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LAND COURT OF QUEENSLAND

2017 | 2018

ANNUAL REPORT



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LAND COURT OF QUEENSLAND
Chambers of President FY Kingham

31 October 2018

Brisbane Magistrates Court
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The Honourable Yvette D'Ath
Attorney-General & Minister for Justice
Leader of the House
GPO Box 149
BRISBANE QLD 4001

Dear Attorney-General

As required by s 77A(1) of the *Land Court Act 2000*, I provide you with the eleventh Annual Report on the operations of the Land Court for the year ended 30 June 2018.

Yours sincerely

Fleur Kingham

VISION

The Land Court will be an exemplary forum for specialist dispute resolution, providing exceptional public value through accessible, flexible, just, fair and innovative services and procedures.

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PRESIDENT'S REPORT

2017-18 has been a busy and productive year for the Court, involving institutional restructure, procedural reform, appointment of an ADR panel and improvements in recording and measuring the Court's performance.

Institutional restructure: Darren Campbell was successful in securing his appointment as the Principal Registrar for the Court. This has provided much needed stability during the transition to a new Registry structure. In the past, Deputy Registrars performed both administrative and judicial support functions. This year, the Court adopted a more conventional model, with associates providing support to the Members. This has resulted in a lean Registry. Associates have assumed responsibilities in monitoring compliance with case management orders. This has reduced some of the load on Registry officers. Nevertheless, there has been significant work in making the transition and ensuring sound systems are in place under the new structure. I am grateful for the expertise, diligence, commitment and goodwill of staff, both past and present. I also commend the leadership shown by the Principal Registrar and acknowledge the Members' patience as new systems were developed.

The Court is dealing with its caseload in an efficient and timely way. I am particularly pleased to report a dramatic improvement in time taken by Members to deliver their reserved judgements.



President: Fleur Y Kingham

Procedural reform: This year I have introduced a number of procedural reforms. In last year's annual report, I outlined a proposed procedure for hearing objections to mining tenures and associated environmental authorities. I refined the procedure in consultation with the Court's Resources User Group in late 2017. Although there are some changes still required to the relevant legislation, the Court has now implemented the procedure, to the extent possible, through a practice direction (PD 4 of 2018). The amendments necessary to implement the revised procedure fully are with the relevant Ministers for consideration.

I issued Guidelines for Expert Evidence and a practice direction defining the procedure for Court Managed Expert Evidence (PD 3 of 2018). My intention was to improve the integrity and efficiency of expert evidence, which is central to most Court hearings. Member Peta Stilgoe, who played an integral role in these initiatives, has prepared an overview for this annual report.

I have issued other practice directions that clarify the process for ordering costs in recommendatory matters (PD 6 of 2017) and the procedure for site inspections (PD 2 of 2018).

2018). I expect to report, next year, on procedural reform in land valuation appeals and compulsory acquisition cases.

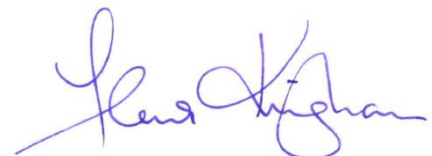
ADR panel: In February 2018, the Court launched a panel of specialist ADR practitioners to provide ADR services to the Court and to parties to disputes that may, but have not yet, come to the Court. Mediation by the ADR panel is governed by the procedure set out in (PD 1 of 2018). The Court is increasingly using ADR panel convenors, rather than Members, to mediate matters before the Court. I encourage potential parties to access the panel directly without filing claims. More information about the Court's approach to ADR and the ADR panel appear later in this report.

Court performance: In the last annual report, I explained difficulties I encountered in reporting the Court's performance, because of issues with the integrity of past records. I appreciate the work done by Registry Officers, under Mr Campbell's leadership, to audit those records and put proper systems in place for current matters. I also acknowledge the valuable support of Ms Julie Steel, the Executive Director of the Supreme District and Land Court Service, who provided advice and resources to assist in that work. During the year, I adopted timeliness targets that are additional to the national targets reported on by civil courts. I also adopted targets for disposition of matters by or before ADR. This year, I will develop a system for reporting outcomes from the CMEE procedure.

This annual report contains information about the Court's performance, which demonstrates the Court is dealing with its caseload in an efficient and timely way. I am particularly pleased to report a dramatic improvement in the time taken by Members

to deliver their reserved judgments. The Court no longer has a significant backlog of judgments reserved for many months. I acknowledge the work done by Members to implement our protocol for reserved judgments.

I acknowledge the contributions of many staff to this annual report. I also acknowledge the important contribution of Mr John Trickett, former President of the Court, to annual reports over many years. My predecessor, Ms Carmel MacDonald, initiated a section in each annual report on some aspect of this Court's history. Mr Trickett is the author of most of those pieces, which provide, collectively a growing and valuable record of this Court's evolution.



PRESIDENT FY KINGHAM

PRINCIPAL REGISTRAR'S REPORT

As Principal Registrar of the Land Court I am pleased to report on the activities of the registry in the past financial year.

I joined the Land Court as the Acting Principal Registrar in February 2017 and I'm very pleased to announce that in March 2018, I was appointed permanently to the role of Principal Registrar, Land Court of Queensland. I'm very excited to continue the great work alongside my team who have achieved a great deal in the last 12 months.

The Land Court continued the program of work utilising the funds provided by the Queensland Government over a two-year period to review and improve the operations of the Court. In the last 12 months a number of projects and improvements have been successfully managed by the registry:

- Court Data File Integrity Project reported in the 2016-17 Annual Report was successfully completed.
- The Land Court website, templates, forms and letters review commenced in February 2018 and continues. This program of work has been one of our most significant in the registry. At the completion of this work clients will have access to up-to-date information to assist them to conduct business in the Court providing exceptional public value.
- Land Court Specialist ADR Panel Orientation took place on 6 February 2018 and the ADR accreditation training commenced on 19 February for five days with 12 panel



Principal Registrar Darren Campbell

members and six Land Court Registry staff attending.

- An important body of work was completed ensuring the records relating to the Land Tribunal established under the *Aboriginal Land Act 1991* was in complete compliance with the Land Court's file structure and integrity standards. This work will ensure historical information related to the Land Tribunal is preserved for future generations.
- Work commenced on scoping the Procedural Assistance Program for Self-Represented Litigants. This program of work will assist parties in over 80% of Land Court cases, and is due to be completed in the 2018-19 financial year.

Cultural change

As reported last year there has been great progress with a strong focus on registry culture as we work towards improving and strengthening our brand. The results of the 2017 Working for Queensland Survey is testament to the progress we made with 100% staff participation, and the results were extremely positive.

Recognition and awards

In 2017 individual staff from the Land Court Registry were successful recipients of the following awards:

The Verdicts:

Most Improved Performance

– Teri Bastiani

The Expert

– Diane Blewett

Martin Hoven Innovation Award

– The Land Court Registry

Divisional Excellence Awards

Category: Leadership

– Highly Commended, Darren Campbell

Retirement

I would like to extend a special thanks to Diane Blewett who retired in January 2018 and Betty Lippiatt who retired in May 2018. Diane and Betty's contribution, both prior and during the Land Court reform, has been pivotal to the success we achieved as a result of their valuable knowledge and input. We wish them both well in their retirement.

