



Land Court of Queensland

Annual Report 2010–2011





LAND COURT OF QUEENSLAND

7 October 2011

The Honourable Paul Lucas
Attorney-General, Minister for Local Government
and Special Minister of State
Executive Building
100 George Street
BRISBANE QLD 4000

Dear Attorney-General

As required by s 77A(1) of the *Land Court Act 2000*, I provide you with the fourth Annual Report on the operations of the Land Court for the year ended 30 June 2011.

This Annual Report also includes a report on the operations of the Land and Resources Tribunal for that year, pursuant to s 77A(3).

Yours sincerely

Carmel MacDonald
President







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Introduction

This is the fourth independent annual report on the operations of the Land Court of Queensland. As explained in previous reports, prior to 2007/2008 the yearly report on the operations of the Land Court was incorporated into the annual report of the department then responsible for the financial administration of the Court.

The Land Court is currently established under the *Land Court Act 2000* which also provides for the constitution, composition, jurisdiction and powers of the Court.

History of the Land Court

The Land Court was first established in 1898. As no comprehensive history of the Land Court has been written, parts of that history are recorded each year in this section of the annual report.

This year a brief history of the appeal process since the commencement of the Land Court is included.

The Land Appeal Court

Previous annual reports have recorded the Presidents and Members appointed to the Court since its inception in 1898. As mentioned in the 2007–2008 Annual Report, the predecessor of the Land Court, the Land Board, was established by the *Crown Lands Act 1884*. Appeals against decisions of the Land Board were to a single Judge of the Supreme Court, who could sit with two assessors.

Volume 1 of the Crown Lands Law Reports contains several decisions of the Supreme Court on appeal from the Land Board, or “Land Board Court”. In most cases the Judges sat with assessors. The earliest reported such case was *Re Minnie Downs* (1886) 1 CLLR 86, an appeal heard by Lilley CJ against a decision of the Land Board Court regarding the rent payable in respect of the resumed part of Minnie Downs Holding in the Tambo District.

Later appeals were heard by Justice Mein in 1890, Justice Harding in 1894 and 1895, Chief Justice Griffith in 1897, Justice Real in 1898 and Justice Cooper in 1897 and 1898.





The *Land Act 1897* provided that as from 1 March 1898, a newly constituted Land Court replaced the Land Board and that an appeal from a decision of a Member of the Land Court was to the Land Appeal Court, comprising a Judge of the District Court and two Members of the Land Court, other than the Member whose decision was under appeal. Decisions of the Land Appeal Court could be appealed to a single Judge of the Supreme Court, who could sit with two assessors. There could be further appeal to the Full Court of the Supreme Court on questions of law only.

The first reported instance of this appeal process appears to be *Re Albro and Other Holdings* (1898) 1 CLLR 194, where the Land Appeal Court, comprising Mansfield DCJ, together with Members Sword and Tully, heard appeals from decisions of the Land Court (Mr Hume), in respect of several holdings.

Mansfield DCJ was the Land Appeal Court Judge in numerous reported cases between 1898 and 1904, while Noel DCJ was the Land Appeal Court Judge on a number of occasions in 1905.

During this period, there are several reported cases in Volume 2 of the Crown Lands Law Reports where single Judges of the Supreme Court heard appeals from the Land Appeal Court. In *The King v Winten* (1906) 3 CLLR 92, the Full Court dealt with a case stated from the Land Appeal Court as to the rent payable in respect of various holdings in the Murweh District.

In 1910, the right of appeal from the Land Appeal Court to a single Judge of the Supreme Court (with or without assessors) was replaced by the right of appeal to the Full Court on a question of law only.

A number of District Court Judges were appointed as Land Appeal Court Judges in the period between 1898 and 1922:

Judge Edward Mansfield	1898 – 1904
Judge AB Noel	1905
Judge GG Miller	1906, 1907 and 1909
Judge Sir Arthur Rutledge KC	1908 and 1911 – 1915
Judge AW Macnaughton	1910
Judge Thomas O’Sullivan KC	1916 – 1922

The District Courts were abolished by the *Supreme Court Act 1921* and the three District Court Judges were appointed as Justices of the Supreme Court. Justice O’Sullivan thus became the first Supreme Court Judge to serve as the Land Appeal Court Judge from 1922 to 1927, except for a period in 1923 when Justice Blair was the Land Appeal Court Judge.



From 1928 until 1937, Justice Hugh Macrossan SPJ served as the Land Appeal Court Judge.

From 1921 to 1937, the *Land Act 1897* continued to provide for the Land Appeal Court to comprise a Judge of the District Court and two Members of the Land Court. However under section 3(3) of the *Supreme Court Act 1921*, any duty imposed on a District Court Judge in any other Act was to be read and construed as if a Judge of the Supreme Court was referred to.

