



LAND COURT OF QUEENSLAND

ANNUAL REPORT 2011-2012



LAND COURT OF QUEENSLAND

26 October 2012

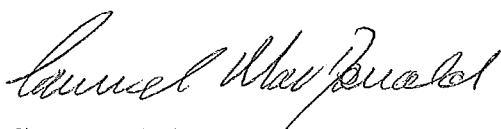
The Honourable Jarrod Bleijie
Attorney-General and Minister for Justice
Level 18
State Law Building
50 Ann Street
BRISBANE QLD 4000

Dear Attorney-General

As required by s 77A(1) of the *Land Court Act 2000*, I provide you with the fifth Annual Report on the operations of the Land Court for the year ended 30 June 2012.

This Annual Report also includes a final report on the operations of the Land and Resources Tribunal, pursuant to s 77A(3) of the *Land Court Act 2000*. The Land and Resources Tribunal ceased to exist on 31 December 2011 upon the expiry of the *Land and Resources Tribunal Act 1999*.

Yours sincerely



Carmel MacDonald
President

Registry:
Postal Address:
Phone: (07) 3247 9268
Web: www.landcourt.qld.gov.au

Level 8, 363 George Street, Brisbane Qld 4000
GPO Box 5266, Brisbane Qld 4001
Fax: (07) 3247 4635
Email: landcourt@justice.qld.gov.au

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Introduction

This is the fifth 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

Sir William Payne - First President of the Land Court

Previous annual reports have recorded some aspects of the (as yet to be written) history of this second oldest continuously operating court in Queensland. As this year is the 50th anniversary of the death of the first President of the Land Court, it seems appropriate to remember the remarkable administrative and judicial career of Sir William Labatt Payne CMG, OBE.

William Payne was born at North Pine, near Caboolture on 5 September 1890 and was educated at Brisbane Grammar School. He joined the Department of Public Lands in 1907. In 1917 he was called to the Queensland Bar, his admission being moved by AD McGill. He was then appointed as a Land Court Advocate.

Mr Payne was appointed Assistant Under-Secretary of the Department of Public Lands in 1922 and he held that position until his appointment to the Land Court on 1 July 1926, at the age of only 36. Mr Payne's appointment occurred in tragic circumstances, following the death of the Honourable JH Coyne, who died as a result of a motor accident while attending sittings of the Land Appeal Court in Townsville. Mr Coyne was formerly Minister for Public Lands under whom Mr Payne had served as Assistant Under-Secretary in 1922 and 1923.

During his time as a Member of the Land Court, in addition to his judicial duties, Mr Payne was appointed to chair a number of Royal Commissions, including inquiries into rabbit, dingo and stock route administration (1929 - 1930), the development of North Queensland (1931) and the economic conditions of the wool industry (1939).

Mr Payne was appointed Chairman of the newly created Land Administration Board on 1 February 1928, but nominally retained his Membership of the Land Court, Deputy Member Mr FW Barlow being appointed in his absence. On 1 February 1932, Mr Payne resigned from the Court and was

permanently appointed as Chairman of the Land Administration Board, Prickly Pear Land Commission, Forestry Board and Irrigation Commission.

Mr Payne held those positions until his appointment as the first President of the Land Court in 1937, a position which had been created by the 1937 amendments to the *Land Act 1910*.

It was not long before the Government again required Mr Payne for other duties. In May 1939, he was commissioned to inquire into and report upon matters relating to the wool industry. "The Wool Industry Advisory Commission Report" was tabled in Parliament in October 1939. During that period, Mr Payne relinquished his Court duties, being replaced on the Court by a Deputy Member, Mr APW Tregear.

In 1957, Mr Payne was appointed Chairman of an International Commission to inquire into and improve land administration in the Federation of Malaya. During his absence from the Court, Mr JP Harvey, Surveyor-General of Queensland, was appointed as a Deputy Member.

