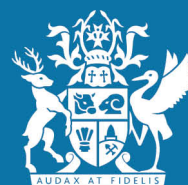


2020 – 2021

Annual Report



LAND COURT
OF QUEENSLAND



LAND COURT OF QUEENSLAND
Chambers of President FY Kingham

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8 October 2021

The Honourable Shannon Fentiman MP

Attorney-General and Minister for Justice

Minister for Women and Minister for the Prevention of Domestic and Family Violence

1 William Street

Brisbane Qld 4000

attorney@ministerial.qld.gov.au

Dear Attorney

Re: Land Court of Queensland Annual Report 2020-2021

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

Yours sincerely

President FY Kingham



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President's Report



COVID-19 lingers on in 2021

In 2020, I looked forward to a post-COVID return to the status quo. That now seems naïve and unrealistic as the pandemic and its impacts linger on. The slowdown in activity led to a reduction in caseload for the Court in 20/21. On the positive side, the judicial officers and staff of the Court have become more accustomed to uncertainty, and more agile in response to changed conditions. Some lockdown measures proved popular enough to maintain, including videoconferences for case reviews. Even those of us less comfortable with the digital world are now more adept at working both remotely and productively.

Our commitment to a safe workplace

The Judicial Officers expressed their commitment to a safe workplace by making the following undertakings about our conduct towards associates and staff:

1. We will not engage in unacceptable conduct;
2. If we observe unacceptable conduct by a colleague, we will respond to it;
3. We will support the Court-based process for dealing with unacceptable conduct;

4. We will not treat anyone adversely because they raised a concern or made a complaint about unacceptable conduct.

The Court also clarified its expectations of associates who are now appointed pursuant to the *Land Court Act 2000* and are not subject to the public service code of conduct.

Looking back, Moving forward

In my first Annual Report as President of the Land Court, I outlined a Blueprint for Reform. Five years' later, it seems timely to reflect on its implementation.

In the 2016/17 report, I identified six key reforms:

- Consistent and active case management
- Increased focus on ADR
- Strengthening expert evidence
- Improved judgment writing
- Stakeholder engagement
- Clear procedure for mining objection hearings.

Looking back, I am pleased to be able to report substantial progress in each of those areas.

Consistent and active case management

In 2016, I changed our case management from a docket system, with each Member managing their own matters across all case types, to a centralised system overseen by the President. My objective was to promote comprehensive, consistent, responsive, and active case management. With input from the profession, the Court developed model directions, some general, some jurisdiction specific. Further, the Court revised its practice directions to reinforce active case management and clearly communicate the Court's expectations of parties in preparing their cases for hearing. More recently, all Members play an important role in

driving efficient and effective case preparation through their management of specific jurisdictions.

Increased focus on ADR

The Court's focus on ADR was strengthened by practice directions about mediation and the creation of a specialist panel of ADR Convenors. The reputation of the panel is strong. It is now the primary source of mediators for Land Court cases. In 20/21, 96% of the mediations were conducted by Convenors from the panel. The Court continues to provide professional development for panel Convenors to maintain their expertise.

Strengthening expert evidence

The Court consulted widely with the legal profession and, perhaps more importantly, with expert witnesses, in developing its Court Managed Expert Evidence (CMEE) procedure. Recently refined in light of experience, the CMEE procedure is now well established. It is routinely used in complex matters with multiple and intersecting issues requiring expert evidence. Judicial officers, in their role as CMEE Convenors, assist lawyers and experts alike to identify and address the material disagreements. They also facilitate a prompt hearing of disputes about expert evidence and case management that might otherwise delay or derail pre-trial preparation.

Even where there is no CMEE, the Court's requirement for a consolidated brief to expert witnesses has improved the quality of joint expert reports. Being briefed with the issues and information each party considers relevant means they must address each party's contentions, not just those of the party who has engaged them.

In those cases where oral evidence is still required, expert witnesses give their evidence concurrently, ensuring the Court gets the best assistance from the experts.

