IN THE HIGH COURT OF AUSTRALIA

No. A16 of 2012

ADELAIDE REGISTRY

BETWEEN

ATTORNEY-GENERAL FOR THE STATE OF SOUTH AUSTRALIA
Appellant

and

CORPORATION OF THE CITY OF ADELAIDE
First Respondent

CALEB CORNELOUP
Second Respondent

SAMUEL CORNELOUP
Third Respondent

APPELLANT'S REPLY

Part I – Internet Publication

1. It is certified that this Reply is in a form suitable for publication on the internet.

Part II – Submissions in Reply

Implied freedom of political communication

2. The Third Respondent attempts, in his written submission, to call in aid the doctrine of "prior restraint" and the concept of a "chilling effect" upon speech that may arise from the need to resort to the courts to resolve questions concerning speech rights.[1] These notions have been developed by the Supreme Court of the United States in the context of First Amendment jurisprudence.[2] Reliance on them is misplaced in considering the operation of the freedom of political communication implied from the *Commonwealth Constitution*. The constitutional

1 Third Respondent's Written Submissions, [20], [24] and [40(xii)].

2 See, most recently, *Thomas v Chicago Park District* 534 US 316 (2002).

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context in this country prohibits the unconditional adoption of jurisprudence derived from quite different constitutional systems.

3. At the heart of these American concepts lies the notion of an individual's right to speak as protected by the first amendment. The doctrine of "prior restraint" focuses on procedural steps of an administrative character that an individual must undertake prior to speaking. The so called "chilling effect", brought about by the possible need to resort to the courts to define speech rights, focuses on the potential deterrent effect that litigation may pose to an individual speaker arising from factors such as the ambiguity in the impugned law, access to the courts to undertake a review, and the anticipated expense of litigation.

4. Whilst considerations of these kinds cannot be said to be categorically irrelevant to the application of the implied freedom, the focus of the inquiry in the Australian context is not on the procedural vicissitudes, whether administrative or litigious, that may confront an individual seeking to exercise a right to speak. Rather, the *Lange* test protects those political communications necessary to maintain the particular system of representative and responsible government mandated by the text and structure of the *Commonwealth Constitution*. Where administrators are legally bound not to abridge the implied freedom, and effective rights of review exist to ensure that those administrators act within power, it is not to the point to hypothesise that an individual's right to speak on a particular occasion might be thwarted by an erroneous application of an administrative discretion. It is the maintenance of system of representative and responsible government that is to be preserved by the implied freedom, not each and every pronouncement that a participant in public debate might wish to contribute.

5. To the extent that procedural restraints, relevant to a consideration of the doctrines of "prior restraint" or the notion of a "chilling effect", may have relevance to the application of the implied freedom, they are overstated by the Third Respondent in the following respects:

5.1. Contrary to the submission of the Third Respondent, the By-law does not impose a "prior restraint on almost all forms of speech"[3] or impose "a ban on most forms of oral and written communication".[4] In fact, the By-law only applies to a narrow class of communications, namely preaching, canvassing, haranguing, touting for business, conducing surveys and opinion polls and distributing written material. As noted in the Appellant's Submissions, the By-law does not require permission to engage in speech generally.[5] For instance, the By-law does not require permission to engage in conversation, to make a speech, to post a message on the internet, to wear a t-shirt bearing a political slogan or to carry a sign. Therefore, to the extent that the By-law can be said to impose a prior restraint it only does so in relation to the forms of communication caught by the By-law. The system of representative and responsible government is not unduly impaired by restricting the capacity of the Second and Third Respondent to preach with immediacy, in circumstances in which there is no restriction on their ability to deliver a spontaneous temperate speech at any time. In this context the statement of Hayne J in *APLA Ltd v Legal Services Commissioner (NSW)* is pertinent:

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3 Third Respondent's Written Submissions, [20].

4 Third Respondent's Written Submissions, [40(i)]. See also [43].

5 Appellant's Submissions, [44.2].

> The implied freedom of political communication is a limitation on legislative power; it is not an individual right. It follows that, in deciding whether the freedom has been infringed, the central question is what the impugned law does, not how an individual might want to construct a particular communication.[6]

5.2. Contrary to the submission of the Third Respondent, to the extent that the implied freedom is burdened by the requirement to obtain permission to engage in those forms of communication falling within the scope of the By-law, the Council may not "take its time in dealing with [an application for] permission".[7] Rather, the Council is obliged to determine the application "with all convenient speed".[8] This duty may be enforced by an order of mandamus which may be granted on an interlocutory basis[9] and determined urgently[10] where the circumstances so require.

