

Queensland



LAND COURT BILL 1999

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1999

A BILL

FOR

An Act to establish the Land Court, and for related purposes

The Parliament of Queensland enacts— 1

PART 1—PRELIMINARY 2

Short title 3

1. This Act may be cited as the *Land Court Act 1999*. 4

Commencement 5

2. This Act commences on a day to be fixed by proclamation. 6

Dictionary 7

3. The dictionary in schedule 2 defines words used in this Act. 8

PART 2—LAND COURT 9

Division 1—Establishment and jurisdiction 10

Establishment of Land Court 11

4.(1) A specialised judicial tribunal called the Land Court is established. 12

(2) The court is a court of record. 13

(3) The court has a seal that must be judicially noticed. 14

Jurisdiction of Land Court 15

5.(1) The Land Court has the jurisdiction given to it under any Act. 16

(2) If jurisdiction for a proceeding is expressly conferred on the court under any Act, the jurisdiction is exclusive. 17
18

Land Court

No distinction between Land Court and chambers	1
6.(1) The distinction between the Land Court and chambers is abolished.	2
(2) The business of the court, wherever it is conducted, is taken to be conducted in court.	3 4
<i>Division 2—General powers</i>	
5	
Land Court to be guided by equity and good conscience	6
7. In the exercise of its jurisdiction, the Land Court—	7
(a) is not bound by the rules of evidence and may inform itself in the way it considers appropriate; and	8 9
(b) must act according to equity, good conscience and the substantial merits of the case without regard to legal technicalities and forms or the practice of other courts.	10 11 12
Subpoenas	13
8.(1) The Land Court may summon a person as a witness and may—	14
(a) require the person to produce documents in the person’s possession or power; and	15 16
(b) examine the person; and	17
(c) punish the person for not attending under the summons or for refusing to give evidence or for failing to produce the documents.	18 19
(2) Despite subsection (1), a person is not required to give evidence that may tend to incriminate the person.	20 21
(3) For subsection (1), a member of the court has the same powers as a Supreme Court judge has for the same matters in the Supreme Court.	22 23
Contempt and contravention of orders	24
9.(1) A person is in contempt of the Land Court if the person—	25
(a) without lawful excuse, fails to comply with an order of the court,	26

Land Court

- (other than an order mentioned in paragraph (e)) or an undertaking given to the court; or 1
2
- (b) wilfully insults a member, a judicial registrar, the registrar, a bailiff or other court officer during the person's sitting or attendance in court, or in going to or returning from the court; or 3
4
5
- (c) wilfully interrupts the proceedings of the court or otherwise misbehaves himself or herself in court; or 6
7
- (d) unlawfully obstructs or assaults someone in attendance in court; or 8
9
- (e) without lawful excuse, disobeys a lawful order or direction of the court at the hearing of any proceeding; or 10
11
- (f) commits any other contempt of the court. 12
- (2)** A member has the same power to punish for a contempt mentioned in subsection (1) as a Supreme Court judge has for contempt of the Supreme Court. 13
14
15
- (3)** If the contempt is in the face of the court, a bailiff or other court officer acting under the court's order may, using necessary and reasonable help and force, take the person committing the contempt into custody and detain the person until the court rises. 16
17
18
19
- (4)** Before the court rises, the court may— 20
- (a) ask the person to explain why the person should not be punished; or 21
22
- (b) adjourn the matter to be dealt with on a stated date. 23
- (5)** If the court acts under subsection (4)(a), the court may deal with the person immediately. 24
25
- Terms of orders** 26
- 10.** The Land Court may make an order, give leave or do anything else it is authorised to do on the terms the court considers appropriate. 27
28

Taking and recording evidence

1

11. The Land Court must take evidence on oath, affirmation, affidavit or declaration and must record the evidence.

2

3

Power to rehear matters

4

12.(1) A party to a proceeding who is dissatisfied with the Land Court's decision may apply to the court for leave to have the matter reheard.

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6

(2) The application must be made within 42 days after the court's decision is given to the party.

7

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(3) If the application is granted, the matter must be reheard, if practicable, by the member who gave the decision on which the rehearing is sought.

9

10

Division 3—Composition and appointments

11

Composition of Land Court

12

13. The Land Court consists of the president and other members.

13

Single member to constitute Land Court

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14. A single member sitting alone constitutes the Land Court for the exercise of its jurisdiction under any Act, unless the Act expressly provides that the court's jurisdiction must be exercised by the court constituted in another way.

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Land Court may be constituted in more than 1 place

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15. The Land Court may be constituted in more than 1 place at the same time.

20

21

Appointment of president and other members of Land Court

22

16.(1) The Governor in Council may appoint the president and other members by commission.

