



# Land Court Act 2000

Current as at [Not applicable]

## Indicative reprint note

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Queensland

# Land Court Act 2000

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# Land Court Act 2000

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

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## **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.
- (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 this Act or another 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 this Act or another 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 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.

## **7A Land Court has power of the Supreme Court**

- (1) The Land Court has, for exercising jurisdiction conferred under this Act or another 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.
- (2) Without limiting subsection (1), 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.
- (3) 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.
- (4) Without limiting the things the Land Court may have regard to in deciding whether to make an order under subsection (3), the Land Court may have regard to Aboriginal tradition and Island custom.
- (5) Subsection (1) has 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.

**7B Land Court order may be enforced in Supreme Court**

- (1) An order of the Land Court may be made an order of the Supreme Court and enforced in the Supreme Court.
- (2) For subsection (1), it is enough to file the order in the Supreme Court.

**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
  - (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.

*Note—*

For the power of the Land Court to rehear matters decided by a judicial registrar, see section 31.

- (2) The application must be made within 42 days after the order containing the decision is made, unless a longer period is allowed by the court.
- (3) The Land Court must not grant leave for the matter to be reheard unless satisfied the decision is based wholly or partly on a mistake of fact.
- (4) 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.

## **12A 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 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).
- (6) Despite subsection (1), a proceeding can not be brought in the Land Court for a declaration about whether or not a document that purports to be an objection under the *Land Valuation Act 2010* is a properly made objection under that Act.

## **Division 3                      Composition**

### **13              Composition of Land Court**

The Land Court consists of the president and other members.

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

A single member sitting alone constitutes the Land Court for the exercise of its jurisdiction under this Act or another 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.

## **Division 3AA                      Appointment of president and other members**

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

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

*Notes—*

- 1 For other provisions relating to the appointment of members, see division 9.

- 2 For the privileges, protection and immunity of members, see section 52D.
- (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.
  - (4) Appointment as a member, other than a member appointed under section 17, must be on a full-time basis.
  - (5) A person may be appointed as a member only if the person is a lawyer of at least 5 years standing with extensive experience in 1 or more of the following—
    - (a) land-related matters;
    - (b) mining or petroleum issues;
    - (c) indigenous issues;
    - (d) another matter or issue the Governor in Council considers to have substantial relevance to the duties of a member.
  - (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 the land tribunal as members of the Land Court; and
  - (b) may appoint any other member of the land tribunal as a member of the Land Court.
- (2) A member of the 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 the 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 the land tribunal.
- (4) Subsection (3) does not prevent the reappointment of the person mentioned in the subsection as a member of the Land Court.

#### **17A Powers and responsibilities of president**

- (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.

#### **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 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, including for a function or power conferred on the court under this Act or another Act.

- (2) Without limiting subsection (1), the rules may provide for the procedures of the court or the registry.
- (3) Also, without limiting subsection (1), the rules may provide for the procedures when the court, a member or a judicial registrar is exercising or performing an administrative function, including—
  - (a) rules providing for costs in relation to the exercise or performance of an administrative function; and
  - (b) rules providing for disclosure by persons in relation to the exercise or performance of an administrative function.
- (4) The procedures of the court are governed by the rules.
- (5) The rules may be uniform rules that apply to other courts.
- (6) The rules are subordinate legislation.

## **22 Orders and directions**

- (1) The Land Court may make an order or direction about the conduct of a proceeding in the Land Court.
- (2) The president may make directions of general application about the Land Court's procedures.
- (3) In making an order or direction under this section, the interests of justice are paramount.
- (4) An order or direction made under this section may be inconsistent with a provision of the rules made under section 21.
- (5) If there is an inconsistency between an order or direction made under this section and a provision of the rules made under section 21, the order or direction prevails to the extent of the inconsistency.
- (6) The Land Court or the president may vary or revoke an order or direction made under this section.

## **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 decisions—applications for leave to rehear matters**

- (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.