The *Land Act and Other Acts Amendment Act 1937* reconstituted the Land Appeal Court to comprise a Judge of the Supreme Court and two Members of the Land Court.

The 1937 Amendment Act also provided for the Northern Supreme Court Judge and the Central Supreme Court Judge to be the Judges of the Land Appeal Court in those Supreme Court Districts. However, for the Southern Supreme Court District, the Chief Justice was required to nominate annually the Land Appeal Court Judge for that District.

Since the enactment of the 1937 Amendment Act, the following Judges of the Supreme Court have served as Judges of the Land Appeal Court*:

Southern Supreme Court District

Acting Justice PL Hart	1938
Justice EA Douglas	1939 and 1941
Justice RF Philp	1940
Justice AJ Mansfield	1942 – 1948
Justice EJD Stanley	1949 – 1956
Justice M Hanger	1957 – 1962
Justice WG Mack	1963 – 1967
Justice NS Stable	1968 – 1979
Justice JD Dunn	1980 – 1983
Justice DK Derrington	1984 – 1987
Justice TF Shepherdson	1988 – 1989
Justice WC Lee	1990 – 1992
Justice BW Ambrose	1993 – 1994
Justice HG Fryberg	1995
Justice JWB Helman	1996 – 1997
Justice JDM Muir	1998 – 2000
Justice DA Mullins	2001 – 2003
Justice AI Philippides	2004 – 2006
Justice MJ White	2006 – 2009
Justice PJ Lyons	2009 –

* Acting appointments during absences of Land Appeal Court Judges have not been included.
Honours awarded to and subsequent appointments of Judges have not been recorded herein.



Northern Supreme Court District

Justice RJ Douglas	1938 – 1953
Justice TC O’Hagan	1953 – 1955
Justice BJ Jeffries	1956 – 1962
Justice RW Skerman	1962 – 1969
Justice JPG Kneipp	1970 – 1992
Justice KA Cullinane	1992 –

Central Supreme Court District

Justice FT Brennan	1940 – 1947
Justice JA Sheehy	1948 – 1964
Justice DM Campbell	1965 – 1973
Justice JL Kelly	1974 – 1977
Justice AG Demack	1978 – 1999
Justice PR Dutney	2000 – 2007
Justice DVC McMeekin	2007 –

Far Northern Supreme Court District

With the establishment of the Far Northern Supreme Court District, Justice SG Jones became the first Far Northern Land Appeal Court Judge on 2 October 1997. Justice Jones continues to serve in that office.



Members and Judicial Registrar of the Land Court

President Carmel Anne Catherine MacDonald BA LLB LLM

Members Paul Anthony Smith BA LLB
Wayne Lindsay Cochrane B Econ B Ed MSc
William Angus Isdale LLB MPubAdmin

Judicial Registrar Barry Richard O'Connor LLB LLM

Part-time Members (appointed pursuant to s.17 of the *Land Court Act 2000*):
Stephen Joseph Keim SC BA LLB (Hons) (until 7 April 2011;
from 6 May 2011)
Jean Hazel Dalton SC BA LLB (Hons) (until 17 February 2011)

Appointment of Part-time Member to Supreme Court

On 25 February 2011, part-time Member of the Land Court, Jean Hazel Dalton SC, was appointed as a Judge of the Supreme Court of Queensland.

Ms Dalton was originally appointed as a part-time Member of the Land Court on 15 April 2004, for a term of one year. Her appointment was subsequently renewed from time to time, the most recent reappointment being from 8 April 2010 to 7 April 2011. Ms Dalton resigned from her position as a part-time Member of the Court on 17 February 2011.

Ms Dalton's appointments to the Land Court were consequent upon her simultaneous appointments as a Deputy Chairperson of the Land Tribunal established under the *Aboriginal Land Act 1991*. Section 17(1)(a) of the *Land Court Act 2000* provides that the Governor-in-Council must appoint the Chairperson and Deputy Chairpersons of the Land Tribunal established under the *Aboriginal Land Act 1991* as Members of the Land Court.

Section 117 of the *Aboriginal Land Act* provides that appeals lie from various decisions of the Aboriginal Land Tribunal to the Land Appeal Court. It is thought that the primary reason for the appointments of the Chairperson and Deputy Chairpersons of the Land Tribunal to the Land Court was to enable those persons to sit on the Land Appeal Court to hear appeals from the Land Tribunal.

The Land Court is grateful to Justice Dalton for her service as a part-time Member of the Land Court.



Jurisdiction

The Land Court is a court of record of the State of Queensland which has wide ranging jurisdiction, unlimited as to amount, conferred by the Acts identified below.