As has been reported in the 2009-2010 Land Court Annual Report, Mr Payne conducted a comprehensive inquiry into land administration in Queensland in 1958 - 1959. His 1959 Report on Progressive Land Settlement in Queensland (the Payne Report), formed the basis for land administration policies until a later review in 1990. During his absence from the Court, Mr Harvey was again appointed as a Deputy Member.

In recognition of his service, Mr Payne was awarded an OBE in 1941 and a CMG in 1958. He was knighted (Knight Bachelor) shortly before his retirement in 1960.

Sir William Payne retired as President of the Land Court on 5 September 1960, having reached the statutory retirement age of 70 years. Even in the twilight of his career, he was conscious of the need for better public administration. Following delivery of his judgment on appeals against determinations of the Valuer-General in the Shire of Balonne on 8 June 1960, Sir William Payne provided suggestions to the Government for the simplification of the *Valuation of Land Act 1944* and the administration of that Act, particularly in relation to the valuation of western grazing lands. His suggestions are reported at (1960-1961) 28 CLLR 66-70.

Sir William Payne died on 1 February 1962.

Death of Dr Neil Divett

I regret to report the death of former Member of the Land Court, Dr Neil Graham Divett, on 1 September 2011.

Neil Divett was born in Brisbane on 18 February 1935. He was educated at the Brisbane Grammar School and in 1955 graduated from the University of Queensland with a Bachelor of Surveying. He was registered as an Authorised Surveyor in 1957. He later completed a Graduate Diploma in Town and Country Planning in 1969, a Master of Urban Studies in 1976 and a PhD in Geographical Sciences in 1988.

After graduating as a surveyor, Neil Divett joined the Commonwealth Department of the Interior (later to become the Australian Survey Office). While with the Commonwealth Government, he was involved with and led a wide variety of difficult surveys, including a direct road to a television transmitter site on Mount Bellenden Ker, the route for the world's longest cableway, the route and locations of microwave transmitter stations in North Queensland and the surveying and mapping of significant parts of the Barrier Reef.

In 1982, Neil Divett transferred to the Queensland Government and held several senior positions in the Departments of Mapping and Surveying, Geographic Information and Lands. He was appointed Surveyor-General for Queensland in 1990, the last person to hold that position before it was abolished. Among other significant appointments, he served as a Deputy Commissioner of the Murray Darling Commission from 1993 to 1995.

Dr Divett joined the Institution of Surveyors in 1955, serving as a committee member for 17 years, President of the Queensland Division, Federal Councillor for 9 years and a National Vice President for 2 years. He was made a Fellow of the Institution in 1984 and an Honorary Fellow in 1988.

In 1997, Dr Divett was appointed as an Acting Member of the Land Court, a position which he held with distinction until he reached the compulsory retirement age of 70 years. Although not trained as a lawyer, his breadth of knowledge and experience in land matters enabled him to deal effectively with the wide range of cases which came before him for determination.

Dr Divett was active in retirement, resolving many disputes as a mediator. He also held a number of part-time positions including:

- General referee, Building and Development Tribunal (Vegetation Management)
- Resumption Delegate, Brisbane City Council
- Chair, Spatial Services Education Advisory Committee
- Objection Delegate of the Coordinator General
- Adjunct Professor, Queensland University of Technology

Neil Divett is remembered with affection and respect by his colleagues on the Land Court and Land Appeal Court and by the members of the legal profession who appeared before him.

The Members and Staff of the Court join me in offering our deepest sympathy to Dr Divett's wife and family.