## **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—
  - (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 5A                      Proceedings**

### **27A        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.

### **27B        Preliminary conference**

- (1) A member or judicial registrar may arrange for each party to a 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 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.

**27C ADR process applies to proceedings started under this part**

- (1) The *Civil Proceedings Act 2011*, part 6 (the **ADR provisions**) applies to proceedings started under this part.
- (2) However, to the extent the cost provisions of the ADR provisions do not provide for a matter, section 27A applies.
- (3) Without limiting subsection (1), for a relevant ADR process—
  - (a) each party to a proceeding who participates in the ADR process must be prepared to identify and discuss the issues in dispute in an attempt to negotiate a settlement; and
  - (b) if a party is represented in the ADR process by a lawyer or agent—
    - (i) the lawyer or agent must have authority to settle the matter or any issue discussed; or
    - (ii) if it is not practicable for the lawyer or agent to have the authority mentioned in subparagraph (i)—the lawyer or agent must have the authority to make a recommendation to the party about settling the matter or any issue discussed.
- (4) In applying the ADR provisions to a proceeding under this part—
  - (a) a reference to a court is taken to be a reference to the Land Court; and
  - (b) definitions and other interpretative provisions of the *Civil Proceedings Act 2011* relevant to the ADR provisions apply.
- (5) In this section—

*relevant ADR process* means an ADR process within the meaning of the *Civil Proceedings Act 2011*, section 39, other than to the extent the section refers to case appraisal.

## **Division 6                      Judicial registrars**

### **Subdivision 1              Appointment of 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.

*Notes—*

- 1 For other provisions relating to the appointment of judicial registrars, see division 10.
  - 2 For the privileges, protection and immunity of judicial registrars, see section 52D.
- (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.

#### **28A              Acting judicial registrars**

- (1) The Governor in Council may appoint a person to act as a judicial registrar—
  - (a) during any period when a judicial registrar is absent from duty or can not, for another reason, perform the functions of a judicial registrar; or



- (b) if the conduct of the business of the Land Court, in the opinion of the Governor in Council, requires the appointment.
- (2) An acting judicial registrar is appointed on a part-time or full-time basis for the term, of not more than 2 years, stated in the person's instrument of appointment.
- (3) The provisions of this Act applying to judicial registrars also apply to an acting judicial registrar to the extent the application is possible.

## **Subdivision 2 Powers of judicial registrars**

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

### **30A 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 this Act or another 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.

### **Subdivision 3      Leave to rehear matters decided by judicial registrars**

#### **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) The party must apply to have the matter reheard within 42 days after the order containing the decision of the judicial registrar is made, unless a longer period is allowed by the court.
- (3) 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.

### **Division 6A      Indigenous assessors**

#### **32A      Indigenous assessors**

- (1) The Governor in Council may appoint indigenous assessors to perform functions for prescribed proceedings to which they are allocated.
- (2) A person is eligible to be appointed as an indigenous assessor only if—
  - (a) the person—
    - (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 prescribed proceeding 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 2008*.
- (4) An indigenous assessor may resign by giving a signed notice of resignation to the Minister.

**32C Allocation of indigenous assessor for a prescribed proceeding**

- (1) The president may allocate an indigenous assessor to a prescribed proceeding 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 prescribed proceeding.

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

- (1) The role of an indigenous assessor for a prescribed proceeding 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 relation to native title and cultural heritage matters**

**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

- (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 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 has jurisdiction—
  - (a) if subsection (1)(c)(i) applies—to mediate the matter under section 27C; 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

- (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 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 a negotiated agreement to the LRT must, if the context permits, be taken to be a reference to the Land Court.
- (4) In this section—

***negotiated agreement*** means 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.
- (2) The Land Court 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).

