



## LAND COURT OF QUEENSLAND

28 October 2008

Attorney General, Minister for Justice  
and Minister Assisting the Premier in Western Queensland  
18<sup>th</sup> Floor  
State Law Building  
50 Ann Street  
BRISBANE QLD 4001

Dear Attorney,

As required by s. 77A(1) of the *Land Court Act 2000*, I provide you with the first Annual Report on the operations of the Land Court for the year ended 30 June 2008.

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

Yours sincerely

A handwritten signature in black ink, reading "C.A.C. MacDonald".

C.A.C. MacDonald  
President of the Land Court



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## Introduction

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**This is the first independent annual report** on the operations of the Land Court of Queensland. Prior to the enactment of the *Land Court and Other Legislation Amendment Act 2007*, the yearly report on the operations of the Land Court was incorporated into the annual report of the department then responsible for the financial administration of the Court.

As this is the first independent report, it is appropriate to trace briefly the 110 year history of the Land Court since it was first established in 1898.

## History of the Land Court and Land Appeal Court

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**The predecessor to the Land Court, the Land Board,** was constituted as an independent administrative and judicial authority under the *Crown Lands Act 1884*. The Board was empowered to determine rents for Crown leasehold lands, compensation upon the resumption of leasehold tenures, the value of improvements payable by incoming lessees and the settlement of other disputes between the Crown and its tenants arising from the administration of the *Crown Lands Act 1884*. The Land Board consisted of two members who exercised jurisdiction jointly. Appeals from the Board were to a single Judge of the Supreme Court who could, if required by either party, be assisted by two assessors, one nominated by each party, but subject to the approval of the Judge. There could be further appeal on a question of law to the Full Court of the Supreme Court.

The Land Court was substituted for the Land Board by the *Land Act 1897*, as from 1 March 1898. It consisted of three Members, each separately empowered to exercise the Court's jurisdiction. Appeals were to a newly constituted Land Appeal Court, consisting of a Judge of the District Court and two Members of the Land Court, other than the Member whose decision was under appeal. Any aggrieved party could appeal from the decision of the Land Appeal Court to a single Judge of the Supreme Court, who could "call in the aid of two assessors specially qualified, one assessor being nominated by each party subject to the approval of the judge." There could be a further appeal on a question of law only to the Full Court.

The consolidating *Land Act 1910* continued in existence the Land Court of three Members and the right of appeal to the Land Appeal Court. The right of appeal to a single Judge of the Supreme Court was replaced by the right to appeal directly to the Full Court on a question of law only.

The *Land Act and Other Acts Amendment Act 1937* reconstituted the Land Appeal Court to comprise a Judge of the Supreme Court and two Members of the Land Court with equal decision making power. That Act provided for the Northern Supreme Court Judge and the Central Supreme Court Judge to be Members of the Land Appeal Courts in those districts. In the Southern Supreme Court District, a Judge of the Supreme Court was nominated annually by the Chief Justice.

The office of President of the Land Court was introduced by the 1937 amendments, which provided that one of the three Members of the Court should be designated as President by the Governor-in-Council.

In general, from its inception in 1898 up to 1944, the Court's principal role was that of judicially determining matters affecting the Crown's lessees in rental, compensation, resumption and many other matters arising under the Crown leasehold system. During that period, the Court's jurisdiction was extended to determining compensation for compulsory resumption of freehold land pursuant to the provisions of the *Public Works Land Resumption Act 1906* and the many other Acts conferring the power of compulsory acquisition upon various statutory authorities. Those powers were consolidated by the *Acquisition of Land Act 1967* and the jurisdiction to determine compensation remained in the Land Court.

The *Valuation of Land Act 1944*, which created the office of the Valuer-General, conferred jurisdiction on the Land Court to hear and determine appeals against determinations by the Valuer-General of the value of land for rating and taxing purposes. Progressively, valuation appeals became a major part of the Court's caseload.

