



# **LAND COURT OF QUEENSLAND**

**ANNUAL REPORT 2012-2013**

---



## LAND COURT OF QUEENSLAND

---

25 October 2013

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 sixth Annual Report on the operations of the Land Court for the year ended 30 June 2013.

Yours sincerely

A handwritten signature in cursive script, appearing to read 'Carmel MacDonald'.

**Carmel MacDonald**  
**President**

# Contents

Introduction	1
History of the Land Court	1
Origins of the Land Court Reports	1
Retirement of the Honourable Justice Margaret White AO	3
Death of former Registrar	3
Members and Judicial Registrar of the Land Court	4
Jurisdiction	4
Legislative Changes	6
Land Court Caseload	9
Types of Cases	9
Land Court Workload 2012-13	12
Land Appeal Court	13
Membership of the Land Appeal Court	13
Land Appeal Court Proceedings	13
Further Appeals	14
Case Management	14
Regional Hearings	15
Alternative Dispute Resolution	15
Preliminary Conference	15
Mediation	16
Land Court and Tribunal Registry	17
Publication of Court Decisions	18
Continuing Judicial Development	18
Assistance to Universities and the Professions	19
Moots	19
Internship - Final year law students	19
Publications and Lectures	19
Library	19
Finance	20
Accommodation	20

# Contents

Introduction	1
History of the Land Court	1
Origins of the Land Court Reports	1
Retirement of the Honourable Justice Margaret White AO	3
Death of former Registrar	3
Members and Judicial Registrar of the Land Court	4
Jurisdiction	4
Legislative Changes	6
Land Court Caseload	9
Types of Cases	9
Land Court Workload 2012-13	12
Land Appeal Court	13
Membership of the Land Appeal Court	13
Land Appeal Court Proceedings	13
Further Appeals	14
Case Management	14
Regional Hearings	15
Alternative Dispute Resolution	15
Preliminary Conference	15
Mediation	16
Land Court and Tribunal Registry	17
Publication of Court Decisions	18
Continuing Judicial Development	18
Assistance to Universities and the Professions	19
Moots	19
Internship - Final year law students	19
Publications and Lectures	19
Library	19
Finance	20
Accommodation	20

## Introduction

This is the sixth 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

### Origins of the Land Court Reports

Continuing the historical narrative provided in previous annual reports, this year's report describes the evolution of the Queensland Land Court Reports which provide the official record of the key judgments of the Land Court and Land Appeal Court as corrected and authorised by the Judicial Registrar. The story of the Land Court Reports also reveals the origins of the Land Court of Queensland, which remains the second oldest continuously operating Court in Queensland's history.

During the year the Land Court published Volume 32 of the Queensland Land Court Reports. This volume contains selected decisions of the Land Court of Queensland and all Land Appeal Court decisions for 2011. It also contains selected decisions of the Queensland Supreme Court, Court of Appeal and High Court of Australia which may directly or indirectly impact on the Land Court or Land Appeal Court.

The Land Court has been publishing the Queensland Land Court Reports since 1974. However, the predecessor of those reports, the Crown Lands Law Reports Queensland commenced in 1906. The first volume published in 1906 became Volume 2 of the Crown Lands Law Reports<sup>1</sup> and contained all cases of interest, not confined to Queensland Courts, which were relevant to the construction of the various Statutes of Queensland relating to the occupation and alienation of Crown lands.

In 1911, Volume 1 of the Crown Lands Law Reports was published.<sup>2</sup> Ironically, Volume 2 preceded Volume 1. An introductory note to Volume 1 explains that the reports were commenced in quarterly

---

<sup>1</sup> (1901-1905) 2 CLLR

<sup>2</sup> (1859-1900) 1 CLLR

numbers in 1901 and at the close of 1905, the reports for 1901 to 1905 were bound in one volume which was called Volume 2.

The then Minister for Lands, the Honourable JT Bell, sanctioned the preparation of a volume of reports extending from the foundation of the Colony of Queensland in 1859 until the end of 1900 to be called Volume 1.

Volume 3, comprising the years 1906 to 1908, and Volume 4, comprising the years 1909 to 1910, then followed and regular volumes continued up until the reports ceased to be called the Crown Lands Law Reports in 1973. They then became the Queensland Land Court Reports. The name change was necessary to reflect the wider jurisdiction of the Land Court which had evolved over the years.