## **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) for leave of absence to the president—the Chief Justice; or
  - (b) for leave of absence to another member—the president.
- (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 for whom eligible contributions are being paid to the member's chosen fund at the time of the member's appointment as a member, if the member elects to continue to have eligible contributions paid to the member's chosen 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 chief executive; and



- (b) for a member whose chosen fund is the scheme under the State Public Sector Superannuation Act—the board under that Act.
- (4) If a member for whom eligible contributions are being paid to the scheme under the State Public Sector Superannuation Act at the time of the member's appointment as a member does not elect to continue to have eligible contributions paid to the scheme, the member, in relation to the scheme—
  - (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.
- (5) In this section—
  - chosen fund***, for a member, means—
    - (a) the scheme under the State Public Sector Superannuation Act; or
    - (b) another fund to which eligible contributions are paid for the member under the State Public Sector Superannuation Act, section 15D.

***eligible contributions*** means contributions paid at the rate prescribed under the deed for the scheme under the State Public Sector Superannuation Act for employees of a unit of the State public sector as defined under that Act.

***State Public Sector Superannuation Act*** means the *Superannuation (State Public Sector) Act 1990*.

#### **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.
- (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 2008*.

- (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 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 to a person appointed as a judicial registrar or acting judicial registrar if, immediately before the appointment, the person was an employee of a prescribed authority (the *relevant prescribed authority*).
- (2) The person keeps the rights the person has accrued because of employment by a prescribed authority, or that would accrue in the future to the person because of that employment, as if service as a judicial registrar or acting judicial registrar were a continuation of the person's service as an employee of the relevant prescribed authority.
- (3) Subsection (4) applies if the person stops being a judicial registrar or acting judicial registrar, other than because the person is removed from office under section 28(3).

- (4) The person is entitled to be appointed to a position in the relevant prescribed authority at the classification level of the substantive position in which the person was employed at the relevant prescribed authority immediately before the person's appointment as judicial registrar or acting judicial registrar.
- (5) Subsection (6) applies if the person stops being a judicial registrar or acting judicial registrar because the person is appointed to a position in a prescribed authority.
- (6) The person's service as judicial registrar or acting judicial registrar is taken to be service of a like nature with the prescribed authority for working out the person's rights as an employee of the prescribed authority.
- (7) In this section—

***classification level***, at a prescribed authority, includes another level, however described, reflecting seniority at the prescribed authority.

***employee***, of a prescribed authority, means—

- (a) a public service officer employed by the prescribed authority; or
- (b) a police officer employed by the prescribed authority; or
- (c) a person, other than a person mentioned in paragraph (a) or (b) or a person employed on a temporary or casual basis, employed by the prescribed authority.

***prescribed authority*** means—

- (a) a department; or
- (b) the Crime and Corruption Commission; or
- (c) Legal Aid Queensland; or
- (d) the Queensland Police Service; or
- (e) another entity prescribed by regulation.

## **Division 11                      Other officials and registry**

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

- (1) There is to be a 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 2008*.

### **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.
- (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**

- (1) The registrar may delegate the registrar's functions or powers under this Act or another Act to the deputy registrar.
- (2) The registrar may, with the president's approval, delegate the registrar's functions or powers under this Act to an appropriately qualified officer of the Land Court.

### **50A          Associates**

- (1) The president may appoint a person nominated by a member as an associate to the member.
- (2) An associate is to be paid the remuneration and allowances decided by the Governor in Council.

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- (3) An associate holds office on the terms and conditions decided by the Governor in Council.
- (4) An associate is appointed under this Act and not under the *Public Service Act 2008*.

## **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**

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.

# **Division 12 Provisions about recommendatory provisions**

## **52A Meaning of *recommendatory provision***

In this division—

*recommendatory provision* means—

- (a) section 32F; or
- (b) the *Aboriginal Cultural Heritage Act 2003*, part 6, division 5 and part 7, division 6; or
- (c) the *Environmental Protection Act 1994*, chapter 5, part 5, division 3, subdivision 3; or
- (d) the following provisions of the *Mineral Resources Act 1989*—
  - (i) sections 72 and 75 to 78;

- (ii) sections 265, 268 and 269;
- (iii) section 318BC; or
- (e) the *Petroleum and Gas (Production and Safety) Act 2004*, sections 320 and 363I; or
- (f) the *Torres Strait Islander Cultural Heritage Act 2003*, part 6, division 5 and part 7, division 6; or
- (g) another provision of this Act or another Act that confers an administrative function on the Land Court.

