

2019 – 2020

# Annual Report



LAND COURT  
OF QUEENSLAND



LAND COURT OF QUEENSLAND

Chambers of President FY Kingham

30 October 2020

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Dear Attorney

**Re: Land Court of Queensland Annual Report 2019-2020**

As required by s 77A(1) of the *Land Court Act 2000*, I provide you with the thirteenth annual report on the operations of the Land Court of Queensland.

Yours sincerely

President FY Kingham



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## President's Report



The impact of COVID-19 has been so all-consuming that, looking back, I find it hard to recall my plans for the year. I believe I expected 2019-20 to be a year of consolidation.

After 3 years of substantial institutional and procedural reform, the Land Court's active case management procedures are well established. The Court can now assess the efficacy of its procedures, with the benefit of some experience.

The performance reports demonstrate the Court is achieving its primary goals. The clearance rate continues to exceed the Court's ambitious target of 102.5%, this year by almost 5% at 107.39%. At the same time, the percentage of matters resolved by decision, rather than during a pre-hearing process, has plummeted from 20% in 2018-19 to 5% this year.

All Judicial Officers and staff played their part in securing this excellent result, which is an endorsement of the Court's procedural philosophy - early identification of issues, and timely and careful preparation of evidence, particularly from expert witnesses.

I am pleased that the Court's institutional reforms, have paid generous dividends this year. The Court, under the strong leadership of the Principal Registrar, has a small but proficient and specialist Registry staff, with an admirable work ethic and commitment to the Court's objectives. I have received feedback from parties and their representatives, who appreciated the professionalism of the Registry staff during the COVID-19 restrictions.

I appreciate the support for the Court's operations from the Executive Director, Julie Steel, and officers of the Supreme, District and Land Courts' Services.

Even before the pandemic, the Court was confronted by a significant change to its membership. Wayne Cochrane retired as a Member in December 2019. James McNamara was appointed as a Member in March 2020. Profiles of both appear in this report. I take this opportunity to thank Wayne for his lengthy service to the Court. I wish him the best for what I expect will be a lengthy, healthy, and enjoyable retirement devoted to family, friends, and fine wine and food.

Moving into 2020-21, the Court is harmonious and productive, with clear procedures which are driving timely outcomes. That is a strong foundation for taking the next step to embed more effective use of technology to enhance dispute resolution.



President FY Kingham

## Principal Registrar's Report



Last year I reported on the great work and achievements of the Registry team through their ongoing commitment to excellence in service delivery of the Land Court. This year is no different as we continue improving operations of the Court.

### Procedural Assistance Service

To further assist self-represented parties, we have set up a procedural assistance workspace in one of our interview rooms. This initiative will provide self-represented parties with a quiet space to prepare and access information related to their needs.

### Annual conference

The Land Court and Referring Agencies Annual Conference was held in November and, as in previous years, was a perfect opportunity to exchange and share the latest approaches to the way in which the referring agencies and the Court deliver services to people in Queensland.

Presentations included:

- GeoResGlobe, an online, interactive experience to view Queensland's mining and exploration data;
- the legislative grounding for Environmental Authorities and how the Department of Environment and Science makes them enforceable;
- the Land Court's plans for 2019-2020; and
- developments and observations on relevant cases from Land Court Members and the Judicial Registrar.

All in all, a very successful annual conference.

### Reconciliation Action Plan

In September 2019, the Land Court took its first steps towards developing a Reconciliation Action Plan. The result was a framework to identify key action items, deliverables, timelines, and responsibilities.

In December 2019, I wrote to Reconciliation Australia and Reconciliation Queensland advising them that the Land Court had commenced the process of developing a Reconciliation Action Plan (Innovate phase).

Work is continuing with this important initiative of the Court, and I look forward to the coming months in which I will be working with my colleagues and stakeholders to bring the Innovate RAP to fruition.

### Professional development

Throughout the year, the entire Land Court Registry participated in mediation training provided by the Dispute Resolution Branch, at levels appropriate to their positions. This training has become integral to the work we do, and engagement with the Alternative



Dispute Resolution Panel is offered as an alternative to coming to Court.

The skills, techniques, and expert guidance on application of the mediation process provided by the training has enhanced the capabilities of all Registry staff.

### Registry

As part of the Registry's commitment to improving internal processes, the focus this year has been on the development and implementation of a detailed Registry manual. The manual details the responsibilities and processes associated with each role and provides certainty about the way things are done, thereby ensuring that we have a consistent approach to delivering services to people in Queensland.

### Culture

Last year I spoke about strengthening our brand, mentoring staff, nurturing talent, and pulling together. This year has been a continuation of that philosophy with a genuine willingness to ensure that we work together to

make things happen. We get things done, and for that I am very thankful to lead such a wonderful group of professional people.

### Finance

Operating Expenses 2019-20	Amount
Employee Expenses	\$ 1,284,694.25
Supplies and Services	\$ 289,563.73
Depreciation	\$ 31.38
Total Operating Expenses	\$ 1,574,289.36