The compilation of those early Crown Lands Law Reports is a tribute to its editor, WF Wilson, MA (Oxon) of the Middle Temple, Barrister at Law, Counsel to the Lands Department, who not only arranged the cases and decisions but also condensed them into manageable volumes.

The first case reported in Volume 1, *Boyle v Fitzgerald*, dealt with an action for damages arising from the alleged breach of duty of a Commissioner of Crown Lands. The breach was alleged to have occurred prior to the separation of the Colony of Queensland from the Colony of New South Wales.

Under New South Wales legislation, a Commissioner of Crown Lands was appointed for each district. Each Commissioner was a Justice of the Peace and exercised extensive administrative and judicial powers in relation to the settlement and occupation of Crown land.

After separation, Commissioners of Crown Lands were similarly appointed in Queensland and the early Crown Lands Law Reports emphasise the importance of such officers in the early settlement of Queensland.

The *Land Act 1884* consolidated the existing land laws, transferring many of the administrative and judicial duties previously the responsibility of the Minister for Lands to the newly created Land Board. Those judicial functions were carried out by the Land Board Court, the predecessor of the Land Court of Queensland.

## **Retirement of the Honourable Justice Margaret White AO**

The Honourable Justice Margaret White AO, a Judge of Appeal, Supreme Court of Queensland, retired on 3 June 2013.

As previously recorded in the Land Court Annual Report 2008-2009, Justice White served with distinction as a Member of the Land Appeal Court for the Southern District for three years terminating on 30 June 2009.

Justice White was subsequently appointed to the Court of Appeal in 2010 where she served with her customary dignity, courtesy and scholarship, until her retirement.

On behalf of the Members of the Land Court, I again place on record our deep appreciation for Justice White's contribution as a Member of the Land Appeal Court. We remain ever grateful for her Honour's continuing interest in and support for the work of the Land Court. This was exemplified in Justice White's address at the valedictory ceremony held on the occasion of her retirement, where she said:

"I am so pleased that the President and Members of the Land Court are here. I hope they will not mind if I particularly acknowledge the former President, Mr John Trickett. I was assigned to the Land Appeal Court by the Chief Justice for three years and was gently introduced into its law and its other lore by John Trickett. I cannot imagine that there is anyone who knows more about land in Queensland and its value than he does.

The Land Court is the second oldest court in the State and goes about its important business quietly and with the utmost dedication and competence."

## **Death of former Registrar**

It is with great regret that I advise of the death on 1 January 2013 of former Registrar of the Land Court, Mr David (Dave) Ferris.

Dave came to the Land Court in the late 1980s as Deputy Registrar to then Member, Mr Daniel Barry. He was subsequently appointed to the position of Senior Deputy Registrar of the Aboriginal and Torres Strait Islander Land Tribunals in January 1992. In that position he assisted at a number of Aboriginal land claim hearings including Simpson Desert and Lakefield National Parks.

In April 1996, Dave returned to the Land Court as acting Registrar and was permanently appointed to that position in December 1997.

As Registrar, Dave managed the administrative changes in registry processes necessitated by the enactment of the *Land Court Act 2000* and the *Land Court Rules 2000*. He was also responsible for the introduction and implementation of the Land Court's first computerised case management system and the creation of the Court's website. Dave completed these tasks, and indeed all his work, efficiently, quietly and with good humour. His retirement in late 2004 was a great loss to the Land Court. We thank him most sincerely for his sterling work for the Court.

The Members and staff of the Land Court join me in offering our deepest condolences to Dave's wife and family.

## 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 BEd 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*)

*\*\* Mr Isdale was previously appointed as an Acting Member of the Land Court from 15 April 2010 to 14 April 2012 and from 15 April 2012 to 14 April 2014. He was appointed as a Member of the Land Court on a full-time basis for a period of 15 years from 18 May 2013.*

## 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 many of the powers of a Judge of the Supreme Court in exercising the Court's jurisdiction.

The Land Court is divided into two divisions, the Cultural Heritage and Indigenous Land Use Agreement Division and the General Division. A Member of the Land Court may sit as a member of the Cultural Heritage Division or the General Division as nominated by the President.