## **52B Application of Act**

- (1) The following provisions of this Act apply to the Land Court in the performance of a function conferred on the court under a recommendatory provision, with all necessary changes, as if the performance of the function under the recommendatory provision were a proceeding—
  - (a) section 5;
  - (b) section 7A(2)(a) and (c) and (3);
  - (c) section 9;
  - (d) section 12A;
  - (e) section 16;
  - (f) section 22;
  - (g) section 24;
  - (h) section 25;
  - (i) section 27;
  - (j) section 27B;
  - (k) section 27C, other than to the extent the *Civil Proceedings Act 2011*, part 6 refers to case appraisal;
  - (l) section 42;
  - (m) section 46;
  - (n) section 52.

- (2) For subsection (1), section 27C applies to the Land Court in the performance of a function mentioned in the subsection as if a reference in section 27C(2) to section 27A were a reference to section 52C.
- (3) Sections 32A, 32C and 32D of this Act apply to the Land Court in the performance of a function conferred on the court under the following recommendatory provisions, with all necessary changes, as if the performance of the function under the recommendatory provision were a proceeding—
  - (a) the *Aboriginal Cultural Heritage Act 2003*, part 6, division 5 and part 7, division 6;
  - (b) the *Torres Strait Islander Cultural Heritage Act 2003*, part 6, division 5 and part 7, division 6.
- (4) In this section—  
*performance*, of a function, includes the exercise of a power.

**52C Costs in relation to performing functions and exercising powers under recommendatory provisions**

- (1) This section applies if the Land Court is performing a function conferred on the court under a recommendatory provision.
- (2) Each party to the performance of the function must bear the party's own costs in relation to the performance of the function.
- (3) However, the Land Court may make an order for costs as it considers appropriate if a party has incurred costs in 1 or more of the following circumstances—
  - (a) for the performance of a function in relation to a relevant objection made by a party—the Land Court considers that all or part of the objection—
    - (i) is outside the Land Court's jurisdiction; or
    - (ii) is frivolous or vexatious; or
    - (iii) is an abuse of the Land Court's process;



- (b) a party has not been given reasonable notice of an intention to apply for an adjournment of the performance of the function;
  - (c) a party is required to apply for an adjournment of the performance of the function because of the conduct of another party;
  - (d) without limiting paragraph (c), a party has introduced, or sought to introduce, new material;
  - (e) a party has defaulted in the Land Court's procedural requirements;
  - (f) for a hearing under the *Mineral Resources Act 1989*, section 78 or 268 in relation to an application for the grant of a mining claim or mining lease under that Act—
    - (i) the applicant abandons the application or does not pursue the application at the hearing; or
    - (ii) a party who made an objection to the application under section 71 or 260 of that Act withdraws the objection or does not pursue the objection at the hearing.
- (4) In deciding the amount of costs, the Land Court may have regard to—
- (a) the scale of costs applying to another court; and
  - (b) any other matter the Land Court considers relevant.
- (5) Section 7B applies in relation to an order made under subsection (3).
- (6) In this section—
- perform***, a function, includes exercise a power.
- relevant objection*** means an objection made under—
- (a) the *Aboriginal Cultural Heritage Act 2003*, section 76 or 111; or
  - (b) the *Environmental Protection Act 1994*, section 182; or

- (c) the *Mineral Resources Act 1989*, section 71 or 260; or
- (d) the *Torres Strait Islander Cultural Heritage Act 2003*, section 76 or 111.