Improved judgment writing

All judicial officers are provided with professional development in judgment writing. Judgments are delivered in a timely way. Parties with concerns about the progress of a judgment may make an anonymous enquiry through the Principal Registrar. The Court has no backlog of reserved judgments.

Stakeholder engagement

The Court would not have been able to develop and implement lasting procedural reforms without the active involvement of those affected by and with a particular interest and expertise in the work of the Court. The Court is fortunate to have had constructive, creative, and thoughtful input from lawyers, expert witnesses, and representatives of relevant community and industry groups and government departments.

Following fairly intensive consultation in the early stages of reform, the Court has now settled on bi-annual meetings of our three primary stakeholder groups: the Professional Reference Group (recently expanded to include the Indigenous Lawyers' Association); the Resources User Group and the Land Valuation Appeals Reference Group. These groups continue to provide important feedback and suggestions, most recently in revising the digital procedures for the Court.

Mining Objection Hearing Procedure

When appointed President, I expressed my discomfort with the Court's role in the administrative decision-making process for mining projects. A more usual role for a Court is to review a decision once made. That is a matter of policy for the government to consider. One of the implications of the unusual function is that the *Uniform Civil Procedure Rules 1999* do not apply. That means clarity and certainty about our process is critical. With detailed advice from

the Resources User Group, the Court developed a procedure for Mining Objection Hearings to govern these cases. It has proved effective in clarifying the evidentiary base for MOHs, encouraging parties to use ADR, making better use of expert witnesses, and narrowing and clarifying the issues for hearing.

What next?

Rules

The Court anticipates revised Land Court Rules will be approved in 21/22. They will scaffold the detail in the Court's practice directions, and reinforce the Court's commitment to efficient, effective, and fair disposition of its cases.

Mining Objection Hearings

The Queensland Law Reform Commission has included the role of the Court in mining approvals on its proposed program for 2021-2026.

Appeal path

Another challenge is constituting the Land Appeal Court. Two Members of the Land Court, other than the Member whose decision is under appeal, sit with a Supreme Court Judge. Because all Members are actively involved in case management and pre-trial preparation of expert evidence, it is sometimes difficult to constitute the Land Appeal Court with Members who have not played a substantial role in the proceeding. Recently, the Government appointed Chief Justice Preston of the Land and Environment Court of New South Wales as an

acting Member of the Court to sit on five appeals. They will be reported on in the next financial year.


The Land Appeal Court is an intermediate appellate court that sits between the Land Court and the Court of Appeal. Its' history reflects a time when Members of the Court did not have to be lawyers if they had valuation qualifications. That is no longer the case. All Members of the Court must be legally qualified as well as possess relevant specialist experience.

That change, as well as the difficulty in constituting the Land Appeal Court, make it timely to reconsider whether an intermediate appellate step is necessary or in the public interest.

Procedure for Valuation Appeals

The Land Valuation Appeal Reference Group has been working with the Court, under Member Stilgoe's guidance, to revise the standard directions for these appeals and to improve the quality of valuers' joint expert reports. I will report on those developments next year.

In closing, I am pleased to report that little remains to be done from the 16/17 blueprint. That is a remarkable achievement, and the result of the commitment, diligence and professionalism of the staff and judicial officers of the Court, to whom I am indebted.



President FY Kingham

Human Rights Act 2019 and the Land Court

On 1 January 2020 the substantive provisions of the Queensland *Human Rights Act 2019* (HRA) came into force, with important implications for the Land Court, in particular to its mining objection hearings.

The HRA aims to establish statutory protections for certain human rights recognised under international law, including those drawn from the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights.

It adopts a dialogue model of human rights protection, imposing obligations on public entities to protect human rights in their decision making, and on courts and tribunals to interpret legislation consistently with human rights, as far as practicable. The Supreme Court may declare a law is inconsistent with human rights. That does not affect its validity but requires Parliament to consider whether the law should be repealed or amended.

Mining Objection Hearings

One of the objectives of the HRA is to ensure that public functions are exercised in a way that is compatible with human rights. This is to be achieved by requiring public entities to act and make decisions in a way compatible with human rights, and to properly consider any relevant human right when making decisions.

