windridge continued on as a judicial registrar of the Land Court, maintaining his interest in all mining issues.

One of the significant highlights of Mr Windridge's judicial career was his conduct of the Moura Inquiry in 1995/96. His recommendations saw fundamental changes made to the training and licensing of coal miners in Queensland. This continues to have a beneficial effect across all facets of large underground and open-cut mining operations.

Although Mr Windridge's term as Judicial Registrar of the Land Court was brief, his extensive knowledge of the State's mining legislation was a valuable resource for the Land Court. I thank him for his contribution.

Jurisdiction

The Land Court is a court of record of the State of Queensland. It is not an administrative tribunal. It 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*
- ▶ *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 in 2008 - 2009:

- ▶ The *Sugar Industry Act 1999* was amended by the *Primary Industries and Other Acts Amendment Act 2008*. The office of the Sugar Industry Commissioner was dissolved and the jurisdiction relating to non-consent access rights across land was transferred to the Land Court (s.65).
- ▶ The jurisdiction of the Land Court under the *Aboriginal Land Act 1991* was expanded by the *Aboriginal and Torres Strait Islander Land Amendment Act 2008*. Additional jurisdiction includes:
 1. Appeals to the Land Court against a decision of the Minister to declare certain land to be not transferable land (ss.16E, 16F).
 2. Applications to the Land Court for forfeiture of private residential leases over transferred or granted land (ss.40Q, 40Y, 77Q, 77Y) and appeals against decisions about the amount of compensation claimed by the lessee (ss.40X, 77X).
- ▶ Mirror provisions in the *Aboriginal and Torres Strait Islander Land Amendment Act 2008* similarly expanded the jurisdiction of the Land Court under the *Torres Strait Islander Land Act 1991*: sections 13E, 13F, 37Q, 37X, 37Y.
- ▶ The *Greenhouse Gas Storage Act 2009* conferred new jurisdiction on the Land Court in respect of
 1. Disputes about access rights to private land (ss.293, 294).
 2. Compensation liability for use of a public road (ss.307, 309) and for certain losses caused to the owners or occupiers of private or public land caused by the activities of a greenhouse gas authority holder (ss.321, 322).
 3. Appeals against certain Ministerial decisions (s.395).
- ▶ The *Revenue and Other Legislation Amendment Act 2009* abolished the taxpayer's right of appeal to the Land Court under the *Land Tax Act 1915*. Land tax appeals now lie to the Supreme Court under the *Taxation Administration Act 1991*.

Land Court Caseload

As at 1 July 2008, the Land Court had a caseload of 990 cases awaiting hearing. During the year a further 1,388 new matters were filed in the Land Court registry and 1,398 were determined. As at 30 June 2009, there were 980 matters awaiting determination.

The majority of cases unheard at 1 July 2008 were appeals against valuations for revenue purposes made by the Department of Natural Resources and Water. Revenue valuations are unimproved valuations made under the *Valuation of Land Act 1944* and are used by various authorities for local government rating, State land tax and rentals on State leasehold land. These cases consisted of:

- ▶ A large number of appeals against valuations of major shopping centres and Brisbane Central Business District properties where the parties have requested that the matters remain in abeyance pending the outcome of appeals to the Land Appeal Court and/or Court of Appeal.

The Land Appeal Court disposed of the relevant appeal during the 2008/2009 period. A subsequent appeal to the Court of Appeal had not been dealt with as at 30 June 2009 with the result that a significant proportion of the matters in this category remained in abeyance at the end of the reporting period.

- ▶ Groups of related matters where the parties were unwilling to proceed pending the outcome of settlement negotiations.
- ▶ Over 160 related appeals against valuations of subdivided land held by a major development company.

These appeals were disposed of in October 2008.

- ▶ A large number of appeals against valuations in western Queensland where values had increased by up to 400%. Case Management techniques were developed whereby the parties agreed that the matters be dealt with by the hearing of test cases to be followed by settlement negotiations in respect of the remaining cases and fast track hearings where the settlement negotiations failed. As at 1 July 2008, over 150 cases had been disposed of. During the 2008-2009 year, a further 241 cases were disposed of using these methods. It is anticipated that the remaining cases will be dealt with in the coming year.

The number of new matters filed in the Court increased by 397 or 40% in the year under review. The number of matters disposed of by the Court increased by 384 or 38%. While the increase in the number of matters disposed of is pleasing, it should be noted that the valuations of subdivided land and the western cases referred to above are included in the disposals. Much of the work relating to the disposition of those cases had occurred in the 2007-2008 year with the benefit of that work accruing in 2008-2009.

