



# Land Court Act 2000

Reprinted as in force on 25 November 2008

Reprint No. 3

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# Information about this reprint

This Act is reprinted as at 25 November 2008. The reprint—

- shows the law as amended by all amendments that commenced on or before that day (Reprints Act 1992 s 5(c))
- incorporates all necessary consequential amendments, whether of punctuation, numbering or another kind (Reprints Act 1992 s 5(d)).

The reprint includes a reference to the law by which each amendment was made—see list of legislation and list of annotations in endnotes. Also see list of legislation for any uncommenced amendments.

Minor editorial changes allowed under the provisions of the Reprints Act 1992 have also been made to use aspects of format and printing style consistent with current drafting practice (s 35).

This page is specific to this reprint. See previous reprints for information about earlier changes made under the Reprints Act 1992. A table of reprints is included in the endnotes.

**Also see endnotes for information about—**

- **when provisions commenced**
- **editorial changes made in earlier reprints.**

## Spelling

The spelling of certain words or phrases may be inconsistent with other reprints because of changes made in various editions of the Macquarie Dictionary (for example, in the dictionary, ‘lodgement’ has replaced ‘lodgment’).

## Dates shown on reprints

**Reprints dated at last amendment** All reprints produced on or after 1 July 2002, authorised (that is, hard copy) and unauthorised (that is, electronic), are dated as at the last date of amendment. Previously reprints were dated as at the date of publication. If an authorised reprint is dated earlier than an unauthorised version published before 1 July 2002, it means the legislation was not further amended and the reprint date is the commencement of the last amendment.

If the date of an authorised reprint is the same as the date shown for an unauthorised version previously published, it merely means that the unauthorised version was published before the authorised version. Also, any revised edition of the previously published unauthorised version will have the same date as that version.

**Replacement reprint date** If the date of an authorised reprint is the same as the date shown on another authorised reprint it means that one is the replacement of the other.



## Queensland

# Land Court Act 2000

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# Land Court Act 2000

[as amended by all amendments that commenced on or before 25 November 2008]

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

### Part 1 Preliminary

#### 1 Short title

This Act may be cited as the *Land Court Act 2000*.

#### 2 Commencement

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

#### 3 Dictionary

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

### Part 2 Land Court

#### Division 1 Establishment and jurisdiction

##### 4 Establishment of Land Court

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

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- (2) The court is a court of record.
- (3) The court has a seal that must be judicially noticed.

## **5 Jurisdiction of Land Court**

- (1) The Land Court has the jurisdiction given to it under an Act.

*Note—*

Various Acts confer jurisdiction on the Land Court. See the *Acts Interpretation Act 1954*, section 49A.

- (2) If jurisdiction for a proceeding is expressly conferred on the court under an Act, the jurisdiction is exclusive.
- (3) Subsection (2) does not limit parts 3 and 4.
- (4) The jurisdiction of the Land Court can not be ousted only because a proceeding before it is about claims or interests of an equitable nature or involves making a decision about title to land.

## **6 No distinction between Land Court and chambers**

- (1) The distinction between the Land Court and chambers is abolished.
- (2) The business of the court, wherever it is conducted, is taken to be conducted in court.

## **Division 1A Cultural heritage division**

### **6A Divisions of court**

- (1) The Land Court is divided into 2 divisions as follows—
  - (a) the Cultural Heritage and Indigenous Land Use Agreement Division;
  - (b) the general division.
- (2) A member may sit as, and exercise the powers and perform the functions of, a member of the Land Court in the cultural

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heritage division or the general division, as nominated by the president.

- (3) A member may be nominated for both the cultural heritage division and the general division.

## **6B Purpose of cultural heritage division**

The cultural heritage division is to exercise the jurisdiction of the Land Court in all matters coming before the court under any of the following—

- (a) *Aboriginal Cultural Heritage Act 2003*;
- (b) *Torres Strait Islander Cultural Heritage Act 2003*;
- (c) division 6B.

## **Division 2 General powers**

### **7 Land Court to be guided by equity and good conscience**

In the exercise of its jurisdiction, the Land Court—

- (a) is not bound by the rules of evidence and may inform itself in the way it considers appropriate; and
- (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.

### **8 Subpoenas**

- (1) The Land Court may summon a person as a witness and may—
- (a) require the person to produce documents in the person's possession or power; and
  - (b) examine the person; and

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- (c) punish the person for not attending under the summons or for refusing to give evidence or for failing to produce the documents.
- (2) Despite subsection (1), a person is not required to give evidence that may tend to incriminate the person.
- (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.

## **9 Contempt and contravention of orders**

- (1) A person is in contempt of the Land Court if the person—
  - (a) without lawful excuse, fails to comply with an order of the court, (other than an order mentioned in paragraph (e)) or an undertaking given to the court; or
  - (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
  - (c) wilfully interrupts the proceedings of the court or otherwise misbehaves himself or herself in court; or
  - (d) unlawfully obstructs or assaults someone in attendance in court; or
  - (e) without lawful excuse, disobeys a lawful order or direction of the court at the hearing of any proceeding; or
  - (f) commits any other contempt of the court.
- (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.
- (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.

- (4) Before the court rises, the court may—
  - (a) ask the person to explain why the person should not be punished; or
  - (b) adjourn the matter to be dealt with on a stated date.
- (5) If the court acts under subsection (4)(a), the court may deal with the person immediately.

## **10 Terms of orders**

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.

## **11 Taking and recording evidence**

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

## **12 Power to rehear matters**

- (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.
- (2) The application must be made within 42 days after the order containing the decision is made by the court.
- (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.

# **Division 3 Composition and appointments**

## **13 Composition of Land Court**

The Land Court consists of the president and other members.

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#### **14 Single member to constitute Land Court**

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

#### **15 Land Court may be constituted in more than 1 place**

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

#### **16 Appointment of president and other members of Land Court**

- (1) The Governor in Council may appoint the president and other members by commission.
- (2) Subject to section 42, an appointment as a member is for 15 years.
- (3) If a person appointed as a member is reappointed, the reappointment may be for up to 15 years.
- (3A) Appointment as a member, other than a member appointed under section 17 or under the *Land and Resources Tribunal Act 1999*, section 27A, must be on a full-time basis.
- (4) A person may be appointed as a member only if the person is—
  - (a) a local lawyer within the meaning of the *Legal Profession Act 2007* of at least 5 years standing with extensive experience in 1 or more of the following—
    - (i) land-related matters;
    - (ii) mining or petroleum issues;
    - (iii) indigenous issues;
    - (iv) something else considered by the Governor in Council to have substantial relevance to the duties of a member; or

- (b) a valuer, or a person professionally qualified in another land-related discipline, with extensive litigation or quasi-judicial experience.
- (5) A member may be appointed as president only if the member satisfies subsection (4)(a).
- (6) 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.
- (7) Despite subsections (2) and (3), a member who, before the end of the member's term of appointment, starts the hearing of a proceeding may remain a member until the proceeding ends.