The Land Court has a function to hear applications under the *Mineral Resources Act 1989* and the *Environmental Protection Act 1994* and objections to them. After considering the statutory criteria, the Court makes a recommendation to the ultimate decision-maker on each application.

When fulfilling that function, the Land Court acts in an administrative capacity and must comply with the obligations imposed on public entities.

Protected rights

The human rights most likely to be engaged when dealing with mining objection hearings are the right to a fair hearing, property rights, recognition and equality before the law, freedom of expression, rights of children and the cultural rights of Aboriginal peoples and Torres Strait Islander peoples.

Cultural rights of Aboriginal peoples and Torres Strait Islander peoples

The HRA provides for the distinct cultural rights held by Aboriginal peoples and Torres Strait Islander peoples as Australia's first people and is modelled on the United Nations Declaration on the Rights of Indigenous Peoples. Of particular relevance to the work of the Land Court are the rights of Aboriginal peoples and Torres Strait Islander peoples to maintain their relationship with land, waters, coastal seas, and other resources with which they have a traditional connection, and the right to conserve and protect those places and resources.

Published decisions

In the reporting period, 3 Land Court decisions considered the HRA.

In *Waratah Coal Pty Ltd v Youth Verdict Ltd & Ors* [2020] QLC 33, the Court dealt with an application by Waratah Coal to strike out objections that relied on the HRA, or to obtain a declaration that the Court does not have jurisdiction to consider those objections. The objections related to applications for the granting of a mining lease and an environmental authority to develop a thermal coal mine in the Galilee



Basin. The objectors (individuals and incorporated bodies) claimed that the granting of those applications would limit a number of human rights.

The President found that the Land Court is subject to the HRA when acting in an administrative capacity (as it is in this case) and must not act or make a decision that is not compatible with human rights, or fail to give proper consideration to human rights.

The application by Waratah to strike out the objections was dismissed.

In *Waratah Coal Pty Ltd v Youth Verdict Ltd & Ors (No 2)* [2021] QLC 4, Waratah Coal sought further and better particulars of most of the grounds of objection, particulars of the human rights said to be limited, and details of the classes of persons whose rights were said to be limited.

In summing up, the President stated that her “primary concern is procedural fairness for the parties ... and having regard to other pre-hearing processes to clarify the issues for hearing.”

An order was made that the objectors, Youth Verdict Ltd and The Bimblebox Alliance Inc, provide an exhaustive list of classes of individuals whose human rights they say will be limited by the applications being granted.

In *Cement Australia (Exploration) Pty Ltd & Anor v East End Mine Action Group Inc & Anor (No 4)* [2021] QLC 22, Member McNamara heard objections to an application for a mining lease and amended environmental authority to extend a limestone mine near Gladstone.

No human rights-based objections were made as the HRA had not commenced when objections closed. However, the Member considered that a failure to consider the HRA would mean that the Minister (the ultimate decision-

maker) would not have the benefit of a recommendation made after consideration of the rights that may be engaged by that Act. The Member considered the human right to property and found that in the present case the deprivation of property was not arbitrary and was reasonable and demonstrably justified.

Principal Registrar's Report



It's exciting to lead a professional team of individuals who embrace opportunities to improve the operations of the Court and actively contribute to improving the experience of parties seeking assistance from the Registry.

Strategic Plan

At the beginning of this year we completed our Strategic Planning for 2021-2022 with a focus that the Court will continue embedding reforms to:

- revise its Rules and practice directions
- conduct an audit of all archived Land Court and Land Tribunal records
- continue to review court practices

We will implement integrated, seamless, fit-for-purpose and digitally-enabled technologies and processes to increase our ability to meet the needs of the community.

The Court will keep on developing and improving the Procedural Assistance Service for self-represented parties to ensure suitable

support services are provided across the Court's jurisdiction.

The Court will continue to develop, strengthen, support and advance its employees accessing programs internally and externally in the areas of:

- Cultural Heritage
- Aboriginal and Torres Strait Islander Australian Foundation Course CORE Cultural Learning
- Court performance – undertake a self-assessment using the International Framework for Courts Excellence

The Land Court will develop and implement a Reconciliation Action Plan (RAP) that will demonstrate a commitment to actions that work towards achieving our unique vision for reconciliation.