The right to convert leasehold land to freehold was reintroduced by the *Land Act Amendment Act 1957*. The Land Court was given jurisdiction to determine the purchasing price which should be paid by a lessee to acquire the fee-simple of the land and, where applicable, the value of commercial timber on that land. With the considerable increase in the number of conversion cases and increasing numbers of appeals against the Valuer-General's valuations, the Legislature made provision in 1959 for the appointment of up to six members of the Land Court, including the President. The jurisdiction in diverse areas continued to increase while at the same time the extent of the workload from the traditional areas of jurisdiction gradually diminished.

The consolidating *Land Act 1962* made no material alteration in the powers or structure of the Land Court, the Land Appeal Court, or the right of appeal on matters of law to the Full Court. Following a review of land policy and administration in Queensland in September 1990 (the Wolfe Committee Report), the *Land Act 1994* consolidated and amended the law relating to the alienation, leasing and occupation of Crown land. All the provisions

of the 1962 Land Act were repealed except those sections dealing with the Land Court, which were expressly continued by s. 521 of the 1994 Act.

At that time the then Government proposed to incorporate the Land Court into the District Court structure. However, in 1996 the newly elected Government decided to retain the Land Court as a separate entity and undertook an investigation into the Court's powers, procedure and rules. That ultimately resulted in the enactment of the *Land Court Act 2000*, which provides for the continuation of the Land Court and the Land Appeal Court and for the creation of the position of Judicial Registrar, with the power to hear a wide range of preliminary issues.

The *Land Court Act 2000* and supporting procedural rules both took effect on 1 July 2000. The Act provides for the constitution, composition, jurisdiction and powers of the Land Court. The occasion was historic in the sense that for the first time since its inception in 1898, the Land Court was governed by legislation which is separate from legislation governing the administration of Crown or State land. This separation recognised the changing broader role of the Land Court in the judicial process of the State.

With the enactment of the *Land Court and Other Legislation Amendment Act 2007*, the jurisdiction of the Land and Resources Tribunal was transferred to the Land Court on 21 September 2007. The Court's jurisdiction was thus extended to include mining and petroleum, cultural heritage and other indigenous issues.

# Members and Judicial Registrars of the Land Court

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**Prior to 21 September 2007, the Land Court consisted of a President, three Members and a Judicial Registrar:**

<b>President</b>	James John Trickett BA LLB FAPI FRICS
<b>Members</b>	Robert Peter Scott QDAH LLB
	Carmel Anne Catherine MacDonald BA LLB LLM
	Richard Stephen Jones LLB (Hons)
<b>Judicial Registrar</b>	Barry Richard O'Connor LLB LLM

The Land Court also had four part-time Members:

Gregory John Koppenol LLB (Hons)

Paul Anthony Smith BA LLB  
(both appointed pursuant to s. 27A of the *Land and Resources Tribunal Act 1999*)

Stephen Joseph Keim SC BA LLB (Hons)

Jean Hazel Dalton SC BA LLB (Hons)  
(both appointed pursuant to s. 17 of the *Land Court Act 2000*)

Following the enactment of the *Land Court and Other Legislation Amendment Act 2007*, Mr Koppenol was appointed as a Judge of the District Court and Mr Smith was appointed as a full-time Member of the Land Court.

Mr Francis William Windridge, the Mining Referee of the Land and Resources Tribunal (and former Mining Warden) was appointed as a Judicial Registrar of the Land Court.

# Jurisdiction

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**The Land Court is a court of record of the State of Queensland. It is not an administrative tribunal. It has wide ranging jurisdiction, unlimited as to amount, conferred by the Acts in the table below. From its origins as an independent body to resolve issues between the Crown and its tenants, the Court now deals with a diverse range of matters relating to land and resources, including:**

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

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

With the transfer of the jurisdiction of the Land and Resources Tribunal to the Land Court on 21 September 2007, the Land Court was divided into two divisions, the Cultural Heritage and Indigenous Land Use Agreement Division and the General Division. A Member of the Land Court may sit as a member of the Cultural Heritage Division or General Division as nominated by the President.

