



**LAND COURT
OF QUEENSLAND**

2016-2017 ANNUAL REPORT



**LAND COURT
OF QUEENSLAND**
CHAMBERS OF President Kingham
Land Court of Queensland

The Honourable Yvette D'Ath
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31 October 2017

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Dear Attorney

As required by s 77A(1) of the *Land Court Act 2000*, I provide you with the tenth Annual Report on the operations of the Land Court for the year ended 30 June 2017.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'Fleur Kingham'.

Fleur Kingham

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President's Report

This has been a year of transition for the Court, marked by significant retirements and appointments. I want to start by paying tribute to my predecessor, Mrs Carmel Macdonald, a distinguished academic, judicial colleague and friend. As President she led the Court through uncertain times with humility and a quiet but unyielding determination. I appreciate her wise counsel and kindness to me. Her outstanding service as a Member and President of this Court is well acknowledged in the profession.

Last year saw the retirement of Justice Lyons, who served as a Member of the Land Appeal Court for the Southern Region from 2009. The former President paid tribute to him in her final annual report. I welcome Justice Dalton as a worthy successor to Justice Lyons. Her Honour has already utilised her intellectual rigour and discipline in leading the Land Appeal Court this year.

Finally, a long serving officer of the Court, Kev Hayden, retired as Registrar of the Court this year. He joined the Court from the Lands Department 21 years ago. He has a wealth of knowledge which he willingly shared. He is affectionately remembered by those who worked with him and the parties and lawyers who could rely on his assistance.

When I was appointed, I announced my intention to review the Court's procedures for hearing objections to mining authorities. At the time, Member Paul Smith was well into hearing the application for and objections to Stage 3 of the New Acland coal mine. His frustration with the process was a matter of public record. In this report I note the Member's perseverance and diligence in producing his recommendation and reasons in a timely way.

The hearing was the longest in the Court's history (98 days), a record the Court must do everything to avoid repeating. A new procedure for these

hearings is well advanced and is summarised in the [Blueprint for Reform](#). The Court consulted extensively in developing reform proposals. The individuals and organisations we consulted hold diverse and sometimes conflicting perspectives. I greatly appreciate that any differences of view did not prevent them from providing frank and constructive feedback to the Court.

During this year, I have sought to improve support for Members. I appreciate the support of Justice Fraser, Chairman of the Supreme Court Library Committee and Supreme Court Librarian, David Bratchford, in extending access to the Judicial Virtual Library. Greater access to electronic resources has allowed the Court, ably led by its own librarian Helen Bannerman, to focus its collection on resources relevant to its specialist functions.

The Court is fortunate the State Government provided additional funding to facilitate improvements in the Court's efficiency and productivity. I trust time will show the funds have been put to good use. They have supported the review of the procedure for mining objection hearings, as well as many other initiatives outlined in the [Blueprint for Reform](#). They have also allowed the Court to reform the structure and procedures of the Registry to improve the integrity and efficiency of its core functions.

Registry staff have been faced by a changing work environment while responding to procedural reforms. They have risen to this challenge admirably. I applaud the Acting Registrar, Darren Campbell, for forging a productive and aspirational Court culture.

This will provide the Members and the Judicial Registrar with the support they need to fulfil their important duties and to implement the blueprint for reform.

I look forward to reporting on the outcome of these initiatives in the next annual report.

President FY 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.

MISSION

The Court hears and determines matters relating to land and other natural resources. The Court:

- Hears appeals against land valuations
- Determines claims for compensation for the resumption of land
- Hears objections to the grant of mining tenures and environmental authorities for resource projects
- Determines compensation for mining activities and compensation and land access for other natural resources activities
- Hears appeals against local government rating categories
- Determines disputes regarding Indigenous land use agreements and cultural heritage issues

GUIDING VALUES

- Equality (Before the Law)
- Fairness
- Impartiality
- Independence of Decision Making
- Competence
- Integrity
- Transparency
- Accessibility
- Timeliness
- Certainty



LAND COURT OF QUEENSLAND

STRATEGIC PLAN

STRATEGIC OBJECTIVES

- Align and develop systems to deliver better public value.
- Develop consistent and effective leadership.
- Build our capability and performance.
- Strengthen our internal and external relationships and alliances.

MINING OBJECTION HEARINGS

The Court will implement a reformed procedure for hearing objections to mining leases and associated environmental authorities. The procedure has been developed following extensive consultation with the objective of furthering the guiding values for the Court.

SPECIALIST ADR (ALTERNATIVE DISPUTE RESOLUTION) PANEL

The Court will establish and train a panel of ADR practitioners with particular qualifications or experience of relevance to the specialist jurisdiction of the Court. The Court will appoint practitioners from the ADR Panel to assist in resolving matters before the Court. Parties can also access practitioners from the ADR Panel by agreement for pre-filing ADR. The Court will pilot a low cost fixed fee ADR service for mediating small mining disputes in regional areas.

DATA INTEGRITY

The data maintained in the case management system is often not reflective of either what is on the file or what has occurred in the matter. An audit of file data and improved procedures will address this for future records. The Court will devise and implement a process for addressing past inaccuracies in data to ensure performance reporting is robust.

CASE MANAGEMENT SYSTEM TEMPLATE REVIEW AND REDESIGN

The current templates on the Caseworks case management system are outdated and inconsistent. A Land Court registry business content expert will work offline to review all templates and update as necessary. An information technology professional will redesign and install the updated version of templates.

OTHER REGISTRY REFORMS

The Court will review and restructure the Registry to build its capability and performance. The Court will also modernise, document and implement consistent registry practices and procedures.

PROCEDURAL ASSISTANCE

The Court will offer a procedural assistance service for self-represented parties. This will be a service that observes the distinction between procedural assistance and advice and connects self-represented parties with suitable support services.



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STRATEGIC PLAN

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Registrar's Report

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

Commencing 1 July 2016, it was recognised that a significant body of work was needed to be undertaken in the Land Court Registry to revise processes and procedures to align with the International Framework for Courts Excellence (IFCE). It was acknowledged that this would entail a significant body of work and, as such, the Queensland Government provided additional funding over a two year period to review and improve operations of the Court.

In February 2017, I was appointed Acting Registrar of the Land Court upon the retirement of the previous incumbent, Kevin Hayden.

Vision for the Court

The Registry has made great progress, moving closer to a shared vision of being regarded as an exemplary court forum for specialist dispute resolution, providing exceptional public value through accessible, flexible, just, fair, and innovative services and procedures.

Court file integrity

One of the largest projects is a review and improvement of the Registry's management of court files. Our goal is to ensure a key performance indicator set by the IFCE in relation to 'court file integrity' becomes standard practice within the Registry. Meeting this standard involves achieving three main criteria – (1) accessibility (i.e. a court file must be available within 15 minutes of a request for access); (2) accuracy (the court file needs to be accurate and organised in accordance with a prescribed standard); and (3) complete (i.e. all documents filed with the Court are on the court file). The Registry is committed to meeting this standard with all of our files.

Cultural change

There has been a significant shift in Registry culture as we work towards improving and strengthening our brand. We now have an officer permanently located at our front counter to greet and assist clients to ensure their first contact with the Court is a positive experience.

The Registry is also focussing strongly on developing staff to their full potential. With this goal in mind Individual Development Expectation Agreements (I.D.E.A.s) have been put in place for all Registry staff. These agreements are meaningful and are assisting the team to support our vision for the Court.

Upgrade of courtroom

Technology has also featured strongly in the past year as we undertook a major upgrade of our biggest courtroom. This has delivered a fully functioning 'state of the art' eTrial system. This new courtroom has proven to be a great asset, particularly because we recently conducted a major eTrial of a large resource matter. This eTrial was a positive experience for all the parties involved.