5.3. Contrary to the submission of the Third Respondent, the discretion conferred on the Council by the By-law is not at large and cannot be exercised so as to bring about the "persecution ... of particular individuals for conducting normal everyday activity, in the manner of a totalitarian regime".[11] Rather, applying this Court's reasoning in *Wotton*, the discretion may not be exercised in a manner that abridges the implied freedom.[12] Further, the difficulties associated with reviewing an exercise of the discretion that is beyond power is overstated by the Third Respondent for the following reasons:

5.3.1. The Council is required to maintain a procedure for internal review of decisions to refuse permission.[13] No fees may be charged to conduct such reviews.[14]

5.3.2. Although there is no obligation on the Council to provide reasons for a decision to refuse permission, the failure to do so does not immunise that decision from review by the Supreme Court.[15] Indeed, the absence of reasons may pique the attention of the reviewing court.[16]

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6 (2005) 224 CLR 322, 451 [381].

7 Third Respondent's Written Submissions, [25].

8 Section 27 of the *Acts Interpretation Act 1915* (SA), applicable by virtue of s14A and the definition of "statutory instrument" in s4(1).

9 *Supreme Court Act 1935* (SA), s29(1).

10 *Supreme Court Civil Rules 2006* (SA), rr10(2)(c), 116(1)(b), 199(1).

11 Third Respondent's Written Submissions, [40(xv)].

12 Appellant's Submissions, [36].

13 *Local Government Act 1999* (SA), s270(1).

14 *Local Government Act 1999* (SA), s270(3).

15 *Public Service Board of New South Wales v Osmond* (1986) 159 CLR 656, 663-664 (Gibbs CJ), referring to *Padfield v Minister of Agriculture, Fisheries and Food* [1968] AC 997. This passage from *Osmond* was referred to, with apparent approval, in *Re Minister for Immigration & Multicultural & Indigenous Affairs; Ex parte Palme* (2003) 216 CLR 212, 224-226 (Gleeson CJ, Gummow & Heydon JJ). See also, *Avon Downs Pty Ltd v Federal Commissioner of Taxation* (1949) 78 CLR 353, 360 (Dixon J); *Minister for Immigration v SZMDS* (2010) 240 CLR 611, 623 [34] (Gummow ACJ and Kiefel J); *R v Secretary for Trade and Industry ex parte Lonrho plc* [1989] 1 WLR 525, 540 (Lord Keith); *Repatriation Commission v O'Brien* (1985) 155 CLR 422, 446 (Brennan J).

16 *Wainohu v State of New South Wales* (2011) 243 CLR 181, 239 [149] (Heydon J).

5.3.3. The anticipated expense associated with an application to judicially review a refusal to grant a permit may be ameliorated in the discretion of the Supreme Court.[17]

5.3.4. The potential for an adverse costs orders to be made against an applicant for judicial review is in the discretion of the Supreme Court.[18]

6. Finally, it should be noted that the Third Respondent asserts that "there are many ways of achieving [the ends of the By-law] that are less draconian and extreme".[19] Tellingly, however, the Third Respondent fails to identify any alternative measures.

Issues raised by the notices of contention

7. In the courts below, the Attorney-General has made no submission to the effect that the By-law was validly made. Rather, the Attorney-General's intervention was primarily concerned with the operation of the implied freedom of political communication. In the Full Court, the following submissions were put by the Attorney-General in addition to those put in relation to the operation of the implied freedom:

7.1. The generality of the terms of the by-law making power contained in s667(1)(9)(XVI) of the *Local Government Act 1934* (SA) (**the 1934 Act**) and its placement at the end of an enumerated list of powers lead to the conclusion that the by-law making power is limited to the making of by-laws that deal with a subject of the same kind as those found in the more specific grants enumerated in the preceding list. Further, the power contained in s667(1)(9)(XVI) of the 1934 Act is limited by reference to an implication arising from the terms of s239(1) of the *Local Government Act 1999* (SA) (**the 1999 Act**). This submission was rejected by the Full Court.[20]

