



# **LAND COURT OF QUEENSLAND**

**ANNUAL REPORT 2013-2014**

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## LAND COURT OF QUEENSLAND

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29 October 2014

The Honourable Jarrod Bleijie  
Attorney-General and Minister for Justice  
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 seventh Annual Report on the operations of the Land Court for the year ended 30 June 2014.

Yours sincerely

**Carmel MacDonald**  
**President**

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## Introduction

This is the seventh 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

### Patrick William Shannon – Land Court Member from 1914 to 1937

*Compiled by Peter Mylne, Barrister-at-Law, Brisbane*<sup>1</sup>

Patrick William Shannon, known personally and professionally as “PW” in the fashion of the Edwardian era, was appointed to the Land Court of Queensland in January 1914. The centenary year of the commencement of his service on the Court provides an opportunity to make some brief observations in respect of one of the most interesting men in late 19<sup>th</sup> and early 20<sup>th</sup> century Brisbane.

Until his death in 1955, PW was almost certainly the last link to the administration of public lands prior to the creation of the Land Board in 1884. He served on the Land Court until the statutory retirement age of 70 in September 1937, making his tenure the third longest in the 130 year history of the Land Court and Land Board.

PW was born in Brisbane on 6 September 1867 and commenced his education by the Christian Brothers at St Josephs College Gregory Terrace in 1876. The college then occupied the little chapel in the precincts of the Cathedral of St Stephen, sometimes known as the Pugin Chapel. The next 15 years saw significant development in the town. It was during this period that the remarkable Florentine, Andrea Stombuco undertook construction of numerous and iconic public and private buildings in Brisbane, many of which still stand. PW’s father-in-law, JW Heckelmann commissioned Stombuco to complete a number of buildings including his own home at Whinstanes.

It was at Gregory Terrace that PW formed a life long friendship with another formidable builder, James Duhig.<sup>2</sup> Together they honed their debating skills as young men in the Catholic Young

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<sup>1</sup> The President of the Land Court also wishes to thank Mrs Nuala Mylne, the youngest daughter of PW Shannon, for her contribution and assistance.

Men's Society. They became gifted public speakers. Their lives would intersect many times over the next 70 years.

Each was representative of the rise of talented and hard working young men of Irish descent in the early stages of the 20<sup>th</sup> century in Queensland. Each also eschewed the idea of transporting the problems of the old world. This was no small challenge. In the early decades of the 20<sup>th</sup> century, about one third of the population of Brisbane was either Irish born (like Duhig and TC Beirne) or first generation Irish descent (like PW). The times were also controversial. The troubles in 1916 culminated in the Anglo-Irish war between 1919 and 1921. These men, and others, determined to leave those issues behind.

On the other hand, the Archbishop of Melbourne, Daniel Mannix, took an Irishman's view of social and political issues of the day. This was hardly surprising. He was nearly 50 years old when he arrived in Australia. PW and James Duhig saw themselves as Queenslanders. Both were in their early 30's upon federation; Mannix's arrival was still 10 years hence. With the proof which only the passage of time provides, their clear sighted approach was a winning formula.

PW's long association with the Lands Department, the Land Board and Land Court commenced with his appointment as a supernumerary clerk in January 1883. He was later appointed a clerk of the newly created Land Board (1885), secretary of the Land Board (1889), registrar of the Land Court, with which the Land Board was then merged (1898), assistant under secretary of the Lands Department (1901), under secretary (1912) and Land Court Member (1914). He followed his close friend and mentor Mr WJ Scott in many of these positions. The Land Board was abolished in 1898 and replaced by the Land Court.

During PW's time as secretary and registrar of the Board and Court respectively, travel to many parts of Queensland was difficult and arduous. The rail network in western Queensland was in its infancy. Steamboats were used to travel to coastal destinations as far away as Cairns and Cobb & Co stage coaches to inland towns. His daughter, Nuala, recalls PW relating to her stories of these journeys. As a young man, coach travel required him to sit next to the driver in all sorts of weather. He wore an oilskin when bad weather set in. At journey's end, it would be caked in dirt and mud.