Land Court Registry structure

Over the last 12 months considerable progress was achieved designing and testing a workable structure for the Land Court and as a result in June 2018 the new structure was approved.

In 2018-19 we will continue to fine-tune and improve this structure to ensure that we are able to provide exceptional service to parties who access the Court.

Finance

Operating expenses 2017-18	\$
Employee expenses	\$1,812,565.36
Supplies & services	\$456,944.24
Depreciation	\$1,506.07
TOTAL OPERATING EXPENSES	\$2,271,015.67

The future

The future approach to our work will have a focus on continuous improvement, supporting our parties, stakeholders, the judiciary and each other. In closing, the future of the Land Court is in good hands.



**PRINCIPAL REGISTRAR
DARREN CAMPBELL**

PERFORMANCE REPORT

735

Cases filed in 2017-18

103%

Clearance rate



Lodgements

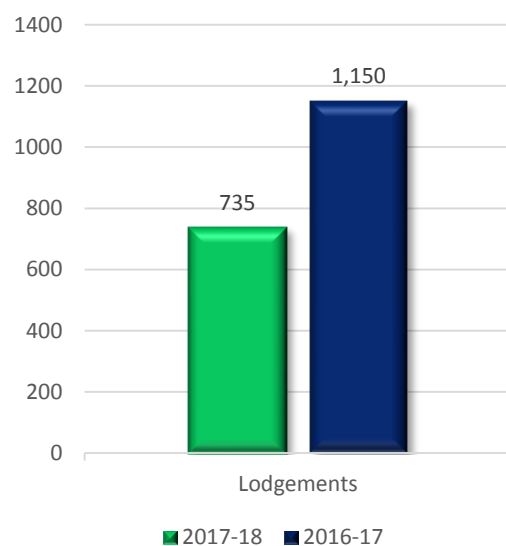
The Court's jurisdiction is diverse involving claims and appeals that may be brought under many Acts dealing with land and resources issues. However, the overwhelming bulk of the Court's caseload is comprised of appeals against statutory land valuations and cases involving mining projects and associated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

In 2017-18, 735 cases were filed. That compares with 1,150 cases in 2016-17. The variance reflects an abnormal spike in the lodgement of land valuation appeals in 2016-17. To a large part, that was due to the number of land valuation appeals filed by one land owner in one regional town. The Judicial Registrar finalised them promptly in a single ADR process, a matter reported on last year.

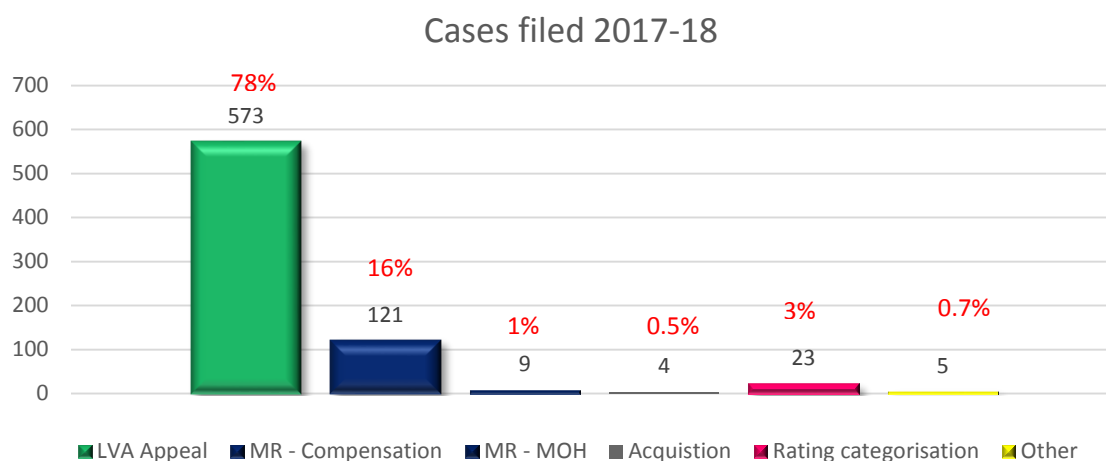
In 2017-18 the land valuation appeal lodgements returned to historic levels, reflected in considerable variance between the two years.

Appeals against land valuations made up 78% (or 573) of the cases, and 18% (or 130) cases were filed in the resources jurisdiction. Of those, 130 resource cases, 121 (16%) were compensation cases and nine (1%) were mining objection hearings.

Cases filed in the last two financial years



Four new claims for compensation for acquisition of land (0.54%) were lodged, and 23 rating categorisation appeals (3%) were lodged. The remaining five cases (0.68%) involved water, land, and environmental protection matters.



Performance targets

Last year, I reported that the Court was developing performance targets against which I would report this financial year. The following key performance indicators demonstrate the Court is meeting its goals for timely disposition of most matters.

Clearance rates

The Court has set a target clearance rate of between 97.5% and 102.5%. In 2017-18, the Court marginally exceeded the top end of that target range, with 735 matters lodged and 768 finalised, resulting in a clearance rate of 103%.

Timeliness

The Court has set targets for timeliness measured by finalisation between 6 and 9 months after lodgement, between 9 and 12 months after lodgement, and for the average across the jurisdiction.

Across all jurisdictions

Our target ranges across the entire caseload are as follows:

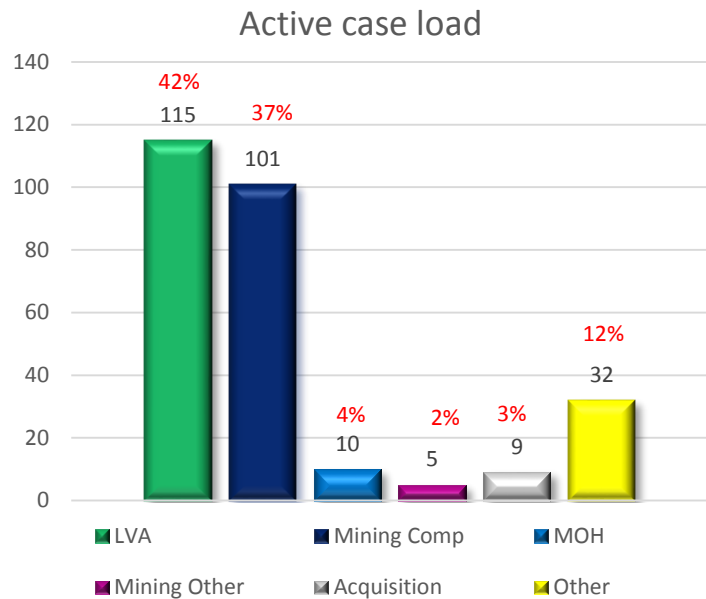
- 3 out of 4 cases will be finalised between 6 and 9 months after lodgement
- 9 out of 10 cases will be finalised between 9 and 12 months after lodgement
- on average, cases will be finalised between 6 and 9 months after lodgement.