The Court deals with a diverse range of matters relating to land and resources, including:

- ▶ the determination of claims for compensation for compulsory acquisition of land;
- ▶ appeals against statutory valuations for revenue purposes;
- ▶ appeals against a wide range of Ministerial and Departmental decisions under various Acts;
- ▶ disputes concerning mining activities throughout the State; and
- ▶ cultural heritage issues.

The Land Court hears and determines matters in a manner similar to the Supreme Court and District Court with some variations, as the procedure of the Court is governed by equity and good conscience and the strict rules of evidence do not apply. Land Court Members are judicial officers appointed by commission and have many of the powers of a Judge of the Supreme Court in exercising the Court's jurisdiction.

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

Legislation giving the Land Court and Land Appeal Court jurisdiction:

- ▶ *Aboriginal and Torres Strait Islander Communities (Justice, Land and Other Matters) Act 1984*
- ▶ *Aboriginal Cultural Heritage Act 2003*
- ▶ *Aboriginal Land Act 1991*
- ▶ *Aborigines and Torres Strait Islanders (Land Holding) Act 1985*
- ▶ *Acquisition of Land Act 1967*
- ▶ *Alcan Queensland Pty Limited Agreement Act 1965*
- ▶ *Amoco Australia Pty Limited Agreement Act 1961*
- ▶ *Austral-Pacific Fertilizers Limited Agreement Act 1967*
- ▶ *Biological Control Act 1987*
- ▶ *Breakwater Island Casino Agreement Act 1984*
- ▶ *Central Queensland Coal Associates Agreement Act 1968*
- ▶ *Century Zinc Project Act 1997*
- ▶ *City of Brisbane Act 2010*
- ▶ *City of Brisbane (Finance, Plans and Reporting) Regulation 2010*
- ▶ *Environmental Protection Act 1994*
- ▶ *Foreign Ownership of Land Register Act 1988*

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- ▶ *Forestry Act 1959*
 - ▶ *Fossicking Act 1994*
 - ▶ *Geothermal Energy Act 2010*
 - ▶ *Geothermal Exploration Act 2004*
 - ▶ *Greenhouse Gas Storage Act 2009*
 - ▶ *Housing (Freeholding of Land) Act 1957*
 - ▶ *Housing Act 2003*
 - ▶ *Land Act 1994*
 - ▶ *Land and Resources Tribunal Act 1999*
 - ▶ *Land Court Act 2000*
 - ▶ *Land Valuation Act 2010*
 - ▶ *Local Government (Aboriginal Lands) Act 1978*
 - ▶ *Local Government Act 2009*
 - ▶ *Local Government (Finance, Plans and Reporting) Regulation 2010*
 - ▶ *Mineral Resources Act 1989*
 - ▶ *Nature Conservation Act 1992*
 - ▶ *Offshore Minerals Act 1998*
 - ▶ *Petroleum Act 1923*
 - ▶ *Petroleum and Gas (Production and Safety) Act 2004*
 - ▶ *Queensland Nickel Agreement Act 1970*
 - ▶ *Racing Venues Development Act 1982*
 - ▶ *Soil Conservation Act 1986*
 - ▶ *State Development and Public Works Organisation Act 1971*
 - ▶ *Sugar Industry Act 1999*
 - ▶ *Survey and Mapping Infrastructure Act 2003*
 - ▶ *Thiess Peabody Coal Pty Ltd Agreement Act 1962*
 - ▶ *Torres Strait Islander Cultural Heritage Act 2003*
 - ▶ *Torres Strait Islander Land Act 1991*
 - ▶ *Transport Infrastructure Act 1994*
 - ▶ *Water Act 2000*
 - ▶ *Water Supply (Safety and Reliability) Act 2008*
 - ▶ *Wet Tropics World Heritage Protection and Management Act 1993*
 - ▶ *Yeppoon Hospital Site Acquisition Act 2006*

Legislative Changes

The following changes to the jurisdiction of the Land Court occurred in 2010/2011:

- ▶ The *City of Brisbane Act 1924* and the *Local Government Act 1993* were repealed and replaced by the *City of Brisbane Act 2010* and the *Local Government Act 2009*, respectively. The right of appeal to the Land Court in respect of the categorisation of rateable land is now found in the *City of Brisbane (Finance, Plans and Reporting)*



Regulation 2010 and the Local Government (Finance, Plans and Reporting) Regulation 2010.