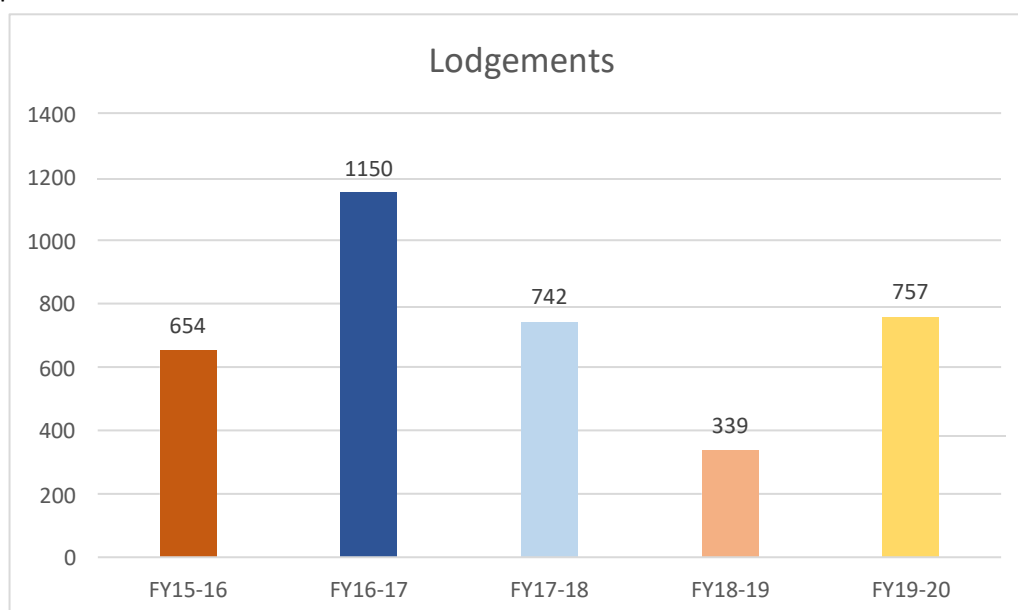
Principal Registrar DM Campbell



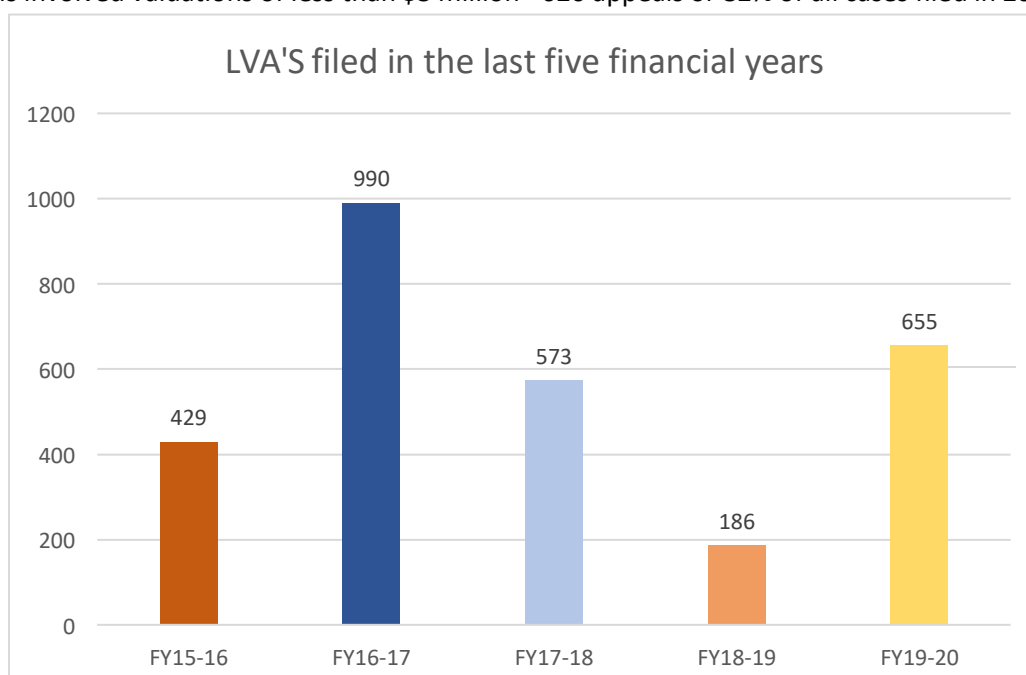
## Performance Reporting

### Lodgements

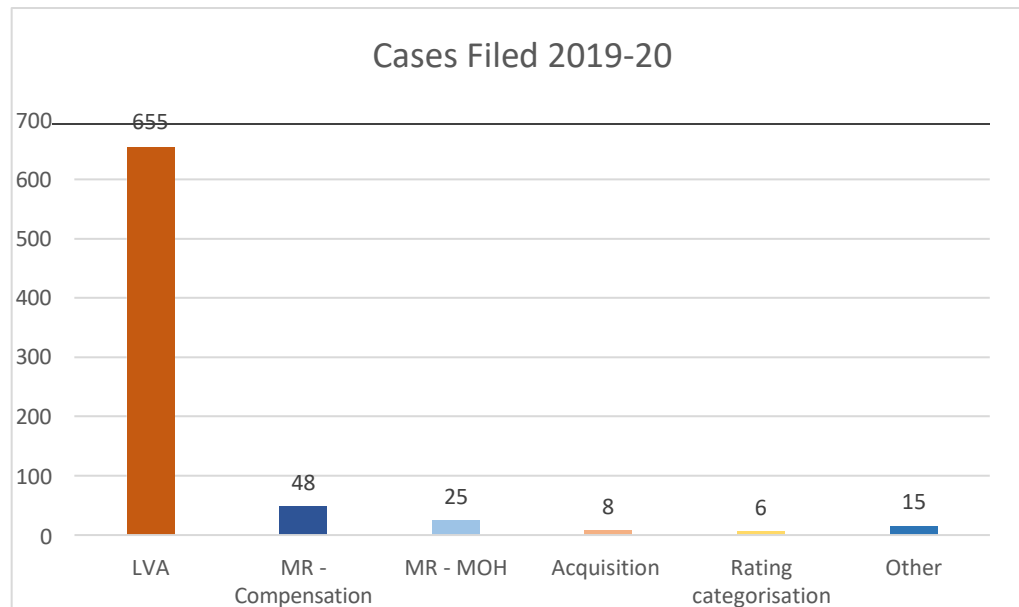
The Court's jurisdiction is diverse involving claims and appeals that may be brought under many Acts dealing with land and resources issues. However, the overwhelming bulk of the Court's caseload is comprised of appeals against statutory land valuations and cases involving mining projects and associated environmental approvals. A significant change in the number of cases or their complexity, can have implications for the statistics and for the resources of the Court. In 2019-2020, 757 cases were filed, up from 339 cases filed in 2018-19.



The increase in new filings is primarily due to an increase in land valuation appeals. Predominantly those appeals involved valuations of less than \$5 million - 620 appeals or 82% of all cases filed in 2019-20.