The future

We have been improving and strengthening our policies and procedures within the Registry to ensure we meet the standards set by the IFCE which, in turn, contributes to our vision. It is envisaged this program of works will be completed by the end of 2017.

We have achieved a great deal in the past 12 months as a result of the dedication and commitment of the professional team here in the Registry. We will continue to work to ensure that we are regarded as an exemplary Court.

I look forward to the ongoing commitment from Registry staff to meet the challenges and celebrate the rewards in the coming year. I am confident that the Registry team will achieve all that is planned for the Court as a result of their professionalism and dedication in the next 12 months.

Acting Registrar Darren Campbell

Past President MacDonald

On 16 August 2016, the President of the Land Court, Carmel Anne Catherine MacDonald BA, LLB, LLM, retired after twenty-three years on the Land Court bench, including eight years as President.

Mrs MacDonald was the first full time female member appointed to the Land Court. She was, however, used to being ‘the first woman’ and dealing with the challenges that label produced. She was the first female articulated clerk appointed to O’Sullivan and Rowell, where she was able to persuade her masters that the ability to play poker was not a necessary prerequisite to success in the law. She was the first female employee of the firm which engaged her in 1975, where she was able to demonstrate the uncanny capacity to mix well with both lawyers and administrative staff.

She was the first woman to be appointed as a full time law lecturer in Queensland, when she was appointed to the fledgling QIT Law School. This is where I first encountered Mrs MacDonald; a patient, unflappable exponent of the law of contract and land law. I will not insult Mrs MacDonald by saying that she taught me all that I know about those two subjects. She taught much more than I ever knew; the failure to absorb the bulk of that information lies with me, not the lecturer.

I did not know, until I started research for this piece, that QIT did not pay Mrs MacDonald at the same rate as her male counterparts. She did not confide her disappointment to her students. She did not reduce the standard of her teaching to match the level of her remuneration. But she did act, being involved in the establishment of the Women Lawyers Association of Queensland, an organisation that sought equal employment opportunities for women and law reform to outlaw discrimination.

Mrs MacDonald’s interest in the rights of indigenous landholders – incorporated into her course material on in land law – equipped her well for her appointment in 2001 as the chairperson of the Aboriginal and Torres Strait Land Tribunals. Mrs MacDonald’s work in that position continued until 2016, dealing with over 60 claims for native title.

Mrs MacDonald’s stewardship of the Land Court resulted in a number of innovations. In 2010, she facilitated the appointment of the former President of the Land Court and a former Member, to preside as specialist mediators, travelling throughout

Queensland. In their first year of operation, the two mediators resolved approximately 400 valuation disputes.

The Land Court conducted its first hearing by videoconference in 2010 and its first eTrial in 2011. Both processes saved time and resources and paved the way for the introduction of further innovation into the Land Court.

Mrs MacDonald presided over a number of notable Land Court decisions. In *Mio Art Pty Ltd & Ors v Brisbane City Council* (2009) 30 QLCR 213, she reaffirmed the fundamental principle that the function of the Court is not to decide whether a planning authority would approve a particular proposal, but how a hypothetical prudent purchaser would have viewed the potential financial return if a particular proposal was considered.

She presided over the first ‘big coal’ dispute of *Xstrata Coal Queensland Pty Ltd & Ors v Friends of the Earth-Brisbane Co-Op Ltd & Ors and Department of Environment and Resource Management* (2012) 33 QLCR 79 in which she had the difficult task of managing the significant power imbalance between the mining company and the many objectors, who were represented by a non-legally qualified agent. This experience was useful in a number of difficult, long-running mining lease cases, including the notorious *Adani Mining Pty Ltd v Land Services of Coast and Country Inc & Ors* [2015] QLC 48.

With a steady hand, Mrs MacDonald steered the Land Court through numerous changes to its jurisdiction, the lacuna created by the Supreme Court’s decision of *BHP Billiton Mitsui Coal Pty Ltd v Isdale and Others* [2015] QSC 107 which cast doubt upon the applicability of many sections of the *Land Court Act 2000* and the *Land Court Rules 2000* to referred matters and a move from 259 Queen Street to the Brisbane Magistrates Court building in George Street.

Mrs MacDonald co-authored Real Property Law in Queensland, a comprehensive analysis of the law which formed a significant part of Mrs MacDonald’s professional life for over 35 years.

All Members of the Land Court join with its newest Member in recording their appreciation for Mrs MacDonald’s wise and measured stewardship of this Court. We wish Mrs MacDonald well in her retirement and, as did her predecessor, look forward to her return as a Land Court mediator!

By Member PG Stilgoe OAM

Blueprint for Reform

In September 2016, the Court used the International Framework for Court Excellence to assess its strengths and weaknesses, identify reform priorities and develop our strategic plan. The Court also adopted the IFCE's 10 core values for courts: equality before the law; fairness; impartiality; independence of decision making; competence; integrity; transparency; accessibility; timeliness; certainty.

The Registrar's report details the review of the Registry's structure and procedures. This will provide a firm foundation for reforms to the way in which the Court deals with its cases and communicates with those who have an interest in its work.

The reforms introduced this year respond to the 10 core values but there was a particular focus on enhancing the Court's performance when measured against the values of *transparency*, *accessibility*, *timeliness* and *certainty*. In summary, the reforms involve:

- Consistent and active case management;
- Increased focus on ADR;
- Strengthening expert evidence;
- Improving judgment writing; and
- Stakeholder engagement.

Those reforms apply across the Court's jurisdictions. Before turning to each of those topics, the reforms proposed to the hearing of applications for and objections to mining authorities deserves separate consideration.

Mining Objection Hearings

The Court undertook an extensive consultation program about reforms to the Court's powers and procedures. The first stage involved an independent consultant who met with interested persons and organisations and provided a report to the Court. In the second stage, the Court established a Resources User Group to provide feedback on proposed reforms. They are now well advanced and will be finalised shortly.

In summary, the new procedure for MOHs will:

1. Specify the overriding obligations of parties, their representatives and the Court to facilitate MOHs being conducted in a way that is accessible, fair, just, economical and expeditious;
2. Make appropriate allowances for parties who represent themselves;
3. Clarify the role of the statutory party (the Department of Environment & Heritage Protection);
4. Ensure the Court receives relevant material;
5. Provide a framework for applicants for mining leases to apply to preserve the confidentiality of commercially sensitive material;
6. Provide for active robust case management, including confining the hearing to issues fixed during pre-hearing steps;
7. Promote greater and more flexible use of ADR;
8. Implement a case specific approach to expert evidence which reinforces the independence of expert evidence and makes the most timely, efficient and effective use of experts;
9. Prevents abuse of the Court's process;
10. Confining the hearing to the issues fixed during case management;
11. Uses techniques and technology to enhance both the fairness and the efficiency of the hearing;
12. Clarifies the circumstances in which a party could be required to bear another party's costs.

Some of those reforms reflect processes that will be or have been introduced for all jurisdictions, which are detailed below.

Consistent and active case management

Inconsistency in case management was a feature of the Court's docket system, under which each Member managed their own list. Developing a consistent and active approach to case management was identified as a critical issue if the Court was to improve its performance against its values of transparency, accessibility, timeliness and certainty.

The Court introduced a centralised system of case management, overseen by the President who assumed management of every pending case. It promotes comprehensive, consistent, responsive and active case management. It brings to light systemic procedural issues. It facilitates an efficient and effective path to early resolution or hearing.

Increased focus on ADR

ADR provides a timely, confidential, without prejudice and flexible forum for parties to explore the issues and search for agreed solutions to their dispute. It can contribute to the Court being more accessible, as well as enhancing timeliness where it results in early agreements. The Court increased its focus on ADR by considering it as a routine step in case management, and by taking the following initiatives.

Court Supervised Mediation

Members and the Judicial Registrar were listed in Preliminary Conferences and Mediations in all types of pending cases, leading to earlier resolution by agreement in many of them.