7.2. The mere failure of a legal practitioner to sign a certificate provided to a council pursuant to s249(4) of the 1999 Act does not have the consequence, by application of the reasoning in *Project Blue Sky*,[21] that a by-law made in reliance on that certificate is invalid. This submission was not accepted by the Full Court.[22]

8. The grounds of appeal pursued by the Attorney-General in this Court relate to the Full Court's application of the implied freedom of political communication. The Attorney-General did not seek special leave to appeal in relation to the conclusions reached by the Full Court on the additional issues on which submissions were put. The Attorney-General is content to accept the reasoning of the Full Court on those issues. However, in order to ensure that the Court has a proper contradictor on these issues, and subject to any submissions the First Respondent

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17 The Court may remit or reduce a fee "on account of the poverty of the party by whom the fee is payable or for any other reason": *Supreme Court Act 1935* (SA), s130(2).

18 *Supreme Court Act 1935* (SA), s40(1); *Supreme Court Civil Rules 2006* (SA), rr263 and 264.

19 Third Respondent's Written Submissions, [40(ii)].

20 *Corporation of the City of Adelaide v Corneloup* [2011] SASCFC 84, [96]-[98], [121]-[123]; (2011) 110 SASR 334, 360-361, 366.

21 *Project Blue Sky Inc v Australian Broadcasting Authority* (1998) 194 CLR 355.

22 *Corporation of the City of Adelaide v Corneloup* [2011] SASCFC 84, [29], [145]; (2011) 110 SASR 334, 342, 370.

may make, the Appellant makes the following submissions in respect of the various issues raised by the notices of contention.

9. Based on the written submissions filed by the Second and Third Respondents, it appears that various grounds raised by the notices of contention are no longer pressed. In particular, it appears that:

9.1. The Second Respondent has abandoned the contention that the Full Court erred "in failing to consider the Constitutionality of the creation of Local Government as defined by the Local Government Act 1999 and as a law making entity".[23]

9.2. The Third Respondent has abandoned the following contentions:

9.2.1. The By-law infringes s238(2)(a) of the 1999 Act.[24]

9.2.2. The By-law infringes s246(2) of the 1999 Act.[25]

9.2.3. The By-law is invalid because the Council failed to adhere to the requirement imposed by s249(4) of the 1999 Act.[26]

10. Based on the written submissions filed by the Second and Third Respondents, it appears that the following grounds raised by the notices of contention are pressed:

10.1. The Second and Third Respondents contend that the By-law exceeded the scope of the by-law making power conferred by s667(1)(9)(XVI) of the 1934 Act.[27]

10.2. The Second Respondent contends that:

10.2.1. The By-law infringes s246(2) of the 1999 Act.[28]

10.2.2. The By-law is invalid because the requirements of the *Electronic Transactions Act 2000* (SA) were not met.[29]

10.3. The Third Respondent contends that the By-law is unreasonable and is not a reasonably proportionate exercise of the power conferred by s667(1)(9)(XVI) of the 1934 Act.[30]

These issues are addressed below.

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23 Second Respondent's Notice of Contention, [4].
24 Third Respondent's Notice of Contention, [4].
25 Third Respondent's Notice of Contention, [5].
26 Third Respondent's Notice of Contention, [6].
27 Second Respondent's Notice of Contention, [1]; Third Respondent's Notice of Contention, [1].
28 Second Respondent's Notice of Contention, [2].
29 Second Respondent's Notice of Contention, [3].
30 Third Respondent's Notice of Contention, [2]-[3].

Section 667 of the 1934 Act: scope of the convenience power

11. Both the Second and Third Respondent seek to raise issues about the scope and exercise of the power conferred by s667 of the 1934 Act.

12. The Second Respondent contends that the Full Court erred in finding that s667 XVI of the 1934 Act authorised the by-law subject only to the Constitutional limitation on freedom of political communication. In particular, the Second Respondent submits that the Court ought to have found that s667 was restricted by s238(2)(a) and s239(1) of the 1999 Act.

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13. The Third Respondent argues that cll2.3 and 2.8 of the By-law are an invalid exercise of the power conferred by s667(1)9(XVI) and are not a reasonable or proportionate exercise of the power.