Procedural Assistance Service

Work continues to improve the services to assist self-represented parties. Last year I spoke of a quiet workspace to prepare and access information for self-represented parties. I am pleased to report that we now have a fully-integrated kiosk set up with a computer for clients to use which enables them to access the Queensland legislation website, Land Court forms, Supreme Court Library website, and other government websites, and includes basic Microsoft Office software. The introduction of this kiosk further improves the experience of self-represented parties accessing relevant information to meet their needs.

Reconciliation Action Plan

Last year I wrote of our first steps in developing a RAP. Over the course of 2019-2020 we faced some challenges in progressing our RAP.

In the first quarter of 2020 Land Court staff attended a workshop facilitated by Reconciliation Australia, which was designed to assist organisations in understanding the RAP process and in managing some of the challenges.

From that workshop we realised we needed to do a considerable amount of additional work as an organisation before we could commit to commencing the RAP journey. We decided to pause, take the opportunity to explore our approach, and, work through some of the questions we had not originally considered, so that we could gain a better understanding of the way forward.

In February 2021, we wrote to Reconciliation Australia and Reconciliation Queensland to inform them that we were ready to participate, in the knowledge that we were on the right path with the right people and ethos to make it happen.

As part of the Land Court RAP journey, we reached out to the Australian Institute of Aboriginal and Torres Strait Islander Studies (AIATSIS) through its CORE Cultural Learning: Aboriginal and Torres Strait Islander Australia Foundation Course.

The program continues to provide all Court staff with the opportunity for self-discovery, a greater understanding of Aboriginal and Torres Strait Islander culture and shared history, and an appreciation of cultural perspectives, the unique aspects of Indigenous culture and history, and its continued impact.

Annual Conference

In April, the Land Court and Referring Agencies Annual Conference took place in Brisbane. This year's conference provided an opportunity for people throughout the State to participate online. A total of 17 people attended in person and 52 people attended online.

Presentations included:

- Progressive rehabilitation and certification plan reform package, Department of Environment and Science (presented online from the Townsville office)
- Proposed Queensland Resources Industry Development Plan, Department of Resources
- Small Mining Sector, Mineral Assessment Hub (presented online from the Townsville office)
- Gas Fields Snapshot, Gas Fields Commission Queensland
- Procedural Assistance and Digital Filing, Land Court Registry

This year's conference proved to be one of the most successful and a model for future conferences in providing greater access to referring agencies and their staff across the State to participate.



Culture

Our culture is tied closely to our brand which is important to all staff. It's a priority for everyone that we continue developing our knowledge and understanding and strengthening our cultural awareness to ensure the Land Court is a culturally safe space by providing accessible, flexible, just, fair and innovative services and respectful and inclusive interactions.

Finance

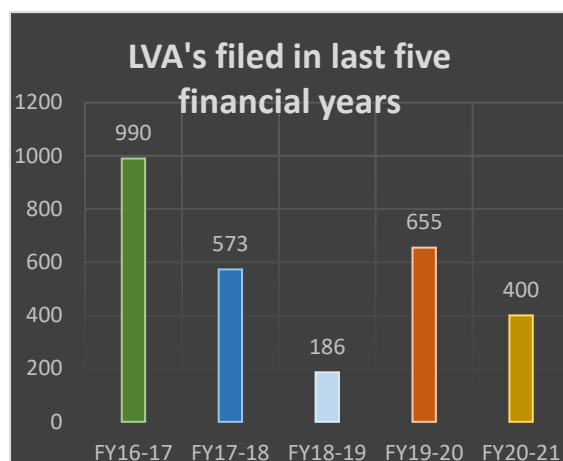
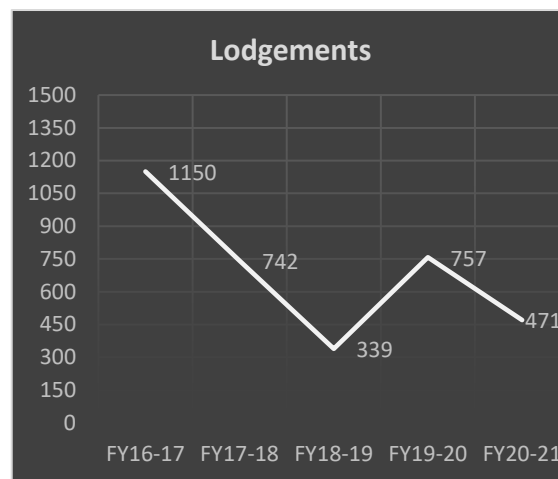
Operating expenses 2020-21:	Amount
Employee expenses	\$1,261,115.01
Supplies & services	\$249,183.32
Depreciation	\$31.37
Total Operating Expenses	\$1,510,329.70