Members and Judicial Registrar of the Land Court

President Carmel Anne Catherine MacDonald BA LLB LLM

Members Paul Anthony Smith BA LLB
Wayne Lindsay Cochrane B Econ B Ed MSc
William Angus Isdale LLB MPubAdmin (reappointed from 15 April 2012)

Judicial Registrar Barry Richard O'Connor LLB LLM

Part-time Member Stephen Joseph Keim SC BA LLB (Hons) (from 6 May 2011 to 5 May 2012)
(reappointed pursuant to s.17 of the *Land Court Act 2000*)

Jurisdiction

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

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

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

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

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

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

- *Aboriginal and Torres Strait Islander Communities (Justice, Land and Other Matters) Act 1984*
- *Aboriginal Cultural Heritage Act 2003*
- *Aboriginal Land Act 1991*
- *Aborigines and Torres Strait Islanders (Land Holding) Act 1985*
- *Acquisition of Land Act 1967*
- *Alcan Queensland Pty Limited Agreement Act 1965*
- *Amoco Australia Pty Limited Agreement Act 1961*
- *Aurukun and Mornington Shire Leases Act 1978**
- *Austral-Pacific Fertilizers Limited Agreement Act 1967*
- *Biological Control Act 1987*
- *Breakwater Island Casino Agreement Act 1984*
- *Central Queensland Coal Associates Agreement Act 1968*
- *Century Zinc Project Act 1997*
- *City of Brisbane Act 2010*
- *City of Brisbane (Finance, Plans and Reporting) Regulation 2010*
- *Environmental Protection Act 1994*
- *Foreign Ownership of Land Register Act 1988*
- *Forestry Act 1959*
- *Fossicking Act 1994*
- *Geothermal Energy Act 2010*
- *Greenhouse Gas Storage Act 2009*

* Previously known as the *Local Government (Aboriginal Lands) Act 1978*. The Act was renamed as a result of the *Aboriginal Land and Torres Strait Islander Land and Other Legislation Amendment Act 2011*.

- *Housing (Freeholding of Land) Act 1957*
- *Land Act 1994*
- *Land and Resources Tribunal Act 1999*
- *Land Court Act 2000*
- *Land Valuation Act 2010*
- *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*
- *Strategic Cropping Land Act 2011*
- *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 2011-12:

- The *Aboriginal Land Act 1991* (ALA) and the *Torres Strait Islander Land Act 1991* (TSILA) were significantly amended and restructured by the *Aboriginal Land and Torres Strait Islander Land and Other Legislation Amendment Act 2011*. As a consequence, the Land Court's jurisdiction under those Acts was affected as follows:

- Under the ALA, new Part 8C now consolidates the appeal provisions relating to the Land Court. It includes new appeal rights against a decision not to renew a private residential lease held by an Aboriginal person and in respect of the amount payable to a person for the value of the lease land and lessee's improvements on the land when a private residential lease held by an Aboriginal person is not renewed. The Land Court is also given jurisdiction to hear and decide appeals in respect of decisions to remove or suspend a member of a land trust.
- Jurisdiction that was formerly exercised by the Aboriginal Land Tribunal in relation to determining access routes across Aboriginal land for the purpose of allowing a person to access his or her land has now also been transferred to the Land Court under the ALA.
- Under the TSILA, new Part 8B now provides for appeals to be made to the Land Court. It includes new appeal rights against a decision not to renew a private residential lease held by a Torres Strait Islander and in respect of the amount payable to a person for the value of the lease land and lessee's improvements on the land when a private residential lease held by a Torres Strait Islander is not renewed. The Land Court is also given jurisdiction to hear and decide appeals in respect of decisions to remove or suspend a member of a land trust. These provisions are similar to the ALA amendments.
- The Land Court's jurisdiction under the TSILA to resolve difficulties arising in relation to the grant of land to Torres Strait Islanders has been removed as this jurisdiction related to the claimable land process which is no longer available under the TSILA.
- The provisions relating to the Torres Strait Islander Land Tribunal have been omitted from the TSILA and accordingly, appeal rights to the Land Appeal Court from decisions of that Tribunal have been removed as well as the power to refer questions of law to the Land Appeal Court.
- Jurisdiction that was formerly exercised by the Torres Strait Islander Land Tribunal in relation to determining access routes across Torres Strait Islander land for the purpose of allowing a person to access his or her land has now also been transferred to the Land Court under the TSILA.