Legislation giving the Land Court and Land Appeal Court jurisdiction:

- ▶ *Aboriginal and Torres Strait Islander Communities (Justice, Land and other Matters) Act 1984*
- ▶ *Aboriginal Cultural Heritage Act 2003*
- ▶ *Aboriginal Land Act 1991*
- ▶ *Aborigines and Torres Strait Islanders (Land Holding) Act 1985*
- ▶ *Acquisition of Land Act 1967*
- ▶ *Alcan Queensland Pty Limited Agreement Act 1965*
- ▶ *Amoco Australia Pty Limited Agreement Act 1961*
- ▶ *Austral-Pacific Fertilizers Limited Agreement Act 1967*
- ▶ *Biological Control Act 1987*
- ▶ *Breakwater Island Casino Agreement Act 1984*
- ▶ *Central Queensland Coal Associates Agreement Act 1968*
- ▶ *Century Zinc Project Act 1997*
- ▶ *City of Brisbane Act 1924*
- ▶ *Environmental Protection Act 1994*
- ▶ *Foreign Ownership of Land Register Act 1988*
- ▶ *Forestry Act 1959*
- ▶ *Fossicking Act 1994*
- ▶ *Geothermal Exploration Act 2004*
- ▶ *Housing Act 2003*
- ▶ *Housing (Freeholding of Land) Act 1957*
- ▶ *Land Act 1994*
- ▶ *Land and Resources Tribunal Act 1999*
- ▶ *Land Court Act 2000*
- ▶ *Land Tax Act 1915*
- ▶ *Local Government Act 1993*
- ▶ *Local Government (Aboriginal Lands) Act 1978*
- ▶ *Mineral Resources Act 1989*
- ▶ *Nature Conservation Act 1992*
- ▶ *Offshore Minerals Act 1998*
- ▶ *Petroleum Act 1923*
- ▶ *Petroleum and Gas (Production and Safety) Act 2004*
- ▶ *Queensland Nickel Agreement Act 1970*
- ▶ *Racing Venues Development Act 1982*
- ▶ *Soil Conservation Act 1986*
- ▶ *State Development and Public Works Organisation Act 1971*
- ▶ *Sugar Industry Act 1999*
- ▶ *Thiess Peabody Coal Pty Ltd Agreement Act 1962*
- ▶ *Torres Strait Islander Land Act 1991*
- ▶ *Torres Strait Islander Cultural Heritage Act 2003*
- ▶ *Transport Infrastructure Act 1994*
- ▶ *Valuation of Land Act 1944*
- ▶ *Wet Tropics World Heritage Protection and Management Act 1993*
- ▶ *Water Act 2000*
- ▶ *Water Supply (Safety and Reliability) Act 2008*
- ▶ *Yeppoon Hospital Site Acquisition Act 2006*

## The Expanded Jurisdiction of the Land Court

From 21 September 2007, the *Land Court and Other Legislation Amendment Act 2007* transferred the jurisdiction of the Land and Resources Tribunal to the Land Court, with one exception concerning some applications for mining tenements made prior to 31 March 2003. For that limited purpose, the Land and Resources Tribunal is continued

in existence until 31 December 2011, at which date the *Land and Resources Tribunal Act 1999* expires. Until then the Tribunal's jurisdiction with respect to the alternative State provisions is preserved.

## Limited Continuation of the Land and Resources Tribunal

Under the *Commonwealth Native Title Act 1993*, the States and Territories are empowered to set up alternative bodies to resolve native title matters. In 2000, the Queensland Government established a system to deal with mining and exploration applications over areas where native title might exist and these were processed in the Tribunal.

However, since 31 March 2003, applications for mining tenements on land where native title may exist have been dealt with under the Commonwealth Native Title Act future act provisions. The jurisdiction of the Land and Resources Tribunal is preserved only to the extent that it is required to determine such applications that were made before 31 March 2003, thus ensuring that those applications will be dealt with under the pre-existing alternative State provisions. Since the 2007 legislation, there are no Members of the Tribunal.

However, the Governor-in-Council may appoint persons, including Land Court Members, to act as presiding or non-presiding members to allow this remaining jurisdiction to be exercised.