Shortly before his appointment to the Land Court in 1914, the then Premier Mr Denham said: *"Mr Shannon who is well qualified to fill a position on the Land Court, cannot at present be spared from his post. It is probable that a not far distant time may offer an opportunity for due recognition of his*

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<sup>2</sup> Bishop of the Archdiocese of Rockhampton 1905-1912; Coadjutor Bishop of the Archdiocese of Brisbane 1912-1917; Archbishop of Brisbane 1917-1965.

*energy, ability and experience. The blue ribbons of the service are fairly won by men of such sterling worth*".<sup>3</sup>

The 23 years PW spent on the Land Court spanned a period of unprecedented political and social change in Queensland. The year following his appointment saw the election of the Ryan government. Although other Labor governments had been elected in Queensland beforehand, none had exercised power in any real sense. The 8-hour working day and compensation for accident victims were introduced under the *Workers Compensation Act 1916* and the State Insurance Office was created. Many state controlled enterprises were created and, by 1916, 10 state butcher shops were operating in Labor electorates.

PW's relationship with the new regime was not without difficulty. In 1917 the Secretary for Public Lands, Mr JM Hunter, wrote a letter to the Member for Balonne, Mr Land, who caused it to be sent to the local newspaper. It was then published. In the letter Mr Hunter referred to a specific decision of the Land Court handed down by PW in respect of a resumption near St George as showing the *"rottenness of the business"*. The decision in fact accepted one of the two proposals, albeit least favourable, submitted by the Crown.

The letter continued: *"As the Court is situated as it is at present, it seems to be fated to injure the Crown and favour the lessee. It would be better to have no court than such a court as this"*. And further, *"a fair deal to both sides ... was certainly not given"* in respect of this particular resumption. Mr Hunter spoke of the prospect of creation of an appeal court to keep the Land Court *"within reasonable bounds"* but reflected that *"if an appeal were allowed to the Crown it would have to be allowed to the lessees who would never fail to take advantage of it"*.<sup>4</sup>

In October 1917, PW referred to these remarks in open court. He sought either a withdrawal or the institution of a public enquiry by the government. Within a week the Minister issued a statement. He referred to the impression that *"Mr Shannon seems to have got ... that my letter suggested some want of integrity on his part in connection with the resumptions"*. In conceding that *"the vernacular used in the letter may be construed in that way but that [he] never intended it in that sense"*, the Minister wished to *"hasten to correct any wrong impression of that nature"*.<sup>5</sup>

PW's response was a great demonstration of his Celtic fluency and wit. Noting that *"[t]he Minister is more picturesque in charge than retreat"*, he recorded his disappointment that the Minister's disclaimer was not *"accompanied by any regret that a meaning so harmless should have found expression in terms so unwarrantable and so untruthful as those to which I have already called his*

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<sup>3</sup> *The Queenslander*, 20 December 1913.

<sup>4</sup> *The Morning Bulletin*, Rockhampton, 19 October 1917.

<sup>5</sup> *Darling Downs Gazette*, 25 October 1917; see also Hansard, 28 November 1917, p.3383.

attention". He only wished to "recall the remark of a one time distinguished Japanese naval visitor in regard to the utterance of a politician of that day that these things are largely matters of taste". He added that "the situations of comic opera will be searched in vain for anything more Gilbertian or more delightfully ridiculous than the picture presented by the Minister invoking the aid of further powers of appeal to restrain this court from doing violence to public interests by adopting a proposition submitted to the court by the Minister himself".<sup>6</sup>

Upon Ryan's departure from the Queensland Parliament to enter federal politics, EG Theodore assumed the premiership in 1919. The brilliant Romanian, a key player in the creation of the AWU, was still only 34. Impatient with the power structures which frustrated his radical agenda, he abolished the Legislative Council in 1920 and the District Court in 1921. His discomfort with the Legislative Council revolved around the unrepresentative nature of membership of the Council based as it was upon appointment and land ownership. There were members of the Ryan government who also sought the abolition of the Land Court.<sup>7</sup>

Despite the changes and controversy of the time, the Land Court survived. From at least 1919, PW was the undoubted leader of the Court. He was reappointed by the Executive Council in September 1928 for a further nine years until his retirement in 1937.