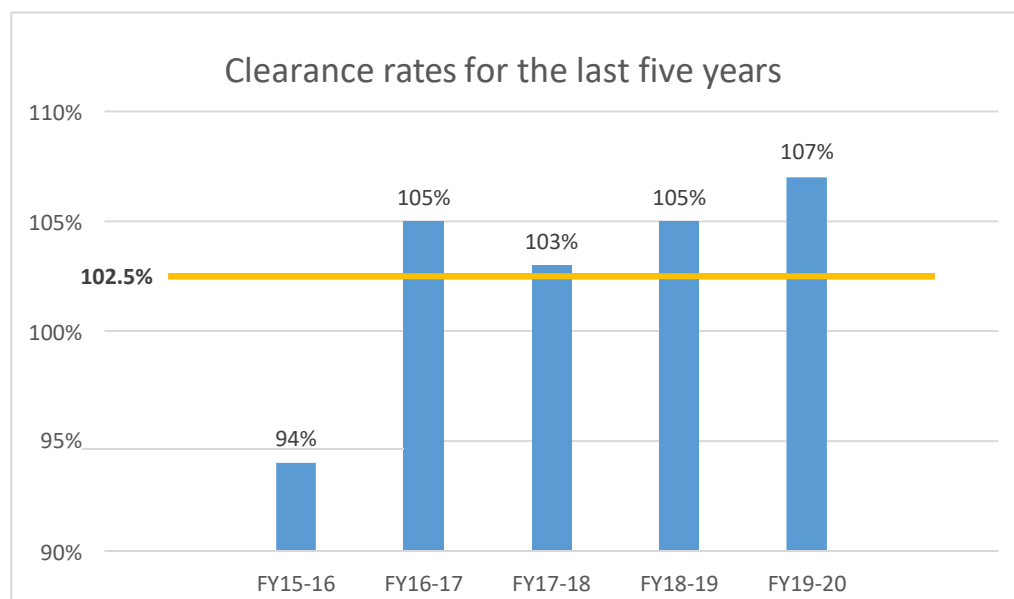


In other jurisdictions, 73 new cases were filed in the resources jurisdiction. Of those, 48 (66%) were compensation cases and 25 (34%) were mining objection hearings. There were 8 new claims for compensation for acquisition of land, and 6 rating categorisation appeals. The remaining 15 cases involved appeals against financial assurance decisions for mining projects, and cultural heritage matters. Whilst valuation appeals are the overwhelming majority of the filings, many are resolved in a very timely way and cases filed in other jurisdictions are more resource intensive, involving multiple issues and expert evidence.



### Clearance rates

The Court has set a target clearance range of between 97.5% and 102.5%. In the last four financial years the Court has exceeded the top end of that target range. In 2019-20, the Court achieved a clearance rate of 107.39%, with 757 cases filed and 813 finalised.





## Outcomes

The Court's clearance rates reflect timely resolution of cases, which is driven by its pre-hearing procedures which aim to achieve early outcomes, by agreement if possible.

The court set the following targets for finalisation outcomes:

- between 20% to 30% of cases will be determined before Court intervention
- between 40% to 60% of cases will be determined by agreement
- between 10% to 20% will be determined by a decision of the Court.

The Court met its target for matters determined without Court intervention, with 26% of matters resolving before any substantial pre-hearing process.

Importantly, the percentage of matters resolved by preliminary conference or mediation exceeded the target, with 69% of matters, mostly land valuation appeals, resolved in this way.

There was an increase in use of mediation by convenors from the Land Court ADR Panel and of the 7 matters settled by mediation, 6 were conducted by an ADR Panel Convenor. 2019-20 saw increased and more effective use of the CMEE process. Although its focus is not resolution, one of the 15 matters directed to CMEE resolved directly as a result of discussions in that process. The Court experienced the benefits of the CMEE in the other 14 cases – greater clarity in expert evidence and reduction in the matters in dispute between expert

witnesses. In 2020-21, the Court will commence a project to evaluate the contribution of CMEE's to the Court's objectives.

Finally, in 2019-20, the Court undertook a pilot of standard directions in land valuation appeals. This involves standard directions and time frames issued by the Registry unless the parties request a directions hearing. One aim was to reduce the number of directions hearings or reviews which resulted in standard outcomes. The other was to reduce the time taken for standard pre-trial steps to promote earlier resolution. The pilot commenced in the 2018-19 year and is ongoing. Although the case numbers involved are still quite small, the results are encouraging against both objectives. The Court will report the outcomes of the pilot in the 2020-21 Annual Report.

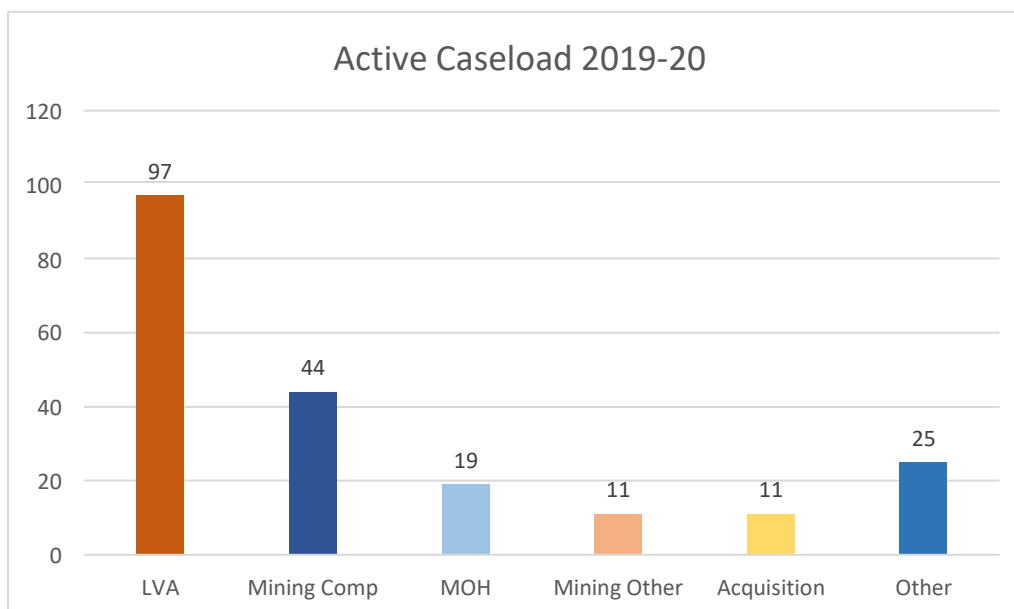
## Timeliness of judgments

The Court aims to deliver judgments within 3 months of final hearing or submissions, whichever is the later. In 2019-20, the Court delivered 37 of its 43 judgments (86%) within 3 months. The remaining 6 judgments were all delivered within 5 months, with 3 of them only slightly exceeding the 3 month target.