14. The Full Court dealt at length with the scope of the power conferred by s667(1)9(XVI) of the 1934 Act. The Full Court held that the By-law was one made for the "convenience, comfort and safety" of the inhabitants of the City of Adelaide, within the scope of s667(1)9(XVI) (**the convenience power**). In reaching this conclusion the Full Court embarked upon an extensive historical survey of local government legislation in South Australia and a review of the
20 authorities dealing with the relationship between specific and general grants of power. Informed by this analysis, the Full Court found that the specific powers conferred by the 1934 Act "elucidate and inform the denotation of the convenience power".[31] In short, the Full Court considered that it would be unduly restrictive of the broad terms of s667(1)9(XVI) to require a subject matter of a by-law to be strictly analogous to the subject matter of one of the specific powers. Rather,

> Identifying the municipal concerns for which the general power authorises by-laws, is, therefore, a complex process requiring a consideration of the nature of contemporary urban communities, the legislative responsibilities of other levels of government and the nature of the specific powers
30 expressly conferred on the organs of local government. The specific powers committed to local government by statute provide an important indication of the role and responsibilities of local government, but the convenience power is not limited to matters which are strictly analogous to the subject matters of the specific powers. The convenience power extends to regulating conduct which, having regard to the considerations I have mentioned, is properly a matter of municipal concern and which, if left uncontrolled, will materially interfere with the comfort, convenience and safety of the city's inhabitants.[32]

15. The Third Respondent relies in particular on the decision of *Leslie v City of Essendon*.[33] The Full Court distinguished this line of authorities by reference to both the historical context and
40 contemporary conceptions of municipal government.[34]

16. In addition, the Full Court accepted that the 1934 Act and the 1999 Act must be read together, and that the convenience power in s667(1)9(XVI) was subject to any "negative implication

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31 *Corporation of the City of Adelaide v Corneloup* [2011] SASCFC 84, [96]; (2011) 110 SASR 334, 360.

32 *Corporation of the City of Adelaide v Corneloup* [2011] SASCFC 84, [99]; (2011) 110 SASR 334, 361.

33 [1952] VLR 222.

34 *Corporation of the City of Adelaide v Corneloup* [2011] SASCFC 84, [90]-[97]; (2011) 110 SASR 334, 358-361.

which may properly be drawn from the by-law making provisions of the 1999 Act".[35] In particular, the Full Court held that ss238(2) and 239 did not mean that the only by-laws that could be made about the use of roads were those authorised by s239. Instead, the Full Court considered that the implication which could be drawn from these two provisions was more limited:

> The convenience power cannot be used to control access to roads in the same unrestricted way in which access to other local government land may be controlled pursuant to s 238 of the 1999 Act. The limitation of the convenience power ... to that conduct which materially interferes with the convenience of inhabitants, avoids any inconsistency with the implication arising out of s 238 and s 239 of the 1999 Act.[36]

Contrary to the submission of the Second Respondent, the Full Court held that the words "comfort and convenience" in s667(1)9(XVI) did not include "minor irritations which are part of everyday living".[37]

17. According to the Full Court, the limitation on the regulation of roads provided for in s239 does not give rise to an implication that no additional aspects of road use can be regulated. In particular, "it could not be suggested that common law nuisances on roads could not be prevented or suppressed".[38]

18. For the purposes of providing this Court with a contradictor, the Appellant accepts and adopts the reasoning of the Full Court on the scope of the convenience power. The Appellant also notes that even if the narrow interpretation of the convenience power is adopted, such that it operates to provide power to make by-laws in relation to matters analogous to the subject matter of one of the specific powers, then the By-law may be supportable by analogy to the power to make laws with respect to the prevention of nuisances found in s667(1)4(l) of the 1934 Act. The Full Court, while noting that in *Samuels v Hall*[39] the majority held that the power to make by-laws preventing nuisances extended to prohibiting conduct which did not amount to a common law nuisance (but which might lead to such a nuisance), instead proceeded on the narrower view of the nuisance power advanced by Zelling AJ in the court below in *Samuels*.[40] The Appellant submits that the By-law may be supported by the nuisance power, either standing alone or together with the convenience power.

Section 667 of the 1934 Act: exercise of the convenience power

19. The Third Respondent submits that the By-law is not a reasonable or proportionate exercise of the power conferred by s667(1)(9)(XVI) of the 1934 Act.[41] The Appellant accepts the statement of general principles by which to determine whether a by-law is unreasonable or

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35 *Corporation of the City of Adelaide v Corneloup* [2011] SASCFC 84, [23]; (2011) 110 SASR 334, 341.

36 *Corporation of the City of Adelaide v Corneloup* [2011] SASCFC 84, [122]; (2011) 110 SASR 334, 366.