## **Division 13                      Miscellaneous**

### **52D      Privileges, protection and immunity**

- (1) A member presiding over a proceeding in the Land Court, or exercising another judicial power, 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 this Act, has the same privileges, protection and immunity as the judicial registrar 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 or the exercise of judicial power by the court, member or judicial registrar were a proceeding in the Supreme Court—
  - (a) a lawyer or agent appearing in the proceeding or before the court, member or registrar;
  - (b) a witness attending in the proceeding or before the court, member or registrar.
- (3) If an administrative function is conferred on the Land Court, a member or judicial registrar, each of the following persons has the same privileges, protection and immunity the person would have if the exercise or performance of the administrative function were a proceeding in the Supreme Court—
  - (a) the member or judicial registrar;
  - (b) a lawyer or agent appearing before the court, member or registrar;

- (c) a witness attending before the court, member or registrar.

## **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 this Act or another 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.

**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.

**57A Costs**

- (1) The Land Appeal Court may order costs for an appeal to the court as it considers appropriate.
- (2) Without limiting subsection (1), the Land Appeal Court may order costs for the proceeding in which the decision appealed against was made, whether or not the court or tribunal that made the decision made, or had power to make, an order for costs for the proceeding.

- (3) If the Land Appeal Court does not make an order under subsection (1), each party to the appeal must bear the party's own costs for the appeal.
- (4) This section is subject to the provisions of this Act or another Act to the contrary.

## **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 land tribunal**

- (1) This section applies to an appeal from a decision of the 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.

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

- (1) This section applies when a question of law is referred to the Land Appeal Court by the 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 the land tribunal, see the *Aboriginal Land Act 1991*, schedule 1.

## **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 this Act or another 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 Central Region of the Supreme Court—the Central Judge, within the meaning of the *Supreme Court of Queensland Act 1991*; and
  - (b) for the Northern Region of the Supreme Court—the Northern Judge, within the meaning of the *Supreme Court of Queensland Act 1991*; and
  - (c) for the Far Northern Region of the Supreme Court—the Far Northern Judge, within the meaning of the *Supreme Court of Queensland Act 1991*.

*Note—*

See the *Supreme Court of Queensland Act 1991*, part 4, division 3.

- (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 region other than the region 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.

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- (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 court may extend the period for serving the notice of appeal under subsection (1).
- (4) 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
- (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 7A to 9, 12A(5), 21 and 22 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.

**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.

**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.

**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

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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.

## **77B Approved forms**

The president may approve forms for use under this Act.

## **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, transitional and validation provisions**

## **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.

**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.

**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

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—

*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—



- (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

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 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—

- (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.

- (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.

## **Division 3                      Transitional and validation provisions for Penalties and Sentences and Other Legislation Amendment Act 2012**

### **92            Definition for div 3**

In this division—

*commencement* means the commencement of this section.

### **93            Validation provision for Land Court Rules 2000**

- (1) Despite the *Statutory Instruments Act 1992*, section 54, the *Land Court Rules 2000*—
  - (a) are taken not to have expired on 1 September 2010; and
  - (b) continue in force until they are repealed under this Act.

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- (2) Anything done, purported to have been done or omitted to be done under the *Land Court Rules 2000* before the commencement has the same effect as it would have had if the *Land Court Rules 2000* had not expired.
- (3) Without limiting subsection (2)—
  - (a) a judgment, order, direction or decision made under the *Land Court Rules 2000* before the commencement is taken to be, and to have always been, made under the *Land Court Rules 2000* as if those rules had not expired; and
  - (b) a right, privilege or liability purportedly acquired, accrued or incurred under the *Land Court Rules 2000* before the commencement is taken to be, and to have always been, a right, privilege or liability acquired, accrued or incurred under the *Land Court Rules 2000* as if those rules had not expired; and
  - (c) a form approved or purported to have been approved under the *Land Court Rules 2000* before the commencement is taken to be, and to have always been, approved under the *Land Court Rules 2000* as if those rules had not expired; and
  - (d) a matter, prescribed under the *Land Court Rules 2000* before the commencement, that a judicial registrar may hear and decide is taken to be, and to have always been, a matter prescribed under the *Land Court Rules 2000* as if those rules had not expired.