PW was a great friend of North Queensland and a great walker. Whilst on circuit in 1929, and aged 61, he walked from his accommodation at Yungaburra to Gordonvale, a distance of about 29 miles. He started at 6.45am and finished the journey at 4.30pm.<sup>8</sup> Did he perhaps encounter on that cool June morning a couple of young brothers, Sid and Ned Williams, each of whom was to have a profound effect on the State's development some 50 years on?

PW's family life was also busy. He had 7 children between 1897 and 1918, the youngest of whom, Nuala, still has an active life. Father Neal Shannon, parish priest of Surfers Paradise 1951-1979, was his son. Holidays were spent at Coolangatta and O'Reillys Guest House. O'Reillys in those days, due largely to its inaccessibility, attracted an eclectic group of visitors drawn to the beauty of the relatively recently declared national park. Much fun was had there.

PW retired on his 70<sup>th</sup> birthday on 6 September 1937. The position of President of the Land Court was created 2 months afterwards. During his retirement valedictory the Acting Chief Justice, Justice Hugh Macrossan, with whom he sat on the Land Appeal Court, was reported as stating that PW "had comported himself, invariably, with dignity and ability, distinguished himself by his

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<sup>6</sup> Hansard, Queensland Legislative Assembly, 28 November 1917, p.3384.

<sup>7</sup> The Member for Balonne, Mr Land, was on record in Hansard to this effect in the controversy involving Mr Hunter referred to above.

<sup>8</sup> *Cairns Post*, 14 June 1929.



*courteous attention to arguments, promptness in the despatch of business, indefatigable industry, and meticulous investigation in his desire to arrive at just conclusions according to law*".<sup>9</sup>

His former colleague on the Court, Herbert Hardacre<sup>10</sup>, a veteran of the very first (albeit short-lived) Labor government in the world, was sorry to see PW leave. He reflected on the fact that, given PW was as physically and mentally fit as ever, the compulsory retirement age was inflexibly applied.<sup>11</sup>

In the early 1950's, whilst in his mid 80's, PW, his wife and two of his daughters travelled to Ireland where he met the Taoiseach, Eamon de Valera. Much time was spent in his retirement undertaking research of the history of the Catholic Church in Queensland. He published a number of articles under the nom de plume Currajong. The content of those articles has been used in at least two important historical works on the early period of the church in Brisbane.<sup>12</sup>

PW largely remained an Edwardian figure in his later years. He died in 1955 aged 87. The panegyric was given by Sir James Duhig. Well past his peak, when his commanding oratory resonated in the cathedral where he had preached for over 40 years, he would have lifted himself for his old friend when he spoke of a life full of commitment to family, faith and public service.

## **Retirement of the Honourable Justice H George Fryberg**

The Honourable Justice George Fryberg retired as a Justice of the Supreme Court on 28 November 2013, having been appointed to that Court as from 23 September 1994.

Justice Fryberg served as a Member of the Land Appeal Court for the Southern Supreme Court District in 1995. He was no stranger to this jurisdiction. While at the senior bar, Fryberg QC had appeared in some of this Court's longest and most complex cases.

The Land Appeal Court dealt with a number of significant cases under the chairmanship of Justice Fryberg, including *Barns v Director-General, Department of Transport* (1996-1997) 16 QLCR 22, *Caltex Oil (Australia) Pty Ltd v Chief Executive, Department of Lands* (1996-1997) 16 QLCR 435 and *GE Cominos & Co Pty Ltd v Chief Executive, Department of Lands* (1996-1997) 16 QLCR 311.

Later, while sitting as a Judge of the Court of Appeal, Justice Fryberg continued to contribute to the jurisprudence of the Land Court jurisdiction. His judgment in the appeal from the Land Appeal

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<sup>9</sup> *The Courier-Mail*, 4 September 1937.

<sup>10</sup> Herbert Hardacre was one of two members of the first Labor government who served on the Court with PW, the other being a former Premier Dr William Kidston.

<sup>11</sup> *The Courier-Mail*, 7 September 1937.