- ▶ The *Transport Infrastructure Act 1994* (TIA) was amended to confer additional jurisdiction on the Court in relation to compensation claims for the taking of easements for light rail overhead wiring and for declarations of land as State toll road corridor land and local government tollway corridor land: see ss 377R, 84D, and 105JA. Further, the TIA was amended to allow proceedings to be brought in the Land Court for compensation claims for licences granted under the TIA for busway land or busway transport infrastructure and light rail land or light rail transport infrastructure: see ss 303AC and 355B.
- ▶ The *Land Valuation Act 2010* repealed the *Valuation of Land Act 1944* and effectively modified the Court's jurisdiction and appeal procedures in relation to land valuations. The Court's jurisdiction in relation to a range of administrative decisions under the Act was transferred to QCAT: see Chapter 5 of the *Land Valuation Act 2010*.
- ▶ The *Geothermal Energy Act 2010* introduced a new land access regime for certain resource tenements. Consequently the Court's jurisdiction was expanded under the following "resource Acts" in relation to determining compensation liability, reviewing compensation and conduct agreements and for other specified matters:
 - *Mineral Resources Act 1989* (Schedule 1, ss 22, 23 and 26);
 - *Greenhouse Gas Storage Act 2009* (ss 325B, 325C and 325DB);
 - *Petroleum and Gas (Production and Safety) Act 2004* (ss 537B, 537C and 537DB);
 - *Petroleum Act 1923* (ss 79VB, 79VC and 79VDB).

The Court's jurisdiction for determining compensation for geothermal tenures is now found in Chapter 6, Part 8 of the *Geothermal Energy Act 2010*.

- ▶ The *Geothermal Energy Act 2010* also:
 - amended the *Petroleum and Gas (Production and Safety) Act 2004* to confer additional jurisdiction on the Court to make recommendations in relation to disputes involving overlapping mineral (f) land and tenures (see s 363I); and
 - repealed and replaced section 773 of the *Mineral Resources Act 1989* to remove retrospectively the Court's jurisdiction in relation to mining lease applications without objection that were referred to the Court in the period between 21 April 2010 and 1 September 2010.
- ▶ The *Water Act 2000* was amended by the *Water and Other Legislation Amendment Act 2010*. Sections 435 and 436 now provide that the Land Court has jurisdiction for deciding disputes about make good agreements for water bores and the provision for



compensation in such agreements. These matters were previously dealt with under the *Petroleum Act 1923* and the *Petroleum and Gas (Production and Safety) Act 2004*.

- ▶ The *Gas Security Amendment Act 2011* amended Schedule 1, Table 2 of the *Petroleum and Gas (Production and Safety) Act 2004* to confer additional jurisdiction on the Land Court for appeals in respect of decisions by the Minister to refuse the grant of applications for the suspension of an Australian market supply condition under s 175E(1) of the Act.
- ▶ The Land Court's jurisdiction in relation to "disclosure exemptions" has been removed from the *Environmental Protection Act 1994*. This jurisdiction was previously a review of an original decision (s 523) under Schedule 2 of the Act.

Land Court Caseload

As at 1 July 2010, there were 355 cases awaiting determination by the Land Court.¹ During the reporting period, 1,080 new matters were filed in the Land Court registry. There were 815 matters finalised with the result that 620 cases were awaiting determination as at 30 June 2011.

The number of cases outstanding as at 1 July 2010 was low compared with previous years because, as explained in the 2009–2010 Annual Report, a special mediation programme was in place from April to June 2010 to deal with the impact of legislative changes to the *Valuation of Land Act 1944*. Most of the mediations resulted in settlement with the consequence that an unusually high number of matters was finalised by the Court in 2009–2010. Further, there was a reduction in the number of valuation appeals filed in the Court in the previous reporting period because no valuations were issued during 2009.

Types of Cases

Land Valuation Act 2010

The *Land Valuation Act 2010* came into effect on 20 September 2010. Section 267 of that Act provides that the *Valuation of Land Act 1944* is repealed. However parts of the *Valuation of Land Act* were continued in operation for the making and issuing of any valuation that had effect before 30 June 2011 and for the making and deciding of objections and appeals in relation to such valuations (ss 268 – 273 *Land Valuation Act*).

¹ The figure of 363 referred to in the 2009–2010 Annual Report incorrectly included 8 matters identified following a review of the Court's caseload.





The unimproved value of land as determined under the *Land Valuation Act* is the basis for the assessment of rents for State leasehold land as well as for the assessment of local government rates and State land tax. Appeals against these valuations comprise the largest number of cases filed in the Land Court each year.

In 2010–11, 783 revenue valuation appeals under the *Valuation of Land Act/Land Valuation Act* were lodged in respect of the unimproved values of land throughout the State and 581 were finalised. Most valuation cases were resolved by or following alternative dispute resolution processes, but the cases that proceeded to hearing were usually more complex or contentious. Although many hearings were completed in less than one day, some occupied several days.