Principal Registrar DM Campbell

Performance Reporting

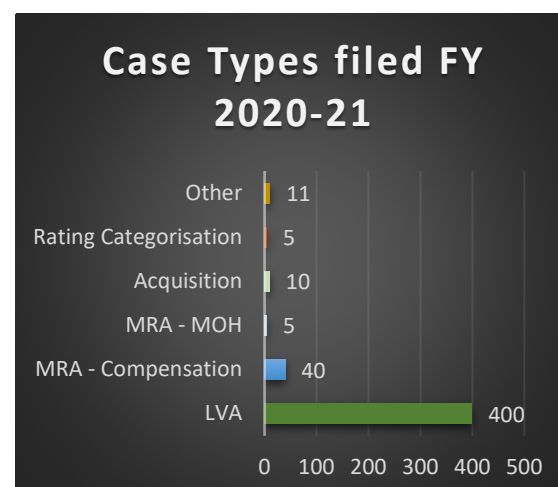
Lodgements

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 implications for the statistics and for the resources of the Court. In 2020-21, 471 cases were filed, down from 757 cases filed in 2019-20.



In 2020-21, 400 of the 471 cases (85%) were LVAs. Although LVAs are the overwhelming majority of the filings, many are resolved in a very timely way. Cases filed in other jurisdictions are more resource intensive, involving multiple issues and expert evidence.

In other jurisdictions, 45 new cases were filed in the resources jurisdiction. Of those, 40 (89%) were compensation cases and 5 (11%) were mining objection hearings. There were 10 new claims for compensation for acquisition of land, and 5 rating categorisation appeals. The remaining 11 cases involved appeals against financial assurance decisions for mining projects, and cultural heritage matters.



Clearance rates

In 2015-16, the Court's clearance rate was 94%. That year, the Court adopted a target clearance range of between 97.5% and 102.5%. Since the target was adopted, the Court has exceeded the top end of that target range each year. In 2020-21, the Court achieved a clearance rate of 119.32%, with 471 cases filed and 562 finalised.

Outcomes

The Court's clearance rates reflect timely resolution of cases, which is driven by its pre-hearing procedures which aim to achieve early outcomes, by agreement if possible.

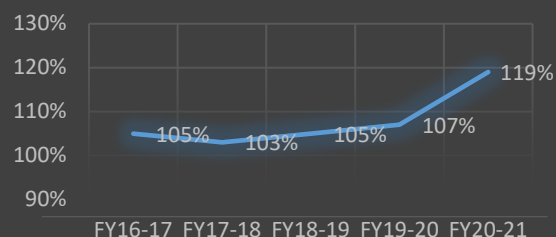
The Court set the following targets for finalisation outcomes:

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

The Court exceeded its target for matters determined without Court intervention, with 44% of matters (252 cases) resolving before any substantial pre-hearing process.

75% of those matters (190 cases) were LVAs. In last year's report the Court described a pilot of standard directions for LVAs with two objectives. One was to reduce the number of directions hearings or reviews. The other was to reduce the time taken for standard pre-trial steps to promote earlier resolution. The increased rate of finalisations prior to any substantive Court event may be attributable, at least in part, to the standard directions. The

Clearance rates for the last five years



LVA Reference Group endorsed the Court's decision to maintain this procedure for LVAs.

