LAND COURT OF QUEENSLAND

2022-2023





5 October 2023

Brisbane Magistrates Court 363 George Street Brisbane GPO Box 5266 Brisbane Queensland 4001 Australia P +61 7 3738 7441 E EA.Landcourtpresident@courts.qld.gov.au

The Honourable Yvette D'Ath MP Attorney-General Minister for Justice Minister for the Prevention of Domestic and Family Violence GPO Box 149 Brisbane QLD 4001 Email: <u>attorney@ministerial.qld.gov.au</u>

Dear Attorney-General,

Re: Land Court of Queensland Annual Report 2022-2023

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

Yours sincerely,

Acting President PG Stilgoe OAM

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Acting President's Overview

It is a privilege to present this annual report as caretaker president following President Kingham's transition to Chair of the Queensland Law Reform Commission.

During her term, President Kingham initiated reforms that resulted in a stronger, more efficient court. She introduced active case management, concurrent evidence, and Court Managed Expert Evidence. President Kingham streamlined Court processes and encouraged a wider use of ADR and, particularly during COVID, strengthened the practice of eTrials.



The relatively low caseload throughout the last two years has enabled the Court to reflect upon these reforms and consolidate efficient court practices.

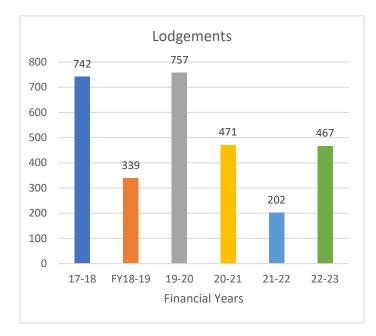
Acting President Peta Stilgoe OAM

I want to thank my colleagues for supporting me and the Court through this transition period. I also want to thank the Principal Registrar, Darren Campbell, for keeping a steady hand on Registry leadership.

The Court is now ready to tackle the increased workload - evident from the performance statistics, and the challenges presented by the changing needs of the Queensland economy.

Performance

The statistics for the 2022-2023 financial year show a trend back to pre-pandemic levels. Further insight has been provided within the below statistics and graphs.



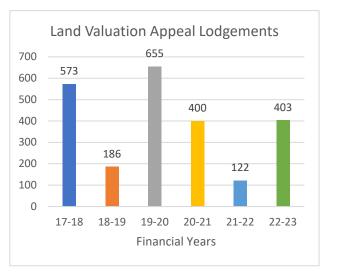
This financial year saw a considerable increase in lodgements compared to the previous financial year.

The Court's land valuation jurisdiction saw 403 appeals lodged which equates to 86% of the Court's total filings. The increase coincides with the valuation program issued by the Valuer-General whereby 1.51 million properties were revalued (87% of Queensland's rateable properties).

During this financial year, the State Valuation Service commenced a review of some of its internal processes. This resulted in a change of trends particularly with the timing of appeals being filed in quarters one and

two of the financial year. Objections were being decided later than in previous years such that the Court continues to receive appeals subject to the 2022 program (date of valuation 1 October 2021). The Court is now seeing appeals filed from both 2022 and 2023 valuation programs.

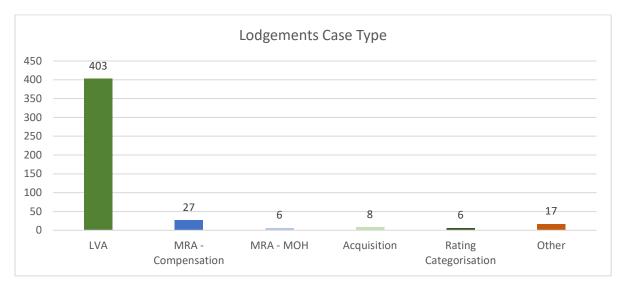
Although the Court's other jurisdictions are much smaller in volume, they are considerably more complex and, therefore, require more Court resources to resolve. Mining compensation and mining objection cases remained steady in this financial year with no sign of any major increases with these jurisdictions.