As at 30 June 2008, no such acting appointments had been made.

## The Jurisdiction Transferred to the Land Court

The jurisdiction of the Land and Resources Tribunal under the following Acts was transferred to the General Division of the Land Court:

- ▶ *Alcan Queensland Pty Limited Agreement Act 1965*
- ▶ *Central Queensland Coal Associates Agreement Act 1968*
- ▶ *Environmental Protection Act 1994*
- ▶ *Fossicking Act 1994*
- ▶ *Geothermal Exploration Act 2004*
- ▶ *Mineral Resources Act 1989*
- ▶ *Offshore Minerals Act 1998*
- ▶ *Petroleum Act 1923*
- ▶ *Petroleum and Gas (Production and Safety) Act 2004*
- ▶ *Queensland Nickel Agreement Act 1970*
- ▶ *State Development and Public Works Organisation Act 1971*
- ▶ *Thiess Peabody Coal Pty Ltd Agreement Act 1962*
- ▶ *Water Act 2000*

The Tribunal's cultural heritage and indigenous land use agreements jurisdiction under the *Aboriginal Cultural Heritage Act 2003* and the *Torres Strait Islander Cultural Heritage Act 2003* was transferred to the new Cultural Heritage and Indigenous Land Use Agreement Division of the Land Court.

To assist the Land Court in its cultural heritage jurisdiction, the Governor-in-Council may appoint appropriately experienced indigenous assessors to advise the Court. An indigenous assessor may be allocated by the President to a proceeding if the President is satisfied that will help to achieve the prompt and efficient conduct of the proceeding. The indigenous assessor does not form part of the Land Court, but is an officer of the Land Court for the proceeding.

As at 30 June 2008, it had not been necessary to appoint indigenous assessors.

## Proceedings Already Before the Land and Resources Tribunal

At the time of transfer of jurisdiction to the Land Court, with the exception of those matters which arose under the alternative State provisions prior to 31 March 2003, any proceeding which had started in the Land and Resources Tribunal and not fully disposed of, became a proceeding in the Land Court. The Land Court was given jurisdiction to finish the proceeding and the President was given wide powers to make directions about how the matter was to be dealt with and to grant indemnity certificates in appropriate cases.

## Land Court Caseload – Traditional Jurisdiction

As at 1 July 2007, the Land Court had a caseload of 1,041 cases awaiting hearing. During the year a further 809 new matters were filed in the Land Court registry and 860 were determined. As at 30 June 2008, there were 990 matters awaiting determination.

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

The large number of outstanding cases at the beginning of the financial year was the result of several factors: primarily, the parties have been unable or unwilling to proceed and have requested that these matters remain in abeyance until the outcome of other appeals to higher Courts, and/or of negotiations between the parties. These cases consist of:

- ▶ Appeals against valuations of major shopping centres, Brisbane Central Business District properties and service stations, in abeyance pending the outcome of appeals to the Land Appeal Court and/or Court of Appeal;
- ▶ Appeals against valuations of subdivided land held by a major development company;
- ▶ Appeals against nearly 500 valuations of properties in western Queensland with increases of up to 400%. The parties agreed that these matters be dealt with by the hearing of test cases. Test cases were heard and determined, followed by fast-track hearings. As at 30 June 2008, over 150 cases had been disposed of, while others were heard in June 2008, but were undetermined at the end of that month. It is anticipated that the majority of the remaining matters will be resolved by discussions between the parties, based on the cases already determined.

Apart from the western cases, a significant proportion of the 990 cases awaiting determination as at 30 June 2008 remain in abeyance. However, they are subject to active case management and it is expected that with the resolution of the appeals to the higher Courts, most of those cases will be resolved within the coming year.

## Types of Cases

### *Valuation of Land Act 1944*

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

In 2007/2008, 765 revenue valuation appeals under the Valuation of Land Act were lodged in respect of the unimproved values of land throughout the State, while 823 were disposed of. Most valuation cases were resolved by or following alternative dispute resolution processes, but the cases that proceeded to hearing were usually the more complex or contentious. Some hearings were completed in less than one day. However, it is not unusual for such hearings to occupy several days and even weeks.