Acquisition of Land Act 1967

The determination of compensation following the compulsory acquisition of land is an important part of the Land Court's jurisdiction. Land is compulsorily acquired for various public purposes set out in the Schedule to the *Acquisition of Land 1967* by various “constructing authorities”, ranging from State Government departments and local authorities to statutory authorities authorised to take land.

Compensation cases that proceed to hearing after negotiations between the parties fail to resolve the matter usually involve complex town planning, engineering, quantity surveying and valuation issues, with evidence from expert witnesses in those and other specialist disciplines. In 2010–11, 29 claims for compensation were filed, while 28 were finalised. Hearing of compensation cases usually involves several days, with the more complex cases taking several weeks.

Land Act 1994

The *Land Act 1994* provides for appeals to the Land Court against a range of Ministerial and Departmental decisions set out in Schedule 2 of that Act. However, all appeals commence with an internal review within the Department of Environment and Resource Management. Only those cases that are not resolved by that process proceed to the Land Court.

In 2010–11, seven *Land Act* appeals were filed in the Land Court, and seven were finalised. The relatively low numbers reflect the success of the internal review process. Only the more complex matters now proceed to hearing.



Local Government (Finance, Plans and Reporting) Regulation 2010; City of Brisbane (Finance, Plans and Reporting) Regulation 2010

These regulations enable local authorities to classify land into different categories for the purpose of levying differential rates and provide for appeals to the Land Court against decisions by local authorities about the categorisation of land.

There were 38 appeals filed in the reporting year, an unusually high number. One particular local authority was the respondent to 29 of those appeals, 22 of which were brought by one landowner. There were 8 appeals finalised in 2010–11.

Mineral Resources Act 1989

These are referrals under the *Mineral Resources Act 1989* of applications for mining tenements and claims for compensation relating to the grant of such tenements.

The more complex matters required several sitting days. Many of the compensation cases were dealt with on the papers without an oral hearing.

During 2010–11, 197 matters were lodged under this legislation and 155 were finalised. Amendments to the Act in 2010 had the result that uncontested mining lease applications are no longer referred to the Land Court. This has reduced the number of matters filed in the reporting period.

Petroleum Act 1923

The Land Court's main jurisdiction under the *Petroleum Act 1923* relates to assessing the compensation liability of petroleum tenure holders and reviewing compensation and conduct agreements. The Court also has jurisdiction to hear disputes in respect of the taking of water from natural sources and for appeals against a range of Ministerial and other decisions identified in Schedule 1 of the Act.

One appeal was lodged in 2010–11 and one was finalised.





Petroleum and Gas (Production and Safety) Act 2004

The *Petroleum and Gas (Production and Safety) Act 2004* confers jurisdiction on the Land Court in relation to a variety of matters including:

- deciding coordination arrangements between adjacent lease holders in respect of coextensive natural underground reservoirs;
- making recommendations in respect of “preference decisions” and disputes involving overlapping mineral (f) land and tenures;
- deciding access agreements and variations thereto;
- deciding the compensation liability of petroleum authority holders under the Act;
- reviewing conduct and compensation agreements.

The Act also provides for appeals to the Land Court against a range of Ministerial and other decisions identified in Table 2, Schedule 1 of the Act.

There were no new appeals lodged under the *Petroleum and Gas (Production and Safety) Act 2004* during 2010–11, however three appeals lodged in previous reporting periods were finalised.

Environmental Protection Act 1994

These are environmental objections and appeals about environmental issues related to mining, petroleum and gas tenures. During 2010–11, 18 objections or appeals were lodged and 26 were finalised.

Cultural Heritage Legislation

Two applications were brought pursuant to the *Aboriginal Cultural Heritage Act 2003* in respect of cultural heritage matters. Three matters were successfully resolved.

Water Act 2000

The *Water Act 2000* provides a right of appeal to the Land Court against a range of internal review decisions made under the Act. Most commonly appeals to the Court involve decisions about the grant of water licences to take or interfere with water under the Act.

The *Water Act 2000* also provides for the Court to determine disputes between petroleum tenure holders and the owners of water bores about make good agreements for bores and compensation. Further, the Act provides a special right of appeal to the Court in relation to development applications made under the *Sustainable Planning Act 2009* for certain types of water developments which relate to activities under the *Mineral Resources Act 1989*.

Three appeals were lodged in 2010–11 and one was finalised.



Land Court Workload 2010–11

Types of Cases	Filed	Finalised	Active as at 30 June 2011
Valuation of Land Act appeals	783	581	283
Acquisition of Land Act claims	29	28	59
Land Act appeals	7	7	5
Local Government Regulation appeals	38	8	32
Mineral Resources Act applications and compensation claims	197	155	216
Environmental Protection Act objections and appeals	18	26	17
Petroleum Act appeals	1	1	0
Petroleum and Gas (Production and Safety) Act appeals	0	3	0
Aboriginal Cultural Heritage Act applications	2	3	0
Water Act appeals	3	1	6
Other matters	2	2	2
Total	1,080	815	620

Land Appeal Court

The Land Appeal Court hears appeals from the Land Court and 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. It also hears appeals from the Land Tribunals established under the *Aboriginal Land Act 1991* and the *Torres Strait Islander Land Act 1991*. The Land Appeal Court has limited original jurisdiction under the *Biological Control Act 1987* and the *Foreign Ownership of Land Register Act 1988*.