Acquisition of land (8) and rating categorisation cases (6) also remain steady for this financial year.

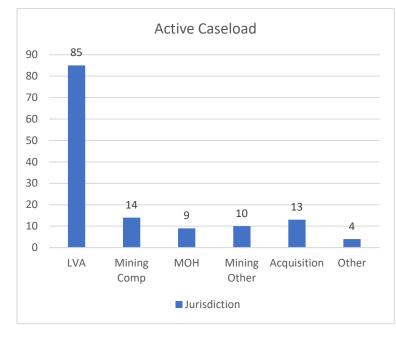
Four matters were filed in the Court's Cultural Heritage jurisdiction: three being injunction applications under the *Land Court Act* 2000.

The Court saw a return of the New Acland Coal dispute with two appeals filed under the *Water Act* 2000.



Active caseload

At the end of the financial year, the Court's active caseload increased to 135 cases. That is a percentage increase of 92.85% from the last financial year. This is in line with the Court having experienced a 131.18% increase in lodgements.



Only 12 cases are greater than two years old. The majority of those are mining cases involving complex issues or acquisition of land cases.

Finalisations and Timeliness

The Court nearly doubled its finalisations this financial year with 402 cases closed.

The Court's timeliness improved considerably with 86.56% of cases resolving within 6 months from being filed. The average days opened for any case in the Court was 113 days (3.7 months).

The Court delivered 25 Judgments (19 final judgments - 6

interlocutory judgments). 92% were delivered within 3 months. There is one judgment pending, due to be delivered early in the next financial year. 10 individual cases resolved by mediation.

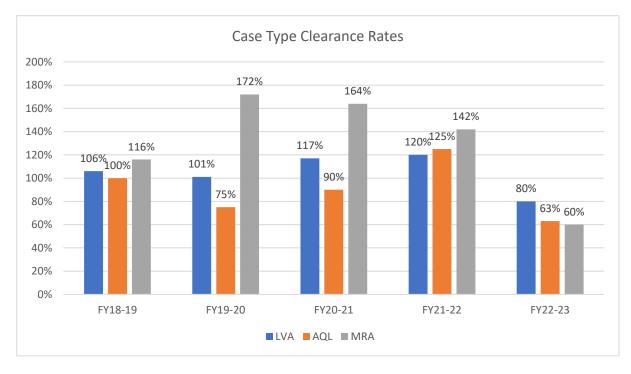
Clearance Rate

The Court's clearance rate for this financial year is 86.08%. Although the clearance rate is lower than usual for this financial year, the Court nearly doubled its finalisations from the previous financial year.

The previous financial year had very low lodgements (202 cases) and lower finalisations (250) which resulted in a high clearance rate (123.76%).



This year, the Court started from a very low caseload and then received more than double the number of lodgements. This results in a lower clearance rate <u>percentage</u> even though the Court finalised nearly double the number of cases.



Appeals and Judicial Reviews

Two appeals were lodged this financial year. One appeal listed for hearing in Cairns was withdrawn before the hearing commenced.

The second appeal is listed for hearing in Townsville in October 2023. The hearing of this appeal was delayed pending the appointment of Judge Coker as a Member of the Court. This appointment has now occurred.

No decisions were handed down in the Land Appeal Court and there have been no appeals to the Court of Appeal.

There was one Judicial Review application filed in the Supreme Court but that was discontinued in February 2023.

Alternative Dispute Resolution (ADR)

Again, the Court showed its high success rate with Preliminary Conferences for LVA appeals under \$5 million with 224 settlements achieved. A further 79 LVA appeal cases resolved before any Court event.

10 matters finalised by mediation, 4 were chaired by an ADR Panel Convenor and 6 by a private mediator.

There were 15 individual mediation sessions chaired by ADR Panel Convenors.

There were no individual mediations sessions chaired by the Members of the Court.

12 matters finalised in this financial year had been referred to the Court Managed Expert Evidence process.