### *Acquisition of Land Act 1967*

The determination of compensation following the compulsory acquisition of land is an important part of the Land Court's jurisdiction. Land is compulsorily acquired for various public purposes set out in Schedule 5 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 matters usually involve complex town planning, engineering, quantity surveying and valuation issues, with evidence from expert witnesses in those and other specialist disciplines. In 2007/2008, 35 claims for compensation were filed, while 19 were disposed of. Hearing of compensation cases usually involves several days, with the more complex cases taking several weeks.

### *Land Act 1994*

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

In 2007/2008, only one Land Act appeal was filed in the Land Court, while eight were disposed of. The number of Land Act matters fluctuates from year to year, but the relatively low numbers reflect the success of the internal review process. Only the more complex matters now proceed to hearing.

### *Land Tax Act 1915*

The number of appeals against decisions of the Commissioner of Land Tax under the Land Tax Act also varies from year to year. Such appeals are not against valuations upon which land tax is assessed, as revenue valuations can be appealed under the Valuation of Land Act. Land tax appeals are generally in respect of the liability of land to land tax and the entitlement to exemptions and concessions. In 2007/2008, five land tax appeals were filed, while seven were disposed of.

## Transferred Jurisdiction

### *Mining and Petroleum Legislation*

In addition to the Land Court's traditional workload, 68 cases which had commenced in the Land and Resources Tribunal but which were not completed by 21 September 2007, were transferred to the Land Court. By 30 June 2008, a further 193 matters which would have gone to the Land and Resources Tribunal, were filed in the Land Court. The transfer of jurisdiction therefore resulted in an increase in the caseload of the Land Court of 261 cases. The majority of those cases were applications for mining tenements and claims for compensation relating to the grant of such tenements. As was the previous practice of the Tribunal, most of those cases were dealt with on the papers without an oral hearing. However, many of the more complex matters required several sitting days.

### *Cultural Heritage Legislation*

Since 21 September 2007, two applications were brought pursuant to s. 106 and s. 113 of the *Aboriginal Cultural Heritage Act 2003* in respect of cultural heritage management plans. One was successfully mediated. The other matter had not been resolved as at 30 June 2008.

### Land Court Caseflow 2007-2008

Types of cases	Filed	Disposed
Revenue Valuation Appeals	765	823
Compensation Claims Land Acquisition	35	19
Land Act Appeals	1	8
Land Tax Appeals	5	7
Other	3	3
*Mining Tenement Applications	97	74
*Compensation Claims Mining	75	75
*Other Mining Matters	16	3
*Petroleum and Gas Matters	3	1
*Cultural Heritage	2	1
<b>Total</b>	<b>1002</b>	<b>1014</b>

\* Since 21 September 2007

# Land Appeal Court

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

The Land Appeal Court traditionally sits at Brisbane, Rockhampton, Townsville and Cairns, the headquarters of the four Supreme Court districts in Queensland. From time to time the Chief Justice nominates a Supreme Court Judge to act as a Member of the Land Appeal Court for the Southern District. The Honourable Justice M.J. White was the Judge nominated for the 2007/2008 year. The Central Judge, the Honourable Justice P.R. Dutney (2007) and the Honourable Justice D.V.C. McMeekin (2008), the Northern Judge, the Honourable Justice K.A. Cullinane, and the Far-northern Judge, the Honourable Justice S.G. Jones AO, were Members of the Land Appeal Court for those districts.

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

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

Historically, appeals to the Land Appeal Court have been mainly in respect of compensation claims arising out of compulsory acquisition under the *Acquisition of Land Act 1967* and revenue valuation appeals under the *Valuation of Land Act 1944*. However, since the transfer of the jurisdiction of the Land and Resources Tribunal to the Land Court, there were two appeals against decisions of the Land Court on matters under the *Petroleum Act 1923*. Previously, appeals from the Land and Resources Tribunal were direct to the Court of Appeal. It is anticipated that appeals in respect of decisions under the *Mineral Resources Act 1989* and the other resources and cultural heritage legislation will occupy a significant part of the Land Appeal Court sittings in the future.