At the end of 2019-20, there were 3 judgments pending. All have since been delivered and there are no outstanding judgments for matters heard in 2019-20.

## Active caseload

At the end of 2019-20, there were 207 active files (pending caseload), of which 136 are less than 2 years old (65.7%).



## Active cases less than 2 years

The Court has set the following targets for timeliness across the entire caseload:

- 3 out of 4 cases will be finalised between 6 and 9 months after lodgement
- 9 out of 10 cases will be finalised between 9 and 12 months after lodgement
- on average, cases will be finalised between 6 and 9 months after lodgement.

As in 2018-19, the Court met the first and third of those targets for cases filed in 2019-20 but did not meet the second.

### Active cases greater than 2 years old

The backlog of files greater than 2 years old sits at 71 cases. That is due, largely, to 51 matters (71%) which comprise 2 groups of matters.

The first group (34 matters) are land valuation appeals awaiting the outcome of four land valuation appeals, which the parties identified would provide guidance for settlement discussions. The four test appeals have been heard and a decision in them is pending at publication of this report.

The second group (18 matters) are rating categorization appeals that were awaiting a Court of Appeal decision. The Court of Appeal recently delivered its decision and the parties to the pending appeals are actively seeking to resolve them.

Of the remaining cases greater than 2 years old, 11 are mining resources cases. Three files involve the New Acland Mine Stage 3 Project (which is awaiting the outcome of an appeal to the High Court). One is a complex compensation claim, which has since resolved. The others are being actively case-managed and, in most cases, the parties are working to resolve them without a hearing.

### Self-represented litigants

In mining resources cases, 41% of applicants, and 57% of respondents were self-represented. Compared with 2018-19 figures. This represents a reduction in self-representation for both applicants and respondents.

In land valuation appeals in 2019-20, there was a significant decrease in the numbers of appellants who were self-represented; 21% down from 60% in 2018-19. This lower level of self-representation reflects the valuation program which included the Brisbane CBD for the 2019-20 appeals. The level of self-representation by the Valuer-General was up at 88% (compared with 76% in 2018-19). Generally, the Valuer-General is represented by valuers in the preliminary conference. If the matter does not resolve there, they may then engage an in-house or external lawyer.

The continuing high level of self-representation across all jurisdictions presents a particular challenge for the Court. Many parties are regionally located with some limitations in access to information and to the internet. The Court's Procedural Assistance Service, which the Principal Registrar has reported on, is intended to meet the procedural needs of the Court's parties, while managing the significant call on the Registry's resources to service those needs.

## Appeals and Judicial Review

### Rights of appeal or review

A party to a proceeding in the Land Court can appeal the decision to the Land Appeal Court. The LAC also has limited original jurisdiction under the *Biological Control Act 1987* and *Foreign Ownership of Land Register Act 1988*.

However, the LAC has no jurisdiction to review decisions made by the Court under a recommendatory provision, such as when the Court makes a recommendation on an application for a mining lease. Those cases are subject to judicial review.

### Appeals to the LAC

Appeals to the LAC are by way of rehearing on the record. The LAC has power to admit new evidence in limited circumstances. The LAC sits as a panel of three members. One member is a Judge of the Supreme Court from the region in which the land is located, and the other two are Members of the Land Court, other than the Member whose decision is under appeal. By convention, the Judge presides, but the members sit as equals and the LAC's decision is the decision of the majority.

Eight appeals and two applications for extension of time were lodged in the LAC in 2019-20, compared with nine appeals lodged in 2018-19. Five appeals were in the Southern District. Of those, one was discontinued and the other four, which were heard together at first instance, will be heard by the LAC in October

2020. The other five appeal files were in the Central District. One application for extension of time was granted, but the related appeal was dismissed. The other application for extension of time was not determined by the end of 2019-20 but has since been dismissed. The remaining two appeals in the Central District were discontinued.

### Appeals to the Court of Appeal

A party may appeal a decision of the LAC to the Court of Appeal on the ground of error or mistake in law or jurisdiction.

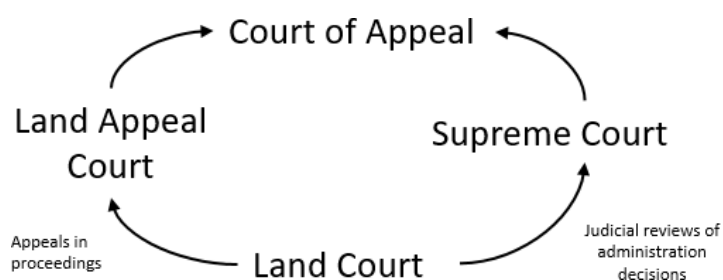
There were three appeals filed in the Court of Appeal in this financial year. All three appeals have now been finalised. One appeal overturned the decision of the LAC. Interim orders were made in the other two, which were resolved without final hearing.

### Appeals to the High Court

An application to the High Court for special leave to appeal a decision of the Court of Appeal was decided in 2019-20. The application, which relates to the decision in relation to New Acland Coal, was granted. In October 2020, the High Court heard the appeal and reserved its decision.

### Judicial Review

The Supreme Court heard and determined two Judicial Review applications from mining objection hearings by the Land Court. One was upheld, the other was dismissed.



## COVID-19

Towards the end of January 2020, the first case of coronavirus (COVID-19) in Queensland was discovered, and at the end of the month the Queensland Government declared a public health emergency. The Chief Health Officer issued Directions to contain the spread, and social distancing, isolation, and remote working became part of the environment in which courts functioned.

During COVID-19 restrictions, the Land Court adapted its systems and processes to continue to deliver a full range of services to people affected by government decisions about land and mining and to their representatives. E-trials and e-filing became the norm; many Registry staff worked from home as a safety precaution; Zoom meetings became routine; the number of people in courtrooms was restricted; and staff kept the Registry open to the public throughout.

Most of the Registry staff worked from home on a rostered basis, without diminishing the

standard of service provided. They quickly came to terms with new challenges and found solutions to ensure that it was still 'business as usual' in a very unusual time. They held twice daily 'Teams' meetings to discuss work, but also to have a chat and keep in touch during difficult times.