- The *Geothermal Exploration Act 2004* was repealed upon the commencement of the remaining provisions of the *Geothermal Energy Act 2010* on 2 March 2012. The Land Court's jurisdiction in relation to geothermal tenures is now entirely located in the *Geothermal Energy Act 2010*. In particular, Schedule 1 of the *Geothermal Energy Act 2010* identifies a number of Ministerial and other decisions under the Act which are now subject to appeal to the Land Court. Further, those provisions empowering the Land Court to decide access agreements in respect of private land outside tenure areas and to determine access and compensation arrangements to carry out decommissioning of wells, have now commenced.

- The *Geothermal Energy Act 2010* also amended s.579 of the *Environmental Protection Act 1994* to allow compensation to be claimed for any "compensatable effect" suffered by a landowner or occupier as a result of entry to land or work conducted by another in relation to the land, to comply with environmental requirements under the *Environmental Protection Act 1994*. An application for such compensation may be made to the Land Court under s.256 of the *Geothermal Energy Act 2010* for compensation relating to the carrying out of authorised activities under the geothermal tenure.

- The *Strategic Cropping Land Act 2011* commenced on 30 January 2012 giving the Land Court new jurisdiction to hear appeals in relation to "SCL protection decisions" made for mining and other resource projects. An "SCL protection decision" is a decision about the impact of a resource activity on land that is strategic cropping land or potential strategic cropping land and whether or not to impose conditions on either or both the environmental authority or resource authority for the resource activity.

- Section 229 of the *Water Act 2000* was amended by the *Water and Other Legislation Amendment Act 2011* to prevent water licences that attach to land from expiring due to part disposal of the land. Previously under s.229 a person could apply to replace a water licence which had automatically expired upon disposal of part of the land to which the licence attached and a decision on the application was appealable to the Land Court. The new s.229 provides that on disposal of part of the land to which a water licence attaches, the water licence is taken to be held jointly by all the owners of the land to which the licence attaches, including the new owner of the part of the land. One or more of the owners may apply to replace the jointly held licence. Under s.877 of the *Water Act 2000*, the chief executive's decision on the application is appealable to the Land Court. If no application is made, the chief executive may decide to amend, subdivide or cancel the licence and that decision is also appealable to the Land Court by virtue of s.877 of the *Water Act 2000*.

Land Court Caseload

As at 1 July 2011, there were 620 cases awaiting determination by the Land Court. During the reporting period, 1,084 new matters were filed in the Land Court registry. 906 matters were finalised with the result that there were 798 cases awaiting determination as at 30 June 2012.

Types of Cases

Land Valuation Act 2010

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

The unimproved 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 2011-12, 840 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 665 were finalised. Most valuation cases were resolved by or following alternative dispute resolution processes, but the cases that proceeded to hearing were usually more complex or contentious. Although many hearings were completed in less than one day, some occupied several days.

Mineral Resources Act 1989

These are referrals under the *Mineral Resources Act 1989* of applications 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 2011-12, 166 matters were lodged under this legislation and 148 were finalised.

Environmental Protection Act 1994

These are environmental objections and appeals in relation to environmental issues related to mining, petroleum and gas tenures. During 2011-12, 23 objections or appeals were lodged and 18 were finalised.

Acquisition of Land Act 1967

The determination of compensation following the compulsory acquisition of land is an important part of the Land Court's jurisdiction. Land is compulsorily acquired for various public purposes set out in 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 2011-12, 34 claims for compensation were filed, while 31 were finalised. Hearing of compensation cases usually involves several days, with the more complex cases taking several weeks.

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 11 appeals filed in the reporting year, and five appeals were finalised.

Land Act 1994

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

In 2011-12, six *Land Act* appeals were filed in the Land Court, and five were finalised. The relatively low numbers reflect the success of the internal review process. Only the more complex matters now proceed to hearing.