There were eight appeals lodged in the Land Appeal Court in 2007/2008, compared with 12 appeals in 2006/2007. However, the complexity of the appeals heard during 2007/2008 resulted in the Land Appeal Court sitting for 20 days. Of particular significance were the hearings of important revenue valuation appeals concerning major commercial sites located in the Central Business District of Brisbane. There were also a number of self-represented litigants which placed additional pressure on the resources of the Land Appeal Court and resulted in an increase in the number of interlocutory applications.

The table below shows the number of appeals lodged for the years 2005/2006, 2006/2007 and 2007/2008. Considering the number of matters dealt with by the Land Court each year there are remarkably few appeals to the Land Appeal Court.

Nature of Appeals	2005/2006	2006/2007	2007/2008
Compensation ( <i>Acquisition of Land Act 1967</i> )	4	1	1
Revenue valuations ( <i>Valuation of Land Act 1944</i> )	10	10	5
Application for rehearing ( <i>Acquisition of Land Act 1967</i> )	1	0	0
<i>Land Tax Act 1915</i>	0	1	0
<i>Petroleum Act 1923</i>	N/A	N/A	2
Appeals to Court of Appeal	0	2	3

All appeals for the 2007/2008 year were in the Southern Land Appeal Court District.

## Case Management

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

- ▶ Appellants in all revenue valuation appeals are offered alternative dispute resolution through preliminary conferences. These conciliation conferences are usually conducted by a Judicial Registrar and have achieved considerable success.
- ▶ Regular colloquies of major cases, including most abeyance cases, at least every 6 months.
- ▶ Directions hearings in appropriate cases, with orders made seeking identification of issues, and the filing of expert reports addressing those issues.
- ▶ Test cases where there are large numbers of similar matters. Following the determination of those test cases, the parties are expected to confer. Expedited hearings are held where no settlement is reached.

## Hearings

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**Although based in Brisbane, the Land Court also sits in regional areas of Queensland. The Court sat on 439 days during the year, including 98 sitting days at the following centres:**

- ▶ Atherton
- ▶ Barcaldine
- ▶ Blackall
- ▶ Bowen
- ▶ Cairns
- ▶ Caloundra
- ▶ Charters Towers
- ▶ Chinchilla
- ▶ Clermont
- ▶ Coolangatta
- ▶ Emerald
- ▶ Gatton
- ▶ Georgetown
- ▶ Ingham
- ▶ Ipswich
- ▶ Longreach
- ▶ Mackay
- ▶ Mareeba
- ▶ Maroochydore
- ▶ Redcliffe
- ▶ Southport
- ▶ Toowoomba
- ▶ Townsville
- ▶ Winton
- ▶ Yeppoon

A total of 283 substantive matters were heard by the Court in Brisbane, as well as 31 jurisdictional hearings. In addition, the Court conducted 194 interlocutory hearings, including applications, reviews and mentions, and four callovers.

## Alternative Dispute Resolution

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

### Preliminary Conference

A preliminary conference is essentially a conciliation process, not merely a preliminary meeting. It is “preliminary” only in the sense that it precedes any adjudication of a matter. The conference is designed to identify the issues in dispute, discuss those issues and attempt to reach an agreement. The term “preliminary conference” is preferred to “conciliation conference”, as it indicates that if no agreed outcome is reached, the matter can proceed to hearing and adjudication.

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

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

Most preliminary conferences are conducted by a Judicial Registrar with extensive experience in dispute resolution. However, a Member will conduct preliminary conferences in certain circumstances. For example, a Member who is hearing cases in a regional centre may, as an adjunct, conduct a limited number of preliminary conferences in that centre, avoiding the expense of a Judicial Registrar also visiting the centre.

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

During the year, 408 preliminary conferences were conducted and 298 matters were disposed of either following the preliminary conference or soon thereafter. That represents a success rate of 73%.