<sup>12</sup> *Robert Dunn, 1830-1917, Archbishop of Brisbane*, NJ Byrne, University of Queensland Press, 1991; *The Foundation of the Catholic Church in Queensland*, DW Martin, Church Archivists Press, 1998.

Court in *Brisbane City Council v Mio Art Pty Ltd* [2012] 2 Qd R 1; (2011) 32 QLCR 285 (the other members of the Court of Appeal agreeing) continues to be frequently cited.

The Members of the Land Court hosted a farewell lunch for Justice Fryberg, to mark his retirement.

We are very grateful to Justice Fryberg for his contribution to the work of the Land Appeal Court and for his continuing support for the Land Court and Land Appeal Court since 1995. We extend our best wishes to him for a long, happy and productive retirement.

## Members and Judicial Registrar of the Land Court

**President** Carmel Anne Catherine MacDonald BA, LLB, LLM

**Members** Paul Anthony Smith BA, LLB  
Wayne Lindsay Cochrane BEcon, B Ed, MSc  
William Angus Isdale LLB, MPubAdmin

**Judicial Registrar** Barry Richard O'Connor LLB, LLM

**Part-time Member** Mark Douglas Evans LLB (Hons) (from 17 August 2012 to 16 August 2014)  
(appointed pursuant to s 17 of the *Land Court Act 2000*)

## 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 strict rules of evidence do not apply. 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 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 the General Division as nominated by the President.

Legislation giving the Land Court and Land Appeal Court jurisdiction as at 30 June 2014:

- *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*
- *Aurukun and Mornington Shire Leases Act 1978*
- *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 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 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*
- *Racing Venues Development Act 1982*
- *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*

\* *This Act has not yet been proclaimed into force.*

## **Legislative Changes**

The following significant changes to the jurisdiction of the Land Court and Land Appeal Court occurred in 2013-14:

- The *Aboriginal and Torres Strait Islander Land Holding Act 2013* (ATSILHA) commenced on 20 February 2014. It repealed the *Aborigines and Torres Strait Islanders (Land Holding) Act 1985* and established a framework for satisfying lease entitlements that were outstanding under the repealed Act and for resolving boundary problems affecting leases granted under the repealed Act. The Land Court is given jurisdiction under the ATSILHA to hear appeals in relation to lease entitlement notices, resolve contested grants and boundary disputes and determine compensation where necessary.
- On 13 June 2014, the *Strategic Cropping Land Act 2011* under which the Land Court was given jurisdiction to hear appeals against “SCL protection decisions” made for resource

projects located on strategic cropping land was repealed by the *Regional Planning Interests Act 2014*.

## Land Court Caseload

As at 1 July 2013, there were 608 cases awaiting determination by the Land Court. During the reporting period, 698 new matters were filed in the Land Court registry. 904 matters were finalised with the result that there were 402 cases awaiting determination as at 30 June 2014.

The number of new matters filed in the Court this year decreased by 118 or 14.5% as compared with the 2012-13 reporting year. The reduction was most marked in the valuation and mining areas which fell by 17.6% and 12.7%, respectively. It is thought that the decline was caused by general stability in the property market and less activity in the mining industry. An increase of more than 100% in compulsory acquisition matters may be reflective of an increase in the development of new infrastructure projects.

## Types of Cases

### *Land Valuation Act 2010*

The *Land Valuation Act 2010* came into effect on 20 September 2010. Section 267 of that Act provides that the *Valuation of Land Act 1944* is repealed. However parts of the *Valuation of Land Act* were continued in operation for the making and issuing of any valuation that had effect before 30 June 2011 and for the making and deciding of objections and appeals in relation to such valuations (ss 268 - 273 *Land Valuation Act*).

The unimproved or site value of land as determined under the *Land Valuation Act* 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 2013-14, 525 revenue valuation appeals under the *Land Valuation Act* were lodged in respect of the unimproved or site values of land throughout the State and 691 were finalised. Most valuation cases were resolved by or following alternative dispute resolution processes, but the cases that proceeded to hearing were usually more complex or contentious.