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 2008-2009, 1,131 revenue valuation appeals under the *Valuation of Land Act* were lodged in respect of the unimproved values of land throughout the State. 1,166 valuation appeals were disposed of. Most valuation cases were resolved by or following alternative dispute resolution processes, but the cases that proceeded to hearing were usually the more complex or contentious. Some hearings were completed in less than one day. However, it is not unusual for such hearings to occupy several days and sometimes 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 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 matters often involve complex town planning, engineering, quantity surveying and valuation issues with evidence from expert witnesses in those and other specialist disciplines. As preparation of such claims for hearing is usually lengthy, these cases are actively case managed by Land Court Members with a view to bringing them on for hearing as soon as is reasonable. In 2008-2009, 26 claims for compensation were filed, while 13 were disposed of. A number of cases have been set down for hearing in the next financial year. 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 Natural Resources and Water. Only those cases that are not resolved by that process proceed to the Land Court.

In 2008-2009, 6 Land Act appeals were filed in the Land Court, and 6 were disposed of. 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 are generally in respect of the liability of land to land tax and the entitlement to exemptions and concessions. In 2008-2009, 10 land tax appeals were filed, while 5 were disposed of.

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)). 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)).

Mineral Resources Act 1989

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

In 2008-2009, 196 applications were lodged under this legislation and 183 were disposed of.

Petroleum Legislation

7 appeals were lodged under the *Petroleum and Gas (Production and Safety) Act 2004* and 5 were disposed of.

Cultural Heritage Legislation

5 applications were brought pursuant to the *Aboriginal Cultural Heritage Act 2003* in respect of cultural heritage matters. 3 were successfully resolved.

Caseflow 2008-2009

Types of cases	Filed	Disposed
Revenue Valuation Appeals	1,131	1,166
Compensation Claims Land Acquisition	26	13
Land Act Appeals	6	6
Land Tax Appeals	10	5
Other	7	12
Cultural Heritage	5	3
Mining Applications and Compensation Claims	196	186
Petroleum Matters	7	5
Other mining matters	0	2
Total	1,388	1,398

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 M.J. White was the Judge nominated for the 2008-2009 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.

The Honourable Justice White completed a three year term as a Member of the Land Appeal Court on 30 June 2009. I wish to place on record the Court's appreciation for Justice White's role in the Land Appeal Court during that period. A number of extremely complex appeals under the *Valuation of Land Act 1944* were dealt with by the Land Appeal Court during Justice White's tenure. Justice White's input to the disposition of those matters, and indeed all the appeals dealt with by the Land Appeal Court during that period, was

invaluable. The Members of the Land Court join with me in thanking Justice White for her contribution to the Land Appeal Court.

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. In practice, further evidence is rarely admitted. 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 6 appeals lodged in the Land Appeal Court in 2008-2009, compared with 8 appeals in 2007-2008. Of particular significance was the disposal of an important revenue valuation appeal concerning a major shopping centre located at the Gold Coast.

The table below shows the number of appeals lodged for the years 2006-2007, 2007-2008 and 2008-2009. 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	2006-2007	2007-2008	2008-2009
Compensation (<i>Acquisition of Land Act 1967</i>)	1	1	1
<i>Land Tax Act 1915</i>	1	0	0
<i>Mineral Resources Act 1989</i>	N/A	0	1
<i>Petroleum Act 1923</i>	N/A	2	2
Revenue valuations (<i>Valuation of Land Act 1944</i>)	10	5	1
<i>Water Act 2000</i>	0	0	1

All appeals for the 2008-2009 year were heard in the Southern Land Appeal Court District. One appeal relating to land in the Far-northern district was transferred to and dealt with in the Southern district.

Appeals to Court of Appeal	2	3	5*
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* 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:

- ▶ 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.
- ▶ Regular callovers of compulsory acquisition compensation cases at least every 6 months.
- ▶ 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 other matters arising in specific geographical areas and conducts regular reviews in respect of those matters.

Regional Hearings

Although based in Brisbane, the Land Court also sits in regional areas of Queensland. The Court sat on 92 days outside Brisbane at the following centres:

- | | |
|---------------|---------------|
| ▶ Atherton | ▶ Gympie |
| ▶ Barcaldine | ▶ Hervey Bay |
| ▶ Beaudesert | ▶ Ingham |
| ▶ Biggenden | ▶ Longreach |
| ▶ Blackall | ▶ Mackay |
| ▶ Blackwater | ▶ Mareeba |
| ▶ Bowen | ▶ Murgon |
| ▶ Bundaberg | ▶ Nanango |
| ▶ Cairns | ▶ Quilpie |
| ▶ Caloundra | ▶ Redcliffe |
| ▶ Charleville | ▶ Rockhampton |
| ▶ Cooktown | ▶ Roma |
| ▶ Coolangatta | ▶ Southport |
| ▶ Emerald | ▶ Toowoomba |
| ▶ Gatton | ▶ Townsville |
| ▶ Gladstone | ▶ Warwick |

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. 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 1944*. 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. Successful preliminary conferences result in settlement and an outcome which is acceptable to both the parties.

During the year, 593 preliminary conferences were conducted. A significant number resulted in settlement.

Mediation

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 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 invariably 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 trained in mediation.

While the cases mediated during the year were few in number, the disposal rate was high. Resource benefits were substantial, saving the Court and parties considerable time and expense.

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.