23

24

(2) Subject to section 42, an appointment as a member is for 15 years.

25

(3) If a person appointed as a member is re-appointed, the re-appointment may be for up to 15 years. 1
2

(4) A member may be appointed as president only if the member is a barrister or solicitor of the Supreme Court of at least 5 years' standing. 3
4

(5) If a member is appointed as president, the appointment as president is for the remainder of the term for which the member was appointed as a member. 5
6
7

Appointment of members of land tribunal as members 8

17.(1) The Governor in Council— 9

(a) must appoint the chairperson and deputy chairperson of each land tribunal as members of the Land Court; and 10
11

(b) may appoint any other member of a land tribunal as a member of the Land Court. 12
13

(2) A member of a land tribunal appointed to the Land Court must be appointed— 14
15

(a) if the member is the chairperson—on a full-time basis; and 16

(b) in any other case—on a part-time basis. 17

(3) A member of a land tribunal who is appointed to the Land Court ceases to be a member of the court if the person ceases to be a member of a land tribunal. 18
19
20

(4) Subsection (3) does not prevent the re-appointment of the person mentioned in the subsection as a member of the Land Court. 21
22

Appointment of acting president 23

18. The Governor in Council may appoint a member, qualified to be president of the Land Court, to act as president during— 24
25

(a) a vacancy in the office of president; or 26

(b) any period when the president is absent from duty or can not perform the duties of president for another reason. 27
28

Appointment of acting members

19.(1) The Governor in Council may appoint a person to act as a member (other than as president)—

- (a) during any period when a member is absent from duty or can not, for another reason, perform the functions of a member; or
- (b) if the conduct of the business of the court, in the opinion of the Governor in Council, requires the appointment.

(2) An acting member is appointed for the term (not more than 2 years) stated in the member's instrument of appointment.

(3) The provisions of this Act applying to members of the court also apply to an acting member to the extent the application is possible.

(4) The rights of a public service officer appointed as an acting member may be preserved under a regulation.

Member not to practise profession likely to conflict

20.(1) A member must not practise in, or have a direct or indirect interest in the practise of, a business or profession if the practise or interest is likely to conflict with the member's duty as a member.

(2) A member must resign from office as a member if the member is chosen as a member of the Legislative Assembly.

(3) Subsection (1) does not apply to—

- (a) an acting member; or
- (b) a member appointed under section 17 on a part-time basis.

Division 4—Rules and directions**Rules of Land Court**

21.(1) The Governor in Council, with the concurrence of the Chief Justice and the president, may make rules about anything—

- (a) required or permitted to be prescribed by the rules; or
- (b) necessary or convenient to be prescribed for the Land Court.

Land Court

(2) Without limiting subsection (1), the rules may provide for the procedures of the court or the registry. 1
2

(3) The procedures of the court are governed by the rules. 3

(4) The rules may be uniform rules that apply to other courts. 4

(5) The rules are subordinate legislation. 5

Directions 6

22.(1) To the extent a matter about Land Court procedure is not provided for by the rules, the matter may be dealt with by a direction under subsection (2) or (3). 7
8
9

(2) The president may issue directions of general application about the procedure of the court. 10
11

(3) A member may issue directions about a particular case before the court when constituted by the member. 12
13

Division 5—Sittings, parties, adjournments and loss of presiding member 14 15

Where Land Court may sit 16

23. The Land Court may sit at any place. 17

Appearance 18

24. A party to a proceeding may appear personally or by lawyer or agent. 19

Adjournments 20

25. The Land Court may— 21

(a) adjourn proceedings from time to time and from place to place; 22
and 23

(b) adjourn proceedings to a time, or a time and place, to be fixed. 24

Stay of proceedings

26.(1) An application to the Land Court for leave to have a matter reheard affects the decision against which the application is made, or the carrying out of the decision, only if the decision is stayed.

(2) The Land Court may stay a decision against which an application is made to secure the effectiveness of the rehearing.

(3) A stay—

(a) may be given on the conditions the Land Court considers appropriate; and

(b) operates for the period stated by the court; and

(c) may be revoked or amended by the court.

(4) However, the period of the stay must not extend past the time when the Land Court—

(a) refuses to grant leave to have the matter reheard; or

(b) if the court grants leave for a rehearing—rehears the matter.

What happens if member dies or is incapacitated

27.(1) This section applies if, after starting to hear a proceeding, the member hearing the proceeding dies or becomes incapable of continuing with the proceeding.

(2) A party to the proceeding may, after giving 7 days' notice to the other party or parties, apply to the president for an order directing the course of action to be taken in the proceeding.