### *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 of such tenements.

The more complex matters required several sitting days. Many of the compensation cases were dealt with on the papers without an oral hearing.

During 2013-14, 108 matters were lodged under this legislation and 150 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, 16 objections or appeals were lodged and 13 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 2013-14, 31 claims for compensation were filed, while 26 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 11 appeals filed in the reporting year, and 10 appeals were finalised.

#### *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 Mines. Only those cases that are not resolved by that process proceed to the Land Court.

In 2013-14, three *Land Act* appeals were filed in the Land Court, and two were finalised. The relatively low numbers reflect the success of the internal review process. Only the more complex matters now proceed to hearing.

### *Petroleum and Gas (Production and Safety) Act 2004*

The *Petroleum and Gas (Production and Safety) Act 2004* confers jurisdiction on the Land Court in relation to a variety of matters including:

- deciding coordination arrangements between adjacent lease holders in respect of coextensive natural underground reservoirs;
- making recommendations in respect of "preference decisions" and disputes involving overlapping mineral (f) land and tenures;
- deciding access agreements and variations thereto;
- deciding the compensation liability of petroleum authority holders under the Act;
- reviewing conduct and compensation agreements.

The Act also provides for appeals to the Land Court against a range of Ministerial and other decisions identified in Table 2, Schedule 1 of the Act.

One application was lodged and finalised under the *Petroleum and Gas (Production and Safety) Act 2004* during 2013-14.

### *Water Act 2000*

The *Water Act 2000* provides a right of appeal to the Land Court against a range of internal review decisions made under the Act. Most commonly, appeals to the Court involve decisions about the grant of water licences to take or interfere with water under the Act.

The *Water Act 2000* also provides for the Court to determine disputes between petroleum tenure holders and the owners of water bores about make good agreements for bores and compensation. Further, the Act provides a special right of appeal to the Court in relation to development applications made under the *Sustainable Planning Act 2009* for certain types of water developments which relate to activities under the *Mineral Resources Act 1989*.

No appeals were lodged under the *Water Act 2000* in 2013-14 and five were finalised.

## Land Court Workload 2013-14

Types of Cases	Filed	Finalised	Active as at 30 June 2014
Land Valuation Act appeals	525	691	166
Valuation of Land Act appeals	Nil	2	2
Mineral Resources Act applications and compensation claims	108	150	153
Environmental Protection Act objections and appeals	16	13	21
Acquisition of Land Act claims	31	26	45
Local Government Regulation appeals	11	10	10
Land Act appeals	3	2	4
Petroleum and Gas (Production and Safety) Act appeals	1	1	Nil
Water Act appeals	Nil	5	Nil
Other matters	3	4	1
<b>Total</b>	<b>698</b>	<b>904</b>	<b>402</b>

## 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.

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. 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 nine appeals lodged in the Land Appeal Court in 2013-14, compared to eight appeals filed in 2012-13. Six of the appeals related to land in the Southern Land Appeal Court District and there was one appeal in each of the Far Northern, Northern and Central Land Appeal Court Districts.

<b>Nature of Appeals</b>	<b>2012-13</b>	<b>2013-14</b>
Compensation ( <i>Acquisition of Land Act 1967</i> )	6	5
<i>Land Valuation Act 2010</i>	Nil	1
<i>Mineral Resources Act 1989</i>	2	1
<i>Water Act 2000</i>	Nil	2

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 were two applications for leave to appeal filed in the Court of Appeal during the reporting period.

<b>Court of Appeal Filing Date</b>	<b>2012-13</b>	<b>2013-14</b>
Applications for leave to appeal to Court of Appeal	2	2

## Case Management

With such a large caseload and few Members, 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*. 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, he or she 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 2013-14, the Court sat on 66 days outside Brisbane at the following centres:

- Ayr
- Bowen
- Caboolture
- Cairns
- Caloundra
- Charters Towers
- Chinchilla
- Coolangatta
- Dalby
- Emerald
- Gladstone
- Gympie
- Hervey Bay
- Ingham
- Innisfail
- Ipswich
- Mackay
- Rockhampton
- Stanthorpe
- Townsville
- 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 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 547 preliminary conferences. 505 cases were finalised in 2013-14 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 offer an opinion as to the likely outcome.