Using mediation to support case management

Mediations are primarily focussed on reaching agreement but, like Preliminary Conferences, they also provide an opportunity to discuss the best process for efficiently managing the case. This enhances the Court's commitment to active case management which is responsive to the issues and the needs of the parties in each case. The Court has issued a Practice Direction which outlines the guidelines for Court supervised mediation (PD 3 of 2017).

Professional development in ADR

The Court promoted collegiate discussions about ADR practice and offered 2 ADR masterclasses led by Mr John Trickett, a highly regarded Mediator and former President of this Court. Some Registry staff also undertook ADR training to support their work as intake officers for Court Supervised Mediation.

Promoting specialist ADR Convenors

The Court prepared to establish a panel of ADR Convenors with relevant experience and expertise in the Court's specialist jurisdiction. The panel will provide a focal point for ADR Convenors who understand this jurisdiction and the issues faced by the parties to disputes that may come to the Court. The Court will provide ongoing training to the panel about legislative and procedural developments. Regionally based ADR Convenors will make ADR more accessible to regionally based parties.

Strengthening expert evidence

Expert evidence is at the core of most contested cases in the Court. Strengthening the integrity, independence and comprehensibility of expert evidence can assist the Court to implement its core values of timeliness and competence. If parties have greater confidence in the independence of expert evidence and can understand where the real conflict lies between the experts, they will be in a better position to assess the strengths and weaknesses of their case. That promotes early resolution. If the case proceeds, better expert evidence can reduce the scope and sharpen the focus of the hearing and improve the quality of the Member's decision making. This furthers the Court's core values of transparency and competence. The Court instigated a number of reforms dealing with expert evidence.

Court Managed Expert Evidence

The Court revised the process for briefing experts who are participating in joint conferences and preparing joint expert reports. The objective was to ensure experts are briefed more comprehensively by a single brief which identifies

the issues any party considers the experts should address and which provides the information any party considers relevant to those issues. In simple cases, the parties prepare joint briefs without Court management. In cases involving more complex issues or numerous areas of expertise, a Judicial Officer will manage the briefing, conference and report process. They will facilitate the process to ensure experts have the information and the time they need to form their opinions, can properly explore and record their agreements and can better explain their disagreements. The process will promote a comprehensive joint report and reduce the justification for further individual reports.

Concurrent expert evidence

Concurrent evidence involves all expert witnesses in a particular discipline giving evidence in a single session facilitated by the Member hearing the matter. The process reinforces the independence of an expert witness, whose primary duty is to the Court, not the party who pays their fee. It can narrow the issues that need to be resolved. It can avoid misinterpretation of expert evidence. It can assist the Member to understand where the real differences lie between experts, and why. The Court adopted a concurrent evidence procedure (PD 2 of 2017) which applies at the discretion of the Member hearing the case. It was used in a number of cases this year, to the satisfaction of the presiding Member. The Court upgraded its main courtroom to accommodate experts giving evidence in this way.

Consultation with expert witnesses

The Court has actively engaged with experts through their professional associations. Their feedback about experiences in this and other courts has informed the reforms to date. Their suggestions for improvement will play an important role in the further development and review of the Court's procedures.

Improving judgment writing

Improving the quality of the Court's judgments responds to the core value of competence. The

Court undertook the following initiatives to achieve that end.

Judgment Style Guide

The Court revised and implemented a Judgment Style Guide, under the leadership of the Court's Librarian, Helen Bannerman, and its Research Officer, Letitia Farrell. The objective is to achieve consistency and uniformity in appearance and presentation to enhance the professionalism of the Court's judgments. The Guide dictates an orthodox approach to catchwords to make the Court's judgments more accessible on electronic search platforms, an important contribution to access to justice.

Judgment writing training

The Court funded the Members and Judicial Registrar to undertake a 2 day intensive Judgment Writing Program offered by the National Judicial College of Australia. The program promotes shorter judgments, clearly expressed, which address only those issues which must be decided. The training reinforced the approach advocated in the style guide.

Accountability for outstanding judgments

Timeliness of decision making was identified as an acute issue for the Court. To improve its performance and reputation, the Court introduced transparent systems for Members to be held accountable for outstanding judgments and for the Court to support Members to deliver judgments in a timely way. This involves:

- A procedure to anonymously enquire about any outstanding judgment;
- Internal reports by Members on their reserved judgments;
- Active monitoring by the President of any judgment outstanding for 3 months or more;
- Listing practices which encourage and support a Member with outstanding judgments to deliver them in a timely way.

During this year, the President made listing decisions to support Members with a number of reserved judgments or a large judgment to prepare.

Those Members were given extended periods without Court commitments so they could focus on their outstanding judgments. Other Members assumed a heavier hearing load to ensure the Court's caseload could, nevertheless, progress in a timely way. This collegiate support was vital in reducing the number of reserved judgments by the end of the year. Accountability and discipline about reserved judgments advances the core values of *timeliness*, *integrity* and *competence*.

Stakeholder engagement

A significant goal for the Court is to enhance its communications with those who are affected by or have a particular interest in the work of the Court. To that end:

- The Court established three consultative groups to provide a platform for ongoing consultations.
- The President, supported by the Members and the Judicial Registrar, has engaged in many meetings with interested parties and participated in consultative processes convened by other agencies.
- The President has given several presentations to professional conferences and invited feedback (formal and informal) about reforms to the Court.
- The Registrar has promoted transparent protocols about the information exchanged with government agencies which either refer cases to the Court or whose decisions are reviewed by the Court.

The response to these initiatives from the stakeholders has been encouraging, supportive, constructive and productive. The Court values and appreciates these contributions which assist the Court to fulfil all of its core values. Their ongoing participation is already furthering the next phase of the reform agenda.

President FK Kingham

Stakeholder Reference Groups

Resources User Group

The *Resources User Group* is an external stakeholder consultation group established by the Court in 2016 which deals with the mining objections hearings jurisdiction. Stakeholders represented in the Resources User Group are: AgForce, Association of Mining and Exploration Companies (AMEC), Australian Mining Petroleum Law Association (AMPLA), Australian Petroleum Production and Exploration (APPEA), Bar Association of Queensland (BAQ), Environmental Defenders Office (EDO), Department of Environment and Heritage Protection (EHP), Department of Natural Resources and Mines (NRM), Queensland Environmental Law Association (QELA), Queensland Law Society (QLS), Queensland Conservation Council (QCC), Queensland Farmers' Federation (QFF) and Queensland Resources Council (QRC).

Land Valuation Appeals Reference Group

The *Land Valuation Appeals Reference Group* was established by the Court in 2017 to consult with external stakeholders in relation to the Court's land valuation appeals jurisdiction. The stakeholders represented on the Land Valuation Appeals Reference Group are: the Valuer-General, Australian Property Institute (API), Bar Association of Queensland (BAQ), Crown Law, Department of Natural Resources and Mines in house legal and Queensland Law Society (QLS).