## **17 Appointment of members of land tribunal as members**

- (1) The Governor in Council—
  - (a) must appoint the chairperson and deputy chairperson of each land tribunal as members of the Land Court; and
  - (b) may appoint any other member of a land tribunal as a member of the Land Court.
- (2) A member of a land tribunal appointed to the Land Court—
  - (a) if the member is the chairperson—may be appointed on a part-time or full-time basis; and
  - (b) in any other case—must be appointed on a part-time basis.
- (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.
- (4) Subsection (3) does not prevent the reappointment of the person mentioned in the subsection as a member of the Land Court.

## **18 Appointment of acting president**

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

- (a) a vacancy in the office of president; or
- (b) any period when the president is absent from duty or can not perform the duties of president for another reason.

## **19 Appointment of acting members**

- (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 on a part-time or full-time basis 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.

## **20 Member not to practise profession likely to conflict**

- (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 3A            Powers and responsibilities of president**

### **20A    Arrangement of business**

- (1) The president is responsible for the administration of the Land Court and for ensuring the orderly and expeditious exercise of the jurisdiction and powers of the Land Court.
- (2) The president has power to do things necessary or convenient to be done for the administration of the Land Court and for ensuring the orderly and expeditious exercise of the jurisdiction and powers of the Land Court.

## **Division 4            Rules and directions**

### **21      Rules of Land Court**

- (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.
- (2) Without limiting subsection (1), the rules may provide for the procedures of the court or the registry.
- (3) The procedures of the court are governed by the rules.
- (4) The rules may be uniform rules that apply to other courts.
- (5) The rules are subordinate legislation.

## **22 Directions**

- (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).
- (2) The president may issue directions of general application about the procedure of the court.
- (3) A member may issue directions about a particular case before the court when constituted by the member.

## **Division 5                      Sittings, parties, adjournments and loss of presiding member**

### **23 Where Land Court may sit**

The Land Court may sit at any place.

### **24 Appearance**

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

### **25 Adjournments**

The Land 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.

### **26 Stay of proceedings**

- (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.

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- (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.

## **27 What happens if member dies or is incapacitated**

- (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—

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- (a) the member hearing and deciding the proceeding may make the order the member considers appropriate about costs for the first hearing; and
  - (b) the first hearing is taken not to have happened other than for paragraph (a).
- (5) An order mentioned in subsection (3)(c) is taken to be a decision of the Land Court.

## **Division 6                      Judicial registrars**

### **28            Judicial registrars**

- (1) The Governor in Council may appoint judicial registrars to exercise the powers and perform the functions prescribed under the rules.
- (2) A person may be appointed as a judicial registrar only if the person is eligible for admission as a barrister or solicitor of the Supreme Court.
- (3) A judicial registrar may be removed from office only by the Governor in Council for proven incapacity or misbehaviour.
- (4) A judicial registrar is an officer of the court.

### **29            Judicial registrar's power to hear and decide matters**

- (1) A judicial registrar may hear and decide a matter prescribed under the rules.
- (2) For the matter, the judicial registrar constitutes and may exercise all the jurisdiction and powers of the Land Court.
- (3) However, a judicial registrar may not exercise any power of the court to punish for contempt.

### **30            Independence of judicial registrars**

A judicial registrar, when constituting the Land Court or otherwise exercising a judicial or quasi-judicial power, is not

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subject to direction or control, other than as provided under this Act.

### **31 Rehearing after judicial registrar's decision**

- (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.

### **32 Judicial registrar may exercise certain judicial or quasi-judicial powers**

- (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 6A Indigenous assessors**

### **32A Indigenous assessors**

- (1) The Governor in Council may appoint indigenous assessors to perform functions in the Land Court in its cultural heritage division for proceedings to which they are allocated.
- (2) A person is eligible to be appointed as an indigenous assessor only if—
  - (a) the person—

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- (i) has experience, for not less than 5 years, in industry, commerce, public administration, the practice of a profession or the service of a government or an authority of a government; or
  - (ii) has researched, and published in journals of high academic quality, in the field of anthropology, history, law, public administration or indigenous issues; and
- (b) the person has, in the opinion of the Governor in Council, a high level of knowledge of or experience in 2 or more of the following—
  - (i) cross-cultural issues;
  - (ii) resolving cultural heritage issues;
  - (iii) indigenous issues;
  - (iv) something else considered by the Governor in Council to have substantial relevance to the duties of an indigenous assessor.
- (3) A member is not eligible for appointment as an indigenous assessor.
- (4) An indigenous assessor who is allocated to a proceeding of the Land Court in its cultural heritage division is an officer of the Land Court for the proceeding.

### **32B Conditions of appointment of indigenous assessor**

- (1) The remuneration and allowances payable to an indigenous assessor are the remuneration and allowances decided by the Governor in Council.
- (2) An indigenous assessor holds office as an indigenous assessor on the conditions, including the indigenous assessor's term of appointment, decided by the Governor in Council.
- (3) An indigenous assessor is appointed under this Act and not under the *Public Service Act 1996*.
- (4) An indigenous assessor may resign by giving a signed notice of resignation to the Minister.

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**32C Allocation of indigenous assessor for a proceeding in the cultural heritage division**

- (1) The president may allocate an indigenous assessor to a proceeding of the Land Court in its cultural heritage division if the president is satisfied the allocation will help to achieve the prompt and efficient conduct of the proceeding.
- (2) The president is not required to allocate an indigenous assessor to a proceeding in the cultural heritage division.

**32D Role of indigenous assessor for a proceeding**

- (1) The role of an indigenous assessor for a proceeding in the Land Court in its cultural heritage division is to advise the court about matters within the indigenous assessor's knowledge or experience that are relevant to a question arising in the proceeding.
- (2) The indigenous assessor does not form part of the Land Court for the proceeding.
- (3) It is not necessary for the indigenous assessor to be present for all of the proceeding.
- (4) All advice given under subsection (1) must be disclosed to the parties to the proceeding, and the parties must be given an opportunity to make submissions on the content of the advice.