Representation Statistics

The Court continues to have a high proportion of self-represented parties.

Of 467 appellants in LVA appeals, 150 were self-represented. (32% self-represented – 68% represented).

Out of the 403 respondent parties involved in LVA appeals, 379 were unrepresented leaving 24 respondent parties represented. (94% unrepresented – 6% represented)

It should be noted that the respondent in all LVA appeals is the Valuer-General. The Valuer-General is not legally represented at preliminary conferences. Therefore, the Valuer-General was unrepresented in 94% of cases before the Court.

Of the 37 applicants in mining resources cases, 11 were self-represented. (30% self-represented – 70% represented). Of the 32 respondent parties in mining resources cases, 20 were self-represented. (62% self-represented – 38% represented).

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 2022-2023, the Court sat outside of Brisbane at the following centres: Atherton, Bundaberg, Caboolture, Cairns, Caloundra, Erub (Darnley Island), Gatton, Georgetown, Goondiwindi, Hervey Bay, Innisfail, Ipswich, Mackay, Mareeba, Mount Isa, Noosa, Poruma (Coconut Island), Rockhampton, Southport, Toogoolawah, Toowoomba, and Townsville.



The cohort involved in the circuit to the Torres Strait to take evidence on Country.

Personalia

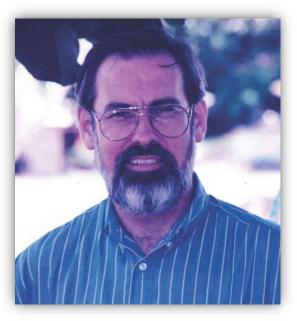
During the 2022-2023 financial year we received the sad news of Graeme Neate's passing.

I record my deep sadness on the passing of Graeme John Neate AM on 17 June 2023 and express my sincere condolences to his family.

Graeme was the inaugural Chairperson of the Land Tribunal, a position he held for more than 9 years from January 1992 to May 2001.

Graeme may be better known for his later service on the National Native Title Tribunal, which included 14 years as its President. However, his contribution to Queensland's land title framework deserves special recognition.

Graeme established and nurtured a new judicial institution under novel state-based land rights



Graeme Neate, "a man of profound empathy, deep understanding, and unwavering Commitment. (Cape York Partnership)

legislation. He developed well considered and culturally appropriate processes, including hearings on country. As well as being an exceptional lawyer, Graeme was a generous mentor and a highly principled leader and decision-maker.

I am confident that claimants and lawyers alike will join with me in remembering Graeme fondly and with great respect. His family can take pride in his positive and enduring legacy.

Written by Fleur Kingham Chair of the Queensland Law Reform Commission

Land Appeal Court of Queensland

The Land Appeal Court hears appeals from the Land Court. The 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.

Judges

In 2022-2023 the Land Appeal Court Judges were:

- Far Northern District, the Honourable Justice James D Henry
- Northern District, the Honourable Justice David OJ North
- Central District, the Honourable Justice Graeme Crow
- Southern District, the Honourable Justice Susan (Sue) Brown.

Land Court of Queensland

The Land Court hears and determines matters relating to land and natural resources. The Land Court is comprised of a President, Members, and Judicial Registrar.

President

The President is responsible for the administration of the Land Court and for ensuring the orderly and expeditious exercise of the jurisdiction and powers of the Land Court.

In 2022-2023 the President was:

- President Fleur Kingham
- Acting President Peta Stilgoe OAM (appointed 5 May 2023).

Members

In 2022-2023 the Members were:

- Member William Isdale
- Member Peta Stilgoe OAM
- Member James McNamara.

Judicial Registrar

In 2022-2023 the Judicial Registrar was Judicial Registrar Graham Smith.

Judicial Support

The President, Members, and Judicial Registrar are supported by a Judicial Support Team comprised of an Executive Assistant and four Associates. In 2022-2023 the Judicial Support Team were:

- Executive Assistant, Tyson Aleksić
- Associate to President Kingham, Sophia Bird
- Associate to Acting President Stilgoe OAM, Dean Cosgrove
- Associate to Member Isdale, Courtney Pipa
- Associate to Member McNamara, Rosalba Rigamoto.

