

**CAROL JEANETTE BOOTH**

Applicant

**ROHAN BRIEN BOSWORTH**

First Respondent

**FRANCES BRIEN BOSWORTH**

Second Respondent

Filed in the Registry on 2001.

AMENDED DEFENCE

To the Applicant's Statement of Claim, the Respondents say as follows:-

1. The Respondents admit the allegations of fact contained in paragraph 1 of the Statement of Claim.
2. The Respondents admit the allegations of fact contained in paragraph 2 of the Statement of Claim.
3. The Respondents admit the allegations of fact contained in paragraph 3 of the Statement of Claim.
4. The Respondents deny the allegations of fact contained in paragraph 4 of the Statement of Claim and say that the lychee fruit season extends for 6-8 weeks from late November/early December to early January each year.
5. The Respondents admit the allegations of fact contained in paragraph 5 of the Statement of Claim save that the horizontal wires are spaced 25 cm apart and not 20 cm apart as alleged.
6. The Respondents admit the allegations of fact contained in paragraph 6 of the Statement of Claim.
7. As to the allegations of fact contained within paragraph 7 of the Statement of Claim, the Respondents deny that the continued operation of the electric grid either causes or will in the future cause either injury or death to a large number of flying foxes:-
  - (a) Either Spectacled Flying Foxes (*pteropus conspicillatus*) or otherwise;

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**DEFENCE**

Filed on behalf of the First Defendant  
Form 17 - R.146  
Version 2

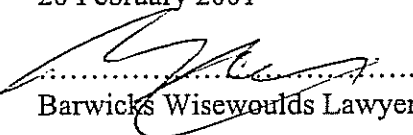
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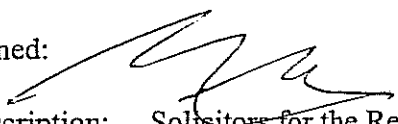
- (b) Either in absolute numbers or in relative numbers having regard to the large population of flying foxes of all species present in and around the Respondents' farm.
8. As to the allegations of fact contained within paragraph 8 of the Statement of Claim, the Respondents:-
- (a) Repeat and rely upon the denials in respect of the allegations contained within paragraph 7 of the Statement of Claim;
- (b) Say that the electrical grids are only operated seasonally;
- (c) Deny that all or a substantial number of flying foxes which fly over or land on the Respondents' farm, whether Spectacled Flying Foxes or other species:-
- (i) Are resident in the Wet Tropics World Heritage Area;
- (ii) Contribute to either:-
- (a) The diversity; or
- (b) The ecological function; or
- (c) The ongoing evolutionary processes of the Wet Tropics World Heritage Area.
9. Further with respect to paragraph 8 of the Statement of Claim, the Respondents say that in the absence of proper surveys involving netting or otherwise trapping large numbers of flying foxes, attaching radio transmitters to the individual flying foxes and then tracking them for extended periods of time or in the alternative taking samples from them for further scientific analysis, there exists no basis for any accurate assertion as to:-
- (a) The population of Spectacled Flying Foxes resident within the Wet Tropics World Heritage Area;
- (b) The population of Spectacled Flying Foxes in areas adjacent to the Wet Tropics World Heritage Area;
- (c) The relevance of flying foxes, whether Spectacled Flying Foxes or otherwise to:-
- (i) The biodiversity;
- (ii) The ecological function; or
- (ii) The ongoing evolutionary processes of the Wet Tropics World Heritage Area.
10. Further, the Respondents say that there is insufficient scientific survey evidence of the distributional range of Spectacled Flying Foxes to be able to identify any impacts on:-
- (a) Residential populations in the Wet Tropics World Heritage Area;
- (b) Biodiversity;
- (c) Ecological functioning; or
- (d) Ongoing evolutionary processes in the Wet Tropics World Heritage Area.
11. The Respondents admit the allegations of fact contained in paragraph 9 of the Statement of Claim.
12. As to the allegations of fact contained within paragraph 10 of the Statement of Claim, the Respondents admit that paragraphs 10(a), (b), (c) and (d) contain a convenient summary of the World Heritage value of the Wet Tropics World Heritage Area but say they will refer, at the trial of this action, to the Convention for the Protection of the World Cultural and Natural Heritage for its full meaning and effect.

13. As to the allegations of fact contained within paragraph 11 of the Statement of Claim, the Respondents deny that the injury and/or the death of any Spectacled Flying Foxes due to the Respondents' action or those of their agents in operating the electric grids has, will have or is likely to have any significant impact on the World Heritage values of the Wet Tropics World Heritage Area in contravention of Section of the *Environment Protection and Biodiversity Conservation Act 1999 (Cth)*.
14. Further with respect to paragraph 11(b) of the Statement of Claim, the Respondents say that the First Respondent holds a permit pursuant to Section 112 of the *Nature Conservation Act 1992 (Qld)* to take five hundred (500) spectacled flying foxes between the period 24 November 2000 and 23 January 2001 and are thereby entitled to utilise the electrical grid system referred to in paragraph 5 of the Statement of Claim.
15. The Respondents further say that at the times complained of by the Applicant, the Respondents were relying upon the provisions of the Damage Mitigation Permit issued to the First Respondent pursuant to the *Nature Conservation Act 1992 (Qld)*.
16. The Respondents deny that the Applicant is entitled to the relief sought in the application.

Dated: 20 February 2001

Signed:   
Barwicks Wisewoulds Lawyers – Solicitors for the Respondent.

This pleading was prepared by Mr Cochrane of Counsel

Signed:   
Description: Solicitors for the Respondent

#### NOTICE AS TO REPLY

You have 14 days within which to file and serve a reply to this defence. If you do not do so, you may be prevented from adducing evidence in relation to allegations of fact made in this defence.