**Division 6B Jurisdiction of Land Court in its cultural heritage division**

**32E Jurisdiction under Commonwealth Native Title Act**

- (1) This section applies if, under the Commonwealth Native Title Act—
  - (a) a claimant or body corporate objects to the doing of an act; and

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- (b) the State is required to ensure that the objection to the doing of the act is heard by an independent person or body.
- (2) The Land Court in its cultural heritage division has jurisdiction to hear the objection.

### **32F Jurisdiction for registered indigenous land use agreements**

- (1) This section applies if—
  - (a) there is a registered indigenous land use agreement under the Commonwealth Native Title Act; and
  - (b) the State is a party to the agreement; and
  - (c) the agreement provides for a matter arising under the agreement to be referred to the LRT or the Land Court for—
    - (i) mediation of the matter; or
    - (ii) the making of a recommendation about the matter; or
    - (iii) the making of a decision about the matter.
- (2) The Land Court in its cultural heritage division has jurisdiction—
  - (a) if subsection (1)(c)(i) applies—to mediate the matter under division 8; or
  - (b) if subsection (1)(c)(ii) applies—to make a recommendation about the matter; or
  - (c) if subsection (1)(c)(iii) applies—to make a decision about the matter.

### **32G Jurisdiction for negotiated agreements**

- (1) A party to a negotiated agreement may apply to the Land Court for an order—
  - (a) for the enforcement of a negotiated agreement; or



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- (b) deciding a matter arising under a negotiated agreement;  
or
  - (c) making a declaration about the interpretation of a negotiated agreement.
- (2) The Land Court in its cultural heritage division must hear and decide an application under subsection (1) and may make the order it considers appropriate.
  - (3) For subsection (5), definition *negotiated agreement*, a reference to a part or division of the Mineral Resources Act includes a reference to the part or division as applied by another provision, or other provisions, of the native title (mining) provisions.
  - (4) Without limiting subsections (1) to (3), a reference in a negotiated agreement to the LRT must, if the context permits, be taken to be a reference to the Land Court in its cultural heritage division.
  - (5) In this section—

*native title (mining) provisions* means the Mineral Resources Act, parts 12 to 18 and part 19, divisions 2 and 5.

*negotiated agreement* means—

- (a) an access agreement under the Mineral Resources Act, part 13, part 15, division 2 or part 16, division 2; or
- (b) a negotiated agreement under the Mineral Resources Act, part 17, division 4; or
- (c) an agreement about the payment of compensation mentioned in the Mineral Resources Act, part 18; or
- (d) an agreement obtained under the Commonwealth Native Title Act, section 31(1)(b).

### **32H Jurisdiction for particular cultural heritage matters**

- (1) A group, or a member of a group, may apply to the Land Court for an injunction under this section to stop the doing of an act.

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- (2) The Land Court in its cultural heritage division must hear and decide an application under subsection (1) and may grant the injunction only if the court is satisfied that—
- (a) the person against whom the injunction is sought is doing the act, or there are reasonable grounds for concluding that the person is likely to do the act; and
  - (b) the act is a relevant act; and
  - (c) the applicant has standing to make the application; and
  - (d) it is necessary to grant the injunction to stop the person doing the act.
- (3) For this section, a group or member of a group has standing to make an application if the group has a traditional, historic or custodial interest in—
- (a) if the relevant act is a contravention of an Aboriginal cultural heritage protection provision—the Aboriginal cultural heritage to which the contravention relates; or
  - (b) if the relevant act is a contravention of a Torres Strait Islander cultural heritage protection provision—the Torres Strait Islander cultural heritage to which the contravention relates; or
  - (c) if neither paragraph (a) nor paragraph (b) applies—an item, place or area of cultural significance that may be adversely affected by the doing of the act the subject of the application.
- (4) In this section—

***Aboriginal cultural heritage protection provision*** means the *Aboriginal Cultural Heritage Act 2003*, section 24(1), 25(1) or 26(1).

***group*** means a group of Aboriginal people or Torres Strait Islanders.

***relevant act*** means an act that is a contravention of—

- (a) an Aboriginal cultural heritage protection provision; or

- (b) a Torres Strait Islander cultural heritage protection provision; or
- (c) a provision of another Act providing for the protection or preservation or access to, items, places or areas of cultural significance to Aboriginal people or Torres Strait Islanders.

***Torres Strait Islander cultural heritage protection provision*** means the *Torres Strait Islander Cultural Heritage Act 2003*, section 24(1), 25(1) or 26(1).

### **32I Jurisdiction for contract conditions**

- (1) A relevant person may apply to the Land Court for an order—
  - (a) for the enforcement of contract conditions; or
  - (b) to decide a matter under contract conditions; or
  - (c) making a declaration about the interpretation of contract conditions.

(2) The Land Court must hear and decide an application under subsection (1) and may make the order it considers appropriate.

(3) Without limiting subsections (1) and (2), a reference in contract conditions to the LRT must, if the context permits, be taken to be a reference to the Land Court in its cultural heritage division.

(4) In this section—

***contract conditions*** means contract conditions under the relevant provision, as applying in relation to—

- (a) a mining lease; or
- (b) another mining tenement, because of the application of the Mineral Resources Act, part 17, division 4 to the mining tenement.

***mining tenement*** means a prospecting permit, mining claim, exploration permit, mineral development licence or mining lease under Mineral Resources Act.

*relevant person* means a consultation and negotiation party under the relevant provision.

*relevant provision* means the Mineral Resources Act, section 675(1)(b)(ii).

## **Division 6C                      Additional power of Land Court when exercising particular jurisdiction**

### **32J      Land Court has power of the Supreme Court for particular purposes**

- (1) This section applies when—
- (a) the Land Court in its cultural heritage division is exercising jurisdiction; or
  - (b) the Land Court in its general division is exercising jurisdiction under any of the following Acts that was conferred on the Land Court under the *Land Court and Other Legislation Amendment Act 2007*—
    - *Environmental Protection Act 1994*
    - *Fossicking Act 1994*
    - *Geothermal Exploration Act 2004*
    - *Mineral Resources Act 1989*
    - *Petroleum Act 1923*
    - *Petroleum and Gas (Production and Safety) Act 2004*
    - *State Development and Public Works Organisation Act 1971*
    - *Water Act 2000*; or
  - (c) the Land Court in its general division is exercising jurisdiction under the *Water Supply (Safety and Reliability) Act 2008*; or