Judicial Development and Engagements

The table below outlines the various events at which the President and Members either attended or presented.

Title:	Туре:	Judicial Officer
JULY 2022		
Bar Association of Queensland	Presentation	President Kingham
Trial Submissions Workshop	resentation	
Australian Institute of Aboriginal and Torres Strait	Attendenes	Member McNamara
Island Studies Conference, Sunshine Coast	Attendance	
AUGUST 202	2	•
Australian Women Lawyers Conference	Presentation	President Kingham
Australasian Conference of Planning and Environment	Dresentation	President Kingham
Courts and Tribunals	Presentation	Member McNamara
SEPTEMBER 2)22	•
LawAsia ADR Conference		
Queensland Civil and administrative Tribunal	Presentation	President Kingham
Decision Writing Seminar		
Perth Energy and Mines Australia Summit	Attendance	Acting President Stilgoe
OCTOBER 20	22	•
National Judicial College of Australia	Presentation	President Kingham
Writing Better Judgments	Fresentation	
National Judicial College of Australia	Attendance	Acting President Stilgoe
Reflections on the Judicial Function		
Australian Judicial Officers Association Colloquium		
National Judicial College of Australia	Attendance	Member McNamara
Writing Better Judgments Course, Tasmania		
NOVEMBER 20)22	
National Judicial College of Australia		
National Judicial Orientation Program	Presentation	President Kingham
National Judicial College of Australia		
National Magistrates Intensive Program		
Australian Judicial Officers Association Colloquium	Attendance	Acting President Stilgoe
FEBRUARY 20	23	
Queensland Environmental Law Association	Attendance Acting President Stilgo Presentation	Acting President Stilgoe
Welcome Function		
Queensland Civil and administrative Tribunal Conference		

Title: Judicial Officer Type: **MARCH 2023** National Judicial College of Australia Writing Better Judgments Hobart National Judicial College of Australia Presentation President Kingham Writing Better Judgments Dubai National Judicial College of Australia National Judicial Orientation Program **APRIL 2023** International Conference on Climate Change Attendance **Acting President Stilgoe** Land Court of Queensland Jurisdiction Presentation Member McNamara Cairns, Mareeba, and Mount Isa MAY 2023 New Zealand Centre for Environmental Law Presentation President Kingham Conference International Association of Women Judges Attendance Acting President Stilgoe **Biannual Conference** Queensland Environmental Law Association Presentation Member McNamara Turning the Tide Conference **JUNE 2023** National Judicial College of Australia Presentation President Kingham **Effective Judicial Presentations** Australian Judicial Officers Association **Governing Council Meeting** Attendance Acting President Stilgoe Australasian Institute of Judicial Administration Oration Queensland Environmental Law Association Attendance Member McNamara International Conference, Dublin, Ireland

Queensland Environmental Law Association's Expert Evidence Workshop

Although the Queensland Environmental Law Association (QELA) has been running expert evidence workshops in conjunction with the Planning & Environment Court for some time, this year was the first time that QELA and the Land Court combined to offer a similar workshop.

Emerging experts in the areas of ecology, environmental issues, quantity surveying, town planning and valuations undertook a five-step workshop with mentors from both the experts' areas of expertise, members of the profession and the court. Members Isdale, Stilgoe and McNamara presented at the introductory session, chaired mock Court Managed Expert Evidence sessions, and presided over mock hearings.

All participants considered the workshop a success and the Land Court Expert Evidence workshop will now be a regular feature on the QELA education calendar.

Principal Registrar's Overview

I take this opportunity to acknowledge the Land Court Registry team for their ongoing support, commitment and enthusiasm working together to provide exceptional public value.

In addition to delivering a high-quality service to the public we have continued to progress implementing the action items in our Reconciliation Action Plan (RAP) – Innovate, continuing our journey of cultural learning within our organisation partnering with the Centre for Cultural Competence Australia's Cultural Competence program.