Legislation giving the Land Court and the Land Appeal Court jurisdiction:

- *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*
- *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*
- *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*
- *Strategic Cropping Land Act 2011*
- *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*

\*\* As at 30 June 2013, these Acts were not yet proclaimed into force.

\*\*\* To be repealed upon the commencement of the *Aboriginal and Torres Strait Islander Land Holding Act 2013*.

## **Legislative Changes**

The following changes to the jurisdiction of the Land Court occurred in 2012-13:

- The jurisdiction of the Planning and Environment Court under s 63 of the *Local Government Act 2009* and s 69 of the *City of Brisbane Act 2010* in respect of appeals against claims for compensation made under those Acts for the taking of land for road widening purposes, was

transferred to the Land Court by the *Local Government and Other Legislation Amendment Act 2012*.

- The *Aboriginal and Torres Strait Islander Land Holding Act 2013* (ATSILHA) received assent on 19 February 2013. Upon proclamation, the Act will repeal the *Aborigines and Torres Strait Islanders (Land Holding) Act 1985* and introduce processes to finalise leasing matters outstanding 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. Proclamation of the Act is anticipated in late 2013.
- The *Mines Legislation (Streamlining) Amendment Act 2012* (the Streamlining Act) introduced significant amendments to the *Mineral Resources Act 1989* (MRA) which affected the jurisdiction of the Land Court in the following ways:
  - A new s 318AAZM was inserted into the MRA giving the Land Court jurisdiction for appeals against a decision of the Minister to refuse an “assessable transfer”. An “assessable transfer” is a transfer that must be approved by the Minister before being registered including, for example, when a new party seeks to be the holder of a permit or when a current permit holder seeks to transfer all their shares in a permit. Likewise, the Streamlining Act inserted similar appeal rights into the other resource Acts – that is, the *Petroleum Act 1923*, the *Petroleum and Gas (Production and Safety) Act 2004*, the *Greenhouse Gas Storage Act 2009* and the *Geothermal Energy Act 2010*.
  - A new s 261 was inserted into the MRA to allow for the withdrawal of objections to applications for the grant of mining leases and s 265 was amended to give the Land Court the discretion to remit a matter back to the chief executive if all properly made objections are withdrawn before the start of an objections hearing.
  - The Land Court’s jurisdiction for caveats was relocated and consolidated into new Chapter 7, Part 3 of the MRA. There are now common provisions which apply to caveats in respect of mining claims, exploration permits, mineral development licences and mining leases. The Streamlining Act also enlarged the Land Court’s jurisdiction by introducing new caveat provisions for all resource interests across the other resource Acts. Previously caveats were only available under the MRA.
- The MRA was further amended by the *Mining and Other Legislation Amendment Act 2013* which delivered a package of reforms for small-scale gemstone and opal mining. Relevantly,

these small-scale miners may now apply for a mining claim instead of a mining lease for areas up to 20ha and the Minister's decision in relation to the "decided area" is open to appeal to the Land Court under s 53(6)(b) of the MRA. These amendments also limited the right of objection to an application for the grant of a mining claim to underlying land owners and the relevant local government (see s 71 of the MRA). Accordingly, the categories of objectors who have standing to appear before the Land Court in relation to mining claim applications has been reduced.

- The *Environmental Protection (Greentape Reduction) and Other Legislation Amendment Act 2012* (the Greentape Act) restructured the approvals framework for environmental authorities for resource and mining activities under the *Environmental Protection Act 1994*. The Land Court's jurisdiction under the *Environmental Protection Act 1994* to hear and make recommendations in respect of objections to environmental authorities for mining activities is essentially unchanged, although the relevant provisions are now found in Chapter 5, Part 5, Subdivision 3 of the Act. Further, the Land Court now makes its recommendations under s 190 of the Act to the "administering authority" (ie. the chief executive) instead of the Minister.
- The Greentape Act also amended Schedule 2 of the *Environmental Protection Act 1994*, which lists the decisions which may be reviewed and appealed to the Land Court under the Act. Divisions 3, 3A and 4 in Part 1 of Schedule 2 in the Act were repealed and replaced with new Divisions 3, 4, 5 and 6 to give appeal rights in relation to various departmental decisions under the new approvals framework for environmental authorities.
- Schedule 2 of the *Environmental Protection Act 1994* was subsequently further amended to give a right of appeal to the Land Court in relation to the following:
  - decisions about temporary emissions licences under Chapter 7, Part 4A of the Act;
  - a decision to refuse an application to suspend an environmental authority under s 284C of the Act;
  - decisions under ss 301(1), 305(1) and 306(1) of the Act relating to claiming or realising financial assurance, discharging financial assurance and changing the amounts of financial assurance with respect to a prescribed condition for a small scale mining activity.
- The *Surat Basin Rail (Infrastructure Development and Management) Act 2012* gives the Land Court new jurisdiction for deciding the amount of compensation payable by the Coordinator-General to an owner or occupier of land for loss or damage caused by an entry to carry out