(3) The president, in response to the application or on the president's own initiative, may, after consulting with the parties to the proceeding—

(a) order the proceeding be reheard; or

(b) adjourn the proceeding to allow the incapacitated member to continue when able; or

(c) with the consent of the parties, make an order the president considers appropriate about deciding the proceeding, or about completing the hearing and deciding of the proceeding.

-
- (4) If, under subsection (3)(a), a proceeding is reheard— 1
- (a) the member hearing and deciding the proceeding may make the 2
order the member considers appropriate about costs for the first 3
hearing; and 4
- (b) the first hearing is taken not to have happened other than for 5
paragraph (a). 6
- (5) An order mentioned in subsection (3)(c) is taken to be a decision of 7
the Land Court. 8

Division 6—Judicial registrars 9

Judicial registrars 10

28.(1) The Governor in Council may appoint judicial registrars to 11
exercise the powers and perform the functions prescribed under the rules. 12

(2) A person may be appointed as a judicial registrar only if the person is 13
eligible for admission as a barrister or solicitor of the Supreme Court. 14

(3) A judicial registrar may be removed from office only by the 15
Governor in Council for proven incapacity or misbehaviour. 16

(4) A judicial registrar is an officer of the court. 17

Judicial registrar’s power to hear and decide matters 18

29.(1) A judicial registrar may hear and decide a matter prescribed under 19
the rules. 20

(2) For the matter, the judicial registrar constitutes and may exercise all 21
the jurisdiction and powers of the Land Court. 22

(3) However, a judicial registrar may not exercise any power of the court 23
to punish for contempt. 24

Independence of judicial registrars 25

30. A judicial registrar, when constituting the Land Court or otherwise 26

exercising a judicial or quasi-judicial power, is not subject to direction or control, other than as provided under this Act.

Rehearing after judicial registrar's decision

31.(1) A party to a proceeding who is dissatisfied with a judicial registrar's decision in the proceeding may, with the leave of the Land Court as constituted by a member, have the matter reheard by the court as constituted by a member.

(2) If the court grants leave, it may do so on conditions, including, for example, a condition about—

- (a) the evidence to be adduced; or
- (b) the submission to be presented; or
- (c) the nature of the rehearing.

Judicial registrar may exercise certain judicial or quasi-judicial powers

32.(1) A judicial registrar may exercise a judicial or quasi-judicial power if a provision of an Act provides for the exercise of the power by the registrar.

(2) A member of the court may exercise any of the powers or perform any of the functions of a judicial registrar.

Division 7—General matters

Land Court may make declarations

33.(1) Any person may bring proceedings in the Land Court for a declaration about—

- (a) a matter done, to be done, or that should have been done under this Act or another Act giving jurisdiction to the court; and
- (b) the construction of any legislation for the purpose of proceedings in which the court has exclusive jurisdiction.

(2) The proceeding may be brought on behalf of a person.

(3) If the proceeding is brought on behalf of a person, the person must consent or if the person is an unincorporated body, its committee or other controlling or governing body must consent.

(4) A person on whose behalf a proceeding is brought may contribute to, or pay, the legal costs incurred by the person bringing the proceeding.

(5) The court has jurisdiction to hear and decide a proceeding for a declaration about a matter mentioned in subsection (1).

Costs

34.(1) Subject to the provisions of this or another Act to the contrary, the Land Court may order costs for a proceeding in the court as it considers appropriate.

(2) If the court does not make an order under subsection (1), each party to the proceeding must bear the party's own costs for the proceeding.

(3) An order made under subsection (1) may be made an order of the Supreme Court and enforced in the Supreme Court.

(4) For subsection (3), it is enough to file the order in the Supreme Court.

(5) The court may, if it considers it appropriate, order the costs to be decided by the appropriate assessing officer of the Supreme Court, under the scale of costs prescribed by law for proceedings in the Supreme Court.

(6) If the court makes an order under subsection (4), the assessing officer may decide the appropriate scale to be used in assessing the costs.

Privileges, protection and immunity

35.(1) A member presiding over a proceeding in the Land Court has the same privileges, protection and immunity as the member would have if the member were a Supreme Court Judge presiding over a proceeding in the Supreme Court.