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- (c) the Land Court in its general division is exercising jurisdiction under—
- (i) the *Aboriginal Land Act 1991*, part 3, division 2, subdivision 4 or part 5, division 2, subdivision 4; or
  - (ii) the *Torres Strait Islander Land Act 1991*, part 3, division 2, subdivision 4.
- (2) The Land Court has, for exercising jurisdiction conferred under an Act, all the powers of the Supreme Court, and may in a proceeding before the Land Court, in the same way and to the same extent as may be done by the Supreme Court in a similar proceeding—
- (a) grant any relief or remedy; and
  - (b) make any order, including an order for attachment or committal because of disobedience to an order; and
  - (c) give effect to every ground of defence or matter of set-off, whether equitable or legal.
- (3) Without limiting subsection (2), the Land Court has, in a proceeding before it, power to grant relief—
- (a) under a declaration of rights of the parties; or
  - (b) under an injunction, whether interim, interlocutory or final, in the proceeding; or
  - (c) by staying the proceeding or a part of the proceeding; or
  - (d) by appointing a receiver including an interim receiver.
- (4) The Land Court may order that a record of, or information about, a proceeding before the Land Court must not be made available to the public.
- (5) Without limiting the things the Land Court may have regard to in deciding whether to make an order under subsection (4), the Land Court may have regard to Aboriginal tradition and Island custom.
- (6) To the extent that the practice and procedure of the Land Court in exercising its jurisdiction in particular matters, including enforcing its judgments and orders, are not provided

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for in the rules, they must as far as practicable be the same as the practice and procedure of the Supreme Court in similar matters.

- (7) Without limiting subsection (6), the appropriate officer of the Land Court must, in addition to duties otherwise imposed on the officer, discharge—
  - (a) any duty an officer of the Supreme Court would be required under the practice of the Supreme Court to discharge in similar circumstances; and
  - (b) any duty imposed on the officer by an order of the Land Court.
- (8) For subsection (7), the appropriate officer of the Land Court has the powers of the relevant officer of the Supreme Court.
- (9) Subsections (2) and (6) have effect subject to—
  - (a) another provision of this Act; and
  - (b) a provision of another Act under which jurisdiction is conferred on the Land Court.

## **Division 7                      General matters**

### **33            Land Court may make declarations**

- (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

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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).

### **34 Costs**

- (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.
- (6) If the court makes an order under subsection (5), the assessing officer may decide the appropriate scale to be used in assessing the costs.

### **35 Privileges, protection and immunity**

- (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.
- (1A) A judicial registrar, exercising judicial or quasi-judicial power the judicial registrar may exercise under the Act, has the same privileges, protection and immunity as the judicial registrar

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would have if the judicial registrar 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;
  - (b) a witness attending in the proceeding.

### **36 Preliminary conference**

- (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.
- (2) Each party must be prepared to identify and discuss the issues in dispute in an attempt to negotiate a settlement.
- (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.
- (4) If agreement is reached between the parties, the member or judicial registrar may dispose of the matter in the way agreed.
- (5) A decision made under subsection (4) must be a decision the Land Court could make in the proper exercise of its jurisdiction.
- (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.
- (7) A member or judicial registrar hearing or disposing of a matter under this section has the powers of the court.
- (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.
- (9) Evidence of anything said or any admission made at the conference is not admissible in the proceeding without the consent of the parties.



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## Division 8                      Alternative dispute resolution

### 37      **ADR process applies to proceedings started under this part**

- (1) The *Supreme Court of Queensland Act 1991*, part 8 and the *Uniform Civil Procedure Rules 1999*, chapter 9, part 4 (together, the **ADR provisions**), apply to proceedings started under this Act.
- (2) However, to the extent the cost provisions of the ADR provisions do not provide for a matter, section 34 applies.
- (3) In applying the ADR provisions to a proceeding under this Act—
  - (a) a reference to the court or the Supreme Court is taken to be a reference to the Land Court; and
  - (b) a reference to the Chief Justice or the Senior Judge Administrator is taken to be a reference to the president; and
  - (c) a reference to a Supreme Court judge is taken to be a reference to a member constituting the Land Court; and
  - (d) a reference to the registrar is taken to be a reference to a judicial registrar of the Land Court; and
  - (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.
- (4) The president may approve a member or judicial registrar as a mediator or case appraiser for the ADR provisions.
- (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).

## **Division 9                      Conditions of members**

### **38            Remuneration**

The salary and allowances of the president and other members are provided for by the *Judicial Remuneration Act 2007*.

### **39            Leave of absence**

- (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) However, for the purpose of applying section 15 of that Act for leave of absence of members, the prescribed authority is—
  - (a) the Governor in Council, if the leave of absence is more than 1 month; or
  - (b) the Minister, if the leave of absence is 1 month or less.
- (3) Subsection (1) does not apply to an acting member.

### **40            Pension benefits to members**

- (1) The *Judges (Pensions and Long Leave) Act 1957*, other than sections 2AA, 8C, 15 and 15A, apply 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.

#### **41 Calculation of length of service as a member**

- (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) 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.

#### **42 Retirement of members**

- (1) A member must retire on reaching 70 years of age.
- (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 proceeding ends.

#### **43 Removal from office or suspension**

- (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.
- (2) If the Legislative Assembly is not sitting, the Governor in Council may suspend the member.

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- (3) The grounds for suspension must be laid before the Legislative Assembly within 7 sitting days after the suspension.
- (4) The Legislative Assembly must either confirm or withdraw the suspension.

#### **44 Non-application of ss 38–41 to certain members**

Sections 38 to 41 do not apply to a member appointed to the Land Court under section 17.

### **Division 10 Conditions of judicial registrars**

#### **45 Conditions of appointment**

- (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.

#### **46 Retirement of judicial registrars**

- (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.

#### **47 Preservation of rights**

- (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**

#### **48 Registrar, deputy registrars and other officers**

- (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*.

#### **49 Functions and powers of registrar and deputy registrars**

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

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- (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.

## **50 Delegation by registrar**

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

## **51 Registries**

- (1) The registry of the Land Court is at Brisbane.
- (2) The registry is under the control of the registrar.
- (3) The registrar may give directions to the deputy registrars and other officers employed in the registry.

## **52 Court records**

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

# **Part 3 Land Appeal Court**

## **Division 1 Establishment and jurisdiction**

### **53 Establishment of Land Appeal Court**

- (1) The Land Appeal Court is established.

- (2) The court is a court of record.
- (3) The court has a seal that must be judicially noticed.

#### **54 Jurisdiction of Land Appeal Court**

The Land Appeal Court has the jurisdiction given to it under an Act.

### **Division 2 General powers**

#### **55 Land Appeal Court to be guided by equity and good conscience**

In the exercise of its jurisdiction, the Land Appeal Court—

- (a) is not bound by the rules of evidence and may inform itself in the way it considers appropriate; and
- (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.