Because of the high early finalisation rate, fewer matters were resolved by preliminary conference or mediation. In 2020-21 35% were finalised this way.

Unusually, 66 LVAs were resolved by mediation in a combined mediation conducted by an experienced valuer who is a convenor from the Land Court's ADR panel. A further 197 LVAs were resolved by preliminary conference conducted by the Judicial Registrar.

The upward trend in the use of the ADR panel reported on in 2019-20 continued in 2020-21. Of the 75 matters mediated, 72 were conducted by convenors from the Land Court ADR Panel.

The productive contribution of CMEEs continued in 2020-21. 69 of the 562 cases finalised this year involved a CMEE at some stage of the matter.

A Court decision was requested to finalise 21% of cases, a fraction above the target rate of 10% - 20%.

Active caseload

At the end of 2020-21, the active caseload was 118 files, of which 83 were less than 2 years old (70.33%).



Cases finalised within 2 years

The Court reports separately on cases finalised within 2 years to reflect timeliness of routine cases. This generally excludes cases that involve complex issues, such as some mining objection hearings and some acquisition of land claims, or matters delayed for external reasons, such as liquidations or litigation in other courts.

Of the cases finalised in 2020-21 within 2 years of filing, 52.8% were finalised within 6 months, 41.6% within 12 months, and 5.6% after 12 months and within 2 years.

The average time to finalisation of these cases is 177 days (less than 6 months) across all case types.

Active cases greater than 2 years old

The backlog of files greater than 2 years old sits at 35 cases (29.66%). 21 of those are a group of categorisation appeals. At the time this report was prepared, all 21 had been discontinued.

Of the remaining 14 cases greater than 2 years old, 5 are mining objection hearings. Three files involve the New Acland Mine Stage 3 Project which the High Court remitted to the Land Court for rehearing, following a successful appeal from a decision by the Court of Appeal. Those cases will be heard this year. The other 2 involve the extension to Cement Australia's limestone mine. Outstanding issues of costs have since been determined and that matter is now finalised.

The remaining matters are being actively case-managed and, in most cases, the parties are working to resolve them without a hearing.

Timeliness of judgments

At the end of 2020-21 there were only 3 judgments pending. They were for mining compensation claims which were being heard on the papers.

The Court has achieved its targets for timeliness in judgments, a notable achievement given the number of judgments reserved for lengthy periods reported on in 2016-17.

The Court aims to deliver judgments within 3 months of final hearing or submissions, whichever is later.

In 2020-21, the Court delivered 41 judgments:

- 36 judgments (87.80%) were delivered within 3 months
- 4 judgments (9.75%) were delivered within 6 months
- 1 judgment was delivered after the 9-month target.

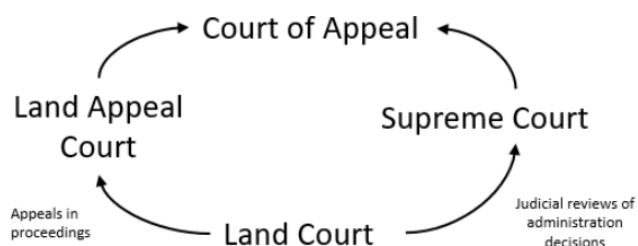
During the time that last judgment was reserved, a party applied to re-open the hearing. The final judgment was delivered just over 3 months after the decision was delivered on the re-opening application.

Appeals and Judicial Review

Rights of appeal or review

A party to a proceeding in the Land Court can appeal the decision to the Land Appeal Court (LAC). The LAC also has limited original jurisdiction under the *Biological Control Act 1987* and *Foreign Ownership of Land Register Act 1988*.

However, the LAC has no jurisdiction to review decisions made by the Court under a recommendatory provision, such as when the Court makes a recommendation on an application for a mining lease. Those cases are subject to judicial review.



Appeals to the LAC

Appeals to the LAC are by way of rehearing on the record. The LAC has power to admit new evidence in limited circumstances. The LAC sits as a panel of three members. One member is a Judge of the Supreme Court from the region in which the land is located, and the other two are 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.

