

CAROL JEANETTE BOOTH

Applicant

ROHAN BRIEN BOSWORTH

First Respondent

FRANCES BRIEN BOSWORTH

Second Respondent

STATEMENT OF CLAIM

(Order 4 rule 6)

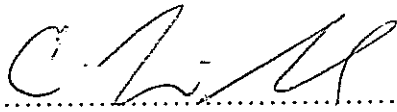
1. The Applicant is an Australian citizen who has engaged in a series of activities for the protection or conservation, or research into, the environment during the previous 2 years including her current employment as Gulf Regional Policy Officer for the World Wide Fund for Nature Australia.
2. The First Respondent and Second Respondent ("the Respondents") operate a lychee fruit and sugar cane farm at Dallachy Creek, Kennedy in the State of Queensland being land described as Lots 107 and 108, Crown Plan CWL652, Parish of Meunga, County of Cardwell ("the Respondents' farm").
3. The lychee orchard on the Respondents' farm is approximately 60 hectares in area.
4. The lychee fruit season, when the lychee fruit ripens and is picked for market, extends for 8 to 12 weeks during November to January each year.
5. The Respondents and/or their agents have constructed and operate annually during the lychee fruit season, a series of 14 aerial electric fences ("the electric grids"):
 - (a) erected in a grid pattern within the lychee orchard on the Respondents' farm;
 - (b) each individual grid line consisting of 20 horizontal wires, spaced 20cm apart, alternating earth and electrified wires, strung between poles at 4.4m to 9.0m in height;

- (c) each individual grid line being up to 820m in length; and
 - (d) the total length of the electric grids being 6.4km.
6. The purpose for which the electric grids are operated on the Respondents' farm is to electrocute flying foxes that approach, fly between or depart from the Respondents' lychee fruit trees.
 7. The Respondents' action and/or those of their agents in causing, procuring or allowing the operation of the electric grids causes and, unless restrained, will continue in the future to cause the injury and/or death of a large number of Spectacled Flying Foxes (*Pteropus conspicillatus*).
 8. The Spectacled Flying Foxes that are being injured and/or killed by the Respondents' action and/or those of their agents at all times or seasonally:
 - (a) are resident in the Wet Tropics World Heritage Area; and/or
 - (b) contribute to the biodiversity, ecological function and ongoing evolutionary processes of the Wet Tropics World Heritage Area.
 9. The Wet Tropics World Heritage Area:
 - (a) was included in 1988 on the World Heritage List kept under Article 11 of the *Convention for the Protection of the World Cultural and Natural Heritage* and remains on the list; and
 - (b) is a declared World Heritage property within the meaning of sections 12 and 13 of the *Environment Protection and Biodiversity Conservation Act 1999 (Cth)*.
 10. The world heritage values of the Wet Tropics World Heritage Area are summarised as follows:
 - (a) an outstanding example representing the major stages in the earth's evolutionary history;
 - (b) an outstanding example representing significant ongoing ecological and biological processes;
 - (c) an example of superlative natural phenomena; and
 - (d) containing important and significant habitats for in situ conservation of biological diversity.
 11. The injury and/or death of the large number of Spectacled Flying Foxes due to the Respondents' action and/or those of their agents in operating the electric grids:

- (a) has, will have or is likely to have a significant impact on the world heritage values of the Wet Tropics World Heritage Area in contravention of section 12 of the *Environment Protection and Biodiversity Conservation Act 1999 (Cth)*; and
- (b) is not authorised under any approval, exemption or other provision of section 12(2) of the *Environment Protection and Biodiversity Conservation Act 1999 (Cth)* or any other law.

This pleading was prepared by Mr Chris McGrath of Counsel.

Dated: 14 February 2001


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Elisa Nichols (Solicitor)