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### EDO Alert! Court of Appeal hears Bat case

This week one of EDO Qld's most important test cases, *Booth v Frippery P/L and others* 9268/05, was heard in the Queensland Court of Appeal. The Court comprised Justice P.D. McMurdo, Justice Williams and Justice Holmes. Barristers Stephen Keim SC and Chris McGrath with EDO Qld as solicitors represented client Dr Carol Booth. The Environmental Protection Agency was joined to the appeal proceedings at its request.

The proceedings were brought by Dr Booth against a decision by Judge Pack DCJ of the Planning and Environment Court made in September 2005. Judge Pack had dismissed Dr Booth's application for orders against a lychee grower in relation to the operation of electric grids. While the grower had admitted to killing tens of thousands of Black Flying-Foxes using the grids, the Planning and Environment Court found that the most recent version of the electric grid, MKVII, had not caused deaths of Flying Foxes. Judge Pack's decision is discussed in the EDO Qld Special Bulletin dated November 2005.

On Monday 27 February 2006, the Court of Appeal first granted *leave to appeal* on one of the legal issues raised on behalf of Dr. Booth, then the Court went on to immediately hear submissions on the appeal. The appeal issue was whether the operation of the electric grids was "directed towards" *crop protection* as Judge Pack DCJ decided, or "directed towards" *taking of wildlife*, as barristers for Dr Booth and the Environmental Protection Agency argued. If the activity was "directed towards" taking wildlife, then the defence to a breach of s88 *Nature Conservation Act* 1992 was not available<sup>1</sup>.

The Court of Appeal did not decide the Appeal on Monday but reserved its decision for another day.

EDO Qld on behalf of Dr Booth wishes to thank Chris McGrath and Stephen Keim for their extensive work. Special thanks to all of the EDO members and other conservationists who have contributed donations to this extremely important case. Dr Booth still needs donations in this case to help pay court fees, transcript fees and other fees. Tax deductible donations can be made to EDO Qld by cheque or by credit card using the donation form at [www.edo.org.au/edoqld/edoqld/new/membership%20form.pdf](http://www.edo.org.au/edoqld/edoqld/new/membership%20form.pdf). Please note on the donation that you "prefer the donation to be spent for the bat case".

*For more information about EDO-Qld cases contact us on (07) 3211 4466 or [edoqld@edo.org.au](mailto:edoqld@edo.org.au).*

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<sup>1</sup> Section 88 of the *Nature Conservation Act* 1992 creates an offence of taking (this includes killing) protected wildlife, unless you are an "authorised person", for example you have a damage mitigation permit, or a defence can be made out.