

# **“THE LAND AND RESOURCES TRIBUNAL: AN INTRODUCTION”**

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## ***Introduction***

1. The establishment of any new court or tribunal in Australia is a matter of some note. It is fair to say that the establishment of the Land and Resources Tribunal (LRT) of Queensland was no exception.

## ***Establishment***

2. The LRT was established by Queensland legislation passed in March 1999.<sup>1</sup> It is significant that the legislation had general bipartisan support in State Parliament.
3. The LRT was established to provide a single forum with streamlined, informal and practical processes to deal with all issues in dispute in relation to proposed resource development and other land management issues. It is also the independent State body envisaged under the *Native Title Act 1993* (Cth) (*NTA*).

## ***Jurisdiction***

4. The jurisdiction of the LRT is conferred under the *LRT Act* and other legislation.<sup>2</sup>
5. The *LRT Act*-conferred jurisdiction is as follows:
  - 5.1 As the independent body required under the *NTA*, to hear objections by native title claimants or bodies corporate to the doing of certain acts.<sup>3</sup>
  - 5.2 Exclusive jurisdiction to enforce and interpret negotiated agreements about native title and mining.<sup>4</sup>
  - 5.3 Exclusive jurisdiction to grant an injunction to stop acts which would contravene legislation<sup>5</sup> protecting, preserving or allowing access to items, places or areas of indigenous cultural significance.<sup>6</sup>

6. The jurisdiction conferred by other legislation is presently as follows:
  - 6.1 Various provisions of the *Mineral Resources Act 1989* (Qld) (*MRA*) which set out the role of the LRT to hear native title objections.
  - 6.2 The functions previously undertaken by the Wardens Court under the *MRA*.<sup>7</sup> That involves hearing applications for mining tenements and recommending to the Minister whether a grant should be made.
7. The major part of the tribunal's native title jurisdiction is contingent upon the Commonwealth Attorney-General's approval of the Queensland alternative State provisions (ASPs) scheme and related legislation.<sup>8</sup> The *NTA* authorises exceptions to and exclusions from the right to negotiate, with respect to certain future acts, if various conditions are met.<sup>9</sup> The Queensland scheme is based on that.<sup>10</sup> As will be appreciated, any Commonwealth approval is also a disallowable instrument.<sup>11</sup>
8. However the operation of one aspect of the tribunal's native title jurisdiction is not dependent upon Commonwealth approval. That concerns hearing objections and making determinations when native title rights and interests are compulsorily acquired by the State for a significant infrastructure facility for a third party.<sup>12</sup> The LRT is the independent body for those purposes.<sup>13</sup>
9. The LRT will not have jurisdiction to determine native title claims. That remains the function of (principally) the Federal Court.

### ***Independence***

10. The LRT is an independent body. The *LRT Act* emphasises that independence by providing that it is not subject to the direction of the Minister.<sup>14</sup>

### ***Members***

11. The members of the LRT consist of presiding members and non-presiding members.<sup>15</sup>
12. The presiding members are the president and 2 or more deputy presidents.<sup>16</sup> The president is at a level equivalent to a Supreme Court judge.<sup>17</sup> Deputy presidents are at a level equivalent to District Court judges.<sup>18</sup> Presiding members must be lawyers who have particular knowledge or experience of indigenous issues and mining or land issues.<sup>19</sup> They are appointed until age 70.<sup>20</sup>
13. The non-presiding members consist of various categories. Members of the Land Court and the Land Tribunal are ex-officio members. Their experience and expertise will be particularly useful in a variety of matters. The other non-presiding members are appointed non-presiding members and referee non-presiding members.<sup>21</sup> They must have extensive prescribed qualifications and experience and are appointed for not more than 5 years.<sup>22</sup> Only the referee members are appointed on a full-time basis.<sup>23</sup>

