

ENVIRONMENTAL LAW

CASE NOTES



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SAMPLE

***Booth v Bosworth and Anor* [2001] FCA 1453**

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Court details: Federal Court of Australia (Branson J)

Procedural history: Application for an injunction under the *Environment Protection and Biodiversity Conservation Act 1999* (Cth). An earlier application for an interim injunction had been unsuccessful

Facts:

- The respondents operated a lychee farm in North Queensland, near the 'Wet Tropics World Heritage Area'.
- In order to keep flying foxes, including Spectacled Flying Foxes, from eating their lychees, they had constructed an electric grid, which electrocuted and killed the flying foxes.
- The applicant held a PhD in biological science and was a research assistant with the Queensland Conservation Council, with a particular interest in flying foxes.
- The applicant sought a prohibitory injunction under s475 (2) of the *Environmental Protection and Biodiversity Conservation Act 1999* (Cth), restraining the respondents from killing the flying foxes.
- Additionally, they sought an additional order under s475 (3) of the Act compelling the demolition of an electric grid that has been erected at the respondents' orchard.
- It was not disputed by the respondents that the operation of the grid constituted an action under the Act, or that the Wet Tropics World Heritage Area was a declared world heritage area.

Issues:

The relevant section of the *Environmental Protection and Biodiversity Conservation Act 1999* (Cth), s475 (1), provided that 'if a person engaged or proposed to engage in an act or omission that might constitute an offence or other contravention of the Act, an interested person could apply to the Federal Court for an injunction'.

This was the first case decided under the more relaxed rules concerning standing as set out in the Act. Accordingly, the question of whether the applicant Dr Booth was an 'interested person' within the meaning of s475 (6) of the Act, was an important issue in this case.

In addition to the question of standing, the Court needed to consider whether the flying foxes contributed to the world heritage values of the heritage area and whether the operation of the grid had a significant impact on this as defined in s12 of the Act.

Reasoning / Decision (Commentary):

The respondents did not dispute that the applicant was an interested party, so the Court did not consider this point and it was accepted that the applicant had standing.

Based on evidence provided by the applicant, the Court was satisfied that flying foxes had been killed by the electric grid. There was some discussion of the significance of the respondents failing to offer evidence on this issue, but as this is an evidentiary point and not an environmental law issue, it will not be considered in this summary.

Based on the evidence provided, the Court determined that approximately 18,000 flying foxes were killed as a result of the electric grid in the 2000-2001 lychee season and that it was reasonable to expect that a comparable number would be killed each season.

It was determined that the majority of Australia's Spectacled Flying Fox population resided in the Wet Tropics World Heritage Area. Accordingly, the Court held that given the proximity of the World Heritage Area and the farm, it was reasonable to conclude that the flying foxes resided in the Wet Tropics World Heritage Area.

As the respondents had not challenged the applicant's assertion that the Wet Tropics World Heritage Area had world heritage values, the question to be determined was whether the flying foxes contributed to the world heritage values of the Wet Tropics World Heritage Area under s12 of the Act. On consideration of the nature of the World Heritage List application and the contents of the treaty, the Court was satisfied that the flying foxes contributed to the world heritage values of the Wet Tropics World Heritage Area.

The Court considered that a serious reduction in the population of the flying foxes would be a matter of considerable consequence, which would be considered to have a significant impact on the world heritage values of the Wet Tropics World Heritage Area.



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