## Mediation

Mediation is a process by which the parties participate together with the assistance of a Judicial Officer, in isolating disputed issues in order to develop options leading to a settlement. The Court has not to date offered case appraisal, in which a neutral evaluator attempts to assess the relevant strengths and weaknesses of each party's case and offer an opinion as to the likely outcome.

Mediation is generally confined to the larger more complex cases, including those involving substantial amounts. Mediation is usually conducted by a Member of the Court trained in mediation.

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

Where a Member conducts a mediation which does not lead to a settlement, that Member cannot subsequently hear the matter. Neither that Member, nor the Member who subsequently hears the matter, can be a Member of the Land Appeal Court, if there is an appeal.

During the year 24 matters, including six major matters, were mediated by a Land Court Member. Of those, 21 settled as a result of the mediation or soon thereafter.

## Registrar of the Land Court and Administrative Support

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

Prior to 21 September 2007, the Registrar was assisted in performing his duties by Senior Deputy Registrar, Mr Kevin Hayden and three Deputy Registrars, Mr Rai Laaja, Mrs Clare Gilbert and Mr Jeffrey Hobson.

Administrative support was provided by Ms Glenda Jones, Ms Terri Bastiani and Ms Katherine Priestly (seconded for part of the year).

Mrs Alison Templeton and Mrs Heather Clarke, part-time administrative officers, were responsible for the provision of transcripts.

### Merging of Registries

With the transfer of the jurisdiction of the Land and Resources Tribunal to the Land Court on 21 September 2007, the registry staff of the Tribunal became members of the staff of the Land Court in a single registry. The Land Court registry staff continued to perform the duties outlined above.

The Registrar of the Land Court, Mr Peter Fernantzen, was also the Acting Registrar of the Land and Resources Tribunal. However, the other Tribunal staff members held various positions.

The Office Manager, Ms Nerida Mead, became the Office Manager of the Land Court, directly assisting the Registrar in the performance of his duties. The Senior Case Manager, Ms Betty Lippiatt, continued in the day-to-day administration of the mining tenement and mining compensation matters. The Executive Officer, Ms Diane Blewett, became a Deputy Registrar. Case Officer, Ms Janette Richardson, was seconded to the Office of Fair Trading and Case Officer, Mr Tony Cameron, combined his role as Case Officer with providing administrative assistance to the Judicial Registrars. Administration Officer, Ms Margaret Christison, continued to provide administrative support.

## The Role of the Deputy Registrars

In addition to assisting the Registrar with the day to day administration of the Court, each Deputy Registrar is assigned to a Member of the Land Court. However, Deputy Registrars perform duties far beyond those of Judges' Associates. They are responsible for organising each Court sittings by their Members, advising the parties, booking court rooms and arranging travel for circuit Courts. While the Court is sitting, the Deputy Registrar not only provides administrative support to the Member, but acts as court official, recorder and bailiff. On completion of hearings, the Deputy Registrar organises the preparation of transcripts and assists the Member to prepare and check judgments, arranges delivery of the judgments and sends copies to the parties.

Because the Deputy Registrar undertakes these various functions, a Land Court Member and Deputy Registrar travel to often remote areas of the State as a self-contained unit, without having to rely on the assistance of Court House staff for hearings in various centres outside Brisbane.

The Deputy Registrars also provide administrative support to the Judicial Registrars.

# 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, each Member made use of the jurisprudential and/or expense of office allowance to attend legal or professional conferences and to undertake professional development courses.**

- ▶ The President attended a conference on Judges and Judging at the Faculty of Law at Oxford University, in July 2007.
- ▶ Mr Scott attended the East West Legal Conference in St Petersburg, Russia, in July 2007.
- ▶ Mrs MacDonald attended a course on mediation run by the Harvard Law School, in June 2008.
- ▶ Mr Jones attended the National Judicial College of Australia's Judgment Writing Course, in September 2007.
- ▶ Mr Smith was visiting guest lecturer at the Novosibirsk State University, Siberia, Russia, in January/February 2008. He was appointed as a Visiting Professor of that University.