In 2017-18, the Court met those timeliness targets for the jurisdiction as a whole.



At the end of the reporting period, the active caseload was:

- 115 land valuation appeals
- 101 compensation cases involving resources activities
- 10 mining objection hearings
- 5 other mining cases
- 9 claims for compensation for acquisition of land
- 32 other types of cases.



Active cases greater than two years old

At the end of the reporting period, 14% or 38 of the active cases were greater than two years old.

Two are appeals against land valuations. Three are mining objection hearings. Two are appeals against the financial assurance for environmental authorities for mining activities. The remaining 28 are claims for compensation for resource activities. Of those cases, 23 involve one company, which is in liquidation. Litigation in the Supreme Court of Victoria has delayed progress of those cases in this Court.

The Court has experienced particular difficulty in ensuring active participation by both miners and landholders in cases involving compensation for renewed mining leases and mining claims. Currently, the Department of Natural Resources, Mines and Energy refers compensation to the Court for determination, unless the miner and landowner have reached an agreement within three months.

The government has introduced a bill to amend the *Mineral Resources Act 1989*. If the proposed amendments pass, the Court will only hear a claim for compensation for a renewed term if either the miner or the landholder applies to the Court for that purpose. If neither does, the compensation agreed or determined for the previous term will carry forward. The Court expects that will result in fewer cases involving compensation for renewed mining claims and mining leases. Also, where claims are made, the Court expects the parties will be more actively engaged than they are under the current system.

Land valuation appeals \$5 million or less

The same timeliness targets as apply to the caseload as a whole, apply to land valuation appeals involving valuations of \$5 million or less. In 2017-18, the Court met or exceeded all timeliness targets for that jurisdiction.

Compensation for mining and resource activities

The targets for compensation claims, other than those involving compulsory acquisition of land, are as follows:

- 3 out of 4 cases will be finalised between 9 and 12 months after lodgement
- 9 out of 10 cases will be finalised between 15 and 18 months after lodgement
- on average, cases will be finalised between 9 and 12 months after lodgement.

In 2017-18, the Court met or exceeded all of those targets.

Other jurisdictions

The targets for all other types of cases are as follows:

- 3 out of 4 cases will be finalised between 15 and 18 months after lodgement
- 9 out of 10 cases will be finalised between 24 and 27 months after lodgement
- on average, cases will be finalised between 18 and 21 months after lodgement.

The Court met or exceeded those targets for cases in all jurisdictions except two.

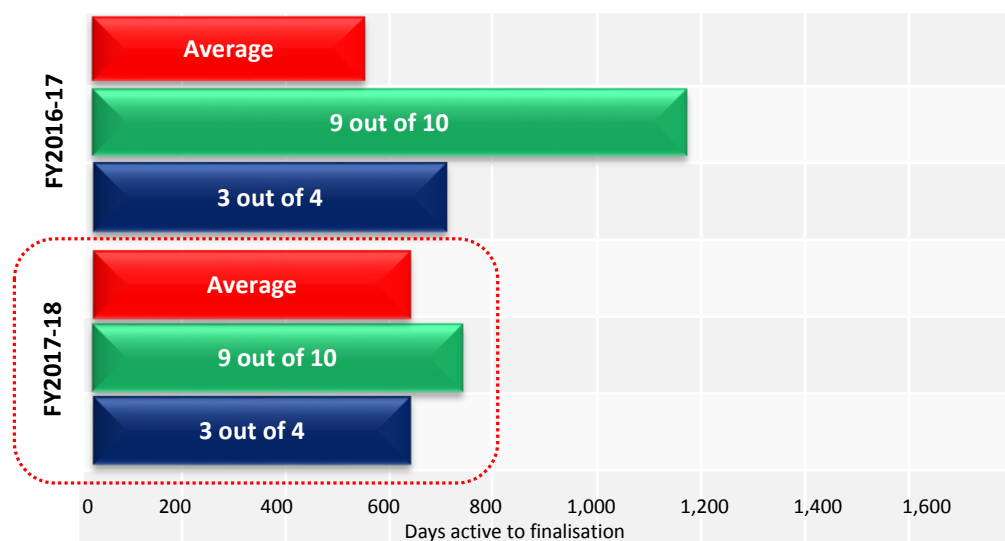
Complex mining and environmental cases

The Court failed to meet its target ranges for complex mining and environmental cases. In April 2018, the Court adopted *Practice Direction 4 of 2018*, which defines the procedure for mining objection hearings. For new lodgements, the Court expects the new procedure will significantly improve the timeliness of these matters. Further, the number of cases is low and poor performance in one case significantly affects the statistics. The objections hearing for the application for Stage 3 of the New Acland Mine has been with the Court for some years. In May 2018, the Supreme Court remitted the case to the Land Court for further hearing. Until it is finalised, that case will distort the statistics for this jurisdiction.

Compensation for acquisition of land

The Court met its targets for timeliness for 9 out of 10 cases and exceeded its target on average for this jurisdiction. However, 3 out of 4 claims for compensation for acquisition of land took more than 18 months to finalise. This fell below the Court's target, but that was a significant improvement on the Court's performance in 2016-17.

Compensation for acquisition of land



However, there is still a need to improve the timeliness in this jurisdiction. More intensive case management and earlier referral to ADR may assist in that regard. The Court also expects its new process for Court Managed Expert Evidence will significantly improve timeliness for the more difficult cases in this jurisdiction.

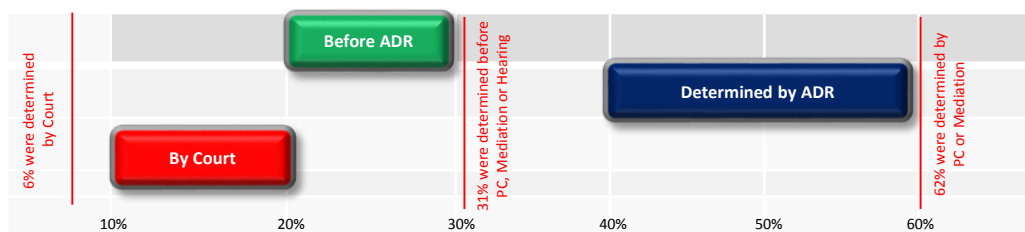
Outcomes

The Court set the following targets for finalisation outcomes:

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

In 2017-18, the Court exceeded each of those targets.

Court's target for finalisation of outcomes



As with previous years, the success in resolving land valuation appeals involving valuations of \$5 million or less at or prior to preliminary conference drives the Court's performance in ADR. There is mixed performance in the mining resources jurisdiction. Mining objection hearings cannot be resolved by agreement unless all objections are withdrawn. However, earlier case management and ADR is proving successful in compensation claims in this jurisdiction. In claims for compensation for acquisition of land, only one case was determined by the Court. Six cases were resolved by mediation and six were resolved prior to referral to ADR.

In 2017-18, the Court established a panel of convenors with specialist expertise in the Court's jurisdiction to provide Court referred ADR. It expects the number of compensation cases resolved by ADR will increase as it refers more cases to mediation by ADR panel convenors. In 2018-19, the Court expects to refer compensation claims for resource activities to early mediation by a panel convener, as a matter of course.

