

**From:** [Redlands Electorate Office](#)  
**To:** [Legal Affairs and Community Safety Committee](#); [Attorney-General and Minister for Justice](#); [Ipswich Electorate Office](#)  
**Subject:** FW: Attention Peter - S 65 Land Court Act  
**Date:** Friday, 19 July 2013 2:04:04 PM  
**Importance:** High

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Kind regards

*Lisa Horan*

**Electorate Officer** for  
Peter Dowling MP - Member for Redlands  
Chairman Ethics Committee  
Member Parliamentary Crime and Misconduct Committee

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**From:** Ian Neil [REDACTED]  
**Sent:** Saturday, 15 June 2013 10:22 AM  
**To:** Redlands Electorate Office  
**Subject:** Attention Peter - S 65 Land Court Act  
**Importance:** High

Good morning Peter.

As discussed last night, I would be extremely grateful if you could put the following submission to the Honourable A-G Jarrod Bleijie in relation to the Justice and Other Legislation Amendment Bill which was introduced into Parliament on 5 June 2013. I understand that the Bill has been sent to a Committee for consideration and is likely to be presented to Parliament for debate in the near future.

Of particular relevance to us is Clause 118 of the Bill which was prepared and presented, I believe, by the Land Court itself whereby it is seeking an amendment to S.65 of the Land Court Act to remedy future situations such as that which has arisen in a recent Land Court matter. The existing S. 65 is worded in a most peculiar way, quite differently to any other similar provisions of legislation, whereby any party intending to appeal a Land Court decision must, within 45 days of the decision, "*serve notice of appeal*" on all relevant parties, and on the Registrar of the Land Court. This is peculiar in that all other legislation that I am aware of simply state that an appeal must be FILED within a certain period of time (thereby activating the appeal Court's jurisdiction) and then served at some future time on the relevant parties.

As an aside, S. 57 (Powers of the Land Appeal Court) of the Act gives the Land Appeal Court discretion "*to make an Order the considers appropriate*", and S. 7 (Land Court to be Guided by

Equity and Good Conscience) requires the Land Court (and thereby the Land Appeal Court) “to act according to equity, good conscience and the substantial merits of the case without regard to legal technicalities ....”

#### **History of Court matter leading to the Bill:**

Without going into too much detail, the circumstances in which the Land Court has apparently seen fit to seek an amendment of the legislation are as follows:

In 2003 Brisbane City Council resumed a large part of the private land of Mr and Mrs Hope at Greencamp Road, Wakerley. An extraordinarily protracted Court case ensued in the Land Court. The Hopes were pursuing compensation of \$750,000, on expert assessment of their entitlement, and BCC offered only \$150,000. Because the Court case took so long and became extremely complicated, our firm and the Hopes’ Barrister Andrew Skoien, offered to continue the case on a “no win, no fee” basis (and no premium added if they did win). Ultimately, the Land Court decided in their favour, but only to the extent of \$235,000. We believe that assessment of the compensation was entirely inadequate. Consequently an appeal was filed against the decision, seeking more appropriate compensation.

#### **The Problem:**

The Hopes’ appeal to the Land Appeal Court was filed on the last day for filing an appeal ie the 45<sup>th</sup> day. In all other jurisdictions, that would be all that is required to activate the Court’s jurisdiction. Even then in all other jurisdictions (so far as I am aware), the Court will have a discretion to allow for any late filing or late service. It is only the Limitation of Actions Act 1974 that has ABSOLUTE time limits (and even then allowances can be made).

However, the Appeal, having been filed on the 45<sup>th</sup> day (ie in time), was not served on BCC until around lunch time the next day. BCC took issue with that minor delay, despite acknowledging that it had not been prejudiced in any way. The Land Appeal Court recently held that it did not have the discretion to excuse the half day delay, despite the absence of any prejudice to BCC and despite what we say is the clear wording and intent of Sections 7 and 57 of the Act and despite the clear wording of Section 65. The Court struck out the Hopes’ appeal. The Hopes have appealed to the Queensland Court of Appeal and that matter was heard on 23 May. A decision is pending.

**So, the Land Court has apparently taken action to overcome the flaws in the wording of S.65 and the unfair consequences that might arise, especially in light of the Land Appeal Court’s ruling that a party’s rights might be lost simply because the appeal was not served in the time prescribed (even where it was filed in time!). Hence, the proposed amendments to S.65.**

**But the proposed amendments have not been given any retrospective consideration. Consequently, whilst the Court has seen fit to rectify the situation for the future, that will not overcome the Hopes’ predicament (assuming the Court of Appeal finds against them, as did the Land Appeal Court). This entirely unjust situation can be simply overcome by a retrospective operation given to the amendment of S.65. This is apparently the only case where the issue has been raised, so there is no question of a “floodgates” problem or unforeseen consequences for other Court proceedings.**

The circumstances of the matter, or at least its history, are quite convoluted, but I trust I have

made the above summary comprehensible. Of course if any further detail is required, or a personal representation, I would be happy to do so.

**Can you please make representation to the A-G to consider inserting a retrospective operation into Clause 118 of the Bill.**

Regards

Ian Neil

Litigation Director      McCarthy Durie Lawyers

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