railway works or investigations of land, for the purpose of facilitating the development of the Surat Basin Rail (s 27(5) and (6)). The Act received assent on 8 November 2012 and will commence on a day to be fixed by proclamation.

- Schedule 2 of the *Land Act 1994*, which lists the decisions which may be reviewed and appealed to the Land Court under the Act, was amended by the *Land, Water and Other Legislation Amendment Act 2013* to give a right of appeal against the following Ministerial decisions:
  - refusal of a mortgage or sublease in respect of a trustee lease under s 58(6) of the *Land Act 1994* (previously numbered s 58(3)); and
  - refusal to grant the cancellation of a land management agreement under s 521ZE(6) of the Act.
  
- Schedule 2 of the *Land Act 1994* was further amended by the *Vegetation Management Framework Amendment Act 2013* to omit the reference to s 240C 'Forfeiting a lease' as the forfeiture provisions relating to vegetation clearing offences and offences relating to future conservation areas under the *Land Act 1994* have been repealed.

## Land Court Caseload

As at 1 July 2012, there were 802 cases awaiting determination by the Land Court. During the reporting period, 816 new matters were filed in the Land Court registry. 1011 matters were finalised with the result that there were 607 cases awaiting determination as at 30 June 2013.

The number of new matters filed in the Court this year decreased by 268 or 24.7% as compared with the 2011-12 reporting year. The reduction was most marked in the valuation, mining and compulsory acquisition areas which fell by 24.1%, 23.5% and 58.9%, respectively. It is thought that the decline was caused by general stability in the property market, less activity in the mining industry and a slowdown 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 2012-13, 637 revenue valuation appeals under the *Land Valuation Act* were lodged in respect of the unimproved or site values of land throughout the State and 722 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. Although many hearings were completed in less than one day, some occupied several days.

#### *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 2012-13, 127 matters were lodged under this legislation and 168 were finalised.

#### *Environmental Protection Act 1994*

These are environmental objections and appeals in relation to environmental issues related to mining, petroleum and gas tenures. During 2012-13, 15 objections or appeals were lodged and 21 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 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 2012-13, 14 claims for compensation were filed, while 37 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 12 appeals filed in the reporting year, and 13 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 2012-13, four *Land Act* appeals were filed in the Land Court, and seven 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.

No appeals were lodged under the *Petroleum and Gas (Production and Safety) Act 2004* during 2012-13. Two were finalised.

### *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*.

Four appeals were lodged under the *Water Act 2000* in 2012-13 and two were finalised.

## Land Court Workload 2012-13

<b>Types of Cases</b>	<b>Filed</b>	<b>Finalised</b>	<b>Active as at 30 June 2013</b>
Land Valuation Act appeals	637	722	332
Valuation of Land Act appeals	Nil	37	4
Mineral Resources Act applications and compensation claims	127	168	194
Environmental Protection Act objections and appeals	15	21	18
Acquisition of Land Act claims	14	37	40
Local Government Regulation appeals	12	13	9
Land Act appeals	4	7	3
Petroleum and Gas (Production and Safety) Act appeals	Nil	2	Nil
Water Act appeals	4	2	5
Other matters	3	2	2
<b>Total</b>	<b>816</b>	<b>1011</b>	<b>607</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 2012-13 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 eight appeals lodged in the Land Appeal Court in 2012-13, compared to nine appeals filed in 2011-12. 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 and Central Land Appeal Court Districts.

Nature of Appeals	2011-12	2012-13
Compensation ( <i>Acquisition of Land Act 1967</i> )	4	6
<i>Mineral Resources Act 1989</i>	3	2
Other	2	Nil

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. Leave to appeal was granted in one of those matters.

