

BETWEEN: **CAROL JEANETTE BOOTH**

Applicant

AND: **RICHARD GEORGE YARDLEY**

First Respondent

ANTJE GESINA YARDLEY

Second Respondent

**APPLICANT'S FURTHER SUPPLEMENTARY SUBMISSIONS FOR
SECOND CONTEMPT PROCEEDINGS**

1. On 20 October 2008 the applicant's solicitor received a facsimile from Mr Walter, the respondents' agent, attaching a four page affidavit from Mr Stephen William Edward Ah Shay, sworn on 15 October 2008.
2. The applicant does not require Mr Ah Shay for cross-examination. The affidavit contains several statements that are irrelevant and matters of opinion, such as paragraph 5, to which the applicant objects but the essential statement of fact is that the grids are now dismantled, save for the stumps of the poles about 600mm high.
3. The applicant does not wish to file any material in reply to the affidavit or to make further submissions beyond the points made here.
4. As noted in the applicant's earlier submissions, whether the grids have now been dismantled does little to affect the issues in dispute for the contempt application, including the sentence that should be imposed on the respondents. This is because at the hearing of the second contempt application on 15 August 2008 the contempt was particularised as having occurred from 31 March to 15 August 2008. The respondents, through their agent, conceded that they had not fully complied with the order to dismantle the grids at the hearing on 15 August. Whether the respondents have now complied with the order is irrelevant to the contempt as particularised.
5. The fact that the respondents have now complied with the order is relevant to sentencing of the respondents as personal deterrence is now less of a factor; however, it does little to affect the sentence that the Applicant submits should be imposed. For the reasons explained at paragraphs 5¹ and 28 of the *Applicant's Outline of Argument for the Second Contempt Proceedings*, dated 1 July 2008, the applicant's submission that a fine of

¹ Noting that the reference in paragraph 5 to "the applicant particularizes the contempt as having occurred from 31 March 2008 until 3 July 2008, the date of the hearing of the second contempt hearing" referred to the original date of the contempt hearing which was adjourned to allow the respondents to file their application to the High Court. The hearing eventually occurred on 15 August 2008.

\$10,000 is appropriate in all of the circumstances was based on the contempt as particularised and on the basis that further contempt of the Court's orders would lead to further proceedings.

6. It remains the case that the contempt in this case is very serious in nature and has several aggravating features. The contempt was clearly a deliberate disobedience of the Court's authority and done as part of a continuing a course of calculated and deliberate disobedience of the law. It was not merely a technical breach or one committed because of an honest, but mistaken belief. Rather, the respondents' actions appear calculated and deliberate.
7. It remains the case that the respondents show no remorse for their disobedience of the Court's orders. Quite to the contrary, their agent Mr Walter continues to dispute the validity of the law applying to the respondents actions. This conduct is reprehensible and an aggravating factor here.
8. The applicant again submits that taking all of the circumstances of this case into account, the seriousness of the contempt indicates that the range of the fine that the Court could impose for the contempt is \$5,000 – \$50,000. Taking into account the apparent very limited financial means of the respondents and that they have now complied with the order, the applicant's submits that a fine of \$10,000 remains the appropriate penalty to impose in all of the circumstances of the case.

Chris McGrath
Counsel for the applicant
28 October 2008