(2) The following persons have the same privileges, protection and immunity as the persons would have if the proceeding were in the Supreme Court—

-
- (a) a lawyer or agent appearing in the proceeding; 1
- (b) a witness attending in the proceeding. 2

Preliminary conference 3

36.(1) A member or judicial registrar hearing a matter may arrange for each party to the proceeding, or the party's lawyer or agent, to attend a preliminary conference. 4
5
6

(2) Each party must be prepared to identify and discuss the issues in dispute in an attempt to negotiate a settlement. 7
8

(3) If a party is represented by a lawyer or agent, the lawyer or agent must have authority to settle the matter or any issue discussed. 9
10

(4) If agreement is reached between the parties, the member or judicial registrar may dispose of the matter in the way agreed. 11
12

(5) A decision made under subsection (4) must be a decision the Land Court could make in the proper exercise of its jurisdiction. 13
14

(6) If agreement is not reached, the member or judicial registrar may, with the consent of the parties, dispose of the matter without a further hearing. 15
16
17

(7) A member or judicial registrar hearing or disposing of a matter under this section has the powers of the court. 18
19

(8) A member or judicial registrar who presides over a preliminary conference may not, without leave of the parties, preside over a hearing of the same matter. 20
21
22

(9) Evidence of anything said or any admission made at the conference is not admissible in the proceeding without the consent of the parties. 23
24

Division 8—Alternative dispute resolution 25

ADR process applies to proceedings started under this part 26

37.(1) The *Supreme Court of Queensland Act 1991*, part 8¹ and the 27

¹ *Supreme Court of Queensland Act 1991*, part 8 (ADR processes)

Land Court

-
- Uniform Civil Procedure Rules 1999*, chapter 9, part 4² (together, the “**ADR provisions**”), apply to proceedings started under this Act. 1
2
- (2) However, to the extent the cost provisions of the ADR provisions do not provide for a matter, section 34 applies. 3
4
- (3) In applying the ADR provisions to a proceeding under this Act— 5
- (a) a reference to the court or the Supreme Court is taken to be a reference to the Land Court; and 6
7
 - (b) a reference to the Chief Justice or the Senior Judge Administrator is taken to be a reference to the president; and 8
9
 - (c) a reference to a Supreme Court judge is taken to be a reference to a member constituting the Land Court; and 10
11
 - (d) a reference to the registrar is taken to be a reference to a judicial registrar of the Land Court; and 12
13
 - (e) definitions and other interpretative provisions of the *Supreme Court of Queensland Act 1991* and the *Uniform Civil Procedure Rules 1999* relevant to the ADR provisions apply. 14
15
16
- (4) The president may approve a member or judicial registrar as a mediator or case appraiser for the ADR provisions. 17
18
- (5) For this section, a reference in the ADR provisions to a mediator or case appraiser is taken to include a mediator or case appraiser approved under subsection (4). 19
20
21

Division 9—Conditions of members 22**Remuneration** 23

38. The salary, allowances and other remuneration of the president and other members are decided by the Salaries and Allowances Tribunal under the *Judges (Salaries and Allowances) Act 1967*. 24
25
26

² *Uniform Civil Procedure Rules 1999*, chapter 9, part 4 (Alternative dispute resolution processes)

Leave of absence

39.(1) The *Judges (Pensions and Long Leave) Act 1957*, section 15, applies to a member as if a reference to a judge included a reference to a member.

(2) Subsection (1) does not apply to an acting member.

Pension benefits to members

40.(1) The *Judges (Pensions and Long Leave) Act 1957*, other than section 15, applies to a member as if a reference to a judge included a reference to a member.

(2) Subsection (1) does not apply to—

(a) an acting member; or

(b) a member who contributes to the State Public Sector Superannuation Fund at the time of the member's appointment as a member and who elects to continue to contribute to the fund.

(3) An election under subsection (2)(b) must be made within 3 months after the member's appointment, by written notice given to—

(a) the board of trustees of the State Public Sector Superannuation Scheme; and

(b) the chief executive.

(4) If a member who contributes to the State Public Sector Superannuation Fund at the time of the member's appointment as a member does not elect to continue to contribute, the member, in relation to the fund—

(a) is taken to have ceased to be a public service officer on the day of the appointment; and

(b) if the member is less than 55 years—is treated as if he or she had resigned; and

(c) if the member is 55 years or more—is treated as if he or she had retired.

Calculation of length of service as a member	1
41.(1) To calculate a member's length of service for sections 39 and 40, every period the member has served as a member is to be counted.	2 3
(2) If a person who was an acting member later becomes a member, the person's period of service as an acting member is counted to calculate the person's length of service as a member.	4 5 6
Retirement of members	7
42.(1) A member must retire on reaching 70 years of age.	8
(2) Despite subsection (1), a member who, before reaching 70 years of age, starts the hearing of a proceeding may remain a member until the hearing ends.	9 10 11
Removal from office or suspension	12
43.(1) A member of the Land Court must not be removed from office except by the Governor on an address by the Legislative Assembly for proven incapacity or misbehaviour.	13 14 15
(2) If the Legislative Assembly is not sitting, the Governor in Council may suspend the member.	16 17
(3) The grounds for suspension must be laid before the Legislative Assembly within 7 sitting days after the suspension.	18 19
(4) The Legislative Assembly must either confirm or withdraw the suspension.	20 21
Non-application of ss 38–41 to certain members	22
44. Sections 38 to 41 do not apply to a member appointed to the Land Court under section 17. ³	23 24

³ Section 17 (Appointment of members of land tribunal as members)

Division 10—Conditions of judicial registrars**Conditions of appointment**

45.(1) A judicial registrar is appointed under this Act and not under the *Public Service Act 1996*.