In 2017-18, the Court adopted *Practice Direction 3 of 2018*, which defines the procedure for Court Managed Expert Evidence. The Court will report on the success of that procedure in the next annual report.

Timeliness of judgments

In 2016-17, the Court adopted a judgment protocol setting a target for the Court to deliver its judgments within three months of the hearing or the receipt of final submissions.

During 2017-18, the Court substantially cleared its backlog of judgments. It also significantly improved the timeliness of delivery of judgments reserved in the reporting period. At the end of the reporting period, six judgments were outstanding. Three of those had been pending for less than three months, and the remaining three had been pending for less than 12 months. All judgments that had been outstanding for more than 12 months were delivered in 2017-18.

Self-represented litigants

In 2017-18, the Court started to record the level of self-represented parties in its jurisdiction.

In mining resources cases, 84% of applicants and 60% of respondents were self-represented. This presents a particular challenge for the Court in hearing cases in this jurisdiction.

In land valuation appeals, 24% of the appellants were self-represented and 76% of the respondents were self-represented. Many of these cases involve appeals against land valuations of \$5 million or less. The Valuer-General is the respondent for all land valuation appeals and is often represented by an officer of the Department of Natural Resources, Mines and Energy. The matters are captured within our self-represented party report, but should not be, if the representative is a lawyer. The Court will review how these reports are prepared for the 2018-19 Annual Report.

EXPERT EVIDENCE IN THE LAND COURT OF QUEENSLAND

The Land Court's many jurisdictions rely heavily on expert evidence to inform its decisions. Valuers, town planners, agronomists, geologists, engineers, and accountants all provide the specialist evidence necessary to make complex decisions. This year, the Court consulted widely with lawyers and experts familiar with the Court to consider options to improve practice. This resulted in two directions issued by the President: *Guidelines for Expert Evidence in the Land Court*, and *Practice Direction 3 of 2018: Procedure for Court Managed Expert Evidence*.

Guidelines for Expert Evidence in the Land Court

To clarify the Court's expectations and encourage good practice, the Court published *Guidelines for Expert Evidence in the Land Court*. This document gathers into one place all the important concepts involved in the provision of expert evidence so that it is accessible for parties, lawyers, and experts.

Although the duties of the expert are well known, they need to be reinforced. The Court has experienced experts advocating for parties or appearing to tailor their evidence to suit a party's interests. This is inimical to the expert's duty to assist the Court by giving objective, impartial opinion evidence.

One issue is how parties, or their lawyers, brief experts to prepare their opinions. Experts may be working from different instructions or assumptions and, therefore,

producing opinions that appear to be about very different matters. To avoid that possibility, the Court usually directs the parties to prepare a single brief of instructions to the experts in a discipline. The parties do not have to agree on the contents of the brief. The brief must include any information or instruction any party considers relevant. Including a document in a brief is without prejudice to a party's right to object at trial to the admission of that document.

The single brief sets up the experts well to provide a useful joint expert report which properly identifies and explains any points of disagreement about matters the Court will have to decide.

The Court Managed Expert Evidence (CMEE) process

The Court has identified problems with how experts are briefed, how experts communicate with each other and with the parties who engaged them, and how well and efficiently the experts prepare their joint expert report. The Procedure for Court Managed Expert Evidence (CMEE) was developed to address such problems.

The Court appoints a Member or the Judicial Registrar as the CMEE convenor to work closely with the parties and the experts in the pre-trial preparation of expert evidence. They convene case management conferences (primarily with the lawyers) and meetings of experts (which the lawyers do not attend).

The role of the CMEE convenor is procedural. They can:

- facilitate communication between the experts, and between the experts and the parties
- help parties, and experts, narrow the issues in dispute
- ensure all experts have access to the same information
- prepare a timetable for the provision of joint expert reports, which is particularly important if there are a number of disciplines involved and where their reports are interdependent
- provide administrative support to the experts (through the convenor's associate), if required
- reinforce the experts' independence and duty to the Court, and encourage frank and comprehensive discussions.

The convenor cannot make any substantive decisions, cannot preside over the case at trial, and, unless the parties consent in writing, cannot preside at a mediation of the case. The convenor cannot make orders unless all parties consent.

Case management conferences are used to prepare for the meetings of experts and to resolve as far as possible any procedural issues. It is a flexible and cost-effective way to deal with interlocutory matters that arise in a complex case, and to facilitate communications between the lawyers and the experts once the experts have commenced their meeting process.

Convenors do not always chair meetings of experts but will usually bring them together for an initial meeting to ensure they understand their task and are adequately briefed. Sometimes the experts ask the convenor to chair subsequent meetings because:

- they want the structure the convenor can provide
- there is a power imbalance between the experts
- they want to check their understanding of the issues they must address.

A convenor will never tell experts what to write in a joint expert report, but might:

- reinforce the Court's expectations
- ask the experts questions to clarify their thinking or to demonstrate that their language might not be making a point clear to a Member
- identify gaps in the joint expert report
- ensure they have addressed each other's assumptions.

The CMEE process is in the early stage of its implementation. Informal feedback has been positive. The Court will evaluate its effectiveness and refine the process in consultation with those who have experienced it in practice.

ALTERNATIVE DISPUTE RESOLUTION

The Land Court is committed to resolving disputes fairly, cost-effectively and efficiently.

ADR makes an important contribution to the Court's ability to achieve that goal. The Land Court's support for and encouragement of ADR is consistent with s 7 of the *Land Court Act 2000* which requires the Court to act according to "equity, good conscience, and the substantial merits of the case". The Land Court uses ADR in a number of ways:

- preliminary conferences in all land valuation appeals involving land valued at \$5 million or less
- at a party's request or the Court's direction, mediation by a Member, the Judicial Registrar, a Convenor from the Land Court's ADR Panel or a private mediator.

The Court is conscious that many parties to hearings in the Land Court, particularly in its resources jurisdiction, must coexist after the Court has made its decision. This is particularly so for landowners whose land is subject to a mining, petroleum, or other resources tenure. It is in each party's interest to build, not fracture, their relationship, despite their dispute. ADR provides a forum for parties to improve their relationship as well as resolve their dispute.



Launch of the ADR Panel

In February 2018, the Land Court launched a panel of specialist ADR convenors to help parties find a suitably qualified convenor. To be accepted for the panel, a convenor must be accredited under national mediator accreditation standards. Importantly, they must also possess qualifications or experience that is relevant to the types of cases filed in the Court.

Their additional qualifications and experience mean the convenors will have a better understanding of:

- the circumstances of the parties and the issues likely to arise in their disputes

- the options to resolve the disputes
- the Court's processes, if the case must be heard by the Court.

The impetus to establish the panel came from interested parties who reported it could be difficult to find suitably qualified mediators who were acceptable to all parties. The Court selected convenors with expertise relevant to the range of the Court's jurisdiction. Some of them were already accredited as mediators.

Others had relevant skills and experience but no mediation qualifications. For those convenors, the Court trained and assisted them in securing their accreditation. When that process is finished, the panel will include a number of experts with qualifications in fields such as accounting, valuation, town planning, agricultural science and engineering.