The Court processes continued to run smoothly and efficiently. The settlement rate for land valuation appeal conferences remained very high throughout COVID-19. The Court continued to hear cases, and conduct mediations and CMEE conferences (case management conferences and meetings of experts) with little interruption. Videoconferencing (through the Pexip platform or Zoom) and teleconferencing options were offered to parties in place of personal appearances. An indication of how this worked is given by the following case studies, dealing with a hearing and with preliminary conferences in land valuation appeals.

### Mining Objection Hearing – a virtual success

(by Alice Killin, Associate to President Kingham)

The Land Court of Queensland recently conducted a six-day mining objection hearing (*Pembroke Olive Downs Pty Ltd v Sunland Cattle Co Pty Ltd & Ors*) completely online. The file was an eFile, that is, all documents were sent to the Court electronically and filed using the Court's document management system.

The hearing itself was conducted via Pexip videoconferencing software, and, at its peak, up to 14 external participants were in the conference. Four counsel appeared. A combination of Pexip and the Court's eTrial software was used to display and share documents, as well as manage exhibits. All parties uploaded documents to the site and the Court Registry and Associate managed the site. There were 450 exhibits.

Ordinarily, the Court would conduct a site inspection on the first day of the hearing, however due to restrictions on travel, the parties conducted a "virtual" site inspection using a helicopter to take footage of the site. On the first day of hearing, the Court and everyone in the videoconference watched flyover videos, which were accompanied by images showing the flight paths plotted over the mining lease application areas. During the videos, counsel for the applicant gave some commentary and noted points of particular interest which could also be seen on the images. This was a great alternative, particularly in this case, where the flyover allowed the Court to see more of the site than would have been possible if we had conducted the inspection in person, simply due to the size of the area applied for.

Of note, there was a concurrent evidence session involving five experts, all in different locations. The concurrent evidence session lasted three days.

Given the nature of the issues and the number of participants, the potential for technical difficulties and delays was high. However, the

Court encountered very few difficulties and the entire hearing ran smoothly.

### Preliminary Conferences – constructive adaptation

(by Judicial Registrar Graham Smith and Deputy Registrar Monica Oates)

The onset of COVID-19 restrictions required that we change our approach to ADR conferencing and as a consequence we adopted and adapted a range of platforms that have since become integral to the Land Court's ability to provide conferencing online without requiring parties, legal representatives and experts to attend in person.

Although we had planned to consult widely with those affected, our first tentative consultation was cut short when the parties unanimously responded, "*why not start now*"? after the possibility of remote conferencing was raised. This commitment to the suggested changes was unequivocal as although everyone was present in person at Court, each party confidently advised that they could return to their home/office and be ready for a tele-conference within 45 minutes.

We might not have realised it at the time, our ADR/COVID-19 ADR journey was off to a flying start. The phone conference that followed, though somewhat ad hoc, was quite constructive and despite no resolution being reached, much food for thought emerged and a highly productive AV conference took place about a week later.

A highlight of this very first conference was the enthusiastic participation of the parties, notwithstanding the somewhat 'off the cuff' start with a platform that they were not entirely familiar with. Upon reflection, we felt this first conference had gone reasonably well

and given the circumstances, we were confident going forward that the processes would improve each time.

After approximately a week of trial and error and quite a few dry runs an alternative AV platform, Zoom was up and running. This new platform provided an effective visual option which we found led to better interpersonal engagement between all stakeholders and from this point onwards nearly all conferences were conducted using an AV platform.

Over time we transitioned from the Zoom platform to include Microsoft Teams and Pexip, and while Zoom was not entirely replaced, the new platforms proved to be very effective as well. Despite some occasional setbacks the combination of platforms were now up and running and proving to be very useful, if not perfect alternatives to in-person conferencing.

This initial period of transition by necessity involved a steep learning curve with much patience, improvisation and trial and error. Many participants commented on the improved flexibility, efficiency and effectiveness of the new look conferences. Our own impression is that some initial resistance to the new platforms might have simply been a case of "*that's the way it's always been done*", while adaptation in many cases has simply involved becoming accustomed to a new process and its advantages. We believe that ongoing progress will continue to be made over time as parties become more confident, engagement more cohesive, and areas for improvement are identified and addressed as matters hopefully continue to be resolved.

The new platforms have provided greater flexibility to scheduling options e.g. "*pit-stop*" type planning conferences or "*catch ups*" are able to be listed at short notice and more conveniently than in-person appearances; this alone adds impetus and streamlines the



resolution processes. We have noticed that the shorter time spans alone are critical to the increased effectiveness of the online process itself e.g. hiccups are addressed by real time collaboration, an online plan B or by substituting an alternative platform, all without anyone having to leave their desk. It is anticipated that over time further efficiencies will emerge as more participants adopt the new platforms.

During the period from mid-March and the end of June 2020, 200 matters were able to be resolved via videoconference. When reflecting on this outcome, and in light of the prevailing circumstances, the contribution of all participants via their patience, collaborative effort and goodwill cannot be overstated.

### The future

(by President Fleur Kingham)

The fundamental lesson I learned during COVID-19 is that technology cannot be an add-on to the Court's usual procedures. It must be integrated and at the core of the Court's processes and strategies. That is the future I envisage for the Land Court, pandemic or not.

In the early stages of COVID-19, the Court struggled to engage with technology that was available, but underutilised. Members and staff quickly understood the untapped potential of technology to keep us connected, working productively, and providing timely and fair access to the Court.

The feedback about the Court's use of technology during the COVID-19 restrictions has been consistently positive, from the legal profession, and from industry and community organisations.

Encouraged by that feedback, and our own experience of working in a more 'virtual' environment, I will revise and consolidate the Court's practice directions about electronic documents. The new Practice Direction will

provide clarity about the Court's procedures for digital files, electronic filing, and e-Trials.

Further, video and tele-conferencing is here to stay. Unless there is a good reason for parties or their representatives to appear in person, they will attend procedural hearings, such as directions hearings and reviews, by video or tele-conference.

Video-conferencing in ADR has already proved its worth in preliminary conferences for land valuation appeals. That will continue.

So will video-conferencing of meetings during CMEEs, with Convenors scheduling case management meetings and meetings of experts as required, and on short notice.