(2) A judicial registrar is paid the salary and allowances approved by the Governor in Council.

(3) A judicial registrar holds office on the conditions not provided for by this Act approved by the Governor in Council.

(4) The office of judicial registrar is not subject to any industrial award, industrial agreement or other industrial instrument or any decision or rule of an industrial tribunal.

(5) When a judicial registrar is appointed, the judicial registrar's salary, allowances and conditions are to be published in the gazette.

(6) A judicial registrar's salary and allowances may not be reduced and any change to the judicial registrar's salary, allowances or conditions must be published in the gazette.

Retirement of judicial registrars

46.(1) A judicial registrar must retire on reaching 70 years of age.

(2) Despite subsection (1), a judicial registrar who, before reaching 70 years of age, starts the hearing of a proceeding may remain a judicial registrar until the hearing ends.

Preservation of rights

47.(1) This section applies if a public service officer is appointed as a judicial registrar.

(2) The person retains all rights that have accrued to the person because of employment as a public service officer, or that would accrue in the future to the person because of that employment, as if service as a judicial registrar were a continuation of service as a public service officer.

(3) If the person stops being a judicial registrar on being appointed to an

office of the public service, the person's service as a judicial registrar is taken to be service of a like nature in the public service for deciding the person's rights as a public service officer.

Division 11—Other officials and registry

Registrar, deputy registrars and other officers

48.(1) The Governor in Council may appoint a person as registrar of the Land Court.

(2) Deputy registrars and other officers necessary for the proper administration of the Act may also be appointed.

(3) The registrar, deputy registrars and other officers are to be employed under the *Public Service Act 1996*.

Functions and powers of registrar and deputy registrars

49.(1) The registrar and deputy registrars have the functions given under this Act or another Act.

(2) The registrar and deputy registrars have the power to do all things necessary or convenient to be done to perform the functions.

(3) The registrar or a deputy registrar must not exercise a judicial or quasi-judicial power.⁴

Delegation by registrar

50. The registrar may delegate a power of the registrar under this Act or another Act to the deputy registrar.

Registries

51.(1) The registry of the Land Court is at Brisbane.

⁴ See section 32 (Judicial registrar may exercise certain judicial or quasi-judicial powers).

(2) The registry is under the control of the registrar. 1

(3) The registrar may give directions to the deputy registrars and other officers employed in the registry. 2
3

Court records 4

52.(1) The registrar must keep minutes of the proceedings and records of the decisions of the Land Court and perform the other duties the president directs. 5
6
7

(2) A person may see and take copies of notes of evidence and of any documents produced in evidence. 8
9

PART 3—LAND APPEAL COURT 10

Division 1—Establishment and jurisdiction 11

Establishment of Land Appeal Court 12

53.(1) The Land Appeal Court is established. 13

(2) The court is a court of record. 14

(3) The court has a seal that must be judicially noticed. 15

Jurisdiction of Land Appeal Court 16

54. The Land Appeal Court has the jurisdiction given to it under any Act. 17

Division 2—General powers 18

Land Appeal Court to be guided by equity and good conscience 19

55. In the exercise of its jurisdiction, the Land Appeal Court— 20

(a) is not bound by the rules of evidence and may inform itself in the 21

way it considers appropriate; and	1
(b) must act according to equity, good conscience and the substantial merits of the case without regard to legal technicalities and forms or the practice of other courts.	2 3 4
Evidence admissible on appeal	5
56.(1) An appeal in the Land Appeal Court must be decided on the evidence on the record of the proceeding in which the decision appealed against was made.	6 7 8
(2) However, the court may admit new evidence if—	9
(a) the court is satisfied admission of further evidence is necessary to avoid grave injustice; and	10 11
(b) the party applying to have further evidence admitted gives the court an adequate reason for the evidence not previously being given; and	12 13 14
(c) application to have further evidence admitted is made before the hearing of the appeal.	15 16
Land Appeal Court may remit matter	17
57. The Land Appeal Court may remit a matter to the court or tribunal that made the decision appealed against—	18 19
(a) because of an error or mistake in law; or	20
(b) for the matter to be heard and decided again either with or without the hearing of further evidence.	21 22
<i>Division 3—Constitution for appeals</i>	23
Appeals from Land Court	24
58.(1) This section applies to an appeal from a decision of the Land Court.	25 26
(2) The Land Appeal Court is constituted by a Supreme Court judge and	27