Petroleum and Gas (Production and Safety) Act 2004

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

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

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

There were two appeals lodged under the *Petroleum and Gas (Production and Safety) Act 2004* during 2011-12. None were finalised.

Water Act 2000

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

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

Two appeals were lodged in 2011-12 and five were finalised.

Land Court Workload 2011-12

Types of Cases	Filed	Finalised	Active as at 30 June 2012
Land Valuation Act appeals	798	381	417
Valuation of Land Act appeals	42	284	41
Mineral Resources Act applications and compensation claims	166	148	234
Environmental Protection Act objections and appeals	23	18	22
Acquisition of Land Act claims	34	31	62
Local Government Regulation appeals	11	33	10
Land Act appeals	6	5	6
Petroleum and Gas (Production and Safety) Act appeals	2	0	3
Water Act appeals	2	5	3
Other matters	0	1	1
Total	1,084	906	798

Land Appeal Court

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

Membership of the Land Appeal Court

The Land Appeal Court is constituted by a Judge of the Supreme Court and two Members of the Land Court, other than the Member whose decision is under appeal.

The Land Appeal Court sits at Brisbane, Rockhampton, Townsville and Cairns, the headquarters of the four Supreme Court districts in Queensland. From time to time, the Chief Justice nominates a Supreme Court Judge to act as a Member of the Land Appeal Court for the Southern District. The

Honourable Justice Peter Lyons was the Judge nominated for the 2011-12 financial year. The Central Judge, the Honourable Justice DVC McMeekin was the Member of the Land Appeal Court for the Central District.

Changes have occurred to the composition of the Supreme Court which have affected the constitution of the Land Appeal Court in the other districts. The Northern Judge, the Honourable Justice KA Cullinane AM and the Far Northern Judge, the Honourable Justice SG Jones AO both retired in the course of the year. They were replaced by the Honourable Justice DOJ North (as Northern Judge) and the Honourable Justice J D Henry (as Far Northern Judge). Justice North took up his appointment on 18 July 2011, whilst Justice Henry was appointed on 12 September 2011.

I should like to place on record the gratitude of the Members of the Land Court for the invaluable contributions by Justices Cullinane and Jones to the work of the Land Appeal Court in their respective districts.

Justice Cullinane became a Member of the Land Appeal Court on 16 November 1992 by virtue of his appointment as the Supreme Court judge for the Northern district on that date. For almost twenty years, Justice Cullinane presided over the Land Appeal Court in Townsville in a variety of cases including such notable matters as *Landel Pty Ltd and Lakes Investments Pty Ltd v Department of Natural Resources and Mines* (2002) 23 QLCR 268 and *Department of Natural Resources and Mines v QNI Metals Pty Ltd* (2002) 23 QLCR 261.

Justice Jones was appointed as the inaugural justice for the Far Northern district of the Supreme Court on 2 October 1997 and, accordingly, became a Member of the Land Appeal Court on the same day. Cases of note heard by the Land Appeal Court during Justice Jones' period of office included *Dawson v Department of Natural Resources and Mines* (2003) 24 QLCR 70 and *Dunn v Burtenshaw* (2010) 31 QLCR 156.

Land Appeal Court Proceedings

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

There were nine appeals lodged in the Land Appeal Court in 2011-12, the same number as were filed in 2010-11. 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	2010-11	2011-12
Compensation (<i>Acquisition of Land Act 1967</i>)	4	4
<i>Mineral Resources Act 1989</i>	4	3
Other	1	2

During the reporting period, six of the appeals related to land in the Southern Land Appeal Court District and there was one appeal in each of the Far Northern, Northern and Central Land Appeal Court Districts.

