

compensation or compensation trust decision for the registered native title party under Pt 18 *Mineral Resources Act 1989* (MRA).

Access Agreement

The MRA does not prescribe matters that must be included in an access agreement, although s 489A sets out a number of provisions that may be included. The Tribunal explained that it is a question of determining what is appropriate in all of the circumstances. The Tribunal determined that the scope and wording of the proposed access agreement in each case was appropriate for the purposes of s 491A, MRA.

Compensation

As there had not yet been a native title determination by the Federal Court in either case, the Tribunal was required to make compensation trust decisions. There was no evidence before the Tribunal in either case demonstrating the effect on the claimed native title rights and interests by the applicants' proposed activities. The Tribunal therefore determined the compensation trust decision as nil in each case.

NEW LAND AND ENVIRONMENT COURT FOR QUEENSLAND*

The Queensland Attorney-General announced on 18 August 2004 that three existing Queensland bodies would be merged to create a new "one-stop shop to hear and determine planning appeals and related land use issues".¹ The new Land and Environment Court will amalgamate the Planning and Environment Court, the Land Court and the Land and Resources Tribunal.

Currently, the Planning and Environment Court (P&E Court) is constituted under the *Integrated Planning Act 1997*, although it was originally formed in 1990 under the *Local Government (Planning and Environment) Act 1990*. The P&E Court comprises judges of the District Court, with just under half of all District Court judges holding commissions to the P&E Court.² The P&E Court's primary jurisdiction is under the *Integrated Planning Act 1997* and the *Environmental Protection Act 1994*. It hears applications and appeals relating to local government decisions about development applications and approvals, as well as a broad environmental jurisdiction.

The Land Court is constituted under the *Land Court Act 2000*, although it first came into being under the *Land Act 1897*. There are thirty-five (35) State Acts which confer jurisdiction on the Land Court, but the main focus of the Court is dealing with appeals against valuations under the *Valuation of Land Act 1944*, disputed claims for compensation under the *Acquisition of Land Act 1967*, appeals against decisions in relation to waterworks licensing in terms of the *Water Act 2000* and appeals against Ministerial decisions pursuant to the *Land Act 1994*.

The Land and Resources Tribunal was created by the *Land and Resources Tribunal Act 1999*, assuming the jurisdiction of the Wardens Court and becoming the State's independent body for the purposes of the Commonwealth *Native Title Act 1993*. The Tribunal's primary jurisdiction is in

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¹ *Queensland Hansard*, 18 August 2004, p 1872-3.

² See District Court of Queensland Annual Report 2002/2003.

mining law, but it also includes matters such as cultural heritage and petroleum and it was slated to take on jurisdiction under the *Geothermal Exploration Act 2004*.

The Attorney-General's announcement states that the new Land and Environment Court "will be user-friendly and more accessible and there will be an emphasis on mediation to resolve disputes".³ It is expected that District Court judges will hear the more complex cases in the new Court, with judicial assessors taking on the remainder of the workload. No date for the establishment of the new Court has been set at this stage.

SOUTH AUSTRALIA

WATER RESOURCES – POWER OF COURT TO EXCUSE BREACHES OF ACT*

Simes v Minister for Environment and Conservation ([2004] SASC 84; 88 SASR 175, Supreme Court of South Australia (FC))

Underground water – "Existing user" – Failure to comply – Prescribed wells – Water Resources Act 1997 (SA) – Environment Resources and Development Court Act 1993 (SA)

This case concerns the rights of an "existing user" under the *Water Resources Act 1997* (SA) even though that person had not applied for a licence within the prescribed time. The case also examines s 33 of the *Environment Resources and Development Court Act 1993* (SA) which allows the Court to excuse a failure to comply with a requirement of that Act and other acts.

Facts

The appellant had used underground water from a bore on his land at Kangarilla for the irrigation of pasture and vines since 1991. At that time the wells in the area were not prescribed wells. On 24 December 1998 all existing wells in the area became prescribed wells. The consequence of that prescription was that under the *Water Resources Act 1997* (SA) (the Act), existing users as defined in s 36 of the Act were able to continue to use water without a licence until the end of the prescribed period (1 July 2000) or if a licence is applied for within six months after the publication in the Gazette of the regulation declaring the resource to be a prescribed resource. Section 36(11) of the Act provided that a person ceases to be an existing user if he or she does not apply for a water licence within that six-month period. The appellant was not identified as an existing irrigator and was not notified of a moratorium, nor offered an authorisation to take water. The appellant did not apply for a water licence until 12 December 2002.

The application was treated as an application under the general licence provisions of the Act to be determined in accordance with s 35 of the Act. The Minister declined to issue a licence with a water allocation based on the appellant's pre-existing use. On appeal to the Environment Resources and Development Court (the ERDC) the appellant asserted that he had a right of appeal under s 36(6) alleging that the Minister had refused a water application to which he claimed to be entitled under s 36(2). The ERDC declared that the appellant was not an existing user within the meaning of s 36 of the Act and the appellant appealed to the Supreme Court.

³ See: <http://statements.cabinet.qld.gov.au/cgi-bin/display-statement.pl?id=2746&db=media>.

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