#### **56 Evidence admissible on appeal**

- (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.
- (2) However, the court may admit new evidence if—
  - (a) the court is satisfied admission of further evidence is necessary to avoid grave injustice; and
  - (b) the party applying to have further evidence admitted gives the court an adequate reason for the evidence not previously being given; and
  - (c) application to have further evidence admitted is made before the hearing of the appeal.

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## **57 Powers of Land Appeal Court**

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

- (a) suspend the operation of the decision and remit the matter, with or without directions, to the court or tribunal that made the decision to act according to law;
- (b) affirm, amend, or revoke and substitute another order or decision for the order or decision appealed against;
- (c) make an order the Land Appeal Court considers appropriate.

## **Division 3 Constitution for appeals**

### **58 Appeals from Land Court**

- (1) This section applies to an appeal from a decision of the Land Court.
- (2) The Land Appeal Court is constituted by a Supreme Court judge and 2 members, other than the member who made the decision appealed against.

### **59 Appeals from a land tribunal**

- (1) This section applies to an appeal from a decision of a land tribunal.
- (2) The Land Appeal Court is constituted by a Supreme Court judge and 2 members including, if practicable, at least 1 member of the land tribunal, other than the member who constituted the land tribunal.
- (3) The chairperson of the land tribunal must recommend to the president the member or members of the land tribunal who should, in the chairperson's opinion, sit as a member or members of the Land Appeal Court.



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**60 Questions of law from a land tribunal**

- (1) This section applies when a question of law is referred to the Land Appeal Court by a land tribunal.
- (2) The Land Appeal Court is constituted by a Supreme Court judge and 2 members including, if practicable, at least 1 presiding member of the land tribunal, and may include a presiding member who constituted the land tribunal.
- (3) The chairperson of the land tribunal must recommend to the president the member or members of the land tribunal who should, in the chairperson's opinion, sit as a member or members of the Land Appeal Court.
- (4) In this section—  
*presiding member*, of a land tribunal, see the *Aboriginal Land Act 1991*, schedule and the *Torres Strait Islander Land Act 1991*, section 3.

**61 President decides members for Land Appeal Court**

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

**62 Nomination of Supreme Court judge to be member of Land Appeal Court**

- (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.
- (2) The Supreme Court judge who is the member of the Land Appeal Court outside Brisbane is—
  - (a) for the far northern district of the Supreme Court—the far northern judge; and
  - (b) for the northern district of the Supreme Court—the northern judge; and
  - (c) for the central district of the Supreme Court—the central judge.

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- (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.
- (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.

**63 Land Appeal Court may be constituted in more than 1 place**

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

**Division 4 Appeals, sittings, parties, adjournments, proceedings and loss of presiding members**

**64 Right of appeal to Land Appeal Court**

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.

**65 Notice of appeal**

- (1) A party intending to appeal against a decision of the Land Court must, within 42 days after the order containing the decision is made by the court, 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.

**66 Where Land Appeal Court may sit**

The Land Appeal Court may sit at any place.

**67 Appearance**

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

**68 Adjournments**

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.

**69 Stay of proceedings**

- (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—
  - (a) may be given on the conditions the Land Appeal Court considers appropriate; and
  - (b) operates for the period stated by the court; and

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- (c) may be revoked or amended by the court.
- (4) However, the period of a stay must not extend past the time when the Land Appeal Court decides the appeal.

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

- (1) This section applies if, after starting a proceeding, 1 of the members of the Land Appeal Court hearing the proceeding dies or becomes incapable of continuing with the proceeding.
- (2) The 2 remaining members may, with the consent of the parties, complete hearing and deciding the proceeding.
- (3) Any question in the proceeding is to be decided in the same way, and the judgment of the Land Appeal Court constituted under this section has the same force and effect as if all 3 members had decided the proceeding.

**71 Decisions of Land Appeal Court**

- (1) The decision of the majority of members hearing an appeal is the decision of the Land Appeal Court.
- (2) Subject to part 4, every decision of the Land Appeal Court is final and conclusive.

**Division 5 General matters**

**72 Application of certain provisions of pt 2 to Land Appeal Court**

- (1) Sections 8, 9, 21, 22 and 34 apply, with necessary changes, to the Land Appeal Court.
- (2) For subsection (1), a reference in the applied sections to the Land Court is taken to be a reference to the Land Appeal Court.

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**73 Registrar, deputy registrars and other officers**

The registrar, deputy registrars and other officers of the Land Court are the registrar, deputy registrars and other officers of the Land Appeal Court.

**73A Privileges, protection and immunity**

- (1) A member hearing a proceeding in the Land Appeal Court has the same privileges, protection and immunity as the member would have if the member were a Supreme Court judge hearing 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;
  - (b) a witness attending in the proceeding.

## **Part 4 Appeals to Court of Appeal**

**74 Who may appeal to Court of Appeal**

- (1) A party to a proceeding in the Land Appeal Court may appeal a decision of the Land Appeal Court to the Court of Appeal on the ground—
  - (a) of error or mistake in law on the part of the Land Appeal Court; or
  - (b) that the Land Appeal Court had no jurisdiction to make the decision; or
  - (c) that the Land Appeal Court exceeded its jurisdiction in making the decision.
- (2) However, the party may appeal only with the leave of the Court of Appeal or a judge of appeal.

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## **75 When leave to appeal must be sought and appeal made**

- (1) A party intending to seek leave of the Court of Appeal to appeal against a decision of the Land Appeal Court must, within 42 days after the order containing the decision is made by the Land Appeal Court, apply to the Court of Appeal for leave to appeal against the decision.
- (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.

## **76 Powers of Court of Appeal**

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**

## **77 Judicial notice**

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

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## **77A Annual report**

- (1) The president must, within 4 months after the end of each financial year, the first of which is the financial year ending 30 June 2008, prepare and give to the Minister a report on the operations of the Land Court for the year.
- (2) The Minister must cause a copy of the report to be tabled in the Legislative Assembly within 14 days after its receipt by the Minister.
- (3) Until the repeal of the LRT Act, each annual report prepared by the president must include a report on the operations of the LRT for the year the subject of the report.

## **78 Regulation-making power**

- (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**

## **Division 1 Savings and transitional provisions for Act No. 1 of 2000**

### **79 Continuance of Land Court**

The Land Court established by section 4 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.

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## **80 Continuance of Land Appeal Court**

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.

## **81 Appointments of members continue**

- (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.

## **82 Entitlements of members continue**

- (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 member's length of service as a member for the purposes of sections 39 and 40.