2 members, other than the member who made the decision appealed against. 1
2

Appeals from a land tribunal 3

59.(1) This section applies to an appeal from a decision of a land tribunal. 4

(2) The Land Appeal Court is constituted by a Supreme Court judge and 5
2 members including, if practicable, at least 1 member of the land tribunal, 6
other than the member who constituted the land tribunal. 7

(3) The chairperson of the land tribunal must recommend to the president 8
the member or members of the land tribunal who should, in the 9
chairperson's opinion, sit as a member or members of the Land Appeal 10
Court. 11

Questions of law from a land tribunal 12

60.(1) This section applies when a question of law is referred to the Land 13
Appeal Court by a land tribunal. 14

(2) The Land Appeal Court is constituted by a Supreme Court judge and 15
2 members including, if practicable, at least 1 presiding member of the land 16
tribunal, and may include a presiding member who constituted the land 17
tribunal. 18

(3) The chairperson of the land tribunal must recommend to the president 19
the member or members of the land tribunal who should, in the 20
chairperson's opinion, sit as a member or members of the Land Appeal 21
Court. 22

(4) In this section— 23

“**presiding member**”, of a land tribunal, see the *Aboriginal Land Act 1991*, 24
section 3 and the *Torres Strait Islander Land Act 1991*, section 3. 25

President decides members for Land Appeal Court 26

61. The president decides which members are to sit as members of the 27
Land Appeal Court for any purpose for any Act. 28

Nomination of Supreme Court judge to be member of Land Appeal Court	1 2
62.(1) The Chief Justice must, from time to time, nominate a Supreme Court judge (who may be the Chief Justice) to act as a member of the Land Appeal Court at Brisbane.	3 4 5
(2) The Supreme Court judge who is the member of the Land Appeal Court outside Brisbane is—	6 7
(a) for the far northern district of the Supreme Court—the far northern judge; and	8 9
(b) for the northern district of the Supreme Court—the northern judge; and	10 11
(c) for the central district of the Supreme Court—the central judge.	12
(3) If the parties to an appeal, or a referral of a question of law, to the Land Appeal Court agree, the appeal may be heard, or the question of law decided, in a district other than the district in which the land, the subject of the appeal or the referral, is situated.	13 14 15 16
(4) If, at any time, a Supreme Court judge who is a member of the Land Appeal Court is unable to carry out the duties of member, the Chief Justice must nominate another Supreme Court judge to act as a member of the Land Appeal Court.	17 18 19 20
Land Appeal Court may be constituted in more than 1 place	21
63. The Land Appeal Court may be constituted in more than 1 place at the same time.	22 23
<i>Division 4—Appeals, sittings, parties, adjournments, proceedings and loss of presiding members</i>	24 25
Right of appeal to Land Appeal Court	26
64. A party to a proceeding in the Land Court may appeal to the Land Appeal Court against all or part of the decision of the Land Court.	27 28

Notice of appeal

65.(1) A party intending to appeal against a decision of the Land Court must, within 42 days after the court's decision is given to the party, serve notice of appeal against the decision on—

(a) all other parties to the proceeding on which the decision was made; and

(b) the registrar of the Land Appeal Court.

(2) The period of 42 days applies whether the decision appealed against is the original decision of the Land Court, the decision on the application for rehearing or the decision on the rehearing.

(3) The notice of appeal must state the grounds on which the decision is appealed against.

Where Land Appeal Court may sit

66. The Land Appeal Court may sit at any place.

Appearance

67. A party to an appeal may appear personally or by lawyer or agent.

Adjournments

68. The Land Appeal Court may—

(a) adjourn proceedings from time to time and from place to place; and

(b) adjourn proceedings to a time, or a time and place, to be fixed.

Stay of proceedings

69.(1) An appeal against a decision of the Land Court affects the decision, or carrying out of the decision, only if the decision is stayed.

(2) The Land Appeal Court may stay a decision appealed against to secure the effectiveness of the appeal.