More information about the ADR options and the panel can be accessed here [ADR](https://www.courts.qld.gov.au/courts/land-court/resolving-disputes-without-a-hearing/alternative-dispute-resolution)

<https://www.courts.qld.gov.au/courts/land-court/resolving-disputes-without-a-hearing/alternative-dispute-resolution>.

Pre-filing ADR

The Court is committed to promoting early use of its ADR panel. The Court encourages use of the panel well before any case commences in the Court. The following are some options for using the panel, without the need to apply to the Court for orders:

- **Case appraisal** resulting in a non-binding decision. This could be very cost-effective for small compensation disputes and the valuers on the panel have particularly relevant expertise. More information about this process can be accessed here [case appraisal](https://www.courts.qld.gov.au/courts/land-court/resolving-disputes-without-a-hearing/case-appraisal) <https://www.courts.qld.gov.au/courts/land-court/resolving-disputes-without-a-hearing/case-appraisal>.
- **Pre-filing ADR** under the *Mineral and Energy Resources (Common Provisions) Act 2014* in relation to conduct and compensation for access for exploration

and other resource activities.

Those examples involve individual negotiations. However, the Court sees a role for the ADR panel at a broader scale. Many of the disputes that reach the Court involve projects that affect many landowners. Sometimes it is because a number of properties will be resumed for public purposes, or a number of landowners and a community will be affected by a resources project, or because the government has released a new field for exploration. In these cases, convenors from the ADR panel could facilitate discussions at an early stage to identify and resolve issues on a community, rather than an individual basis.

For example, convenors could facilitate:

- discussions between a resuming authority and all landowners affected by a public project
- consultations with affected landowners, local authorities and other community and public interest groups when developing terms of reference for an environmental impact statement
- discussions between exploration companies and landowners in newly released exploration areas, to identify general principles and rates to apply in individual negotiations about conduct and compensation agreements for access.

There is an obvious benefit for all sectors of the community if disputes can be resolved early, if not avoided altogether. The ADR panel provides access to well-trained convenors with specialist expertise. They are independent of all parties and the government, and the Land Court offers ongoing professional development and oversight. The Court will monitor the use of panel convenors and report regularly about its impact.

LAND COURT OF QUEENSLAND

Where the Court fits within the judicial system

The Land Court is a court of limited statutory jurisdiction, which means that it can only exercise the jurisdiction and powers which are given to it under statute.

A full list of the Land Court of Queensland and Land Appeal Court of Queensland's jurisdiction can be found on the [Land Court website](https://www.courts.qld.gov.au/courts/land-court/about-the-land-court/jurisdiction)

<https://www.courts.qld.gov.au/courts/land-court/about-the-land-court/jurisdiction>.



Land Court President and Members

Member PA Smith; Member WL Cochrane; President FY Kingham; Judicial Registrar GJ Smith; Member WA Isdale; Member PG Stilgoe

President, Members, and Judicial Registrar of the Court

President Fleur Yvette Kingham BA/LLB(Hons), LLM(Dist.), HonD(Griffith University)

Member Paul Anthony Smith BA/LLB

Member Wayne Lindsay Cochrane BAB, MSc, BEc, BEd

Member William (Bill) Angus Isdale LLB, MPubAdmin

Member Peta Gwen Stilgoe OAM BA/LLB, LLM

Judicial Registrar Graham Joseph Smith LLB, Grad Dip Leg Prac, Bbus, LLM, AAPI, CPV

The President, Members, and Judicial Registrar present on relevant topics at national and international conferences. Their papers can be accessed by going to their profiles on the Land Court website.



Member PG Stilgoe

Member Peta Gwen Stilgoe OAM

In July 2017, Member Stilgoe was appointed a Member of the Land Court of Queensland after a career in private practice and in courts and tribunals.

Member Stilgoe was admitted to the Bar in 1984 but transferred to the solicitors' branch of the profession in 1986. She had a career in private practice, specialising in commercial litigation from 1986 to 2007.

In 2007, Member Stilgoe was appointed as the first ADR Registrar to the Planning and Environment Court of Queensland. Member Stilgoe introduced court-facilitated mediation to that jurisdiction.

Member Stilgoe was a Member of the Queensland Civil and Administrative Tribunal from its inception in 2009. In 2012 her leadership potential was realised when she was appointed as a Senior Member to that Tribunal. She has also developed and presented ADR and other training programs for members of QCAT and other tribunals.

Member Stilgoe was pivotal in introducing innovative and effective ADR processes at both QCAT and the Planning and Environment Court.

Member Stilgoe is a well-respected litigation lawyer and highly regarded by judicial officers, practitioners, and expert witnesses for her mediation skills as well as her experience in planning and environment matters. Her contributions to ADR were recognised in 2013 when she was awarded an OAM.

When Member Stilgoe was appointed, the Land Court was well advanced in reviewing its procedures and sharpening its focus on ADR. Her contributions to reforms in ADR practice and expert witness procedures have enhanced and accelerated that work. In this report, she has provided an excellent summary of our *Guidelines for Expert Evidence in the Land Court* and our Practice Direction on *Court Managed Expert Evidence*. Member Stilgoe's contribution in developing and implementing those procedures has been pivotal.

Land Court Judicial Support Team

Deputy Registrars, who performed both administrative and court duties, formerly provided support to the Members. In 2017, the Court transitioned to the conventional court model of associates supporting the members. With the President's Executive Assistant, they form the Judicial Support Team for the Court.

The President wishes to acknowledge the team's predecessors in the following roles: her Honour's Associate from January 2017 until July 2018, Georgia Kiss; her Honour's Executive Assistant from August 2016 until February 2018, Amanda Chiv; and the Associate to the Members in 2017, Odette Malpas-Haussmann.



Judicial Support Team

May-Ann Chen, Associate to Member PG Stilgoe; Nick Wray-Jones, Associate to President FY Kingham; Lya McTaggart, Associate to Member WA Isdale; Krystal Cunningham-Foran, Associate to Member PA Smith and Member WL Cochrane; Tyson Lee, Executive Assistant to President FY Kingham.

LAND APPEAL COURT OF QUEENSLAND

A party to a proceeding in the Land Court can appeal the decision to the Land Appeal Court (LAC). Appeals are by way of rehearing on the record. The LAC has power to admit new evidence in limited circumstances.

The LAC is constituted by a Judge of the Supreme Court from the region in which the land is located, and two Members of the Land Court, other than the Member whose decision is under appeal. By convention, the Judge presides, but the Members sit as equals and the LAC's decision is the decision of the majority.

In 2017-18, the Judges of the LAC were:

- **The Honourable Justice JH Dalton** (Southern Region)
- **The Honourable Justice DVC McMeekin**, until his retirement (Central Region)
- **The Honourable Justice DOJ North** (Northern Region)
- **The Honourable Justice JD Henry** (Far Northern Region)
- **The Honourable Justice GF Crow** from 24 April 2018 (Central Region).