14. There are 3 categories of referee non-presiding members—mining, mediation and indigenous issues. The mining and mediation referees must be lawyers with experience in those particular fields.<sup>24</sup> The indigenous issues referee must have experience in fields such as cultural heritage and indigenous issues, academia or management.<sup>25</sup>
15. The referees will play a very important role. The mining referee replaces the previous position of mining warden—a very busy job. The mediation referee will oversee the tribunal’s extensive mediation role. That is consistent with the attempt which we will make to resolve matters by mutual agreement rather than by having a result imposed on the parties by the tribunal. The indigenous issues referee will have a key role in advising the president and deputy presidents about cultural heritage and indigenous issues. That will be particularly important for the proper functioning of the tribunal.
16. Members are not allowed to hold an interest in a mining tenement.<sup>26</sup> Members must also disclose any conflicts of interest.<sup>27</sup>
17. The *LRT Act* contains detailed provisions about who can sit on particular matters. In some cases, it must be the mining referee or a Land Court non-presiding member or a presiding member.<sup>28</sup> In other cases, it must be a panel (which in some cases will include a member of the National Native Title Tribunal).<sup>29</sup> A panel consists of a prescribed combination of at least 3 members.<sup>30</sup> The president determines the persons to sit.<sup>31</sup> When assembling a panel, the president must have regard to the public importance or complexity of the matter and the need for promptness and efficiency.<sup>32</sup> When sitting on a panel, the non-presiding member’s role is to advise the presiding member about relevant matters within his or her knowledge or experience and to help in the conduct of the proceeding in a way the presiding member considers appropriate.<sup>33</sup> Only the presiding members have voting rights on a panel.<sup>34</sup> But the non-presiding members’ role is very important and will undoubtedly assist in the decision-making process.
18. Appeals are available only on a question of law.<sup>35</sup> Appeals from a panel or the president go to the Court of Appeal,<sup>36</sup> but some other appeals are to the president sitting alone.<sup>37</sup>

### *Sittings*

19. The LRT will be based in Brisbane, but as a routine part of our operation, we will sit in regional centres and other places as required. We propose to be a hands-on operation and users can be assured that they will see a lot of us around the State.

*Procedure*

20. Since my appointment last December, I have engaged in detailed consultation with a large number of user groups about the procedures which would be best suited for the LRT. That process has been extremely useful, and I congratulate all participants on the constructive approach which has been adopted. Information and feedback sessions with various user groups have already occurred and more are planned for country areas. All of this enables our user groups to meaningfully participate in the development of the jurisdiction.
21. The procedure that we have in mind is that all applications to the tribunal will be commenced by the use of an application form. In some cases, one would no doubt expect Aboriginal or Torres Strait Islander people with a relevant interest to be the applicant party. In other cases, non-indigenous people, companies or government departments may be the applicant party. It will all depend upon what it is that the moving party wants to achieve by starting a matter in the tribunal.
22. Once the application is filed, we will usually schedule a directions hearing, where all future steps in the matter can be discussed and timetabled. That may occur by telephone—and at some future stage, I hope, by video. It is important for me to emphasise that matters will not be permitted to drift along aimlessly.
23. Given the nature of the jurisdiction, the anticipated workload and the statutory obligation to act as quickly as possible,<sup>38</sup> and bearing in mind the success which has been achieved in other jurisdictions by the routine use of directions hearings, it has been generally accepted that an active case management approach would be best suited. That is how we propose to act.
24. Procedures must, of course, be adaptable and flexible so as to suit the circumstances of particular cases.<sup>39</sup> Urgent matters will receive urgent attention. The normally public hearings could be closed to hear culturally sensitive evidence or if it is in the interests of justice.<sup>40</sup> Significantly, the LRT is not bound by the rules of evidence.<sup>41</sup> That permits additional flexibility. Naturally, the tribunal must observe natural justice.<sup>42</sup> Although lawyers can appear for people, that is not compulsory. Parties can therefore act for themselves or be assisted by an agent or friend.<sup>43</sup>
25. For exercising its jurisdiction, the LRT will have all of the powers of the Supreme Court.<sup>44</sup> It will have short LRT-specific rules and forms. Our practice and procedure will be heavily (and intentionally) case managed, with resort being made to the practice and procedure of the Supreme Court where appropriate.<sup>45</sup> However, in the absence of special circumstances, each party will normally bear their own costs.<sup>46</sup>
26. Consistently with the legislative requirement for minimal formality and technicality,<sup>47</sup> and having regard to a variety of other considerations, I have

already directed that legal wigs and gowns will not be worn in the tribunal. I am pleased to say that that decision has received widespread approval.