The Land Appeal Court sits at Brisbane, Rockhampton, Townsville and Cairns, the headquarters of the four Supreme Court Districts in Queensland. From time to time the Chief Justice nominates a Supreme Court Judge to act as a Member of the Land Appeal Court for the Southern District. The Honourable Justice Peter Lyons was the Judge nominated for the 2010–11 financial year. The Central Judge, the Honourable Justice DVC McMeekin, the Northern Judge, the Honourable Justice KA Cullinane AM, and the Far Northern Judge, the Honourable Justice SG Jones AO, were Members of the Land Appeal Court for those Districts.





A party to a proceeding in the Land Appeal Court may, with leave of the Court of Appeal or a judge of appeal, appeal a decision of the Land Appeal Court to the Court of Appeal on the ground of error or mistake in law or jurisdiction. Further appeal could lie to the High Court of Australia, but only with special leave. There are very few appeals against the decisions of the Land Appeal Court.

Appeals to the Land Appeal Court are by way of rehearing, usually on the record of the Court below. The Land Appeal Court has power to admit new evidence, but only if the Court is satisfied that such evidence is necessary to avoid grave injustice and that adequate reason can be shown why the evidence was not previously given. By convention, the Supreme Court Judge Member presides, but all Members of the Land Appeal Court sit as equals and the decision of the majority is the decision of the Land Appeal Court.

There were 9 appeals lodged in the Land Appeal Court in 2010–11, compared with 11 appeals in 2009–10. Considering the number of matters dealt with by the Land Court each year there are remarkably few appeals to the Land Appeal Court.

Nature of Appeals	2009–10	2010–11
Compensation (<i>Acquisition of Land Act 1967</i>)	5	4
Other	1	1
<i>Mineral Resources Act 1989</i>	3	4
Revenue valuations (<i>Valuation of Land Act 1944</i>)	2	0

During the reporting period, four of the appeals related to land in the Southern Land Appeal Court District and one concerned land in the Northern Land Appeal Court District. Four appeals related to land in the Central Land Appeal Court District, two of which were heard in Brisbane.

	2009–10	2010–11
Appeals to Court of Appeal	1	3*

* Includes 2 related matters.



Case Management

With such a large caseload and few Members, the Land Court has adopted a number of case management procedures:

- ▶ Appellants in all revenue valuation appeals are offered alternative dispute resolution through preliminary conferences. These preliminary conferences are usually conducted by the Judicial Registrar and have achieved considerable success.
- ▶ Callovers have been replaced with efficient file allocation procedures.
- ▶ Directions hearings in appropriate cases, with orders made seeking identification of issues and the filing of expert reports addressing those issues.
- ▶ Each Member takes responsibility for case management of matters arising in specific geographical areas and conducts regular reviews in respect of those matters.

Regional Hearings

Although based in Brisbane, the Land Court also sits in regional areas of Queensland. Normally, a matter is dealt with in the district where the land the subject of the dispute is located. During 2010–11, the Court sat on 73 days outside Brisbane at the following centres:

- | | |
|-------------------|---------------|
| ▶ Atherton | ▶ Ipswich |
| ▶ Bundaberg | ▶ Mackay |
| ▶ Caboolture | ▶ Mareeba |
| ▶ Cairns | ▶ Redcliffe |
| ▶ Charters Towers | ▶ Rockhampton |
| ▶ Coolangatta | ▶ Roma |
| ▶ Emerald | ▶ Stanthorpe |
| ▶ Gatton | ▶ Toogoolawah |
| ▶ Georgetown | ▶ Toowoomba |
| ▶ Gladstone | ▶ Townsville |
| ▶ Innisfail | ▶ Warwick |





Alternative Dispute Resolution

As an alternative to its adjudicative role, the Land Court also provides Alternative Dispute Resolution (ADR) processes by a Judicial Officer, either a Member or the Judicial Registrar.

Preliminary Conference

A preliminary conference is essentially a conciliation process, not merely a preliminary meeting. It is “preliminary” only in the sense that it precedes any adjudication of a matter. The conference is designed to identify the issues in dispute, discuss those issues and attempt to reach an agreement. The term “preliminary conference” is preferred to “conciliation conference”, as it indicates that if no agreed outcome is reached, the matter can proceed to hearing and adjudication.