Professional Reference Group

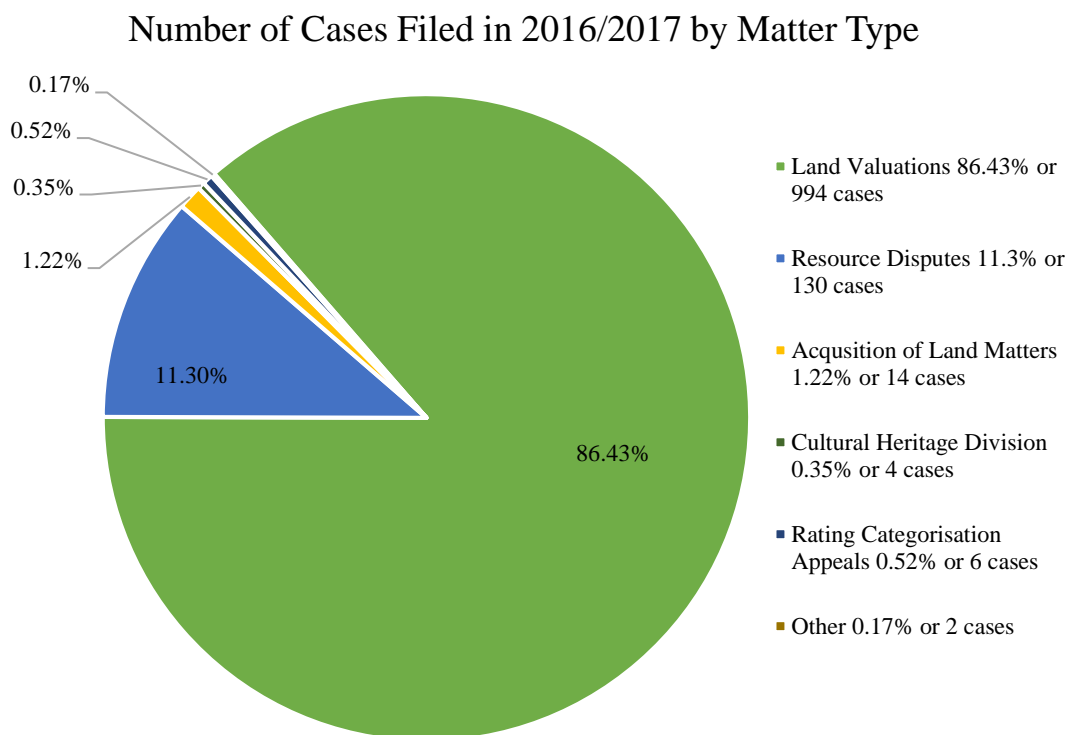
The *Professional Reference Group* was established by the Court in 2017. The stakeholders represented in this reference group are: Australian Mining Petroleum Law Association (AMPLA), Bar Association of Queensland (BAQ), Queensland Environmental Law Association (QELA) and Queensland Law Society (QLS).

Performance Reporting

This annual report presents case information for this year only. There is no historical analysis because the Court has identified issues with the integrity of its records. The Registrar has instigated an audit of current files and their associated records. The Registry records will be corrected where necessary. In future reports, this year’s performance report will provide a baseline for identifying trends with more confidence.*

Cases Filed in 2016/2017

1,150 cases were filed in the Court this year. The largest jurisdiction, if measured by the number of cases filed, is appeals against land valuations. Most of these are resolved prior to hearing. Proportionally more court resources are devoted to other matter types such as disputes about large or controversial resource projects and disputes about compensation for compulsory acquisition of land. Although few in number, those matters that go to hearing involve complex issues requiring expert evidence. Reforms outlined elsewhere in this report are intended to improve the Court’s efficiency in resolving or determining these disputes, while preserving procedural fairness for all parties.



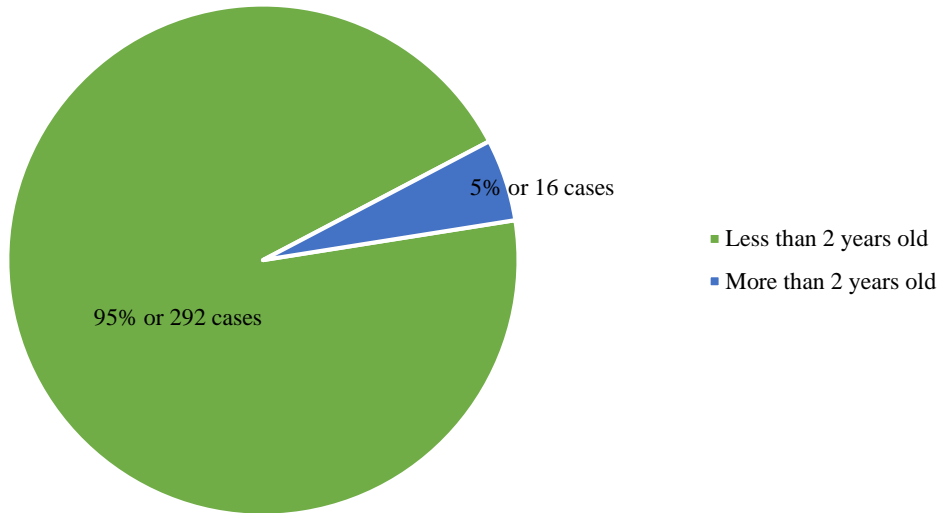
Clearance rate in 2016/2017

1,150 cases were filed and 1,210 cases were finalised by the Court this year, giving a clearance rate of 105%.

Active Cases

At the end of the year, the Court’s active files (pending caseload) was 308 files, 292 of which are less than two years old (95%). It has a backlog of 16 cases (or 5%) which are more than two years old.

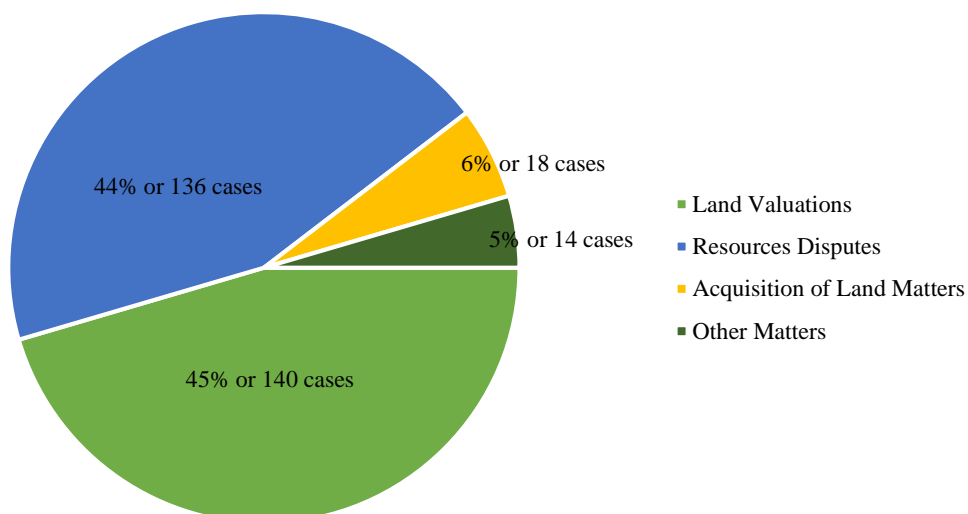
Active Cases as at 30 June 2017



Active Cases by Matter Type

Of the 308 active cases there is little difference between the pending case load for land valuation appeals, at 140 cases (45%), and resources disputes, at 136 cases (44%).

Types of active cases as at 30 June 2017

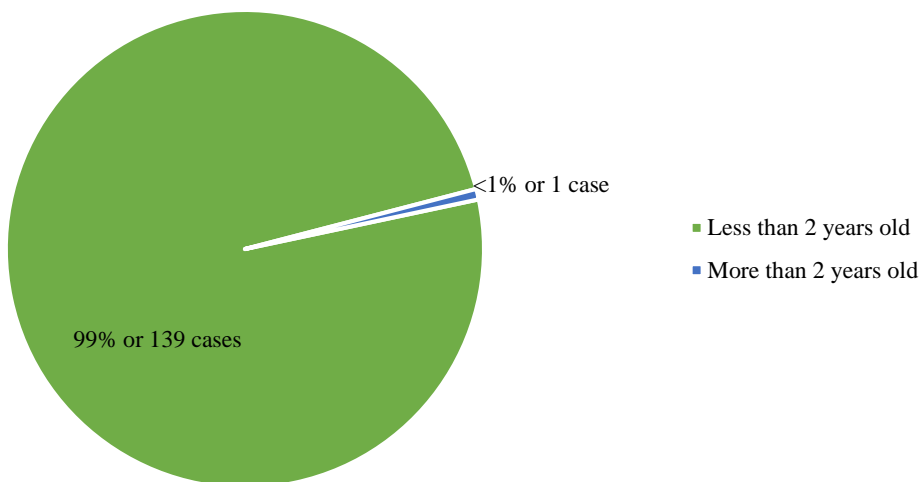


* Where percentages (%) are used they are usually rounded up or down to their nearest whole number.

