



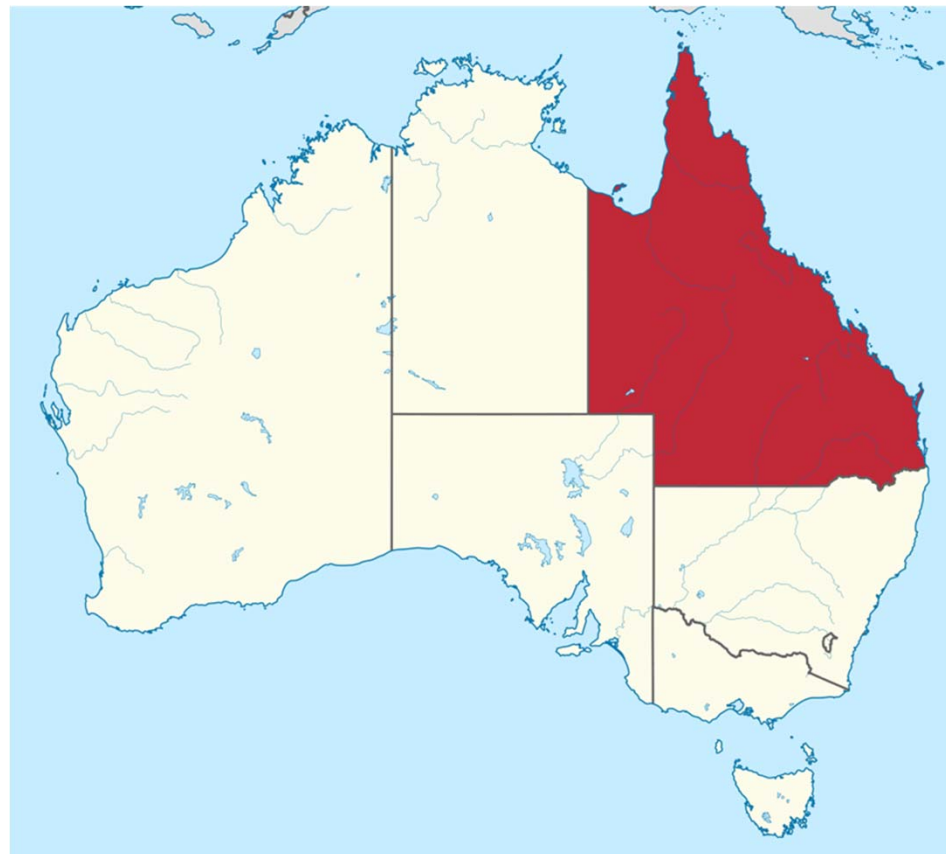
# The Planning and Environmental Court of Queensland

HIS HONOUR MICHAEL RACKEMANN

# Queensland



## The Sunshine State



# Queensland



**Area:** 1.73 million square kilometres (668,000 square miles)

Same size as Alaska

**Population:** 5 million (approx.) and growing

**Capital City:** Brisbane – Population: 2.5 million (approx.)

**Climate:** Tropical and subtropical

**Fauna/Flora:** Rich biodiversity

- 13,000 native plant species

- majority of Australia's native fauna species

# Planning and Environment Court



## Creation & History

- 21 December 1965** – created as the Local Government Court
- 20 January 1966** – first Judge appointed
- 15 March 1991** – name changed to Planning and Environment Court

**Thereafter** – continued under successive statutory regimes – most recently the *Planning and Environment Court Act 2016*

# Planning and Environment Court



## Constitution & Structure

- Constituted by Judges – appointed with security of tenure
- Associated with the District Court of Queensland (a court of ordinary civil and criminal jurisdiction)
  - All P&E Court Judges also sit in the District Court, but
  - Other District Court Judges do not sit in the P&E Court
- Benefits of association with the District Court:
  - Regional presence
  - Shared use of court resources (budget savings)
  - Flexible deployment of judicial resources
  - Remaining in touch with judicial norms