I have previously reported of the team's dedication and commitment to improving the operations of the Court and of our unique workplace culture to which I'm proud to say is deeply embedded in our workplace DNA to the betterment of all who work in this place.



Principal Registrar, Darren Campbell.

Strategic Plan

There has been steady progress completing the tasks in the 2022-2023 strategic plan and the Court continues to:

- audit all Land Court records to identify Aboriginal Land Tribunal and permanent records
- digitise the collection of mining warden decisions and copies of transcripts, appeal decisions of superior courts and courts of other jurisdictions
- implement the action items in the Land Court's RAP
- a program of cultural competence training
- implement a work experience program for First Nations students
- review First Nations business procurement
- develop materials on the Cultural Heritage jurisdiction in lay terms targeted for selfrepresented litigants
- develop and implement court forms for the Cultural Heritage jurisdiction to increase access to justice and streamline the application process
- consult with relevant groups to develop on Country protocol for First Nations evidence.

Land Court and Referring Agencies Annual Conference 2022

The conference was held on 24 August 2022 at the Dalby Events Centre. I was delighted to officially launch the Court's RAP which was opened with an acknowledgement of Country by William (Thira-Mayinj) Haupt, a Muruwarri and Gidgee man, a smoking ceremony and Corrobboree dance performed by the Mura Biri Gururu Aboriginal Dance group, and a pre-recorded message from the Attorney-General and Minister for Justice, the Honourable Shannon Fentiman MP.



William Haupt and the Mura Biri Gururu Aboriginal Dance group commencing the Smoking Ceremony.

The conference generated local media interest with a segment feature on Channel 7 Toowoomba and President Kingham being interviewed by the local newspaper and radio station. It was a fitting way to commend such a momentous occasion.

The conference program featured a range of stakeholders who presented on topics relevant to the Court's jurisdiction, including the Chair and Executive Director of the Queensland Law Reform Commission, the Queensland Mine Rehabilitation Commissioner, and other representatives from the Department of Seniors, Disability Services, and Aboriginal and Torres Strait Islander Partnerships, Department of Resources, Department of Environment and Science, Queensland Gas Fields Commission and AgForce.

Registry Officers

The Land Court Registry is comprised of 1 x AO8, 2 x AO6, 2 x AO4, and 1 x AO3.

The Principal Registrar is responsible for the management and coordination of Land Court Registry administration. In 2022-2023 the Registry Officers were:

- Principal Registrar, Darren Campbell
- Senior Registrar Business Operations, Nichole Padovan
- Senior Registrar Court Management, Chris De Marco
- Deputy Registrar, Gregory Grodecki
- Deputy Registrar, Paulo Frutuoso
- Court Officer, Paulo Ribeiro Junior.

Registry Services

The Land Court Registry is responsible for:

- receiving and sealing documents for filing and service
- providing procedural information about court processes and the progress of particular matters
- maintaining court records and ensuring that documents are created and distributed to give effect to orders of the court
- organising resources to enable matters to progress through the system and hearings to proceed
- performing administrative support to the Court, including budget and resource management.

Operating Expenses

Expenses 2022-2023:	Amount:
Employee expenses	\$1,304,865.22
Supplies and services	\$233,817.14
Depreciation	\$0.00
Total:	\$1,538,682.36

Location and Contact

Phone:	(07) 3738 7199
Email:	LandCourt@justice.qld.gov.au
Hours:	8:30am to 4:30pm, Monday to Friday (excluding Public Holidays and other designated court holidays)
Postal:	GPO Box 5266, Brisbane, Queensland, 4001
Address:	Level 8, Brisbane Magistrates Court Building, 363 George Street, Brisbane, Queensland, 4000
Website:	www.courts.qld.gov.au/courts/land-court

Women of the Land Court

The Land Court of Queensland is the second oldest Queensland court (after the Supreme Court) and replaced its predecessor, the Land Board, from 1 March 1898. This was the time before federation and Queensland had separated from the colony of New South Wales in 1859.