Active Land Valuations Cases

Of the 140 active land valuation appeals only 1 appeal (<1%) is more than two years old. This reflects the high resolution rate by ADR which frees up the Court’s resources for the more contentious or complex appeals.

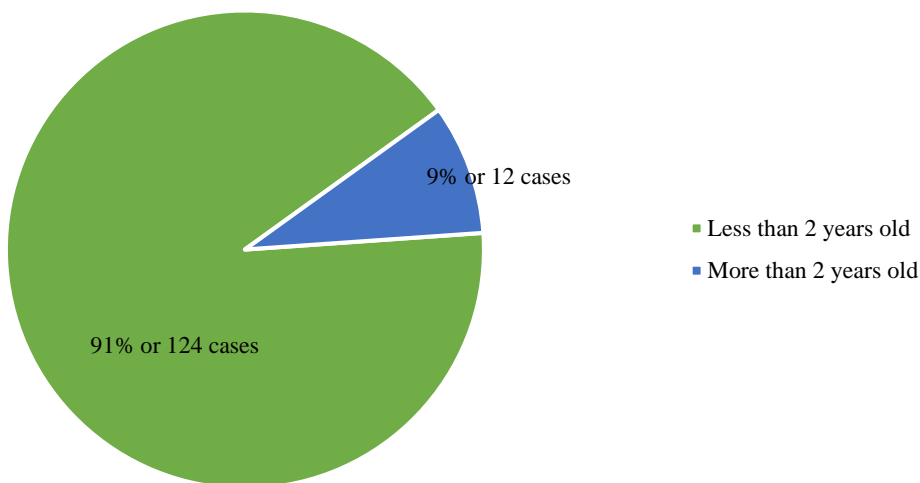
Active Land Valuations Cases as at 30 June 2017



Active Resources Disputes Cases

The resources disputes active caseload, which totals 136 cases, has a much higher proportion of cases which are more than two years old. 12 cases (9%) fall into that category. This may reflect the complexity of the issues and the time taken to develop expert evidence during pre-trial processes. Reforms to the procedure for mining objection hearings are intended to reduce the time to finalisation.

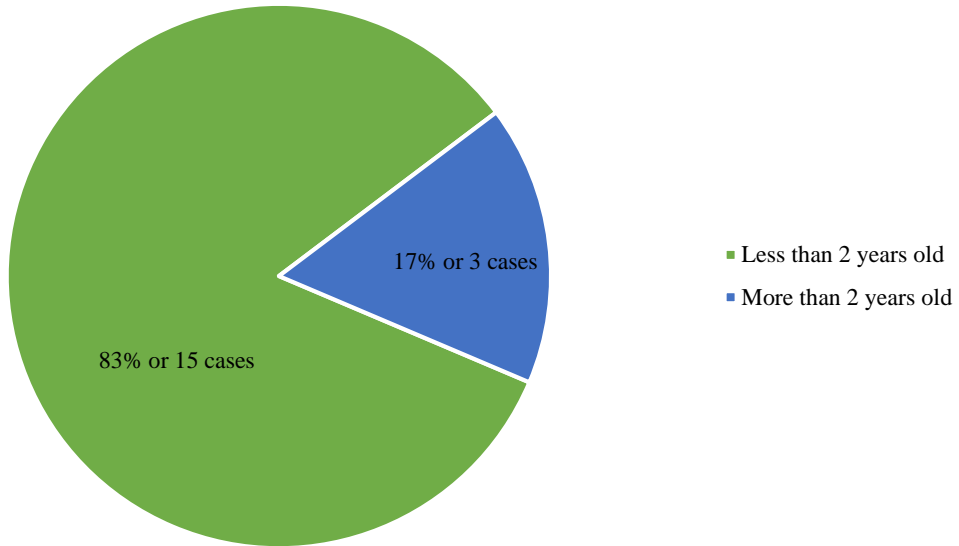
Active Resources Disputes Cases as at 30 June 2017



Active Acquisition of Land Cases

3 cases (17%) of these cases are more than two years old. Greater use of ADR and improved procedures for expert evidence are intended to reduce the time to resolve or determine these cases.

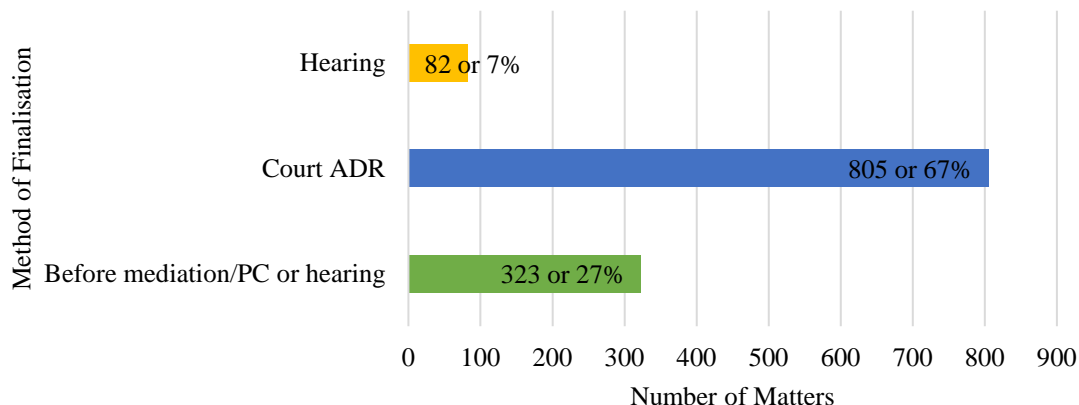
Active Acquisition of Land Cases as at 30 June 2017



Finalisation Method of Finalisation for all Matters

The Court has a strong focus on the use of ADR across all of its jurisdictions. It offers court supervised processes, including Preliminary Conferences and Mediations conducted by Members or the Judicial Registrar. However, it also promotes direct negotiation between the parties and, by agreement, mediation by a private mediator. Of the 1,210 matters finalised in 2016/2017 only 82 matters (7%) went to a final hearing. 805 matters (67%) were resolved through Court Supervised ADR and the remaining 323 (27%) by direct negotiation or mediation by a private mediator.