# Planning and Environment Court



## Jurisdiction

- Jurisdiction given under any statute e.g.
  - Environmental Protection Act
  - Nature Conservation Act
  - Planning Act
- Proceedings include:
  - appeals by hearing anew – full merits review
  - applications for declarations and orders about declarations
  - applications for enforcement orders or interim enforcement orders to restrain or remedy an offence
  - other appeals & applications
  - contempt of Court
- Environmental issues arise
  - in environment specific proceedings, or
  - as an issue in other proceedings e.g. about whether a development application should be approved – such applications are referred to all agencies with relevant jurisdiction

# Planning and Environment Court



## Disposition of caseload

- Approx. 500 cases per year
- Vast majority resolve without any final contested hearing
- What is different about an environmental dispute?
  - Subject matter
  - Parties
  - Range of interests
  - Relevance beyond the parties
  - Types and range of considerations
  - Future focus
  - Importance of scientific expertise
- Response – active list supervision and individual judicial case management aimed at informed, efficient, expeditious, just and satisfactory resolution of the issues by agreement or determination without undue delay, expense or legal technicality

# Planning and Environment Court



## Key elements of case management

- Active list supervision
  - Cases not permitted to languish
- Individual case management
  - by Judges at review hearings
- Simplicity and flexibility
  - Pre-trial steps governed more by judicial directions tailored for each case than by overreliance on rules
- Alternative Dispute Resolution
  - Directions ordinarily include a dispute resolution plan, most often using the Court's free in-house mediation service provided by the ADR registrar
- Problem solving approach

# Planning and Environment Court



## Management of experts

- Experts are crucial in most environmental cases
- Experts are managed from an early stage
- P&E Court permits the parties to appoint the experts, but manages the process so that professional objectivity is required and protected and the parties and the Court have the benefit of the experts joint endeavour.
  - The experts meet in the absence of the parties or their lawyers
  - The experts prepare a joint report without reference to the parties or their lawyers
  - The joint report often informs the dispute resolution process and the experts will often attend, with the parties and their lawyers, at a mediation or without prejudice conference to assist in finding ways to address issues
  - If the matter proceeds to trial the experts may prepare individual statements and give evidence about any area of disagreement
  - The evidence of experts is usually heard in “blocks” of those with like expertise, but other options are available

# Planning and Environment Court



## **Without fear or favour – a dispassionate approach**

- The competing pressures on environmental courts
- The dangers of “cause judging”
- The importance of principled decision making
- The P&E Court’s approach to ecological sustainability

# Planning and Environment Court



What is success for an  
environmental court?

# Planning and Environment Court



## Further reference material

### Court website

<https://www.courts.qld.gov.au/courts/planning-and-environment-court>

### Statute and Court Rules

*Planning and Environment Court Act 2016 –*

<https://www.legislation.qld.gov.au/view/html/inforce/current/act-2016-026>

*Planning and Environment Court Rules 2018 –*

<https://www.legislation.qld.gov.au/view/html/inforce/current/sl-2018-0067>

# Planning and Environment Court



## Further reference material (cont.)

### Papers

#### - As to the P&E Court generally:

M Rackemann DCJ, 'Environmental decision-making, the rule of law and environmental justice' [2011] Resource Management Theory and Practice 37

M Rackemann DCJ 'The Planning and Environment Court – changing faces, longevity and a stable core' – QELA conference 15/5/15

#### - As to the management of experts:

ME Rackemann DCJ, 'The Management of Experts' (2012) 21 Journal of Judicial Administration 168

#### - As to the importance of impartial objectivity:

M Rackemann DCJ, 'How green is my ECT? The challenge of impartial objectivity' 29(2-3) *Environmental Law & Management* 88 – *Symposium on Environmental Adjudication in the 21<sup>st</sup> Century*, Auckland, New Zealand, 11 April 2017

Link to all papers: <https://www.sclqld.org.au/judicial-papers/judicial-profiles/profiles/merackemann/papers>