Although the Court's first completely virtual trial proceeded smoothly, it exposed some inadequacies in our technology when the trial proceeds as an e-Trial. Simply put, the e-Trial program does not integrate well with the video-conference platform provided for the Court. I expect this will be remedied, in time.

In any case, hearings in person will remain the norm, but the Court will ask parties to consider how technology might be employed for the hearing. The Court will take evidence by video or tele-conference, if that promotes a timely, efficient and fair hearing. It will also facilitate observation of hearings by video or tele-conference for parties or instructing solicitors who are remotely located.

To assist all parties, but particularly those who represent themselves, the Court will produce a video guide to the Court's video and tele-conferencing systems. The Court will continue to offer a 'trial run' for parties or representatives who want to familiarise themselves with the technology and test their own facilities.

This year, the Court has benefited from some practical suggestions from the legal profession about how to improve its use of technology. I expect that constructive input will continue

through the Court's regular consultations with the profession and relevant representative bodies.

## The Courts and the 1919 pandemic

(by Helen Bannerman, Librarian)

Just over 100 years ago, the Queensland people and courts endured the pneumonic influenza, and there are many similarities to our experience of COVID-19.

The *Pneumonic Influenza Regulations* were gazetted on 29 January 1919 in Queensland giving wide powers to the Commissioner of Public Health, and the Queensland border was closed on the same day. Quarantine camps were set up at Wallangarra and Coolangatta and people stranded had to apply to the government for re-entry, as well as paying a daily fee of seven shillings six pence for their keep. A quarantine camp at Lytton catered for troops from the war returning by boat.

Police and magistrates were busy enforcing and fining 'border busters'.

But, from newspaper accounts, it appears that courts in Queensland continued to sit during the worst of the flu, which was between May and August 1919, and the *Influenza Regulations* were removed on 14 August.

The Full Court sat in Brisbane between 18 and 20 March 1919 in a forfeiture proceeding for non-maintenance of rabbit-proof fencing (*The King v Tomkins*). The Land Court and Land Appeal Court had previously decided the pastoral lease was not liable to forfeiture. In that case, Hugh Macrossan appeared with his brother Neal Macrossan for the appellant. Each was later to serve as Chief Justice of Queensland. Feez KC and McGill were for the respondent.

On 10 July in the Supreme Court, the Attorney-General and Premier (Hon TJ Ryan) appeared with Mr HD Macrossan for George Taylor (one of the 'red flag prisoners') in support of an

Before concluding with COVID-19, it is interesting to consider how courts responded to a similar episode last century.



Justice Hugh Denis Macrossan

Photo: State Library of Queensland

application that the Commonwealth *War Precautions Regulations*, under which a number of men were prosecuted for carrying the red flag, were *ultra vires* and unlawful. Macrossan had earlier achieved prominence by appearing in many of the state's leading constitutional cases.

On 11 July a criminal sitting in the District Court before Judge Jameson heard a case of stealing a plough, a pair of plough reins, and three wedges the property of Mrs Ellen Sinnamon at Browns Plains.

On the same day, Hugh Macrossan appeared in the City Police Court for five theatre owners charged with failing to close their places of amusement, thereby contravening an order made by the Commissioner of Public Health. Macrossan contended that the Joint Health



Board had no authority to prosecute — and further that the board could only be described as a 'busybody'. The case was adjourned *sine die*.

The *Crown Land Law Reports* for 1919 was a slim volume with 11 cases reported (1 Full Court, 1 Land Appeal Court and 9 Land Court) as well as determination of rents for grazing selections and pastoral holdings throughout Queensland. In May, a number of hearings were held in Atherton in resumption compensation matters.

On 27 August the Hon Dr Kidston LL.D (a former premier of Queensland) retired as a Land Court

Member having reached the mandatory retirement age.

Hugh Macrossan accepted judicial appointment in 1926 but declared at his swearing-in that his future now presented a 'dull prospect'. As a judge, he has been called 'waspy' and was certainly a forceful character. Macrossan was appointed Senior Puisne Judge in 1926, and judge of the Land Appeal Court in 1936.

Whether his time with the Land Appeal Court lived up to his Honour's prediction is not a matter of record!

## Judicial Members

### Land Court of Queensland

In 2019-20, the President, Members and Judicial Registrar of the Land Court were:

- President Fleur Yvette Kingham BA/LLB (Hons), LLM (Dist.), DUniv (Griffith University)
- Member Wayne Lindsay Cochrane BAB, MSc, BEc, Bed (retired 29 December 2019)
- Member William (Bill) Angus Isdale LLB, MPubAdmin
- Member Peta Gwen Stilgoe OAM LLB (Hons), LLM
- Member James Raymond McNamara LLB, MPubAdmin (appointed 9 March 2020)
- Judicial Registrar Graham Joseph Smith LLB, Grad Dip Leg Prac, Bbus, LLM, FAPI, CPV

### Tribute to Member Wayne Lindsay Cochrane on his retirement

(by Judicial Registrar Graham Smith)



Late December 2019 was particularly memorable for Land Court Member, Wayne Cochrane. Although a reason to celebrate was never necessary, and with the festive season in full swing, Wayne had both a birthday and the culmination of an outstanding legal career to celebrate, courtesy of s 42(1) of the Land Court Act 2000.

Wayne grew up in Toowoomba and from an early age was highly inquisitive, had a strong

desire to learn, and a love of sport and the great outdoors. After performing exceptionally as a student at Harristown State High School, Wayne completed his initial teaching qualification in 1970 and later graduated from the University of Queensland with degrees in Economics and Education. After starting as a high school teacher with the Queensland Education Department for 3 years, Wayne continued at Brisbane Grammar School, becoming master in charge of the middle school during a 14 year career.

Given his love of learning and appetite for knowledge, it came as no surprise that Wayne went further and completed a Master of Science degree and the Barristers' Board exams (Honours II), both while working as a school teacher and a sessional economics lecturer at QIT. While in the final stages of the Barristers' Board exams Wayne served as a clerk and associate to Judge Quirk of the Local Government Court for two years, and following his admission to the bar was appointed as counsel assisting Commissioner, Mr Tony Fitzgerald QC on the Commission of Inquiry into the Future Management of Fraser Island.