Seven appeals were lodged in the Land Appeal Court in 2017-18, compared with five appeals in 2016-17. All were heard during the year. Two hearings were in the far Northern Region. All other appeals were heard in the Southern Region. The LAC allowed one appeal, dismissed three appeals, (one by consent) and judgment is reserved in the remaining three appeals.

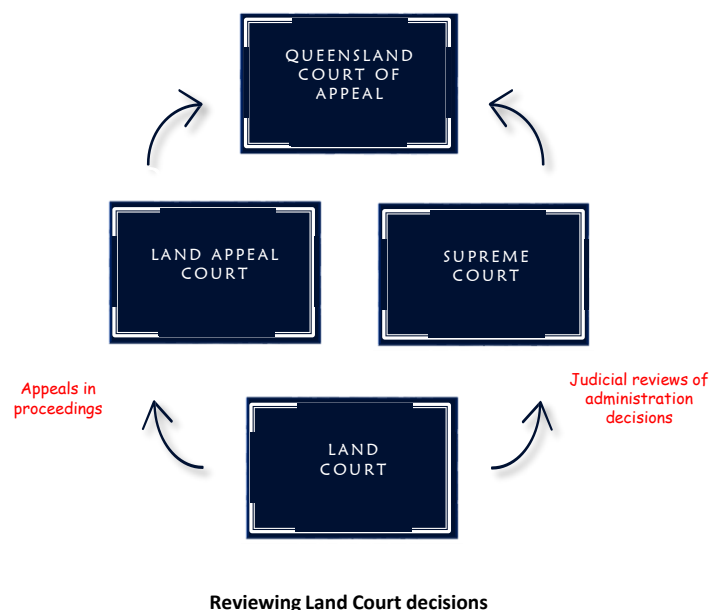
A party may appeal from a decision of the LAC to the Court of Appeal on the ground of error or mistake in law or jurisdiction. There was one application for leave to appeal to the Court of Appeal during the reporting period, compared to two filed in 2016-17. At the end of the financial year it was still awaiting hearing.

Judicial review

In some cases, the Court's function is to provide a recommendation on an application to another decision-maker. Most commonly, they relate to mining objection hearings.

In the 2016-17 Annual Report, I reported on three judicial review applications that were filed, but not heard, in that period. They have since been decided in the Supreme Court. Two were dismissed. They related to the Court's recommendations under the *Aboriginal and Torres Strait Islander Landholding Act 2013*. The third was upheld. That was an application to review the Member's recommendation on the mining objection hearing for Stage 3 of the New Acland Mine. It was remitted to the Court for a limited rehearing. An appeal to the Court of Appeal against the decision on judicial review is pending.

No new applications for judicial review were filed in 2017-18.



Vale the Honourable John Muir

John Daniel Murray Muir, former Judge of Appeal of the Supreme Court of Queensland, and Member of the Land Appeal Court from 1998 to 2000, passed away in February 2018.

Those who had the pleasure of serving with his Honour, or appearing before him, remember his incisive mind, his dry wit, and his calm and considered manner.

Mr John Trickett was President of the Land Court during Justice Muir's term on the Land Appeal Court. To mark his retirement, Mr Trickett wrote a tribute to his Honour, published in the Land Court's 2014-15 Annual Report. In this annual report, it is fitting, once again, to acknowledge his Honour's important service to this Court.

Tribute by Mr John Trickett (Annual Report 2014-15)

The Honourable Justice JDM Muir, a Judge of Appeal, Supreme Court of Queensland, retired on 26 December 2014.

Justice Muir served as a Judge in the trial division of the Supreme Court of Queensland from 1997 until 2007 when he was appointed to the Court of Appeal. Justice Muir was a Member of the Land Appeal Court for the Southern District from 1998 to 2000.

The Land Appeal Court handed down many significant decisions during Justice Muir's term as a Member of the Court. Of particular importance were decisions relating to various aspects of the award of compensation for the compulsory acquisition of land including *Heavey Lex No 64 Pty Ltd v Chief Executive, Department of Transport* (2001) 22 QLCR 177 where the Land Appeal Court clarified the principles applicable to disturbance claims in compensation proceedings under the *Acquisition of Land Act 1967*.

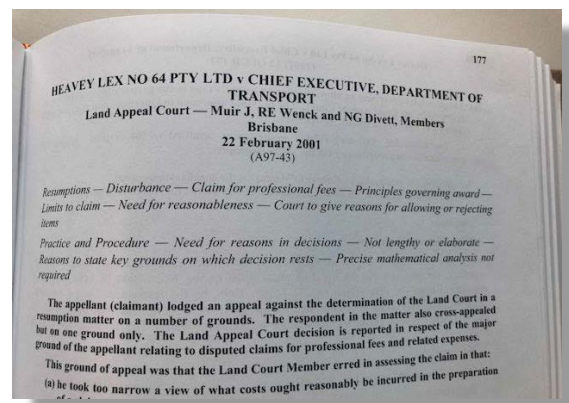


The late Hon Justice John Muir
Image courtesy of Supreme Court Library Queensland

Justice Muir's judgment in that case continues to be frequently cited.

In addition during that period the Land Appeal Court dealt with many difficult cases relating to revenue valuations.

Justice Muir's guidance and legal acumen were a great asset to the Land Appeal Court during his period of office on that Court. We thank him most sincerely for his contribution and for his continuing support for the Land Court since that time.



Headnote from Justice Muir's influential Heavey Lex decision

STAKEHOLDER ENGAGEMENT



The Chinese delegation with Land Court staff in Court 40

Chinese delegation

International visit from the China Ministry of Land and Resources

On 7 September 2017, the Land Court was host to a delegation of 20 senior officials from the China Ministry of Land Resources, the Chinese Geological Survey, and provincial departments of Land and Resources.

The China Ministry of Land Resources is the national authority in China, and is responsible for land and natural resources management in China.

The delegation was keen to learn more about related issues and gain an understanding of the Land Court of Queensland's operations and processes.

The full-day program covered the Land Court of Queensland's organisational alignment to the Queensland Government structure, the Land reform program including the International Framework of Courts Excellence (IFCE), the Court's file cycle from lodgement to close, an information session on objections to mining projects and landowner compensation for mining activities.

Presentations were also delivered on alternative dispute resolution, experts, trials and the Land Court jurisdiction.

The international visit was a wonderful opportunity for both the Land Court of Queensland and to the China Ministry of Land and Resources to share information of mutual interest, and to develop a friendship.

Stakeholder consultation

The Court has three stakeholder groups: Resources User Group, Land Valuation Reference Group and the Legal Profession Group.

In the reporting period, the focus of the Court's consultations was with the Resources User Group reforms to the process for mining objection hearings.

The Resources User Group includes: AgForce, Association of Mining and Exploration Companies, Australian Mining Petroleum Law Association, Australian Petroleum Production and Exploration, Bar Association of Queensland, Environmental Defenders Office, Department of Environment and Science, Department of Natural Resources, Mines and Energy, Queensland Environmental Law Association, Queensland Law Society, Queensland Conservation Council, Queensland Farmers' Federation, and Queensland Resources Council.

This year, the Resources User Group endorsed the proposed "Procedure for Mining Objection Hearings", which has been partially implemented by *Practice Direction 4 of 2018*.