Preliminary conferences are offered to all parties in appeals against valuations under the *Valuation of Land Act 1944* and the *Land Valuation Act 2010*. They are generally not offered in cases with complex compensation issues or questions of law, or where there is need to consider detailed technical evidence, as such cases do not lend themselves to the conference process. However, the parties in a growing number of such cases are seeking mediation by a Member of the Land Court (see below).

The Court will convene preliminary conferences only where parties to a dispute agree to pursue that option. In rare cases, even though the parties request a preliminary conference, the Court will elect to hear a matter, usually in locations infrequently visited by the Court. Failure to resolve such a matter by preliminary conference would result in the Court having to revisit the centre.

Most preliminary conferences are conducted by the Judicial Registrar who has extensive experience in dispute resolution. There are too few Members of the Land Court for two Members to be potentially precluded from hearing an appeal to the Land Appeal Court. Nevertheless, a Member will conduct preliminary conferences in certain circumstances. For example, a Member who is hearing cases in a regional centre may, as an adjunct, conduct a limited number of preliminary conferences in that centre, avoiding the expense of the Judicial Registrar also visiting the centre.

The adoption of the preliminary conference process has resulted in considerable resource savings for the Land Court. The standard preliminary conference takes much less time than a Court hearing, following which additional time would be required for judgment writing. The majority of preliminary conferences result in settlement and an outcome which is acceptable to all parties.



During the year, the Court conducted 399 preliminary conferences. 349 were finalised as a result of conferences held during this and previous reporting periods.

Mediation

Court supervised mediation is a process by which the parties participate, together with the assistance of a Judicial Officer, in systematically isolating disputed issues in order to develop options leading to a settlement. The Court does not consider that it is appropriate to offer case appraisal by a Member, in which a neutral evaluator attempts to assess the relevant strengths and weaknesses of each party's case and offers an opinion as to the likely outcome.

Where parties elect to pursue mediation, the Court will usually adopt that option. Mediation is generally confined to the larger more complex cases, including those involving substantial monetary amounts. Court supervised mediations are conducted by a Member of the Court or the Judicial Registrar.

29 cases were mediated by Land Court Members and the Judicial Registrar during the year and 43 settled as a result of mediations held in this and the previous reporting period. The disposal rate of those cases was high. Resource benefits were substantial, saving the Court and parties considerable time and expense.

If a mediation is unsuccessful, the parties retain the right to have the matter heard and determined by the Land Court. Where a Member conducts a mediation which does not lead to a settlement, that Member cannot subsequently hear the matter. Neither that Member, nor the Member who subsequently heard the matter, can be a Member of the Land Appeal Court, if there is an appeal.

Land Court and Tribunals Registry

The Registrar of the Land Court, Deputy Registrars and other officers of the registry provide administrative support to the Land Court. The Registrar is responsible for the budget and resource management and administrative functions of the Court. The Registrar is also charged with keeping minutes of the proceedings and records of the decisions of the Land Court, and performing all the functions given to the Registrar under the *Land Court Act 2000* or any other Act. The Land Court registry is under the control of the Registrar.





The registry staff are:

Registrar: Ms Katie Stride BA LLB MPub Ad (until 11 March 2011)

Acting Registrars: Mr Kenneth Wells (from 6 April 2010 to 26 November 2010)

Mr Kevin Hayden (from 29 November 2010)

Office Manager: Ms Nerida Mead BA

Senior Deputy Registrar: Mr Kevin Hayden

Senior Case Manager: Ms Betty Lippiatt

Deputy Registrars: Mr Rai Laaja

Mrs Clare Gilbert

Mr Jeffrey Hobson

Ms Diane Blewett

Administrative Officers: Ms Glenda Jones

Ms Terri Bastiani

Ms Margaret Christison

Ms Keren Astill

Research Officer: Ms Saskia Vanderbent BA JD (Hons) GDLP (until 27 May 2011)

**Applications
Administrator:** Ms Kelly Suvorovs



Publication of Court Decisions

Major decisions of the Land Appeal Court and Land Court are published in annual volumes of the Queensland Land Court Reports with head notes. The Land Court Reports in bound volumes extend back to the first constitution of the Court.

All decisions of the Land Appeal Court and Land Court are available online at:

www.landcourt.qld.gov.au/decisions/recent.asp

Selected decisions of the Land Appeal Court and Land Court are reported in the Local Government and Environmental Reports of Australia, as well as being available online at:

www.austlii.edu.au/databases.html

Continuing Judicial Development

Each Member of the Land Court is provided with allowances which are to be used for the purposes of continuing judicial education and development. During the year, the Members attended legal and professional conferences and seminars.