After arriving at the private bar and with a lot of effort Wayne established a very busy private practice. Although many briefs were land use





and planning related, the practice also afforded a high degree of geographic and jurisdictional variety i.e. weeks could be spent in regional Queensland, sometimes a planning appeal in Townsville one day, then a mining matter in Mareeba the next, with the remaining time spent in Cairns for trial preparation with solicitors and clients followed by a late flight home for a weekends respite.

Jurisdictional variety also grew rapidly with early success in the Court of Appeal for a used car dealer facing alleged non-compliance with the *Trade Practices Act*, and later success in the *Racing Appeals Tribunal* for several thoroughbred syndicators who were cleared on appeal after W.L. Cochrane convinced the tribunal Members that his clients had not committed *false, misleading or fraudulent* behaviour within the meaning of those terms in the *Australian Rules of Racing*. Later still and slightly closer to home, success in both the Land Appeal Court and Court of Appeal on behalf of the respondent Chief Executive NRW in appeals concerning *Water Act 2000* licences within the Barron River/ Atherton district. Notwithstanding his large client base and unenviable workloads, Wayne none the less found time to be elected to, and serve actively on the Bar Association Council for two years.

The very qualities that embodied Wayne's career at the bar placed him in good stead for appointment to the Land Court. A no nonsense, hands on approach was firmly applied to every aspect of his new bailiwick, be it case management, intolerance of sloppy submissions, non-compliance with evidentiary requirements or Court directions.

Wayne's depth and breadth of experience across the broad spectrum of the Court's jurisdiction, together with a school teacher's patience and an ability to find practical solutions to perplexing conundrums was invaluable to all Court staff. Rarely a day passed that Wayne didn't drop into chambers

for a chat or to offer some practical insight into any matters that may have had me puzzled.

At least equally important as Wayne's jurisprudential contributions were the abundance of "*miscellaneous*" non-jurisprudential contributions that frequently emerged from the *Aladdin's Cave* that doubled as his chambers. Hidden treasure such as Suncorp tickets, newspapers, baked delicacies (including banana infused chocolate cakes), movies, books, magazines, shirts, ties, wine, whiskey, coats, old texts, journals, transcripts, reports, antiques, furniture, art plus an array of sporting and historic memorabilia were freely available to all and sundry, such was the nature of his generosity.

It is testament to the high regard held for Wayne's vast local government experience that he was plucked only days into retirement to serve when required as Acting Independent Council Election Observer for review matters that retired judge John Robertson may have been unable to deal with.

Although his careers were often hectic it was not all work and no play by any stretch. Wayne, born during the festive season, highly sociable and gregarious by nature relished nothing more than relaxing with family and friends, be it a weekend BBQ at home, a Friday night at the football or after work drinks while on circuit. Wayne loved people and loved sharing the happy times, "*don't be a stranger, just turn up*" was the standard invitation to join him. A natural storyteller with an elephant's memory and an equally large zest for life, Wayne was always great company. Be it in chambers early on a Monday morning or after work on Friday, the banter was always lively and crammed with hilarious recollections of incidents, events and colourful characters that Wayne had encountered over the years.

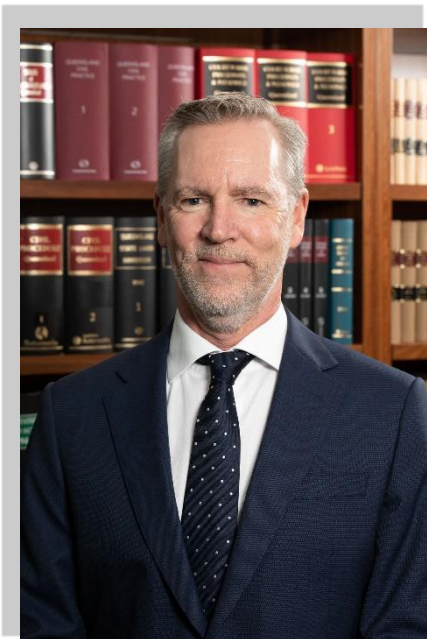
Although tinged with sadness, the Land Court's loss is the Cochrane family's gain. No doubt that deep belly laugh, the endless jokes and

pranks together with wise insights and exciting plans will be shared often on the beach at Noosa with Bradley, Megan and Damian and grandchildren Will, Darcy, Eadie and Lola or with the myriad of lifelong friends that frequently gather at Cochrane HQ at Wilston.

Wayne Lindsay Cochrane, congratulations on a tremendous career and all the very best for a long and happy retirement!

## Profile of Member James Raymond McNamara

(by President Fleur Kingham)



On 9 March 2020, James Raymond McNamara was sworn in as a Member of the Land Court of Queensland. On 13 March, the Court celebrated his appointment at a well-attended public ceremony in the presence of professional colleagues and family and friends. Within days Australia closed its borders due to the COVID-19 pandemic and Member McNamara commenced his duties under most unusual and isolating conditions. Social distancing requirements and safe work recommendations meant he saw little of his new colleagues, or at least not too many of us

at one time. Luckily for the Court, Member McNamara is not easily flustered, a quality evident to parties once he started hearing cases.

Member McNamara's equanimity was, no doubt, developed over decades working in a variety of demanding roles.

His Honour began his career as a legal officer at Queensland Crown Law, before moving to the Office of the Director of Public Prosecutions, and the then Criminal Justice Commission. Those were interesting times. The CJC was one of the many recommendations from the Fitzgerald Inquiry, and introduced a long overdue system of public sector accountability.

However, it was land, and the relationship of Australians to the land that was to capture the young lawyer's enduring interest.

In the early 1990s, the Queensland government passed legislation recognising indigenous cultural and historical interests in land, in certain areas. The High Court's historic decision in Mabo followed shortly afterwards.

In that context, Member McNamara committed to public service and focussed his attention on indigenous people, land, and culture. In 1996, he was appointed Director Legal and then Executive Director in the Policy Division of the Department of the Premier and Cabinet. He subsequently seized the opportunity to work as a Legal Consultant to the Ministry of Justice, British Columbia on First Nations treaty table negotiations, and completed a Master of Public Administration at Harvard University before returning to Queensland.