	2011-12	2012-13
Appeals 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 if the Appellant was not offered an objection conference under the *Land Valuation Act 2010*. Preliminary conferences are usually conducted by the Judicial Registrar and have achieved considerable success.
- Directions hearings 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.
- 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 2012-13, the Court sat on 90 days outside Brisbane at the following centres:

- Atherton
- Beaudesert
- Bowen
- Bundaberg
- Caboolture
- Cairns
- Charters Towers
- Chinchilla
- Coolangatta
- Dalby
- Goondiwindi
- Gympie
- Herberton
- Ingham
- Innisfail
- Ipswich
- Mackay
- Mareeba
- Maroochydore
- Nambour
- Proserpine
- Stanthorpe
- Toogoolawah
- Toowoomba
- 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 507 preliminary conferences. 554 cases were finalised in 2012-13 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.

Twenty two cases were mediated by Land Court Members or the Judicial Registrar and 21 matters settled as a result of Court supervised mediations held in this and the previous reporting year. A further 15 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  
Mrs Clare Gilbert  
Ms Diane Blewett  
Ms Keren Astill

**Office Manager:** Mrs Linda Gardner

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

**Research Officer:** Mrs Letitia Farrell LLB (Hons) BBus(Acc) (Hons)

## 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 in bound volumes extend back to the first constitution of the Court, as was discussed under the heading "Origins of the Land Court Reports" earlier in this report.

All decisions of the Land Appeal Court and Land Court 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.

Mrs MacDonald attended the National Judicial College of Australia's Leadership Program for Heads of Specialist Courts in Sydney in May 2013. She also attended the 2013 Asia-Pacific Regional Conference of the International Association of Women Judges in Auckland, New Zealand in May 2013 and the 2013 Australian Environmental Law Enforcement Conference in Edinburgh, Scotland in June 2013.

In July 2012, Mr Smith attended the 9<sup>th</sup> Annual International Conference on Law hosted by the Athens Institute for Education and Research in Athens, Greece.

Mr Cochrane attended the 2012 Australian Environmental Law Enforcement Conference in Dubrovnik, Croatia in July 2012.

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 2012.

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

### **Moots**

During the year, Mr Isdale, Mr O'Connor and the Research Officer presided over moots held as part of the Queensland University of Technology (QUT) Shine Torts Moot competition.

Mr Smith provided training to students at the QUT Law School who had been selected to participate in a mooting competition in Oxford, England.

### **Internship – Final year law students**

As part of the QUT Law School internship program, the Land Court hosted two final year law students (on an unpaid basis), one in second semester 2012 and the other in first semester 2013. Whilst at the Land Court, the students were mentored by the Judicial Registrar and the Research Officer.

The internship and associated report count as an elective unit towards the law degree. Both students received top honours for their internship reports, with the first student reporting on the Land Court's jurisdiction in relation to coal seam gas disputes and the second student reporting on public interest issues associated with a major mining case observed in the Land Appeal Court.

The internships proved to be most worthwhile for the students, the QUT supervisors and the Court.

### **Publications and Lectures**

Mrs MacDonald was a guest speaker at the 2013 Una Prentice Awards ceremony hosted by the Women Lawyers Association of Queensland Inc. in Brisbane in April 2013.

Mr Smith presented a paper relating to "Mediation and Negotiation" at the East West Medical & Legal Conference in Prague, Czech Republic, in July 2012.

### **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 financial year 2012-13 are shown in the table below. The expenses exclude Members' salaries and allowances which are appropriated separately.

<b>Operating Expenses 2012-2013</b>	<b>\$</b>
Employee Expenses	1,124,955
Supplies and Services	298,741
Depreciation and amortisation	3,569
<b>Total Operating Expenses</b>	<b>1,427,265</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  
Annual Report  
2012-2013

Land Court of Queensland  
Level 8, 363 George Street  
Brisbane QLD 4000  
Australia  
GPO Box 5266  
Brisbane QLD 4001

Email: [landcourt@justice.qld.gov.au](mailto:landcourt@justice.qld.gov.au)  
Website: [www.landcourt.qld.gov.au](http://www.landcourt.qld.gov.au)  
Telephone: (07) 3247 5193  
Facsimile: (07) 3247 4635

---