



## ENVIRONMENTAL DEFENDERS OFFICE (QLD) INC.

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### **EDO ALERT – Black Flying Fox case rehearing successful!**

*Excellent news: Dr Carol Booth succeeded in her rehearing at the Planning and Environment Court before Judge Robin on 16 November. The Court made enforcement orders under the Nature Conservation Act 1992 requiring lychee farmers Merv and Pam Thomas of Mutarnee near Townsville to dismantle their electric grids within 2 months. The electric grids have resulted in many deaths of protected black flying foxes.*

*A big thank you to Barrister Chris McGrath and to Dr Booth herself, for their unstinting work on this landmark nature conservation case. Many thanks also to the expert witnesses including Jon Norling, Dr Hugh Spencer, Dr Jon Hanger, Mr Adam Leard, and Ms Dominique Thiriet. We also warmly thank our other witnesses, donors and volunteers who all contributed to the case's success. Dr Booth is to be highly commended for her tireless dedication to the protection of flying fox species. Here is a copy of Dr Booth's press release....*

#### **MEDIA RELEASE**

Friday 16 November 2007

Today (Friday) the Planning & Environment Court will grant conservationist Dr Carol Booth orders requiring that lychee farmers Merv and Pam Thomas of Mutarnee, NQ, stop using their electric grids and dismantle them within 2 months, unless they get a permit from the EPA.

Dr Booth took the legal action after she and a colleague found dead flying-foxes on the property in 2003 and 2004. The property is partly surrounded by the Paluma National Park

In his judgement in Booth v Frippery, Judge Robin found that the Thomases had illegally killed "thousands" of flying-foxes, and were likely to continue to kill or injure "substantial" numbers, despite their claims that the grids were non-lethal: "Deaths by electrocution...itself are not the end of the matter...flying foxes which have suffered injury by electricity may not die then and there, but manage to fly off and then perish in various ways at some remove in time and place in outcomes that would not have happened but for the contact with the electrified grid. An associated phenomenon, to be expected in the fruiting season, is lethality for vulnerable fetuses of mothers which suffer electric shock."

The Respondents had attempted to rely on a defence provided under the Act where they had to prove that they had not intended to take the flying foxes. The word "take" has a definition under the Act which includes killing, injuring, or harming a protected animal. They were unsuccessful in their attempt to raise this defence. Judge Robin said it was important not to confuse motive with intent. He said that the Respondents had as their motive the protection of their lychee crops, and, as a way of satisfying their motive, they had intended that the flying foxes should be killed or at least harmed. The judge considered a number of cases dealing with the concept of intent in arriving at this conclusion.

"This is the second lychee business required by the courts to dismantle their grids, and the third ordered to stop electrocuting flying-foxes," Dr Booth said. "It's time for the government to order all electric grids dismantled to prevent any further illegal killings."

Solicitor for Dr Booth, Jo-Anne Bragg of the Environmental Defenders Office Qld, said the case proved once again the great importance of community legal rights. "As the judgement recognised, such rights allow members of the community like Carol Booth to stop illegal activity when the state lacks "the capacity or the will to adequately police compliance" with environmental legislation.

"These cases run by the community have saved the lives of tens of thousands of flying-foxes, set new legal precedents for nature conservation, and forced the government to do something about large-scale bat slaughter in orchards."

"However," Dr Booth said, "the government should now move to totally end the killing of flying-foxes as a method of crop protection - by requiring that grids be dismantled and that non-lethal methods be used instead of shooting. Netting is now being adopted by most farmers as it makes both commercial and environmental sense."

### **Contacts**

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### **A history of flying-fox cases**

2001: Booth v Bosworth - the Federal Court found that Rohan Bosworth had probably electrocuted 18,000 spectacled flying-foxes in 2000, and ordered that he stop. This was the first ever case under new federal environment laws.

2002/03: Booth v Bosworth – subsequent appeals by the farmer failed to overturn the original judgment.

2005: Booth v Frippery, Thomas & Ors - the Planning & Environment Court refused to grant orders against Merv & Pam Thomas. This was the first ever case run under the Nature Conservation Act using third party rights.

2006: Booth v Frippery - the Appeal Court found there had been errors made in the original hearing and ordered a retrial.

2007: Booth v Yardley - the Planning & Environment Court ordered that Richard Yardley dismantle his grid, after he admitted on public radio to electrocuting 1100 spectacled flying-foxes.

2007: Booth v Frippery - in the rehearing of the case, the Planning & Environment Court ordered that the electric grids be dismantled.