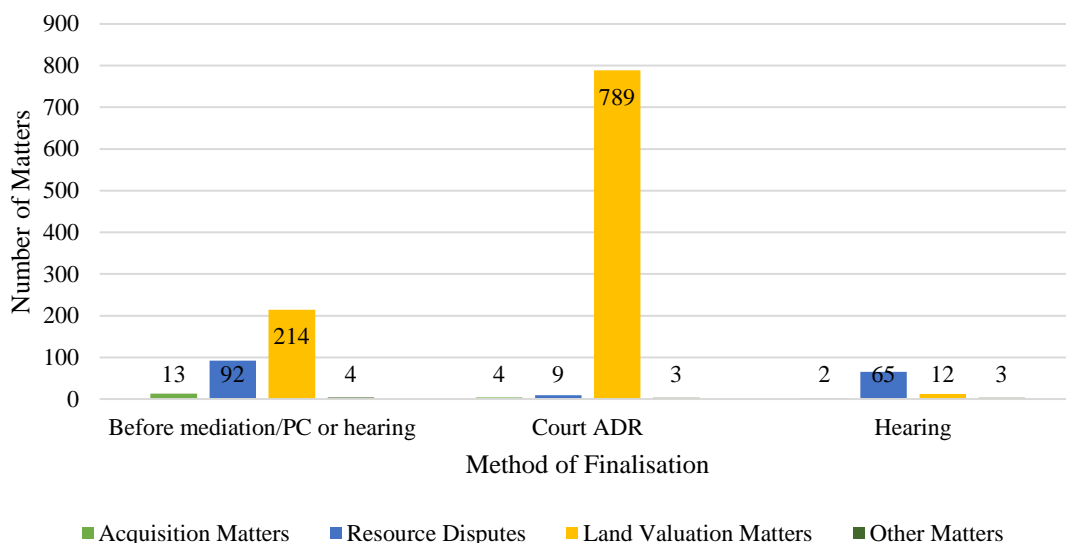
Method of Finalisation for all Matters



Method of Finalisation by Matter Type

The method of finalisation when broken down by matter type, demonstrates the primary importance of ADR in land valuation appeals. Only 12 (1%) of the 1,015 land valuation appeal matters went to a final hearing. 789 (78%) were resolved by Court supervised ADR. This was usually by Preliminary Conference conducted by the Judicial Registrar. His work is an invaluable contribution to the timely disposition of these matters. The Judicial Registrar’s strategic approach to ADR is illustrated by the resolution of 413 appeals in one mining town, detailed later in this report. The Court is committed to increasing the use of ADR in all its jurisdictions.

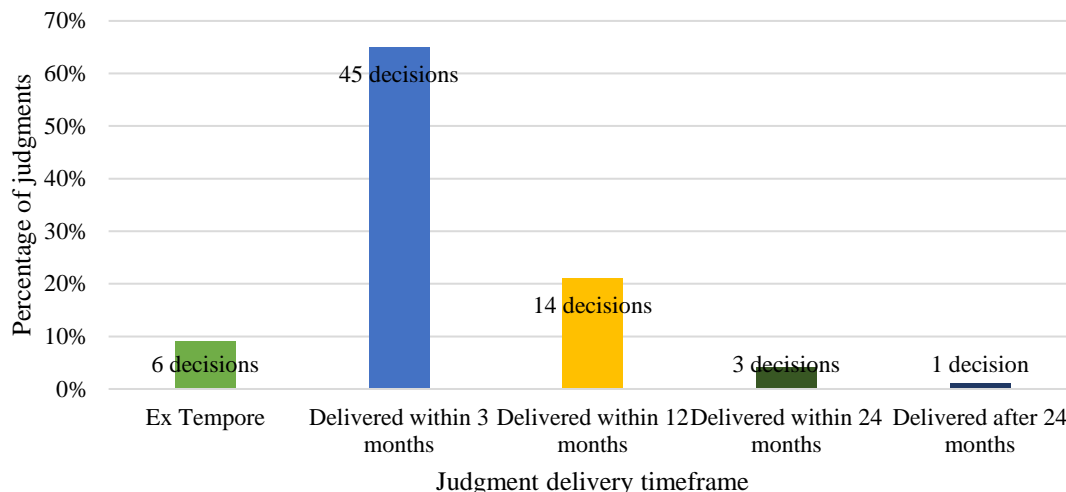
Method of Finalisation by Matter Type



Judgments Delivered

In 2016/2017 the Members of the Court worked hard to clear a backlog of reserved decisions and delivered a total of 69 judgments. The Court introduced a reserved judgment protocol which sets three months as the target date for delivery. 26% of judgments delivered in 2016/2017 (18 matters) were delivered more than 3 months after they were reserved. 6% (4 matters) were delivered more than 12 months after they were reserved.

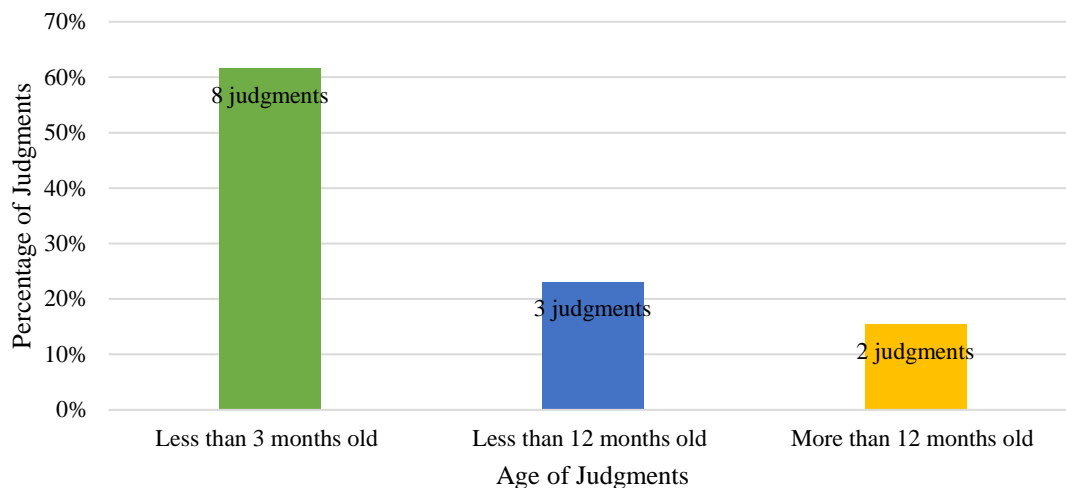
Judgments Delivered in 2016/2017



Outstanding Judgments

This graph shows the age of judgments which were outstanding at the end of 2016/2017. There were only 13 judgments then outstanding, 62% (8 judgments) were less than three months old. Further support was provided to Members to ensure the remaining judgments outstanding for more than 3 months (38% or 5 judgments) were delivered before this report was published. The Court now has no significant backlog of reserved judgments. It will maintain vigilance about its judgments and continue to report performance against its benchmark to promote transparency and accountability.

Outstanding Judgments as at 30 June 2017



The Land Appeal Court of Queensland

The Land Appeal Court is constituted by a Judge of the Supreme Court and two Members of the Land Court, other than the Member whose decision is under appeal. By convention, the Supreme Court Judge presides, but all Members of the Land Appeal Court sit as equals and the decision of the majority is the decision of the Land Appeal Court.

The Land Appeal Court sits at Brisbane, Rockhampton, Townsville and Cairns, the headquarters of the four Supreme Court regions in Queensland.

From time to time, the Chief Justice nominates a Supreme Court Judge to act as a Member of the Land Appeal Court at Brisbane pursuant to s 62(1) of the *Land Court Act 2000*.

The Honourable Justice JH Dalton was the Judge nominated for the 2016-2017 financial year. The Central Judge, the Honourable Justice DVC McMeekin, the Northern Judge, the Honourable Justice DOJ North and the Far Northern Judge, the Honourable Justice JD Henry, are Members of the Land Appeal Court for those regions.

Performance Report for the Land Appeal Court of Queensland

Five appeals were filed during 2016/2017. Two of them, involving decisions made under the *Aboriginal and Torres Strait Islander Landholding Act 2013*, were withdrawn and the appellants pursued judicial review proceedings not yet finalised.

Two more appeals related to interlocutory decisions in the course of a longstanding dispute under a statutory compensation regime. Those appeals were heard and the decision was still reserved at the end of the year.

The fifth appeal related to a financial assurance under the *Environmental Protection Act 1994*. That was heard and decided during the year. An appeal to the Court of Appeal against that decision was outstanding at the end of the year.

Judicial Review

Three applications for judicial review of decisions or recommendations made by Members of the Court were filed in 2016/2017. Two of these were brought when the appeals against decisions under the *Aboriginal and Torres Strait Islander Landholding Act 2013* were withdrawn. The third is an application to review the recommendation made in relation to the New Acland Stage 3 application. All three were pending at the end of the year.

The Honourable Justice JH Dalton

Justice Dalton replaced Justice Lyons as the Land Appeal Court Member for the Southern Region this year.