Women and the Law

Queensland's *Married Women's Property Act 1890* had come into effect in 1891 and allowed married women to acquire and dispose of property and other investments independent of their husbands, but the requirement that women retire from the state public service upon marriage remained in place in Queensland until 1969.



Librarian, Helen Bannerman

In 1905 the passing of the *Legal Practitioners Act 1905* (Qld) allowed women to practise law in Queensland and the first female solicitor, Agnes McWhinney, was admitted in 1915. Nadia Haxton became the first woman to practise as a barrister in Queensland in 1966.

Margaret McMurdo was the first woman to be appointed as a judge in Queensland when she was appointed a judge of the District Court in 1991 and Margaret White, later to sit as the Southern District judge on the Land Appeal Court, was the first woman to be appointed as a judge of the Supreme Court in 1992.

This article recognises women who have played a part in the Land Court's history. The historical information above sets in context the absence of women sitting on the bench in Land Court and Land Appeal Court matters until the 21st century. The exception to this is the Land Tribunal where women occupied the positions of Deputy Chairperson and Member from 1993 until 2016 when the last claim was determined by Chairperson Carmel McDonald.

Special mention should also be made of a pool of women who transcribed Land Court hearings in the last quarter of the 20th century. The job of transcribing Land Court hearings was not entrusted to the State Reporting Bureau as with other Queensland Courts of the time. Instead, a small pool of dedicated women worked as needed, and as hearings dictated, to transcribe hearings and often delivered them overnight. This allowed the women to balance work and family responsibilities but came to an end around the turn of the century.

Early Female Litigants

Women have appeared in the Land Court as litigants since the first years of operation. Volume 1 of the *Crown Land Law Reports* (which was the predecessor of the current *Queensland Land Court Reports*) contain two cases where the applicant was a female.

Re Lomax (1899) 1 CLLR 195 was an application to the Land Court for the approval of Emma Mary Lomax's application No 874, Dalby Register, to select a grazing farm. The application was accepted by

the Land Commissioner, but it was not signed by the applicant; instead, it was signed by her attorney. Land Court Member, Mr Tully, held that it was imperative that the application should be signed by the applicant personally, as directed by s 91 of the *Land Act 1897*, and cancelled the application.

In *Re Forrest* (1899) 1 CLLR 196, the tough lesson from *Lomax* concerning the requirement for the applicant to personally sign the application was taken on board. The application to the Land Court was made on behalf of Doreen Marie Forrest for the approval of her applications Nos 1180 and 1181, Isisford Register (which had been accepted by the Land Commissioner) to select two portions as unconditional selections. The applicant was described as "a spinster, aged three years".

The Crown objected that the applicant was not qualified to select and, among other things, mentioned that the application should be signed by the applicant.

Land Court Member, Mr Sword, found that Doreen Marie Forrest, "a child admittedly of the age of three years on 9th February last, ostensibly signed, by making her mark …" but cancelled the applications because a child of her age could not have an "intelligent understanding of the nature and consequences of the transaction entered into".

Female Judicial Officers

The following list gives information about the women who have been appointed to the Land Appeal Court, Land Court, and Land Tribunal of Queensland.

The Honourable Justice Debra A Mullins AO:

- Judge of the Supreme Court of Queensland 2000 to present
- Judge of the Land Appeal Court of Queensland 2001 to 2003
- Judge of the Land Appeal Court of Queensland 2019
- Judge of the Queensland Court of Appeal 2020 to present
- Justice Mullins was appointed an Officer of the Order of Australia in 2019 for distinguished service to the law and to the judiciary, to professional development and legal education, and to women
- President of the Queensland Court of Appeal 2022 to present.