Changes to the *Land Court Act 2000* and other legislation to fully implement the proposed procedure are with the Queensland Government for consideration.

The Resources User Group also provided feedback on other developments in the Court, including the establishment of the Land Court's ADR Panel.

Land Court of Queensland and Referring Agencies Inaugural Annual Conference

This annual conference was established to provide a convenient forum for the Land Court and the agencies which refer cases to the Court to discuss developments in their practices and procedures.

The inaugural conference was hosted by the Court in November 2017 and the following topics were discussed:

- development in alternative dispute resolution and expert evidence in the Land Court
- financial assurance for resource projects
- the land valuation program
- Queensland Government spatial data using Google Earth (Queensland Globe)
- new process for mining objections hearing
- environmental assessment and conditioning of coal projects
- the role of the GasFields Commission Qld
- procedure for determining compensation for resources activities.

GasFields Commission

This year, the Court has participated in community presentations organised by the GasFields Commission to explain the different types of ADR and their benefits. Member Stilgoe presented at meetings in towns in South-West Qld including Dalby, Cecil Plains, Chinchilla, Miles, and Roma. Feedback from stakeholder groups has been very positive and there is strong support for the Court to continue to its involvement in such presentations.

LIBRARIAN'S REPORT

Today, the Land Court library service represents the best of a traditional, print law library, plus the advantages of a modern online collection.

The Land Court has long relied on its print library collection. In the memory of current staff, the library has moved with the Court from Tank Street in the City to 259 Queen Street — until it was displaced with the creation of the Queensland Civil and Administrative Tribunal (QCAT) — and on to its current location in the Brisbane Magistrates Court building at 363 George Street, Brisbane.

In 2017–18, the Court went through a substantial restructure of its registry, and rethink of the way it delivers services to parties who appear before the Court, legal practitioners, the members themselves, and other stakeholders. The library space was remodelled to accommodate these new ways of working, and this necessarily resulted in less room for a print collection.

A core collection of specialist texts, reference works, loose-leaf services, and authorised reports series was retained and accommodated in the new space. Purpose-built glass front cabinets were commissioned to hold the library's historic Queensland statutes, reports, registers, and other print volumes. Significant resources from the collection of the Aboriginal Land Tribunals were also retained as part of the Court's collection.

Access to day-to-day legal resources is now provided through the Supreme Court Library's online Judicial Virtual Library, which is available to members and their research staff.

Today, the Land Court library service represents the best of a traditional print law library, plus the advantages of currency, portability, and searchability of a modern online collection. A



Librarian: Helen Bannerman

library committee made up of a members' representative, the Judicial Registrar, an associates' representative, the Registrar, the Judgments Coordinator, and the Librarian meets regularly to ensure the needs of all users are met.

The library is staffed by a part-time professional librarian who also acts as assistant editor of the *Queensland Land Court Reports*.

Queensland Land Court Reports

Authorised law reports assist legal practitioners, members of the judiciary, and other interested parties to access decisions of the Court that establish the law. The inclusion of headnotes that summarise legal argument and distil the legal conclusions provide added value over unreported decisions.

Under the guidance of the Judicial Registrar, Graham Smith, the Court publishes annual volumes of the *Queensland Land Court Reports* which have been produced by the Court since 1974, and prior to that as the *Crown Lands Law Reports*, the first volume of which covered the period 1859–1900.

The annual volumes include all decisions of the Land Appeal Court, and those of superior courts that relate to Land Court matters. This year the Court published the 2015 volume of the *Queensland Land Court Reports*, in which twenty-seven decisions were reported: two Court of Appeal decisions, two Supreme Court decisions, four Land Appeal Court decisions, and nineteen Land Court decisions.

The 2015 reported decisions considered the following Acts:

Acts	No.
Acquisition of Land Act 1967	7
Land Valuation Act 2010	6
Mineral Resources Act 1989	5
Mineral Resources Act 1989 Environmental Protection Act 1994	4
Environmental Protection Act 1994	3
Water Act 2000	1
Appeal Costs Fund Act 1973	1

Judgment digitisation

The Land Court has been delivering judgments since around 1898, and, as with other courts, the Land Court produces annual volumes of significant judgments that have been selected for reporting. These are the authorised reports of the Court — the *Queensland Land Court Reports*, and before that the *Crown Land Law Reports*.

Over the years, paper copies of Court judgments were stored in the Land Court Library, though many from the days of typewriters and carbon paper have not

survived.

As computers replaced typewriters, and the internet became part of Court and judicial life, the Court made its judgments available online through the Court's website and AustLII (the Australasian Legal Information Institute), thereby assuring the preservation of the Court's decisions from that time on.

In 2016, the Court completed a project to publish all Land Court and Land Appeal Court decisions available in electronic format on the Supreme Court Library's CaseLaw web page. Subsequently, the complete decisions of the former Land and Resources Tribunal (LRT) have also been made available through the CaseLaw web page. (The jurisdiction of the LRT was transferred to the Land Court in 2007.)

However, a collection of around 3,000 Land Court and Land Appeal Court paper decisions spanning the years 1963 to 2002 remained. The Court is concerned to preserve the record of its decisions, and to make them accessible to practitioners, litigants, and researchers, but limited staff capacity and technology to achieve digitisation was a stumbling block.

An excellent working relationship with the Supreme Court Librarian, David Bratchford, and his specialist staff had been built up during the 2016 project. This year, the Court has commenced a partnership with the Supreme Court Library to digitise and make the paper collection available through the CaseLaw web page. Supreme Court Library staff have the expertise to efficiently manage the project, and the Land Court has agreed to a financial contribution towards the work.

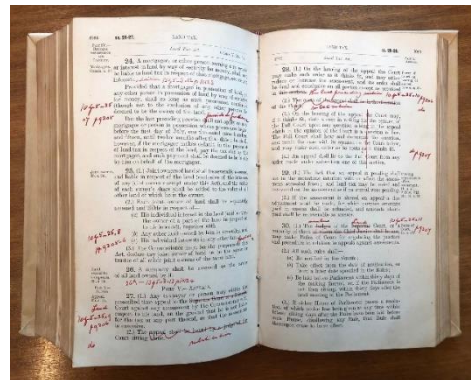
THE LAND COURT AND THE VALUER-GENERAL

An important part of the present jurisdiction of the Land Court is the hearing and determining of appeals against the Valuer-General's decisions on the value of land for rating and taxing purposes. However, that jurisdiction has evolved gradually.

From its establishment, the Land Court had been responsible for determining rentals for all Crown leasehold land which were assessed by the Department of Lands. However, quite independently of that Department, the office of the Valuer-General as the State's valuation authority was created by the *Valuation of Land Act 1944*.

The need for the establishment of such a valuation authority to make valuations on uniform principles was well canvassed in the Parliamentary Debates in 1943 and 1944. At that time, the Queensland system of land valuation for revenue purposes was perhaps best described as unorganised and haphazard. Each of Queensland's 146 local authorities was responsible for making its own unimproved values for rating purposes, while the Commissioner of Land Tax was charged with making separate unimproved values for the assessment of land tax. Furthermore, the Department of Lands made valuations for various purposes in respect of Crown lands. There was no coordination between authorities and the valuations themselves varied greatly in quality.