7 appeals were lodged in the LAC in 2020-21, compared with 10 appeals lodged in 2019-20. 6 appeals were in the Southern District. One has been heard and at the time of this report the decision has been delivered. The remaining 5 will be heard shortly. One was filed in the far Northern Region and has been discontinued.

Judgments

The LAC delivered 3 judgments, 2 involving costs applications.

Appeals to the Court of Appeal

A party may appeal a decision of the LAC to the Court of Appeal on a ground of error or mistake in law or jurisdiction.

There were no appeals filed in the Court of Appeal in this financial year.

Judicial Review

The Supreme Court heard one judicial review application from a mining objection hearing by the Land Court. The decision on that application is pending.

Librarian's Report



The 2020-21 year provided challenges due to COVID restrictions and produced solutions necessitated by those restrictions.

Use of online resources increased and access to print resources and texts was restricted when the Supreme Court Library closed its doors to users during lockdowns. Nevertheless, the new intake of associates managed their research efficiently and members continued to make use of the Judicial Virtual Library, kindly extended to the Court by the Supreme Court Library Queensland.

The librarian continued to provide assistance with legal citation, research, education, and increased the current awareness service by alerting members and associates to new cases and articles.

Interested party decisions

A collection of 22 decisions of the Land Tribunal were published on the Supreme Court Library Caselaw website. They involved applications by persons who wished to become parties to proceedings for the hearing of land claims under the *Aboriginal Land Act 1991*.

The claims related to Crown land near Aurukun, Melville National Park, Simpson Desert National Park, the former Peppan Reserve, North Barrow Island, Lakefield National Park, Cliff Islands National Park, Crown land near Helenvale, the eastern part of Rokeby National Park, Jardine River National Park, Archer Bend National Park, and 10 islands near Cape Grenville.

The Land Tribunal determined the last claim, the Boodjumulla (Lawn Hill) National Park claim, in 2016.

Queensland Land Court Reports

The Court publishes annual volumes of the *Queensland Land Court Reports* (QLCRs) in which selected decisions of the Land Court, all decisions of the Land Appeal Court, and reviews and appeals heard in superior courts are reported. The QLCRs have been produced continuously since 1974, and prior to that as the *Crown Land Law Reports*, the first volume of which covered the period 1859-1900.

This year, the Court published the 2018 volume in which 27 cases were reported: 9 Land Appeal Court decisions and 18 Land Court decisions. Two reported decisions considered the *Local Government Regulation 2012*.

The 2018 reported decisions considered the following Acts:

Act considered	Number of decisions
<i>Acquisition of Land Act 1967</i>	4
<i>Local Government Regulation 2012</i>	2
<i>Land Valuation Act 2010</i>	15
<i>Mineral Resources Act 1989</i>	4
<i>Mineral Resources Act 1989 & Environmental Protection Act 1994</i>	2

Organisation and Administration

Judicial support

The Executive Assistant and Associates provide support to the President, Members and Judicial Registrar of the Court.

In 2020-21, the Executive Assistant and the Associates of the Land Court were:

- Executive Assistant, Tyson Joseph Lee (until July 2020); Elise Biggs
- Associate to President Kingham, Alice Killin (until 15 January 2021); Nikolaos Papavasiliou
- Associate to Member Isdale, Eleanor Sondergeld (until December 2020); Dominic Bilton
- Associate to Member Stilgoe, Edward Cleary (until 15 January 2021); Lianna Lazzaretti
- Associate to Member McNamara, Fiona Maher (until 5 March 2021); Cara Scarpato

Land Court Registry

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

In 2020-21, the Registry Officers of the Land Court were:

- Principal Registrar, Darren Campbell
- Senior Registrar, Business Operations, Nichole Padovan
- Senior Registrar, Court Management, Chris De Marco
- Deputy Registrar, Gregory Grodecki
- Deputy Registrar, Monica Oates
- Court and Administration Officer, Paulo Frutuoso

Location and contact details

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