In addition, the Members attended a range of seminars/discussions conducted by various professional institutions in matters related to the Court's jurisdiction, such as the Queensland Bar Association, the Environmental Law Association, the Australian Property Institute, the Australian Mining and Petroleum Law Association and the Royal Institution of Chartered Surveyors.

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

## Assistance to Education

During the year, as in previous years, the President, Members and Judicial Registrar presided at Moots between students of Queensland and Interstate Universities. The Land Court also made available its Court rooms for Moots between students of the University of Queensland and the Queensland University of Technology and the Interstate Moot between the winner of that Moot and the University of Technology Sydney.

In addition, the Judicial Registrar, Mr O'Connor, presented a paper on significant cases at the annual conference of the Australian Property Institute in Brisbane.

## Library

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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. It has been enhanced by the smaller but important Land and Resources Tribunal library.

The library is maintained by part-time Librarian, Ms Helen Bannerman, who also maintains a register of the Court's judgments. A small library committee comprising Mr Jones, Mr O'Connor, the Registrar and Librarian co-ordinate the preparation and printing of the volumes of the Land Court Reports, of which the Registrar is the editor. The Land Court Reports in bound volumes extend back to the first constitution of the Court.

## Digital Recording

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The Court Rooms utilised by the Land Court in Brisbane have digital recording systems which have also been installed into the Supreme, District and Magistrates Courts. It is intended that the digital system will also be installed in all regional Courts. Despite some teething troubles, the digital system has potential to offer considerable benefits over the former manual system. The Deputy Registrars and the Land Court Transcription Staff have become proficient with the use of the digital system.

## Case Management Systems

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The Land Court Electronic Case Management System was established several years ago. It was designed to cater for the needs of the Land Court and has operated effectively during that time.

However, the Land and Resources Tribunal had a different Electronic Case Management System which was established to meet its perceived needs at that time. Unfortunately, the two case management systems are not compatible and the various records have not been able to be merged and are maintained separately.

Provision has been made in the 2008/2009 budget for the merging of the two case management systems.

## Finance

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

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

The operating expenses of the Land Court for the financial year 2007-2008 are shown in the table below. They include the operating expenses of the Land and Resources Tribunal from 1 July 2007 to 21 September 2007, but exclude Members' salaries and allowances, which are appropriated separately.

Operating expenses 2007-2008	\$
Employee related expenses	1,247,376
Supplies and services	1,069,404
Depreciation and amortisation	73,398
Other expenses	266
<b>Total Operating Expenses</b>	<b>2,390,444</b>

## Accommodation

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

# Report on the Operations of the Land and Resources Tribunal 2007–2008 —

**Under s. 77A(3) of the *Land Court Act 2000*, each annual report of the Land Court must include a report on the operations of the Land and Resources Tribunal for the year the subject of the report, until the repeal of the Land and Resources Tribunal Act on 31 December 2011. Prior to the transfer of the jurisdiction of the Tribunal to the Land Court on 21 September 2007, the Tribunal remained a separate entity under the provisions of the *Land and Resources Tribunal Act 1999*.**

The Tribunal commenced the year with 73 cases undisposed of. From 1 July 2007 until 21 September 2007, 59 new cases were received. During that time, a total of 64 cases were disposed of, leaving 68 undisposed of cases which were transferred to the Land Court.

The 64 cases disposed of comprised:

- ▶ 3 appeals.
- ▶ 3 environmental objections.
- ▶ 3 mining claim compensation applications.
- ▶ 29 mining lease applications.
- ▶ 23 mining lease compensation applications.
- ▶ 1 native title access agreement.
- ▶ 1 native title compensation agreement.
- ▶ 1 petroleum and gas compensation agreement.

Between 21 September 2007 and 30 June 2008, one matter was referred to the Court concerning an application for a mining tenement on land where native title may exist. As explained earlier, it will therefore be necessary for the Governor-in-Council to make appointments to enable this matter to be dealt with.