

<b>Booth v Bosworth [2001] FCA 1453</b>
<i>Application for injunction under the Environment Protection and Biodiversity Conservation Act 1999 (Cth) – The Flying Fox Case</i>
by <b>Chris McGrath</b> , Barrister-at-Law

In the first full trial under the *Environment Protection and Biodiversity Conservation Act 1999 (Cth)* ("EPBC Act"), Booth v Bosworth [2001] FCA 1453 ("the Flying Fox Case"), Justice Branson of the Federal Court has decided to grant an injunction restraining an action found to be causing a significant impact on the world heritage values of the Wet Tropics World Heritage Area.<sup>1</sup> The case is a crucial test of the new offence provisions for matters of national environmental significance under the EPBC Act and a landmark case highlighting the importance of open standing for public interest litigation to protect the environment.

The Flying Fox Case involved an application by a conservationist to restrain the mass culling of Spectacled Flying Foxes (*Pteropus conspicillatus*) by a large aerial electric grid on a 60ha lychee farm in north Queensland, adjacent to the Wet Tropics World Heritage Area. The electric grid consisted of 20 horizontal electrified wires, spaced 25cm apart, strung between poles at 4–9m height (slightly above tree-top level), with 14 grid lines stretching for 470–820m in length, a total of 6.4km of grid lines. When flying foxes collide with any two of the wires (which are alternated earth – live), they create a circuit and are electrocuted by a high voltage current.

In deciding to grant the injunction, Justice Branson found:

- The operation of the electric grid killed in the order of 18,000 Spectacled Flying Foxes in the 2000–2001 lychee season, of which 9,900–10,800 were females.
- In early November 2000 the total Australian population of Spectacled Flying Foxes did not exceed 100,000.
- The operation of the electric grid in the 2000–2001 lychee season killed roughly 20% of the Australian population of Spectacled Flying Foxes.
- Unless restrained the future operation of the electric grid would continue to cause the death of comparable numbers of Spectacled Flying Foxes subject only to this species becoming increasingly rare in those areas of Australia from which flying foxes may be attracted to the farm.
- The Spectacled Flying Fox is part of the world heritage values of the Wet Tropics World Heritage Area.
- The operation of the electric grid in the 2000–2001 lychee season had a significant impact on the population of Spectacled Flying Foxes.
- The probable impact of the operation of the electric grid, if allowed to continue on an annual basis during future lychee seasons, will be an ongoing dramatic decline in the Spectacled Flying Fox population leading to a halving of the population of Spectacled Flying Foxes in less than five (5) years, which would render the Spectacled Flying Fox an endangered species in the Wet Tropics World Heritage Area.

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1. The judgment is available at <[www.federalcourt.gov.au](http://www.federalcourt.gov.au)>. See also C McGrath, 'Casenote: Booth v Bosworth' (2001) 18 (1) EPLJ 23 in relation to an earlier interim injunction in the case.

- The continued operation of the electric grid will have, or is likely to have, a significant impact on the world heritage values of the Wet Tropics World Heritage Area.

The decision clarifies a number of crucial issues for the operation of the EPBC Act. Justice Branson found that a “significant impact” was an “impact that was important, notable or of consequence having regard to its context or intensity”. Her Honour also made an important analysis of the meaning of “world heritage values”.

A further important aspect of the case is that it establishes that an action taken outside a World Heritage area can be regulated under the EPBC Act if it has, will have or is likely to have a significant impact on world heritage values.<sup>2</sup>

Finally, one wider political and administrative aspect of the case that is not found in the judgment is the challenge that the case makes to the role that politics play in the prosecution of environmental offences and listing of threatened species, particularly where agricultural interests are involved. The background of the case indicates that both State and Federal regulators, who refused to take action to halt the operation of the electric grid, suffer from systemic issues of regulatory capture for agriculture. It is disturbing to note that the electric grid the subject of this case had been operated for 15 years with the tacit approval of the Queensland Parks and Wildlife Service (“QPWS”) prior to the injunction being sought.

However, despite its earlier actions, apparently over many years, in acquiescing to the practice of mass culling of flying foxes by fruit growers, the Honourable Dean Wells MLA, Queensland Minister for Environment and Heritage, has recently announced that QPWS will no longer issue damage mitigation permits under the Nature Conservation Regulation 1994 (Qld) for the operation of electric grids, effectively outlawing their operation.<sup>3</sup> Provided this public stance is backed by on-the-ground enforcement, the operation of these electric grids appears destined to cease.

2. This aspect would apply equally to Ramsar wetlands.

3. D Wells, Queensland Parliamentary Hansard, 8 August 2001, pp 2331-2333.