The Honourable Justice Jean Dalton:

- Part-time Member of the Anti-Discrimination Tribunal Queensland 2001 to 2005
- President of the Anti-Discrimination Tribunal Queensland 2005 to 2008
- Part-time Member of the Land Court and Land Tribunal 2004 to 2011
- Deputy Chairperson of the Land Tribunal 2004 to 2011
- Judge of the Supreme Court of Queensland 2011 to present
- Judge of the Land Appeal Court of Queensland 2016 to 2018
- Judge of the Queensland Court of Appeal 2022 to present.

The Honourable Anthe Philippides:

- Judge of the Supreme Court of Queensland 2000 to 2014
- Judge of the Land Appeal Court of Queensland 2004 to 2006
- Judge of the Queensland Court of Appeal 2014 to 2021
- First woman of Hellenic heritage to be admitted as a barrister in Queensland in 1984 and to attain silk in Australia in 1999
- First appointments in Australia to a superior court and an appellate court respectively of a woman lawyer of immigrant parents from Cyprus.

The Honourable Margaret Jean White AO:

- First woman to be appointed to the Supreme Court of Queensland 1992
- Judge of the Land Appeal Court of Queensland 2006 to 2009
- Judge of the Queensland Court of Appeal in 2010 to 2013
- Justice White was appointed an Officer of the Order of Australia "for distinguished service to the judiciary and to the law particularly in Queensland..." in 2013.

Carmel Anne Catherine MacDonald:

- First woman to be appointed as a full-time law lecturer in Queensland (at Queensland Institute of Technology)
- First female Member of the Land Court of Queensland 2001 to 2008
- Chairperson, Land Tribunals established under the *Aboriginal Land Act 1991* and the *Torres* Strait Islander Land Act 1991, 2001 to 2016
- President of the Land Court of Queensland 2008 to 2016.

President Fleur Yvette Kingham:

- Deputy President of the Land and Resources Tribunal Queensland 2000 to 2006
- Member of the Land Court of Queensland 2004 to 2006
- Judge of the District Court of Queensland 2006 to 2016
- First Deputy President of the Queensland Civil and Administrative Tribunal 2009 to 2012
- President of the Land Court of Queensland 2016 to present
- Member of the Queensland Law Reform Commission 2022 to 2023
- Chairperson of the Queensland Law Reform Commission 2023 to present.

Acting President Peta Gwen Stilgoe OAM

- Member of the Queensland Civil and Administrative Tribunal 2009 to 2012
- Senior Member of the Queensland Civil and Administrative Tribunal 2012 to 2017
- Member of the Land Court of Queensland 2017 to present
- Acting President of the Land Court of Queensland to present.

Stephanie Ann Forgie:

- Deputy Chairperson, Land Tribunal 1993 to 2003
- Deputy President of the Administrative Appeals Tribunal 1988 to 2021.

Christine Mary Fewings:

- Deputy Chairperson of the Land Tribunals 1998 to 1999
- Native Title Registrar of the Federal Court of Australia
- Native Title Registrar of the National Native Title Tribunal 2018.

Beverley Maud Perel:

• Member of the Land Tribunal 1993 to 1998.

Dr Eve Mumewa Doreen Fesl AM:

- Member of the Land Tribunal 1998 to 2010
- the first Indigenous Australian to receive a PhD from an Australian university in 1989
- following her mother's death in 2005, became the senior spokesperson for the Gubbi Gubbi people.

Ruth Margaret Wade:

- Member of the Land Tribunal 1998 to 2003
- Member of the National Native Title Tribunal 2000 to 2009.

Netta Tyson:

• Member of the Land Tribunal 2004.

Dr Nancy Margaret Williams:

- Member of the Land Tribunal 2004 to 2010
- Honorary Associate Professor School of Social Science, The University of Queensland
- Author of Two laws: managing disputes in a contemporary Aboriginal community (1987).

Written by Helen Bannerman Librarian, Land Court of Queensland



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Bernard Lee Singleton, Miyamiya, March 2022©

The Land Court of Queensland acknowledges the Traditional Custodians of this land, and recognises the culture, history, diversity, and deep connection to land, sea, and waters of Aboriginal and Torres Strait Islander peoples.