Her Honour is no stranger to the Court, having served from 2004 to 2011 as a part-time Member of the Land Court and the Aboriginal & Torres Strait Islander Land Tribunal. Justice Dalton is an experienced judicial leader, having served as President of the Anti-Discrimination Tribunal and Deputy Chairperson of the Aboriginal and Torres Strait Islander Land Tribunal.

Strategic ADR in Action

The Court's strategic approach to ADR is demonstrated by the approach taken to appeals to land valuations in Dysart.

On 17 August 2016, 413 land valuation appeals were filed with the Court concerning properties located in Dysart, a town approximately 100km north of Emerald.

All 413 properties were owned by BHP Coal Pty Ltd. They made up almost a third of the town. They ranged from small residential blocks to larger commercial sites.

All the appeals had a statutory land valuation of under \$5,000,000. Such appeals must all proceed to a Preliminary Conference (PC) by the Judicial Registrar before any further action is taken by the Court. Many appeals settle through this process.

The Judicial Registrar adopted a strategic approach to these appeals and managed them collectively. All were prepared and scheduled for PCs to occur over a single day. This required extensive work by the Registry and the parties to maximise the prospects of resolution.

The PCs were held in Mackay on 4 October 2016 over several hours. All 413 appeals were resolved, and parties executed final settlement agreements on the same day.

The 100% settlement of 413 appeals is a remarkable outcome. It exemplifies how the Court can provide exceptional public value using accessible and flexible processes.

This year the Judicial Registrar, Graham Smith, and the Deputy Registrar, Chris de Marco, were recognised in the Department's Verdict Awards for their record of resolving matters in this Court.

This article appeared in Issue 9 of the Department for Justice and the Attorney General's internal staff magazine, Just us.



Mining Objections Hearings – Looking Back and Moving Forward

Introduction

A key focus of this year has been the review of the process for hearing objections to mining leases and associated environmental authorities (MOHs). The MOH has been a feature of Queensland mining law from separation of the colony. It has always been a controversial jurisdiction, first coming under scrutiny by a Royal Commission in 1897. The Court plays an unusual role, providing a recommendation to the administrative decision maker, sometimes during a highly politicised debate.

As we look to the future, it is important to acknowledge the past and consider the historical context for this unusual function for a Court.

Looking back

The history of mining has deep veins that transcend continents and ages. Ancient civilizations traded in resources won from the earth. For example, it is recorded that ‘...the Phoenician civilisation prided themselves on their travels in their then known world in a quest for minerals, particularly the mining of tin in England.’ It was the indigenous people of Australia, though, who were our first miners. It is accepted that for more than 40,000 years before the arrival of the First Fleet in Sydney Harbour, Australian Aborigines mined the land for ochre and stone.

A notable Queensland example is a 78ha open cut stone axe quarry at Lake Moondarra, north of Mt Isa. That site is at least 1000 years old. The Kalkadoon people quarried the basalt outcrops, manufactured hard, dense, axe-blanks and traded them through extensive inland trade networks covering much of the western Lake Eyre basin. This was a communal endeavour by the traditional owners, involving both men and women in mining and manufacture.

While that is our indigenous history, our legal system is largely untouched by indigenous law and we must fast forward in time to the Roman Empire to understand the development of the modern objections hearing. The Romans recognised the domain of the State and the ownership of mineral in the soil by the State. Upon its conquest by the Romans, Britain inherited this conception of State domain. Under English law the Crown lay claim by Royal prerogative to Royal Mines, which are mines of gold and silver. Otherwise, under the feudal system, all other minerals belonged to the owner of the soil, whether the owner was the Crown or a freeman. That conception underlies the remnants of private ownership of minerals under some land tenures issued early in Queensland’s history.

When the English Empire claimed territory in Australia in the late 18th Century, it had already evolved rules about the reception of English law into its colonies. Using the language of the time, if a colony was either uninhabited or inhabited by a primitive people whose laws and customs were considered inapplicable to a civilised race, the general rule was that the settlers took with them, as their *birthright*, the laws of England.

That applied in the free colonies, such as South Australia, but was less certain in New South Wales and Van Diemen’s Land, which were penal colonies. English criminal law was imported to penal colonies under Letters Patent issued in 1787. In practise, other English laws were also applied in those colonies as well, however their status was in doubt until 1828 when the British Parliament passed ‘an Act to Provide for the Administration of Justice in New South Wales and Van Diemen’s Land’. It applied the laws in force in England in 1828 to the penal colonies.

With that, the foundation for mining law in Queensland was settled. English law applied in the colony of New South Wales before separation of Queensland in June 1859. In truth, though, there was little English law that guided the new colonies and, even before separation, the government of NSW exercised its legislative power to regulate mining.

The *Goldfields Act 1856* (NSW) was enacted to regulate activities on the gold fields following the gold rushes which started in 1851, first in NSW and then in Victoria. Gold mining transformed the immigrant population of Australia from one comprised predominantly of British and Irish convicts to a multicultural melange of gold fever sufferers. The population of Australia trebled in a decade.

As the gold rushes died down in southern states, gold fever spread to Queensland. James Nash discovered gold in Gympie in 1867 and within two years thousands of people had moved into the area. With the opening of the Gympie Goldfield came the first institution charged with regulating mining in Queensland.

That was the Gympie Local Mining Court. It was established under the NSW *Goldfields Act 1856* (NSW), which then still applied. Viewed through a modern lens, the Local Mining Court was a most unusual tribunal.

It had a combination of legislative and adjudicative functions. It made regulations for the district and settled disputes between miners. Apart from a Chairman appointed by the government, the Members of the Court were elected from and by holders of mining rights. This model was devised in Victoria following a Royal Commission into the events leading up to the Eureka Stockade in 1854.

But the Gympie Local Mining Court was not the only show in town. There were also Commissioners appointed under the *Mineral Lands Act 1872* (s 24). The first recorded mining hearing in Queensland occurred in Gympie and was presided over by Henry Edward King, described as the Gold Commissioner. He had the responsibility of holding an open court to hear objections and protests to applications for mining tenures. He could provisionally accept or reject any application, but if he accepted the application, no title accrued until confirmed by the Secretary for Lands.

In 1874, Queensland's flirtation with participatory democracy was abandoned. The Gympie Local Mining Court was abolished and a

new system of Wardens' Courts was introduced by the *Goldfields Management Act* (1892) 38 Vic. No. 11. By then there was more than one goldfield in operation. The Governor could proclaim a Wardens' Court for any goldfield. A Wardens' Court was a court of record. It had jurisdiction to hear and determine all disputes relating to mining. It was presided over by a Warden or Warden and assessors drawn from the local community.

As early as 1881, the Warden's function was considered by the Supreme Court of Queensland (in the case *Re Mills, ex parte Mills* (1881) 1 QLJ 1). It concluded the duties of a Mining Warden in receiving, recording and reporting on applications for mining leases were purely ministerial.

In 1897, during a Queensland Royal Commission into the regulation of mining, Wardens came in for some criticism. One submission suggested Wardens 'would certainly be swayed by local feeling, and others might be guided by vindictive motives'.

It was also suggested at the time that Wardens:

...who moved in the upper circles of local society, became too closely identified with the interests of the employers; some of them may perhaps have been over-ready to consider exemption applications by their friends.

Despite such views, Wardens survived when the *Mining Act 1898* consolidated a number of Acts associated with mining. Commissioners appointed under the *Mineral Lands Act 1872* became Wardens under the *Mining Act 1898* (s 105(2)). Each goldfield and mineral field was assigned to a particular Wardens' Court. The Warden had the judicial duty of determining disputes arising in relation to mining in the district. The Warden also performed ministerial duties, exercising the functions prescribed by the mining acts and regulations, and acting as the administrative officer of the Department of Mines for that district.