## **83 Appointments and entitlements of registrar, deputy registrars and other officers continue**

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



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**84 Land Court orders continue**

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

**85 Proceedings started under Land Act 1994 continue**

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.

**Division 2 Transitional provisions for Land Court and Other Legislation Amendment Act 2007**

**86 LRT president**

- (1) This section applies if the person (the *relevant person*) holding appointment under the LRT Act, section 7 as the president of the LRT—
  - (a) resigns the person's office as president (the *resignation*); and
  - (b) at or about the same time as the resignation takes effect, is appointed as a District Court judge (the *new appointment*).
- (2) From the new appointment, and while the relevant person holds the appointment, the salary, allowances and rates of allowances payable to the relevant person cease to be those payable to a Supreme Court judge and become those payable to a District Court judge.
- (3) On being appointed, the relevant person is entitled to receive a single payment of an amount equal to the difference between

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the salary, allowances and rates of allowances payable to a Supreme Court judge and those payable to a District Court judge for the period starting on the day of appointment and ending on the prescribed day.

- (4) The State has no liability of any kind, other than as provided for in subsection (3), to compensate the relevant person in any way because of the resignation and new appointment, and in particular because of any reduced salary, allowances and rates of allowances payable to the person after the prescribed day.
- (5) Subject to subsection (6), the relevant person retains all entitlements accrued but not received by the person while the person was the president of the LRT.
- (6) Leave, including leave of absence under the Judges Pensions Act, accrued by the person and not taken before the date of appointment is to be paid at the salary applicable to a District Court judge.
- (7) Subsection (8) applies if, after the new appointment, the relevant person continues uninterruptedly as a District Court judge until the person—
  - (a) retires after the prescribed day; or
  - (b) retires or is removed from office as mentioned in the Judges Pensions Act, section 5(1); or
  - (c) earlier dies.
- (8) The Judges Pensions Act, to the extent that Act provides for the payment of any pension, including for example the payment of a pension to a spouse or child, is taken to apply in relation to the relevant person as if the person—
  - (a) had been a Supreme Court judge from when the person was appointed president of the LRT until the person's retirement or death as mentioned in subsection (7) (the *relevant period*); and
  - (b) had been entitled to the salary, as defined under that Act, of a Supreme Court judge as applying from time to time in the relevant period.
- (9) In this section—

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*prescribed day*, in relation to the relevant person, means the first day on which the relevant person would become eligible to receive a pension under the Judges Pensions Act, section 4, if the relevant person retired from office (otherwise than because of permanent disability or infirmity as specified in section 5 of that Act) on that day.

## **87 LRT deputy president**

- (1) This section applies if a person (the *relevant person*) holding appointment under the LRT Act, section 7 as a deputy president of the LRT—
  - (a) resigns the person's office as deputy president (the *resignation*); and
  - (b) at or about the same time as the resignation takes effect, is appointed as a member of the Land Court (the *new appointment*).
- (2) From the new appointment, and while the relevant person holds the appointment, the salary, allowances and rates of allowances payable to the relevant person cease to be those payable to a District Court judge and become those payable to a member of the Land Court.
- (3) The State has no liability of any kind to compensate the relevant person in any way because of the resignation and new appointment, and in particular because of any reduced salary, allowances and rates of allowances payable to the person after the new appointment.
- (4) The relevant person retains all entitlements accrued but not received by the person while the person was a deputy president of the LRT, and for calculating any amount payable to the person in relation to an entitlement accrued but not received, the applicable salary and allowances of the person are taken to be the salary and allowances of a District Court judge in force when the amount comes to be calculated.
- (5) Subsection (6) applies if, after the new appointment, the relevant person continues uninterruptedly as a member of the Land Court until the person—

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- (a) retires after the prescribed day; or
  - (b) retires or is removed from office as mentioned in the Judges Pensions Act, section 5(1); or
  - (c) earlier dies.
- (6) The Judges Pensions Act, to the extent that Act provides for the payment of any pension, including for example the payment of a pension to a spouse or child, is taken to apply in relation to the relevant person as if the person—
- (a) had been a District Court judge from when the person was appointed a deputy president of the LRT until the person's retirement or death as mentioned in subsection (5) (the *relevant period*); and
  - (b) had been entitled to the salary, as defined under that Act, of a District Court judge as applying from time to time in the relevant period.
- (7) In this section—
- prescribed day*, in relation to the relevant person, means the first day on which the relevant person would become eligible to receive a pension under the Judges Pensions Act, section 4, if the relevant person retired from office (otherwise than because of permanent disability or infirmity as specified in section 5 of that Act) on that day.

## **88 LRT mining referee**

- (1) This section applies if a person (the *relevant person*), holding appointment under the LRT Act, section 16(2)(c) as a mining referee of the LRT—
- (a) resigns the person's office as mining referee (the *resignation*); and
  - (b) at or about the same time as the resignation takes effect, is appointed as a judicial registrar of the Land Court (the *new appointment*) under this Act.
- (2) From the new appointment until 16 July 2008, and while the relevant person holds the appointment, the salary and

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allowances payable, and the conditions applicable, to the relevant person continue to be those payable and applicable to the person under the person's instrument of appointment as a mining referee of the LRT.

- (3) The State has no liability of any kind to compensate the relevant person in any way because of the person's ceasing to hold appointment as a referee non-presiding member under the LRT Act and being appointed under this Act as a judicial registrar.
- (4) The relevant person retains all entitlements accrued but not received by the person while the person was a mining referee of the LRT, and for calculating any amount payable to the person in relation to an entitlement accrued but not received, the applicable salary and allowances of the person continue to be the salary and allowances payable to the person under the person's instrument of appointment as a mining referee of the LRT when the amount comes to be calculated.
- (5) The relevant person's entitlements under this section must not be reduced.
- (6) Sections 45 and 46 do not apply to the relevant person.
- (7) The relevant person may resign the person's appointment as a judicial registrar by giving a signed notice of resignation to the Minister.
- (8) The appointment and employment of the relevant person as a judicial registrar is not subject to any industrial award, industrial agreement or other industrial instrument or any decision or rule of an industrial tribunal.
- (9) At the end of the relevant person's term as a judicial registrar, the relevant person ceases to hold office and the relevant person has no further entitlement to hold office under this Act or the LRT Act.