Further Appeals

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

	2010-11	2011-12
Appeals to Court of Appeal	3*	2

* 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 revenue valuation appeals where the valuation is less than \$5 million are offered alternative dispute resolution through preliminary conferences. If the valuation is \$5 million or more, the appellant is generally only offered a preliminary conference by the Court if the Appellant was not offered an objection conference under the *Land Valuation Act 2010*. Preliminary conferences are usually conducted by the Judicial Registrar and have achieved considerable success.

- Directions hearings in appropriate cases, with orders made seeking identification of issues, and the filing of expert reports addressing those issues.
- A court supervised mediation process is offered in the larger, more complex cases in an attempt to resolve or narrow the issues in dispute. This can result in substantial time and cost savings for the parties and the Court. Court supervised mediations may be conducted by a Member of the Court or the Judicial Registrar. If a Member convenes the mediation, he or she will not preside over any subsequent hearing of the matter.
- Each Member takes responsibility for case management of matters arising in specific geographical areas and conducts regular reviews in respect of those matters.

E-trial

In August 2011, the Land Court conducted its first electronic trial, or e-trial, in the matter of *Xstrata Coal Qld Pty Ltd v Friends of the Earth - Brisbane Co-op Ltd* [2012] QLC 013. The hearing involved applications for and objections to three mining leases and an associated environmental authority to develop the largest open cut coal mining operation in the southern hemisphere.

The hearing was listed before the President of the Land Court for three weeks. There were numerous parties, some of whom engaged solicitors with senior and junior counsel while some were represented by an agent without legal qualifications. Given the volume of material (one of the documents relied on by the applicants was 12,000 pages in length while another document was 6,000 pages in length) it was decided to conduct the hearing by way of an e-trial.

With assistance from the Supreme and District Court's E-trials registry, the preparation leading up to the trial, including the creation of an e-trial website, was dealt with efficiently and effectively.

The trial itself was conducted seamlessly and concluded in eight days, down from the initial estimate of 15 days.

The Land Court's first e-trial was an unmitigated success and contributed to the reduction in the overall length of the trial. The obvious flow-on effect from this was a saving of the parties' and the Court's time and resources. Positive feedback was received from all of the parties at the conclusion of the e-trial.

Electronic trials in the Courts system are becoming the way of the future and it is important for the Land Court to embrace this new technology. It is envisaged that this trial will be the first of many e-trials to be conducted in the Land Court in the future.

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 2011-12, the Court sat on 121 days outside Brisbane at the following centres:

- Beaudesert
- Bowen
- Bundaberg
- Caboolture
- Cairns
- Caloundra
- Charters Towers
- Clermont
- Coolangatta
- Dalby
- Emerald
- Gayndah
- Georgetown
- Gladstone
- Hervey Bay
- Ipswich
- Kingaroy
- Mackay
- Mareeba
- Maroochydore
- Nambour
- Nanango
- Proserpine
- Rockhampton
- Toogoolawah
- Toowoomba
- Townsville

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* except in cases where the valuation is \$5 million or more. In those cases, the parties should have already participated in an objection conference process in accordance with the legislation.

Preliminary conferences are generally not offered in cases with complex compensation issues or questions of law, or where there is need to consider detailed technical evidence, as such cases do not lend themselves to the conference process. However, the parties in a growing number of such cases are seeking mediation by a Member of the Land Court or the Judicial Registrar (see below).

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

Most preliminary conferences are conducted by the Judicial Registrar who has extensive experience in dispute resolution. 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 515 preliminary conferences. 439 cases 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 systemically isolating disputed issues in order to develop options leading to a settlement. The Court does not consider that it is appropriate to offer case appraisal by a Member, in which a neutral evaluator attempts to assess the relevant strengths and weaknesses of each party's case and offer an opinion as to the likely outcome.