That continued under the *Mining Act 1968-1976*. The Regulations to that Act provided that the Warden was to hear applications for mining

leases along with any objections and recommend to the Minister whether they should be granted or rejected. The Minister was not bound to accept the Warden's recommendation. Ultimately, the decision was made by the Governor-in-Council upon the recommendation of the Minister (*Mining Act 1968-1976* s 21(4)).

By the 1970s, though, the relationship of the Mining Warden to the Mines Department came under fire. In an editorial during the debate about sandmining of the Cooloola sand mass, this editorial was published in the Courier Mail:

Perhaps they (the Cooloola leases) should be granted. Mining and conservation must learn to coexist. But that is not the point... it is absurd that questions which can concern conservation and environment, recreation and tourism, should be dealt with by the Mines Department, which is responsible for promoting mining. A Mining Warden should not be the arbitrator.

Views such as this explain the increasing separation of the Wardens' Court from the Minister and Department responsible for mining. Over time Wardens were no longer officers of the Mines Department, but Stipendiary Magistrates. This did not completely quell criticism as they remained public servants until that link was severed by the *Stipendiary Magistrates Act 1991*.

At one stage, it seemed possible that the Wardens' Court would lose its role in hearing objections. In its Green Paper regarding reform of the *Mining Act 1968-1986*, the Queensland Government canvassed a proposal to divide the Warden's functions between the Mining Registrar, who would perform the administrative functions, and the Court system, which would perform the judicial functions including determining compensation.

That would have left consideration of objections in the hands of the Mining Registrar, not the Courts. That proposal was not adopted and the Wardens' Court function remained largely unchanged by the *Mineral Resources Act 1989*,

although the Wardens' Court was created as a single institution by that Act.

In 1999, the office of Mining Warden and the Wardens' Court was abolished by the *Land and Resources Tribunal Act 1999*. In 2007, the Land and Resources Tribunal, which had assumed the non-coronial functions of the Warden, was abolished and its jurisdiction conferred on the Land Court.

Through those rapid transitions, although there were many reforms to the institutions and their composition, the function in hearing objections to mining lease applications remained unchanged.

The reformed procedure for MOHs will build on the historical foundation while furthering the guiding values of the Court: equality (before the law), fairness, impartiality, independence of decision making, competence, integrity, transparency, accessibility, timeliness and certainty.

President FY Kingham

* This is an edited version of a part of a published paper. References to source documents have been deleted. The original paper, '[Hearing Objections to Mining Projects: an Enigma Wrapped in Obscurity?](#)', can be accessed through the Supreme Court Library.

Wadja Wadja Project

In September 2016 the Aboriginal Land Tribunal heard its last matter (Lawn Hill National Park). The Aboriginal Land Tribunal travelled extensively taking evidence “On Country” and as a result had the necessary camping equipment to successfully travel throughout remote parts of Queensland.



The Land Court of Queensland conducted a stocktake of the items held in an offsite storage unit that was part of the Aboriginal Land Tribunals inventory. A number of quality swags (4), sleeping bags (5), stretchers, tents and other related material to be qualified was identified. In discussions with the President it was decided that the Court would donate the equipment to the Wadja Wadja independent non-denominational

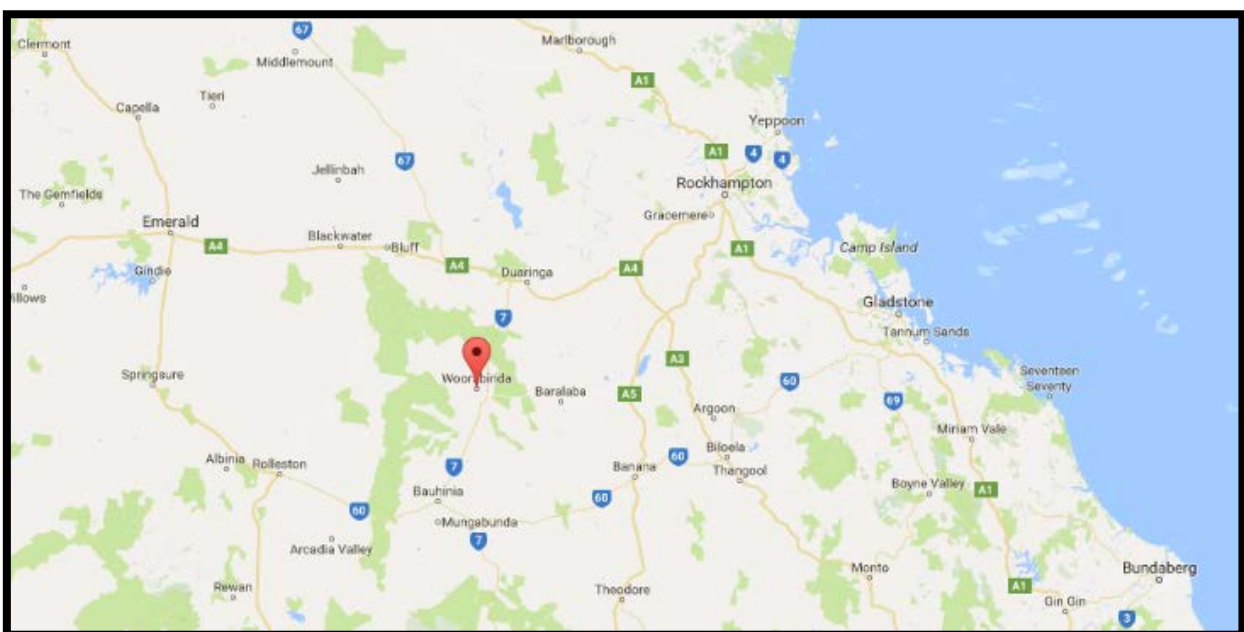
community school in the Woorabinda Aboriginal Shire in western Queensland.

They also loan out their equipment to other agencies in the area who run similar programs. It was felt this was a worthy choice as the students would benefit for years to come and the Court could contribute to the enrichment of these children’s lives in a very tangible way.



The staff of the Registry all contributed in different ways to this project and enjoyed the positive experience gained from this project. The registry worked with local businesses and community groups such as the Sunnybank Mens’ Shed to prepare the equipment for shipment to Woorabinda. This gesture is something that will benefit the local community and the school for many years to come.

President Kingham, on her trip to regional Queensland for circuit work, stopped in and met the Principal, Staff and Students of Wadja Wadja. Time was spent answering questions of the students with all things relating to the Law.



Jurisdiction

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](#).

President, Members and Judicial Registrar of the Court

President Fleur Yvette Kingham BA, LLB (Hons), LLM (Dist.), Hon.DUniv.

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.

* appointed after end of 2016/2017 year

Judicial Registrar Graham James Smith LLB, Grad Dip Leg Prac, BBus, LLM, AAPI, CPV.

The Court's Judicial Officers undertook professional development activities and gave presentations to relevant audiences nationally and internationally. In 2017/2018 the Court will report their use of allowances for continuing judicial education and development in the same way as Judges of the Supreme and District Court. Their presentations are accessible through their profiles accessible on the Land Court [website](#).

Land Court Registry

The Land Court Registry is the administrative arm of the Land Court and the Land Appeal Court. It forms part of the Department of Justice and Attorney-General.

The Land Court Registry is under the control of the Registrar. The current acting Registrar is Darren Campbell.

Finance

Operating Expenses 2016-2017	\$
Employee Expenses	\$1,201,330
Supplies & Services	\$336,290
Depreciation	\$1,780
<i>Total Operating Expenses</i>	<i>\$1,539,401</i>

Location and Contact Details of the Court

Address

Level 8 Brisbane Magistrates Court Building, 363 George Street, Brisbane Qld 4000 ([Map](#)).

The Registry business hours are from 8.30am to 4.30pm, 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) 3247 5193 (business hours)

0419 725 161 (after hours)

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(07) 3247 4635

landcourt@justice.qld.gov.au

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