-
- (3) A stay— 1
- (a) may be given on the conditions the Land Appeal Court considers 2
appropriate; and 3
- (b) operates for the period stated by the court; and 4
- (c) may be revoked or amended by the court. 5
- (4) However, the period of a stay must not extend past the time when the 6
Land Appeal Court decides the appeal. 7

**What happens if member of Land Appeal Court dies or is 8
incapacitated 9**

70.(1) This section applies if, after starting a proceeding, 1 of the 10
members of the Land Appeal Court hearing the proceeding dies or becomes 11
incapable of continuing with the proceeding. 12

(2) The 2 remaining members may, with the consent of the parties, 13
complete hearing and deciding the proceeding. 14

(3) Any question in the proceeding is to be decided in the same way, and 15
the judgment of the Land Appeal Court constituted under this section has 16
the same force and effect as if all 3 members had decided the proceeding. 17

Decisions of Land Appeal Court 18

71.(1) The decision of the majority of members hearing an appeal is the 19
decision of the Land Appeal Court. 20

(2) Subject to part 4,⁵ every decision of the Land Appeal Court is final 21
and conclusive. 22

Division 5—General matters 23

Application of certain provisions of pt 2 to Land Appeal Court 24

72.(1) Sections 8, 9, 21, 22 and 34 apply, with necessary changes, to the 25

⁵ Part 4 (Appeals to Court of Appeal)

Land Appeal Court.⁶ 1

(2) For subsection (1), a reference in the applied sections to the Land 2
Court is taken to be a reference to the Land Appeal Court. 3

Registrar, deputy registrars and other officers 4

73. The registrar, deputy registrars and other officers of the Land Court 5
are the registrar, deputy registrars and other officers of the Land Appeal 6
Court. 7

PART 4—APPEALS TO COURT OF APPEAL 8

Who may appeal to Court of Appeal 9

74.(1) A party to a proceeding in the Land Appeal Court may appeal a 10
decision of the Land Appeal Court to the Court of Appeal on the ground— 11

(a) of error or mistake in law on the part of the Land Appeal Court; 12
or 13

(b) that the Land Appeal Court had no jurisdiction to make the 14
decision; or 15

(c) that the Land Appeal Court exceeded its jurisdiction in making the 16
decision. 17

(2) However, the party may appeal only with the leave of the Court of 18
Appeal or a judge of appeal. 19

When leave to appeal must be sought and appeal made 20

75.(1) A party intending to seek leave of the Court of Appeal to appeal 21
against a decision of the Land Appeal Court must, within 42 days after the 22
Land Appeal Court's decision is given to the party, apply to the Court of 23
Appeal for leave to appeal against the decision. 24

⁶ Sections 8 (Subpoenas), 9 (Contempt and contravention of orders), 21 (Rules of Land Court), 22 (Directions) and 34 (Costs)

(2) If the Court of Appeal grants leave, notice of appeal against the decision must, within 42 days after the Court of Appeal grants leave to appeal, be served on—

- (a) all other parties to the appeal; and
- (b) the registrar of the Land Appeal Court.

Powers of Court of Appeal

76. The Court of Appeal may do 1 or more of the following—

- (a) return the matter to the Land Appeal Court for decision in accordance with the Court of Appeal’s decision;
- (b) affirm, amend, or revoke and substitute another order or decision for the Land Appeal Court’s order or decision;
- (c) make an order the Court of Appeal considers appropriate.

PART 5—MISCELLANEOUS

Judicial notice

77. All courts and persons acting judicially must take judicial notice of the appointment and signature of every person holding office under this Act.

Regulation-making power

78.(1) The Governor in Council may make regulations under this Act.

(2) Without limiting subsection (1), a regulation may—

- (a) prescribe fees and costs for the Land Court or the Land Appeal Court; and
- (b) prescribe how fees and costs are to be received and dealt with in the courts.

PART 6—SAVINGS AND TRANSITIONAL

Continuance of Land Court

79. The Land Court established by section 4⁷ is a continuance of the Land Court established under the repealed *Land Act 1962* and preserved in existence under the *Land Act 1994*, section 521.

Continuance of Land Appeal Court

80. The Land Appeal Court established by section 53 is a continuance of the Land Appeal Court established under the repealed *Land Act 1962* and preserved in existence under the *Land Act 1994*, section 521.

Appointments of members continue

81.(1) This section applies on the commencement of section 4.

(2) The members who constituted the Land Court immediately before the commencement, continue to constitute the court.

(3) The member who was president of the court immediately before the commencement continues as president.

(4) Each member, including the president, continues in office until the member's term of appointment ends.

Entitlements of members continue

82.(1) From the commencement of section 4, a member who was a member of the Land Court immediately before the commencement remains entitled to all rights accrued or accruing to the member under the member's appointment.