## **89 Previous LRT deputy president**

- (1) This section applies to a person if—
  - (a) before the commencement of this section—

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- (i) the person held appointment under the LRT Act, section 7 as a deputy president of the LRT; and
    - (ii) the person resigned the person's office as a deputy president (the *resignation*); and
    - (iii) at or about the same time as the resignation took effect, the person was appointed as a District Court judge (the *new appointment*); and
  - (b) on the commencement of this section, the person still held the new appointment.
- (2) For the purposes of the application of the Judges Pensions Act to the person, that Act is taken to apply to the person, including to a spouse or child of the person, as if the person had been a District Court judge for the whole of the time from when the person was appointed a deputy president of the LRT until the new appointment.

## **90 Assumption by Land Court of role of warden and Wardens Court under particular Acts**

- (1) The relevant mining Act provisions are taken to continue to have effect as if the *Land and Resources Tribunal Act 1999* had not been enacted, but only to the extent necessary for giving full effect to the relevant designated Act provisions.
- (2) A reference in a relevant mining Act provision or relevant designated Act provision to a warden or the Wardens Court is taken to be a reference to the Land Court.
- (3) In subsection (4), definition *designated Acts*, a reference to an Act includes a reference to any instrument—
  - (a) that has been made or entered into under the Act; and
  - (b) that the reference to the Act does not otherwise include.
- (4) In this section—

*designated Acts* means the following Acts—

  - *Alcan Queensland Pty. Limited Agreement Act 1965*

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- *Central Queensland Coal Associates Agreement Act 1968*
  - *Offshore Minerals Act 1998*
  - *Petroleum Act 1923*
  - *Queensland Nickel Agreement Act 1970*
  - *Thiess Peabody Coal Pty. Ltd. Agreement Act 1962.*

***relevant designated Act provisions*** means the provisions of the designated Acts that mention a warden or the Wardens Court.

***relevant mining Act provisions*** means the provisions of the *Mineral Resources Act 1989* that, immediately before the commencement of the LRT Act, section 86 mentioned, directly or indirectly, a warden or the Wardens Court.

## **91 Land Court to assume jurisdiction for proceedings already before the LRT**

- (1) This section applies to a proceeding if—
  - (a) the proceeding was started in the LRT before the commencement of this section; and
  - (b) immediately before the commencement of this section, the proceeding had not finally been disposed of; and
  - (c) if the proceeding had been started after the commencement of this section, the proceeding would have been started in the Land Court.
- (2) The Land Court has jurisdiction to finish a proceeding to which this section applies and for that purpose—
  - (a) the proceeding is a proceeding in the Land Court; and
  - (b) the Land Court has all the powers of the LRT.
- (3) The president may give any necessary directions about how the proceeding is to be dealt with by the Land Court instead of by the LRT.

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- (4) Without limiting subsection (3), the president may give or make any of the following directions or orders—
  - (a) that the matter be heard afresh entirely or partly;
  - (b) that any record of the LRT or any evidence, materials or submissions before the LRT be taken to be part of the proceeding before the Land Court;
  - (c) any costs order, including an order that any costs be paid from the appeal costs fund and for that purpose may grant to any party to the proceeding, other than the State, an indemnity certificate.
- (5) An indemnity certificate granted under this section—
  - (a) has effect as if it were an indemnity certificate granted to a respondent by the Supreme Court under the *Appeal Costs Fund Act 1973*; and
  - (b) entitles a party to whom it is granted to be paid from the appeal costs fund the reasonable costs of the proceeding as assessed by the appeal costs board.



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## Schedule 2      Dictionary

### section 3

*Chief Justice* means the Chief Justice of Queensland.

*Commonwealth Native Title Act* means the *Native Title Act 1993* (Cwlth).

*cultural heritage division* means the Cultural Heritage and Indigenous Land Use Agreement Division of the Land Court.

*deputy registrar* means a deputy registrar appointed under section 48.

*general division* means the general division of the Land Court.

*Judges Pensions Act* means the *Judges (Pensions and Long Leave) Act 1957*.

*judicial registrar* means a judicial registrar appointed under section 28.

*Land Appeal Court* means the Land Appeal Court established under section 53.

*Land Court* means the Land Court established under section 4.

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

*LRT* means the Land and Resources Tribunal.

*LRT Act* means the *Land and Resources Tribunal Act 1999*.

*member* means a member of the Land Court.

*Mineral Resources Act* means the *Mineral Resources Act 1989*.

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

*registrar* means a person appointed as registrar under section 48.

# Endnotes

## 1 Index to endnotes

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## 2 Date to which amendments incorporated

This is the reprint date mentioned in the Reprints Act 1992, section 5(c). Accordingly, this reprint includes all amendments that commenced operation on or before 25 November 2008. Future amendments of the Land Court Act 2000 may be made in accordance with this reprint under the Reprints Act 1992, section 49.

## 3 Key

### Key to abbreviations in list of legislation and annotations

Key	Explanation	Key	Explanation
AIA	= Acts Interpretation Act 1954	(prev)	= previously
amd	= amended	proc	= proclamation
amdt	= amendment	prov	= provision
ch	= chapter	pt	= part
def	= definition	pubd	= published
div	= division	R[X]	= Reprint No. [X]
exp	= expires/expired	RA	= Reprints Act 1992
gaz	= gazette	reloc	= relocated
hdg	= heading	renum	= renumbered
ins	= inserted	rep	= repealed
lap	= lapsed	(retro)	= retrospectively
notfd	= notified	rv	= revised edition
num	= numbered	s	= section
o in c	= order in council	sch	= schedule
om	= omitted	sdiv	= subdivision
orig	= original	SIA	= Statutory Instruments Act 1992
p	= page	SIR	= Statutory Instruments Regulation 2002
para	= paragraph	SL	= subordinate legislation
prec	= preceding	sub	= substituted
pres	= present	unnum	= unnumbered
prev	= previous		

## 4 Table of reprints

Reprints are issued for both future and past effective dates. For the most up-to-date table of reprints, see the reprint with the latest effective date.

If a reprint number includes a letter of the alphabet, the reprint was released in unauthorised, electronic form only.