27. LRT decisions will be publicly available,<sup>48</sup> including on the internet. It is also important that our decisions are able to be easily accessed for precedent purposes.
28. The LRT is committed to modern, effective and pro-active client service for the new millennium and is embracing state of the art technology to accomplish this commitment. The tribunal is moving towards being fully electronic, giving wider access through the use of the internet and intranet facilities. Technology employed by the tribunal will allow electronic filing and storage of documents and will facilitate electronic access to public information by all tribunal users, regardless of their level of technical sophistication. The LRT aims to be at the forefront of technological advancement for the justice system, but at the same time will offer a high standard of personal service for those who prefer it.
29. Mediation will be a key part of the LRT's operation.<sup>49</sup> We envisage accrediting specialist mediators to assist with the provision of these services. We have already commenced discussions with user groups about this process. I invite all interested persons (including residents of other States) to contact the Acting Registrar (Ms Kateena Ryan) for relevant details.
30. The tribunal will be supported by staff who, I am proud to acknowledge, have impressed me immensely. They are encouraged to be knowledgeable about all stakeholders and are committed to the principles of accessibility and co-operative development of the practices of the jurisdiction. Regular meetings with stakeholders will be held to ensure that we maintain a user-friendly and informed environment.
31. I also stress that the LRT will respect the interests of all stakeholders. This is a very important part of being a completely independent and fair body.

### ***Conclusion***

32. The establishment of the Land and Resources Tribunal heralds a new approach to the topical issues which fall within our jurisdiction. Our focus will be accessibility and informality of process, balanced with efficient service provision. We approach our challenging task with enthusiasm and with the widespread goodwill of stakeholders.

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<sup>1</sup> *Land and Resources Tribunal Act 1999 (Qld) (LRT Act)*, s.4.

<sup>2</sup> *Ibid.*, s.51(1).

<sup>3</sup> *Ibid.*, s.51A.

<sup>4</sup> *Ibid.*, s.52. The types of agreements are identified in Schedule 2 to the *LRT Act*.

<sup>5</sup> Such as s.56 of the *Cultural Record (Landscapes Queensland and Queensland Estate) Act 1987 (Qld)*.

- 6 *LRT Act*, s.53.
- 7 *Ibid.*, s.87, Schedule 3 (amendments to *MRA*).
- 8 See *Native Title (Queensland) State Provisions Amendment Act (No. 2) 1998 (Qld)*.
- 9 Relevantly, ss.26A, 26B, 43, 43A.
- 10 *Native Title (Queensland) State Provisions Amendment Bill (No. 2) 1998 Explanatory Notes*, p.1.
- 11 *NTA*, ss.43A(1)(b), 214; *Acts Interpretation Act 1901 (Cth)*, ss.46A, 48-50.
- 12 *NTA*, s.24MD(6B).
- 13 *State Development and Public Works Organisation Act 1971 (Qld)*, s.78B(1)(c).
- 14 *LRT Act*, s.5. The president must also prepare an annual report to the Minister for tabling in Parliament:  
s.78.
- 15 *Ibid.*, s.6.
- 16 *Ibid.*, s.7(1).
- 17 *Ibid.*, s.10(1).
- 18 *Ibid.*, s.10(2).
- 19 *Ibid.*, s.8(1)(b).
- 20 *Ibid.*, s.9(1).
- 21 *Ibid.*, s.15(1).
- 22 *Ibid.*, s.22(2).
- 23 *Ibid.*, s.16(2)(b).
- 24 *Ibid.*, s.18(1) & (2).
- 25 *Ibid.*, s.18(3).
- 26 *Ibid.*, s.26.
- 27 *Ibid.*, s.27.
- 28 *Ibid.*, s.40(1), Schedule 1.
- 29 *Ibid.*, ss.39, 40, 42.
- 30 *Ibid.*
- 31 *Ibid.*, s.40(2).
- 32 *Ibid.*, s.39(4).
- 33 *Ibid.*, s.41(4).
- 34 *Ibid.*, s.41(2).
- 35 *Ibid.*, s.67(1).
- 36 *Ibid.*, s.67(2)(b).
- 37 *Ibid.*, s.67(2)(a).
- 38 *Ibid.*, s.49(1)(b). Time deadlines are also imposed by the *MRA*: see ss.454, 500, 547, 580, 613, 645.
- 39 As to the interaction with case management principles, see *State of Queensland v. J. L. Holdings Pty Ltd* (1997) 189 CLR 146.
- 40 *LRT Act*, s.48(3).
- 41 *Ibid.*, s.49(2)(a).
- 42 *Ibid.*, s.49(1)(a).
- 43 *Ibid.*, s.47.
- 44 *Ibid.*, s.65(1).
- 45 *Ibid.*, s.65(5).
- 46 *Ibid.*, s.50.
- 47 *Ibid.*, s.49(1)(b).
- 48 *Ibid.*, s.55(d).
- 49 *Ibid.*, s.71ff; *MRA*, ss.493(2)(b), 540(2)(b), 594(2)(a)(ii).