(2) If a member who was a member of the Land Court immediately before the commencement had been a temporary member, the member's period of service as a temporary member is counted to calculate the

⁷ Section 4 (Establishment of Land Court)

member's length of service as a member for the purposes of sections 39 and 40.⁸ 1
2

Appointments and entitlements of registrar, deputy registrars and other officers continue 3
4

83.(1) From the commencement of section 4, the appointments of the registrar, deputy registrars and other officers (the “**officers**”) to the Land Court, in force immediately before the commencement, continue. 5
6
7

(2) Each officer remains entitled to all rights accrued and accruing to the officer under the officer's appointment. 8
9

Land Court orders continue 10

84.(1) An order made by the Land Court before the commencement of section 4, and still in force immediately before the commencement, continues to have effect from the commencement. 11
12
13

(2) The order may be discharged or amended by the court under this Act. 14

Proceedings started under *Land Act 1994* continue 15

85. A proceeding started in the Land Court before the commencement of section 4 may be continued and completed by the Land Court under this Act. 16
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18

PART 7—CONSEQUENTIAL AMENDMENTS 19

Acts amended—sch 1 20

86. Schedule 1 amends the Acts it mentions. 21

⁸ Section 39 (Leave of absence)
Section 40 (Pension benefits to members)

SCHEDULE 1	1
CONSEQUENTIAL AMENDMENTS	2
section 86	3
ACQUISITION OF LAND ACT 1967	4
1. Section 26(1), ‘Subject to this section the Land Court shall have’—	5
<i>omit, insert—</i>	6
‘The Land Court has’.	7
2. Section 26(2) and (2A)—	8
<i>omit.</i>	9
BIOLOGICAL CONTROL ACT 1987	10
1. Section 55(3), ‘within 28 days’—	11
<i>omit, insert—</i>	12
‘within 42 days’.	13
CITY OF BRISBANE ACT 1924	14
1. Section 89(3)(a), ‘within 30 days’—	15
<i>omit, insert—</i>	16
‘within 42 days’.	17

SCHEDULE 1 (continued)

2. Section 90(1)(b)—	1
<i>omit.</i>	2
3. Section 90(1)(c)—	3
<i>renumber</i> as section 90(1)(b).	4
LAND ACT 1994	5
1. Section 429(1)—	6
<i>omit, insert—</i>	7
‘ 429.(1) In deciding an appeal, the court has the same powers as the decision maker.’.	8
	9
2. Section 431—	10
<i>omit, insert—</i>	11
‘Jurisdiction of the court	12
‘ 431. The court has jurisdiction to hear and decide matters referred to the court by the Minister.’.	13
	14
3. Section 521—	15
<i>omit.</i>	16
4. Schedule 6, definition “court”, ‘repealed Act’—	17
<i>omit, insert—</i>	18
‘ <i>Land Court Act 1999</i> ’.	19

SCHEDULE 1 (continued)

LAND TAX ACT 1915

1. Section 27A(1), ‘An’—

omit, insert—

‘Despite the *Land Court Act 1999*, section 65(1), an’.

2. Section 30, ‘Land Act 1962’—

omit, insert—

‘*Land Court Act 1999*’.

LOCAL GOVERNMENT ACT 1993

1. Section 988(2)(a), ‘within 30 days’—

omit, insert—

‘within 42 days’.

2. Section 989(1)(b)—

omit.

3. Section 989(1)(c)—

renumber as section 989(1)(b).

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SCHEDULE 1 (continued)

SOIL CONSERVATION ACT 1986

1. Section 22(1), ‘within a period of 21 days’—

omit, insert—

‘within 42 days’.

2. Section 23, heading, ‘final’—

omit.

3. Section 23(1)—

omit.

**STATE HOUSING (FREEHOLDING OF LAND)
ACT 1957**

1. Section 5(3)—

omit.

SUGAR INDUSTRY ACT 1991

1. Section 208(2), ‘within 21 days’—

omit, insert—

‘within 42 days’.

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SCHEDULE 1 (continued)

VALUATION OF LAND ACT 1944

1. Section 45(7) and (8)—

omit.

WATER RESOURCES ACT 1989

1. Sections 43B(3)(b), 51(2) and (4) and 181(2), ‘within 30 days’—

omit, insert—

‘within 42 days’.

2. Section 51(10)—

omit.

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SCHEDULE 2

1

DICTIONARY

2

section 3

3

“Chief Justice” means the Chief Justice of Queensland.

4

“deputy registrar” means a deputy registrar appointed under section 48.

5

“judicial registrar” means a judicial registrar appointed under section 28.

6

“Land Appeal Court” means the Land Appeal Court established under section 53.

7

8

“Land Court” means the Land Court established under section 4.

9

“land tribunal” means the Land Tribunal established under the *Aboriginal Land Act 1991* or the *Torres Strait Islander Land Act 1991*.

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11

“member” means a member of the Land Court.

12

“president” means the member of the Land Court appointed under section 16 as president of the court.

13

14

“registrar” means a person appointed as registrar under section 48.

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