#### **94 Transitional provision for approved forms**

- (1) This section applies if, immediately before the commencement, a form was approved for a purpose under the *Land Court Rules 2000*.
- (2) The form is taken to have been approved under section 77B for the purpose.

## **Division 4                      Transitional provision for Mineral and Energy Resources (Common Provisions) Act 2014**

### **95            Pre-amended Act continues to apply for particular negotiated agreements and contract conditions**

- (1) This section applies in relation to a proposed mining lease if, on or after the commencement—
  - (a) a relevant negotiated agreement is obtained; or
  - (b) relevant contract conditions take effect.
- (2) The pre-amended Act continues to apply for the relevant negotiated agreement or relevant contract conditions.
- (3) In this section—

*commencement* means the commencement of this section.

*pre-amended Act* means this Act as in force immediately before the commencement.

*relevant contract conditions* means contract conditions under the pre-amended Act, section 32I(4), definition *contract conditions*, paragraphs (a) and (b).

*relevant negotiated agreement* means a negotiated agreement under the pre-amended Act, section 32G(5), definition *negotiated agreement*, paragraph (a), (b) or (c).

## **Division 5                      Transitional provisions for State Development and Public Works Organisation and Other Legislation Amendment Act 2015**

### **96            Privileges, protection and immunity for powers and functions before commencement**

Section 35 as amended by the *State Development and Public Works Organisation and Other Legislation Amendment Act*

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2015 applies to the exercise or performance of a judicial power or administrative function by the Land Court, a member or a judicial registrar before the commencement as if the power or function were exercised or performed after the commencement.

## **Division 6                      Transitional and saving provisions for Justice and Other Legislation Amendment Act 2019**

### **97            Definitions for division**

In this division—

*former*, for a provision of this Act, means the provision as in force from time to time before the commencement.

*new*, for a provision of this Act, means the provision as in force from the commencement.

### **98            Existing applications for leave to rehear matters**

- (1) This section applies in relation to an application for leave to have a matter reheard made under former section 12, but not decided, before the commencement.
- (2) New section 12 applies in relation to the application.

### **99            Existing directions**

A direction made under former section 22 that was in effect immediately before the commencement continues in effect as if it were made under new section 22.

### **100          Existing performance of function or exercise of power under recommendatory provision**

- (1) This section applies if, before the commencement, the Land Court had started, but not finished, performing a function or



exercising a power conferred on the court under a recommendatory provision.

- (2) Former part 2 continues to apply in relation to the performance of the function or the exercise of the power as if the *Justice and Other Legislation Amendment Bill 2019* had not been enacted.

#### **101 Proceedings and declarations under former s 33**

- (1) A proceeding started under former section 33 before the commencement may continue to be heard and decided by the Land Court under new section 12A.
- (2) A declaration made under former section 33 that was in effect immediately before the commencement is taken to be a declaration made under new section 12A.

## Schedule 2 Dictionary

### section 3

***administrative function*** means an administrative function or power conferred under an Act.

*Examples of an administrative function or power—*

- 1 the Land Court's power to make an objections decision under the *Environmental Protection Act 1994*
- 2 the Land Court's power to make a recommendation in respect of an application for the grant of a mining lease under the *Mineral Resources Act 1989*, section 269

***Chief Justice*** means the Chief Justice of Queensland.

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

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

***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*.

***LRT*** means the Land and Resources Tribunal established under the repealed *Land and Resources Tribunal Act 1999*.

***member*** means a member of the Land Court.

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

***prescribed proceeding***, for part 2, division 6A, means a proceeding of the Land Court under—

- (a) the *Aboriginal and Torres Strait Islander Land Holding Act 2013*; or
- (b) the *Aboriginal Cultural Heritage Act 2003*; or
- (c) the *Torres Strait Islander Cultural Heritage Act 2003*; or
- (d) part 2, division 6B.

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

***recommendatory provision*** see section 52A.

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

***rules***, for part 2, division 6, means the rules of the Land Court made under section 21.