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

43 cases were mediated by Land Court Members and the Judicial Registrar during the year and 15 settled as a result of mediations held in this and the previous reporting period. Even where settlement was not achieved, the issues were narrowed in most cases resulting in substantial resource benefits and 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 Tribunal Registry

The Registrar of the Land Court, Deputy Registrars and other officers of the registry provide administrative support to the Land Court. The Registrar is responsible for the budget 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: Mr Kevin Hayden (from 29 July 2011)

Acting Registrar: Mr Kevin Hayden (until 28 July 2011)

Senior Deputy Registrar: Mr Jeffrey Hobson (from 22 November 2011)

A/Senior Deputy Registrar: Mr Jeffrey Hobson (until 21 November 2011)

Senior Case Manager: Ms Betty Lippiatt

Deputy Registrars: Mr Rai Laaja

Mrs Clare Gilbert

Ms Diane Blewett

Ms Keren Astill (from 19 March 2012)

Office Manager: Mrs Linda Gardner (from 3 October 2011)
Ms Nerida Mead BA (until 30 September 2011)

Administrative Officers: Ms Glenda Jones
Ms Terri Bastiani
Ms Margaret Christison
Ms Keren Astill (until 16 March 2012)

Research Officer: Ms Letitia Marshall LLB BBus(Acc) (Hons) (from 15 August 2011)

Applications Administrator: Ms Kelly Suvorovs (until 26 September 2011)

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 Environment 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.

Mrs MacDonald attended the Queensland Law Society Vincents' 50th Anniversary Symposium at Brisbane, Queensland, in March 2012.

Mr Smith attended a conference entitled "Language and the Law" at the Supreme Court of the Northern Territory in Darwin in May 2012. He also attended the International Bar Association's 2nd Mediterranean Law Conference in Barcelona, Spain in June 2012.

Mr Cochrane attended the Australian Bar Association Conference in Berlin, Germany in July 2011.

Mr Isdale attended an event titled "Mabo: 20th Anniversary Roundtable" at the University of Queensland in May 2012.

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 the Queensland Law Society Vincents' 50th Anniversary Symposium. Mr O'Connor also chaired a session at the Queensland Law Society 12th Annual Property Law Conference in November 2011.

Assistance to Universities and the Professions

Moots

During the year, Mr Isdale and Mr O'Connor presided at moots between students of Queensland and Interstate Universities.

Internship – Final 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 2012. 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 and the Research Officer. The internship proved to be most worthwhile for the student, the QUT supervisors and the Court.

Publications and Lectures

Mrs MacDonald presented a paper providing an update on recent changes to the Land Court's jurisdiction and case law at the Queensland Law Society Vincents' 50th Anniversary Symposium in Brisbane.

Mr Smith presented a paper at the "Language and the Law" conference at the Supreme Court of the Northern Territory in Darwin.

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

Ms Marshall presented a paper providing an update on recent changes to the Land Court's jurisdiction and case law at the Queensland Law Society 5th Annual Gold Coast Symposium.

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 2011-12 are shown in the table below. The expenses exclude Members' salaries and allowances which are appropriated separately.

Operating Expenses 2011-2012	\$
Employee Expenses	1,162,762
Supplies and Services	418,387
Depreciation and amortisation	3,392
Total Operating Expenses	1,584,541

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 2011 - 2012

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*.

The *Land and Resources Tribunal Act 1999* expired during the reporting period, on 31 December 2011, and accordingly this is the final report on the operations of the Land and Resources Tribunal.

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 was an alternative state body under the *Native Title Act 1993* (Cth) empowered to deal with such applications and was continued in existence until 31 December 2011 for the limited purpose of dealing with such applications. No applications under these provisions were outstanding at the commencement of the period under review and none were lodged in the Land and Resources Tribunal during the relevant period. The work of the Land and Resources Tribunal was therefore complete at the time of expiry of the *Land and Resources Tribunal Act 1999*.

Land Court of Queensland
Annual Report
2011-2012

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

Email: landcourt@justice.qld.gov.au
Website: www.landcourt.qld.gov.au
Telephone: (07) 3247 5193
Facsimile: (07) 3247 4635