When the Valuation of Land Bill was introduced in 1943, there was wide support for uniform valuations. At the Second Reading, the responsible Minister, the Honourable HA Bruce, explained the reason for the legislation:



Amendments to the *Land Tax Act* in 1920 gave jurisdiction to the Land Court

"The case for the Bill is in the main it will set up a single valuing authority for the purpose of making valuations on an unimproved basis for all lands, both freehold and leasehold. That will achieve uniformity for local rating purposes. Notwithstanding that the principles of valuation are clearly laid down in local government laws a wide divergence has occurred in their application, principally because of the lack of uniformity of valuation as between areas. The Bill will make possible a single valuation for land tax and local government purposes, thus abolishing the present system, in which we have one value for land tax purposes and another for local government purposes. That is the main principle of the Bill."

While opposing some of the provisions of the Bill, the Leader of the Opposition, Mr Nicklin, said:

"We must admit that an advantage of a Valuer-General's Department is that it ensures expert valuation of land based on principles that will give uniformity and accuracy, and eliminate personal and political considerations. In our State we have had local authorities favouring the principle of low valuations and others favouring the principle of high valuations. We have the anomaly of similar parcels of land adjacent to each other and equal in all respects having a very wide difference in the valuations put on them by the local authorities."

At that time, the Commissioner of Land Tax employed his own valuers, but only freehold land was taxable, and the various exemptions, concessions and thresholds meant that the pool of landowners paying land tax was quite a shallow one. While the Brisbane City Council had established the City Valuer's Office with its own valuers, the other councils relied on

private valuers or other sources to make their valuations, which varied greatly in accuracy, relativity and timeliness.

However, at least all these authorities were making unimproved values of land, the legislation containing similar or identical definitions of “unimproved value”. This system of valuation had evolved because the English system of rating by local governments on the Annual Rental Value of land had proved to be unsuitable for the largely undeveloped Australian Colonies. Therefore, many Australian authorities preferred a system of valuation based not on income, but on the market or selling price of land (its “capital value”) excluding the value of any improvements, then referred to as its “unimproved capital value”.

Queensland was the first Colony to abandon the English system and adopt revenue raising for local government by rating on the capital value of land, excluding improvements, in 1897. That was made compulsory for all the Colony’s local authorities in 1890. From 1911, the new Commonwealth Government imposed land tax on the “unimproved capital value” of an owner’s land. By 1915, all Australian States, as well as the Commonwealth, were raising revenues from land taxes based on the unimproved capital value of land.

The Commonwealth Government ceased imposing land tax in 1952, although all States continued to raise revenues through land taxation.

When the Commonwealth Government commenced to impose land tax throughout Australia, the inconsistencies in valuations within and between States became apparent. In an attempt to remedy this disparity, it was agreed at the Premiers’ Conference in 1913 that each State would establish its own

valuation authority. New South Wales set up an independent Valuer-General in 1916.

Queensland took until 1944 to establish a similar office, although an attempt to do so had been made unsuccessfully in 1917. Eventually all other States followed.

Queensland’s first Valuer-General was a senior public servant, Mr PE Richardson, who had previously been General Manager of the Agricultural Bank and before that Commissioner of Land Tax. In addition, Mr Richardson had served on Valuation Courts in country districts. The Department of the Valuer-General commenced operations on 1 July 1946. Mr Richardson was reappointed Valuer-General in 1953, by which time the Department had a staff of 110, including 45 valuers. However, for various reasons, including the lack of suitably qualified valuers, the Department was unable to value all areas of the State until the mid-1960s, when Longreach Shire was valued for the first time.



Image supplied by the Department of Natural Resources, Mines and Energy

One of the major controversies concerning the 1944 *Valuation of Land Act* was that unimproved values were to be made on the basis that all land was held from the Crown in fee-simple, including those lands held under leasehold tenures. Previously, local

government legislation had provided for land held under many leasehold tenures to be valued at a multiple of twenty times the annual rent, which rent had been determined by the Land Court. However, those rents were reappraised at different times, so the formula resulted in the valuations of lands with recently adjusted rents being out of relativity with those of similar lands the rentals of which were determined many years previously.

This method of valuing leasehold land had no impact on land tax, as it was levied only on freehold land.

It was not until 1920 that the Land Court was given jurisdiction to hear and determine appeals by landowners against land tax valuations. Previously, the 1915 *Land Tax Act* provided that a dissatisfied landowner could appeal to the Supreme Court or District Court against any assessment by the Commissioner on the ground that the owner was not liable for land tax or that the assessment was excessive. The 1920 amendments to the *Land Tax Act* substituted the Land Court for the Supreme Court or District Court.

On the other hand, the local government legislation had provided for its own regime of Valuation Courts for each local government area, constituted by two or more Justices of the Peace appointed by the Governor in Council, or by any Police Magistrate by himself.

The 1944 *Valuation of Land Act* repealed the appeal provisions of the *Local Government Act*, the *City of Brisbane Act*, and the *Land Tax Act*, and Part VI of the 1944 Act provided for all valuation appeals to be to the Land Court. However, there was an interesting exception; where the valuation in dispute was £1,000 or less, the landowner had the option to appeal to a Valuation Court, constituted by a Stipendiary

Magistrate, whose decision would be final, with no right of appeal and with no power to award costs.

Following dissatisfaction from landowners with some decisions of the Land Court, the appeal regime was changed in 1953, again providing for a Valuation Court, presided over by a Stipendiary Magistrate, or if the valuation in dispute was £10,000 or more, at the option of the landowner, by a Judge of the Supreme Court.

However, that appeal regime did not last for long and 1959 amendments substituted the Land Court for the Valuation Court, with a single Member hearing appeals against valuations regardless of amount, with right of appeal to the Land Appeal Court and further appeal to the Full Court of the Supreme Court (now Court of Appeal) on matters of law. This remains the present appeal regime.

The statutory office of Valuer-General was abolished in 1992. However, under the administration of the Chief Executive of the responsible Department, the State Valuation Service continued to make unimproved values for rating and taxing purposes. The office of Valuer-General was re-established by the *Land Valuation Act 2010*.

The reasons for the abolition of the office of Valuer-General and its subsequent reinstatement and the introduction of a new concept of “site value” for urban lands, are yet to be documented, but are well beyond the scope of this brief historical outline.

JJ TRICKETT
FORMER PRESIDENT OF
THE LAND COURT

THE REGISTRY

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



Land Court Registry staff

Greg Grodecki, Paulo Frutuoso, Nichole Padovan, Guy Lietzow-Chin, Darren Campbell, Chris De Marco

Location & contact details of the Land Court

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

Registry business hours: 8.30 am to 4.30 pm, Monday to Friday (*excluding public holidays and other designated court holidays*)

Postal address: The Land Court of Queensland, GPO Box 5266, Brisbane Qld 4001

Phone: (07) 3406 7777 (business hours)

Email: landcourt@justice.qld.gov.au

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