In 2000, Member McNamara was appointed the Executive Director of the Aboriginal and Torres Strait Islander Land Service with the then Department of Natural Resources and Mines. He served in that role until 2012,



overseeing the development and implementation of several key reforms and policy programs. He was also part of the executive management team responsible for the suite of agencies with land administration and land management functions, including the State Valuation Service, Titles Registry, Land and Spatial Information and Native Title Services.

That was the role Member McNamara had when I encountered him professionally in 2004. He arranged for my secondment from what was then the Land Resources Tribunal to facilitate land negotiations for the Hope Vale Aboriginal community in far north Queensland. It was most interesting and challenging work.

Member McNamara's equanimity was evident even then. I greatly benefited from his steady, measured, and thoughtful management of a very complex situation. They are qualities that will stand him in good stead in this Court.

As well as his legal and management qualifications and his extensive leadership experience, Member McNamara is an accredited mediator. He drew upon all those qualifications in his most recent role as a Member of the National Native Title Tribunal.

As a Member of the NNTT, his Honour oversaw the management and conduct of a significant national arbitration and mediation case load.

Member McNamara's experience is valuable in a number of the Land Court's jurisdictions, including the Court's jurisdiction to hear applications for injunction against acts that risk harm to Aboriginal or Torres Strait Islander cultural heritage, as well as its functions under the *Native Title (Queensland) Act 1993* in relation to indigenous land holdings and negotiated agreements.

In his time at the Land Court, Member McNamara has already presided over mining objection hearings, land valuation appeals, conduct and compensation disputes, Aboriginal cultural heritage matters, and has acted as a Court Managed Expert Evidence (CMEE) convenor. He has also significantly assisted with the development of the Court's Reconciliation Action Plan.

Member McNamara's good humour and leadership qualities make him a welcome addition to the Court. Most invaluable, though, is that strong sense of equanimity, so evident as he commenced his tour of duty with this Court in the grip of a pandemic.

## Land Appeal Court of Queensland

In 2019-20, the Judges of the LAC were:

- The Honourable Justice Mullins (Southern Region), until 12 December 2019, then the Honourable Justice Boddice
- The Honourable Justice Crow (Central Region)
- The Honourable Justice North (Northern Region)
- The Honourable Justice Henry (Far Northern Region)

## Librarian's Report



The Land Court Library continued to provide a full range of services this year, despite some disruption caused by necessary precautions due to the COVID-19 pandemic. Research and assistance with legal citation and editing were the main services provided by the Librarian.

### Historical decisions now available

The digitisation of all known historical Land Court and Land Appeal Court decisions was completed this year.

The work was undertaken in partnership with the Supreme Court Library Queensland, whose staff scanned the previously unavailable decisions (1963 to 1994). A total of 2,571 decisions were scanned, information was added to assist retrieval, and they were published on the CaseLaw page of the Supreme Court Library's website.

## Interested party decisions

The Land Tribunal was established under the *Aboriginal Land Act 1991*, and until 22 December 2006 received claims made by groups of Aboriginal people to areas of claimable land. The Act provided that claims must be made not later than 15 years after the commencement of the Act.

The Land Tribunal determined the last claims, the Boodjumululla (Lawn Hill) National Park claims, in 2016, and a report and recommendations were provided to the Minister by the Chairperson.

This year 22 decisions relating to various land claims under the *Aboriginal Land Act 1991* were located in Land Court records. All decisions were applications to be made a party to proceedings for the hearing of a land claim (interested party decisions).

Work has commenced on preparing these decisions, which are only available in paper, and they will be made available through the Supreme Court Library on the CaseLaw website in the next reporting period.

## Queensland Land Court Reports

The Court publishes annual volumes of the *Queensland Land Court Reports* in which selected decisions of the Land Court, all decisions of the Land Appeal Court, and reviews and appeals heard in superior courts are reported. The QLCRs have been produced continuously since 1974, and prior to that as the *Crown Land Law Reports*, the first volume of which covered the period 1859-1900.

This year, the Court published the 2017 volume in which 17 cases were reported: two Court of Appeal decisions, one Land Appeal Court decision, and 14 Land Court decisions. The reported decisions include two that considered the *Petroleum and Gas (Production and Safety) Act 2004*, and one that considered the *Transport Infrastructure Act 1994*.



The 2017 reported decisions considered the following Acts:

Act considered	Number of decisions
<i>Acquisition of Land Act 1967</i>	2
<i>Environmental Protection Act 1994</i>	2
<i>Land Court Act 2000</i>	1
<i>Land Valuation Act 2010</i>	2
<i>Mineral Resources Act 1989</i>	6
<i>Petroleum and Gas (Production and Safety) Act 2004</i>	2
<i>Transport Infrastructure Act 1994</i>	1
<i>Water Act 2000</i>	1

## Organisation and Administration

### Judicial support

The Executive Assistant and Associates provide judicial support to the President, Members and Judicial Registrar of the Court.

In 2019-20, the Executive Assistant and the Associates of the Land Court were:

- Executive Assistant, Tyson Joseph Lee
- Associate to President Kingham, Nicholas Wray-Jones (until 30 September 2019); Alice Killin
- Associate to Member Cochrane, Krystal Cunningham-Foran
- Associate to Member Isdale, Amanda Lee (until 20 January 2020); Eleanor Sondergeld
- Associate to Member Stilgoe, Ewan Raeside (until 20 January 2020); Edward Cleary
- Associate to Member McNamara, Fiona Maher

### Land Court Registry

The Land Court Registry provides administrative support to the Court, including budget and resource management.

In 2019-20, the Registry Officers of the Land Court were:

- Principal Registrar, Darren Campbell
- Senior Registrar, Business Operations, Nichole Padovan
- Senior Registrar, Court Management, Chris De Marco
- Deputy Registrar, Gregory Grodecki
- Deputy Registrar, Monica Oates
- Court and Administration Officer, Paulo Frutuoso

### Location and contact details

#### Address

Level 8, Brisbane Magistrates Court Building,  
363 George Street, Brisbane Qld 4000

#### Business hours

8.30 am to 4.30 pm, Monday to Friday  
(excluding public holidays and other  
designated court holidays)

#### Postal address

GPO Box 5266, Brisbane Qld 4001

#### Phone

(07) 3738 7199 (business hours)

#### Email

landcourt@justice.qld.gov.au

#### Website

<http://www.courts.qld.gov.au/courts/land-court>