Reprint No.	Amendments to	Effective	Reprint date
1	none	1 July 2000	5 July 2000
1A	2001 Act No. 33	7 June 2001	20 June 2001

  

Reprint No.	Amendments included	Effective	Notes
1B	2004 Act No. 43	3 December 2004	
1C	2005 Act No. 70	8 December 2005	
1D	2007 Act No. 39	29 August 2007	
1E	2007 Act No. 39	21 September 2007	
2	2007 Act No. 37	28 September 2007	
2A	2007 Act No. 55	30 November 2007	
2B	2007 Act No. 55	14 March 2008	
2C	2008 Act No. 34	1 July 2008	
2D	2008 Act No. 29	18 July 2008	
2E	2008 Act No. 59	25 November 2008	R2E withdrawn, see R3
3	—	25 November 2008	

## 5 List of legislation

### **Land Court Act 2000 No. 1**

date of assent 8 March 2000

ss 1–2 commenced on date of assent

remaining provisions commenced 1 July 2000 (2000 SL No. 165)

amending legislation—

### **Natural Resources Legislation Amendment Act 2001 No. 33 pts 1, 7**

date of assent 7 June 2001

commenced on date of assent

### **Justice and Other Legislation Amendment Act 2004 No. 43 ss 1–2, pt 14**

date of assent 18 November 2004

ss 1–2 commenced on date of assent

remaining provisions commenced 3 December 2004 (2004 SL No. 263)

### **Justice and Other Legislation Amendment Act 2005 No. 70 s 1, pt 16**

date of assent 8 December 2005

commenced on date of assent

**Justice and Other Legislation Amendment Act 2007 No. 37 pts 1, 22**

date of assent 29 August 2007

ss 1–2 commenced on date of assent

remaining provisions commenced 28 September 2007 (2007 SL No. 241)

**Land Court and Other Legislation Amendment Act 2007 No. 39 pts 1, 3, s 41 sch**

date of assent 29 August 2007

ss 1–2, 27 (to the extent it ins ss 86–89) commenced on date of assent

remaining provisions commenced 21 September 2007 (2007 SL No. 236)

**Judicial Remuneration Act 2007 No. 55 ss 1–2(1), 54 sch 1**

date of assent 9 November 2007

ss 1–2, 54 commenced on date of assent

sch 1 amdt 2 commenced 30 November 2007 (2007 SL No. 294)

remaining provisions commenced 14 March 2008 (2008 SL No. 62)

**Aboriginal and Torres Strait Islander Land Amendment Act 2008 No. 29 pts 1, 4**

date of assent 21 May 2008

ss 1–2 commenced on date of assent

remaining provisions commenced 18 July 2008 (2008 SL No. 233)

**Water Supply (Safety and Reliability) Act 2008 No. 34 ss 1, 2(2), 751 sch 2**

date of assent 21 May 2008

ss 1–2, 751 commenced on date of assent

remaining provisions commenced 1 July 2008 (2008 SL No. 202)

**Justice and Other Legislation Amendment Act 2008 No. 59 s 1, pt 19**

date of assent 25 November 2008

commenced on date of assent

## 6 List of annotations

**PART 2—LAND COURT****Jurisdiction of Land Court**

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**Division 1A—Cultural heritage division**

div 1A (ss 6A–6B) ins 2007 No. 39 s 21

**Power to rehear matters**

s 12 amd 2005 No. 70 s 118

**Single member to constitute Land Court**

s 14 amd 2007 No. 39 s 41 sch

**Appointment of president and other members of Land Court**

s 16 amd 2001 No. 33 s 20; 2004 No. 43 s 61; 2007 No. 39 s 22

**Appointment of members of land tribunal as members**

s 17 amd 2001 No. 33 s 21

**Appointment of acting members**

s 19            amd 2001 No. 33 s 22

**Division 3A—Powers and responsibilities of president**

div 3A (s 20A) ins 2005 No. 70 s 119

**Division 6A—Indigenous assessors**

div 6A (ss 32A–32D) ins 2007 No. 39 s 23

**Division 6B—Jurisdiction of Land Court in its cultural heritage division**

div 6B (ss 32E–32I) ins 2007 No. 39 s 23

**Division 6C—Additional power of Land Court when exercising particular jurisdiction**

div hdg        ins 2007 No. 39 s 23

**Land Court has power of the Supreme Court for particular purposes**

s 32J            ins 2007 No. 39 s 23  
                  amd 2008 No. 34 s 751 sch 2; 2008 No. 29 s 66

**Costs**

s 34            amd 2005 No. 70 s 120

**Privileges, protection and immunity**

s 35            amd 2005 No. 70 s 121

**Remuneration**

s 38            sub 2007 No. 55 s 54 sch 1

**Leave of absence**

s 39            amd 2007 No. 39 s 24; 2008 No. 59 s 81

**Pension benefits to members**

s 40            amd 2007 No. 55 s 54 sch 1

**Retirement of members**

s 42            amd 2004 No. 43 s 62

**Jurisdiction of Land Appeal Court**

s 54            amd 2007 No. 39 s 41 sch

**Powers of Land Appeal Court**

s 57            sub 2005 No. 70 s 122

**Questions of law from a land tribunal**

s 60            amd 2008 No. 29 s 67

**President decides members for Land Appeal Court**

s 61            amd 2007 No. 39 s 41 sch

**Notice of appeal**

s 65            amd 2005 No. 70 s 123

**Privileges, protection and immunity**

s 73A          ins 2007 No. 37 s 108

**When leave to appeal must be sought and appeal made**

s 75 amd 2005 No. 70 s 124

**Annual report**

s 77A ins 2007 No. 39 s 25

**PART 6—SAVINGS AND TRANSITIONAL****Division 1—Savings and transitional provisions for Act No. 1 of 2000**

div hdg ins 2007 No. 39 s 26

**Division 2—Transitional provisions for Land Court and Other Legislation  
Amendment Act 2007**

div hdg ins 2007 No. 39 s 27

**LRT president**s 86 prev s 86 om R1 (see RA s 40)  
pres s 86 ins 2007 No. 39 s 27**LRT deputy president**

s 87 ins 2007 No. 39 s 27

**LRT mining referee**

s 88 ins 2007 No. 39 s 27

**Previous LRT deputy president**

s 89 ins 2007 No. 39 s 27

**Assumption by Land Court of role of warden and Wardens Court under particular  
Acts**

s 90 ins 2007 No. 39 s 27

**Land Court to assume jurisdiction for proceedings already before the LRT**

s 91 ins 2007 No. 39 s 27

**PART 7—CONSEQUENTIAL AMENDMENTS**

pt hdg om R1 (see RA s 40)

**SCHEDULE 1—CONSEQUENTIAL AMENDMENTS**

om R1 (see RA s 40)

**SCHEDULE 2—DICTIONARY**def “**Commonwealth Native Title Act**” ins 2007 No. 39 s 28def “**cultural heritage division**” ins 2007 No. 39 s 28def “**general division**” ins 2007 No. 39 s 28def “**Judges Pensions Act**” ins 2007 No. 39 s 28def “**LRT**” ins 2007 No. 39 s 28def “**LRT Act**” ins 2007 No. 39 s 28def “**Mineral Resources Act**” ins 2007 No. 39 s 28