Mr Smith attended the annual conference of the Queensland Environmental Law Association at the Gold Coast, Queensland, in May 2011.

Mr Cochrane attended a conference conducted by the National Judicial College of Australia in Fremantle, Western Australia, in November 2010.

Mr Isdale attended the Bar Association of Queensland Annual Conference at the Gold Coast, Queensland, in March 2011.

Members used their jurisprudential and/or expense of office allowances for these continuing education and development purposes.

Mr O'Connor attended the annual conferences of the Australian Property Institute and the Queensland Environmental Law Association as well as a mining industry seminar on coal seam gas development.





Assistance to Universities and the Professions

Moots

During the year, as in previous years, the Members, the Judicial Registrar and the Research Officer presided at moots between students of Queensland and interstate universities.

Mr Smith assisted in coaching QUT students in preparation for an international moot competition in London.

The Land Court made its courtrooms available for a moot between students of the University of Queensland (UQ) and the Queensland University of Technology (QUT). Mr O'Connor and Ms Vanderbent provided assistance to the QUT team in their preparation for the moot. Former Land Court President Mr Trickett provided similar assistance to the UQ team. Mr Cochrane presided over the moot with the assistance of industry experts.

Internship – First year law student

As part of the QUT Law School internship program, the Land Court hosted a final year law student (on an unpaid basis) in first semester 2011. This internship and associated report counts as an (elective) unit towards the law degree. Whilst at the Land Court, the student was mentored by the Judicial Registrar. The internship proved to be most worthwhile for the student, the QUT supervisor and the Court.

Publications and Lectures

Mr O'Connor presented a paper to the Australian Property Institute, reviewing major valuation and related cases from the previous twelve months.

Ms Vanderbent published papers in the Queensland Environmental Practice Reporter.

Visit from Chinese dignitaries

In September 2010, the Land Court hosted a visit by 19 officials from the Beijing Municipal Bureau of Land and Resources, People's Republic of China. Mr Smith and Ms Vanderbent explained the role and operations of the Land Court to the group with particular emphasis on the Court's jurisdiction in valuation and compulsory acquisition matters.



Library

The Land Court has established and maintained an extensive specialist library which contains many historical volumes not available electronically. The library is an essential tool to the efficient and effective performance of the Land Court.

The library is maintained by part-time Librarian, Ms Helen Bannerman BA (Hons), Grad Dip Lib Sc, who also maintains a register of the Court's judgments. A library committee comprising Mr Smith, Mr O'Connor, the Registrar, the Research Officer and the Librarian supervise the library collection and co-ordinate the preparation and printing of the volumes of the Land Court Reports, of which the Judicial Registrar is the editor.

Finance

The funding for the Land Court is provided by the Queensland Government through the Department of Justice and Attorney-General. The various financial statements are included in the Annual Report of that Department.

As with the Judges of the Supreme and District Court, the salary and allowances of the Members of the Land Court are provided for by the *Judicial Remuneration Act 2007*.

The operating expenses of the Land Court for the financial year 2010–11 are shown in the table below. The expenses exclude Members' salaries and allowances which are appropriated separately.

Operating expenses 2010–2011	\$
Employee Expenses	1,242,938
Supplies and Services	339,280
Depreciation and amortisation	5,643
Total Operating Expenses	1,587,861





Accommodation

The Land Court is located in the Brisbane Magistrates Court building, 363 George Street, Brisbane. The registry and courtrooms of the Land Court are situated on level 8 and the Members' chambers are located on level 9.

Report on the Operations of the Land and Resources Tribunal 2010–2011

Under s.77A(3) of the *Land Court Act 2000*, each annual report of the Land Court must include a report on the operations of the Land and Resources Tribunal for the year the subject of the report, until the expiry of the *Land and Resources Tribunal Act 1999* on 31 December 2011.

From 21 September 2007, the *Land Court and Other Legislation Amendment Act 2007* transferred the jurisdiction of the Land and Resources Tribunal to the Land Court, with one exception concerning applications filed prior to 31 March 2003 for mining tenements where native title may exist. The Land and Resources Tribunal is an alternative state body under the *Native Title Act 1993* (Cth) empowered to deal with such applications and is continued in existence until 31 December 2011 for the limited purpose of dealing with such applications. The Governor-in-Council may appoint persons, including Land Court Members, to act as presiding or non-presiding Members to allow this remaining jurisdiction to be exercised.

No applications under these provisions were lodged in the Land and Resources Tribunal in the period under review. One matter that had been previously lodged was finalised. Mrs MacDonald and Mr Smith were appointed as Acting President and Acting Deputy President of the Land and Resources Tribunal respectively from 26 November 2010 to 25 May 2011 to finalise the matter.



Land Court of Queensland Annual Report 2010–2011

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