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

Forty-six 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 7 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:

**Registrar:** Mr Kevin Hayden

**Senior Deputy Registrar:** Mr Jeffrey Hobson

**Senior Case Manager:** Ms Betty Lippiatt

**Deputy Registrars:** Mr Rai Laaja (until 11 April 2014)  
Mrs Clare Gilbert  
Ms Diane Blewett  
Ms Keren Astill (on leave from 22 November 2014)  
Mr Gregory Grodecki LLB, Grad Dip Leg Prac (acting appointment from 28 October 2013)

**Office Manager:** Mrs Linda Gardner (until 20 September 2013)  
Ms Betty Lippiatt (part-time acting appointment from 23 September 2013)

**Administrative Officers:** Ms Glenda Jones  
Ms Terri Bastiani  
Ms Margaret Christison

**Research Officer:** Mrs Letitia Farrell LLB (Hons), BBus(Acc) (Hons)  
Mr Graham Smith LLB, Grad Dip Leg Prac, BBus, LLM, AAPI, CPV (acting appointment from 22 April 2014 to 4 July 2014)

## **Retirement of Deputy Registrar Rai Laaja**

Deputy Registrar Rai Laaja retired in April 2014, after more than 25 years in the Land Court and 40 years in the Public Service.

Rai was appointed as a Deputy Registrar of the Land Court in June 1988. Rai's knowledge, professionalism and courteous manner were qualities greatly appreciated by all who dealt with him. During his 25 years in the Land Court, Rai supported Mr DM White (a former President), Mr RP Scott and most recently, Mr WL Cochrane.

Prior to his retirement, Rai took long service leave. During that period a number of officers from within the department acted in his position.

The President and Members of the Court place on record their great appreciation of Rai's loyal 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) in bound volumes 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 May 2014, Mrs MacDonald attended a conference entitled "Timeliness in the Justice System" organised by the Australian Centre for Justice Innovation and the Australasian Institute of Judicial Administration in Melbourne, Victoria.

Mr Smith attended the Queensland Environmental Law Association's annual conference at the Gold Coast, Queensland, in May 2014.

Mr Cochrane attended the 2014 Australian Environmental Law Enforcement Conference in San Sebastian, Spain in June 2014.

Members used their jurisprudential and/or expense of office allowances for these continuing education and development purposes.

Mr O'Connor attended the annual conference of the Australian Property Institute on the Gold Coast in November 2013.

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

### **Moots**

During the year, Mr 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 2013. 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 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 2013, Mr O'Connor presented a paper to the Australian Property Institute reviewing major valuation and related cases from the previous 12 months.

In September 2013, Mr Smith attended the Berdyansk Institute of State and Municipal Management in Berdyansk, Ukraine and gave lectures as a Visiting Professor. Mr Smith also presented a paper at the Queensland Environmental Law Association's annual conference in May 2014.

Mr Cochrane presented a paper about practice and procedure in the Land Court at a seminar organised by the Queensland Environmental Law Association in April 2014.

A paper co-authored by Mrs MacDonald, Mr Smith, Mr O'Connor and Mrs Farrell entitled "The Land Court of Queensland: It's History, Jurisdiction and Recent Case Law" was published as part of the "Azov Legal Readings" by the Berdyansk Institute of State and Municipal Management in Ukraine.

## Visit from Japanese University Professor

In February 2014, the Land Court hosted a visit by Professor Mitsuaki Usui from the Meiji University Law School in Tokyo, Japan. Professor Usui was visiting various courts and tribunals across Australia in order to research the role of specialist courts in property assessment review systems. Mr Smith (who was Acting President at the time), Mr Cochrane and Mr Isdale met with Professor Usui to explain the property valuation process in Queensland and the function and operation of the Land Court and Land Appeal Court, including the Courts' practices and procedures.

## 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 Smith, Mr O'Connor, 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 2013-14 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	1,133,026
Supplies and Services	323,807
Depreciation and amortisation	3,722
<b>Total Operating Expenses</b>	<b>1,460,555</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  
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