During the year, 25 matters were mediated by a Land Court Member. Of those, 22 settled as a result of the mediation or soon thereafter. The successful mediations included a number of major commercial cases such as revenue valuation appeals concerning Central Business District properties.

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. Subject to the oversight of the President, 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 registry staff are:

Registrar:	Mr Peter Fernantzen (until 7 November 2008) Ms Katie Stride BA, LLB, MPub Ad (from 1 December 2008)
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
Case Support Officers:	Ms Glenda Jones Ms Terri Bastiani (seconded for part of the year) Mr Tony Cameron
Administrative Officers:	Ms Margaret Christison Ms Keren Plowman
Part-time Administrative Officers:	Ms Alison Templeton Ms Heather Clarke
Research Officer:	Ms Saskia Vanderbent BA, JD (Hons), GDLP (from 4 April 2009)

Retirement of Registrar

Mr Peter Fernantzen retired as Registrar of the Land Court on 7 November 2008. Mr Fernantzen was appointed Registrar on 27 March 2005. Prior to that date, Mr Fernantzen was a Deputy Registrar of the Court from 19 January 1988 when he worked principally as Deputy Registrar for former Member Mr RE Wenck and, more recently, for former President Mr JJ Trickett. Mr Fernantzen had been an officer in the Lands Department until his appointment as a Deputy Registrar of the Land Court.

Mr Fernantzen was a long serving and very valuable member of the Land Court registry staff. On behalf of the Members and Staff of the Land Court, I thank him for his hard work and loyal service to the Court.

New Position

A new position, Research Officer of the Land Court, was created in 2009. The Research Officer provides research assistance to the Members, assists in research and drafting in relation to legislative reform and court documents, assists in the preparation of the Land Court Reports for publication and provides general legal assistance to the Registrar.

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.

The decisions of the Land Appeal Court and Land Court are available online at

<http://www.landcourt.qld.gov.au/decisions>

As from 2007, selected decisions of the Land Appeal Court and Land Court have been reported in the Local Government and Environment Reports of Australia

From 2009, selected decisions of the Land Appeal Court and Land Court are available online at

<http://www.austlii.edu.au/au/qld>

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.

- ▶ Mrs MacDonald attended the annual Native Title conference in Melbourne in June 2009.
- ▶ Mr Scott attended the UIA (Union Internationale des Advocats) conference in Bucharest, Romania in October 2008.
- ▶ Mr Jones attended the annual Queensland and Environmental Law Conference in May 2009 and various seminars in Brisbane.

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 November 2008 and the annual conference of the Queensland Environmental Law Association in May 2009, as well as various seminars in Brisbane.

Assistance to Universities and the Professions

During the year, as in previous years, the Members and Judicial Registrar 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 and the former President, Mr Trickett, presided over the Interstate Moot between the winner of that Moot and the University of Technology Sydney.

Mr Jones presented a paper on expert evidence at the annual conference of the Australian Property Institute at the Gold Coast and a paper on the role and function of the Land Court at a professional development seminar in Brisbane.

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

In June 2009 a group of property professionals from the Philippines visited the Land Court. The visitors observed an alternative dispute resolution process and discussed matters of common interest with Members of the 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 small library committee comprising Mr Jones, Mr O'Connor, the Research Officer and Librarian co-ordinate the preparation and printing of the volumes of the Land Court Reports, of which Mr O'Connor is the editor. The Land Court Reports in bound volumes extend back to the first constitution of the Court.

Case Management System

With the enactment of the *Land and Other Legislation Amendment Act 2007*, the jurisdiction of the Land and Resources Tribunal was transferred to the Land Court on 21 September 2007.

As the Land Court and the Land and Resources Tribunal operated two separate case management systems, steps have been taken this year to combine the two systems into one new system, Caseworks. The new system has been introduced, with necessary modifications for Land Court requirements, and a large portion of the data has been transferred. Extensive staff training has been undertaken and while further work is needed to complete the process, the transition is well under way.

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 2008-2009 are shown in the table below. The expenses exclude Members' salaries and allowances which are appropriated separately.

Operating expenses 2008-2009	\$
Employee Expenses	989,566
Supplies and Services	1,166,604
Depreciation and amortisation	127,179
Total Operating Expenses	2,283,349

Accommodation

The registry of the Land Court is situated on Level 9 of 259 Queen Street as also are the Members' Chambers. The courtrooms and mediation rooms used by the Land Court are situated on Level 10 and are shared from time to time with several tribunals also located in the building.

Report on the Operations of the Land and Resources Tribunal 2008–2009

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 1999* 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.

There have been two (related) mining applications dealt with under these provisions in the period under review. Following negotiation, an agreement was reached between the parties which as at 30 June 2009 awaited execution by some of the parties.

Mrs MacDonald and Mr Smith were appointed as acting President and acting Deputy President respectively of the Land and Resources Tribunal from 6 November 2008 to 5 May 2009 for the purpose of dealing with those two matters.

**Land Court of Queensland
Annual Report
2008–2009**

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