37 *Corporation of the City of Adelaide v Corneloup* [2011] SASCFC 84, [23]; (2011) 110 SASR 334, 341.

38 *Corporation of the City of Adelaide v Corneloup* [2011] SASCFC 84, [123]; (2011) 110 SASR 334, 366.

39 [1969] SASR 296.

40 *Corporation of the City of Adelaide v Corneloup* [2011] SASCFC 84, [42]; (2011) 110 SASR 334, 345-346.

41 Third Respondent's Notice of Contention, [2], [3]; Third Respondent's Written Submissions, [63]-[76].

disproportionate as set out in the Third Respondent's Written Submission.[42] However, contrary to the Third Respondent, the Appellant submits that the By-law was made consistently with these principles.

20. The Full Court dealt in some detail with this submission.[43] The Full Court was not persuaded that the By-law was such an unreasonable or disproportionate measure that it was beyond the legislative authority conferred by the 1934 Act.[44] In particular, the Full Court held that the inconvenience caused by haranguing the public is "substantial", as was evidenced by the alleged activities of the Second and Third Respondent.[45] In addition, the Full Court was satisfied that preaching or handing out printed material was likely to adversely affect the convenience, comfort and safety of inhabitants of the City if there was no limit on the prescribed conduct.[46]

21. Further, the Full Court held that the requirement to obtain permission was not a disproportionate response to this problem. The Full Court noted that:

> Delegated legislation is disproportionate or, to put it in another way, not capable of being considered reasonably appropriate and adapted to the statutory purpose of the delegation, where it only marginally advances the statutory purpose but at the same time imposes substantial collateral legal and practical burdens.[47]

In finding that the permission system was proportionate, the Full Court noted that the By-law was designed "not only to ensure that road users are not faced with a barrage of spruikers but also to afford those who wish to disseminate their opinions on the road an orderly system and opportunity to do so."[48] The Full Court's finding on the question of proportionality was also informed by the fact that there were no obvious alternatives. Contrary to the submission of the Third Respondent,[49] the Full Court was of the view that potential alternatives would be difficult to police and would not achieve the purpose of the equitable allocation of time and space for those wishing to engage in the regulated conduct.[50]

22. The Appellant accepts and adopts the reasoning of the Full Court on the exercise of the power conferred by s667 of the 1934 Act. Further support for the exercise of this power can be found in the Appellant's Submissions concerning the reasonably appropriate and adapted nature of the By-law.[51] In the Appellant's submission the test as to the proportionality of the exercise of

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42 Third Respondent's Written Submissions, [63]-[66].

43 *Corporation of the City of Adelaide v Corneloup* [2011] SASCFC 84, [22], [99]-[117] and [124]-[129]; (2011) 110 SASR 334, 340-341, 361-365, 366-367.

44 *Corporation of the City of Adelaide v Corneloup* [2011] SASCFC 84, [22], [129]; (2011) 110 SASR 334, 340-341, 367.

45 *Corporation of the City of Adelaide v Corneloup* [2011] SASCFC 84, [125]; (2011) 110 SASR 334, 366.

46 *Corporation of the City of Adelaide v Corneloup* [2011] SASCFC 84, [126]-[127]; (2011) 110 SASR 334, 366-367.

47 *Corporation of the City of Adelaide v Corneloup* [2011] SASCFC 84, [115]; (2011) 110 SASR 334, 365.

48 *Corporation of the City of Adelaide v Corneloup* [2011] SASCFC 84, [126]; (2011) 110 SASR 334, 367.

49 Third Respondent's Written Submissions, [74].

50 *Corporation of the City of Adelaide v Corneloup* [2011] SASCFC 84, [128]; (2011) 110 SASR 334, 367.

51 See Appellant's Submissions, [30]-[50].

the by-law making power is the same as the test for determining whether the By-law is reasonably appropriate and adapted for the purposes of the implied freedom.

Section 246(2) of the 1999 Act: "licence"

23. The Second Respondent submits that the permission system established by the By-law constitutes a requirement that a person obtain a licence to carry out an activity contrary to the limitation on a council's by-law making power found in s246(2) of the 1999 Act. The Second Respondent submits that the Full Court erred by finding that s246(2) of the 1999 Act did not apply to the By-law.

24. Section 246(2) of the 1999 Act provides as follows:

> A council cannot make a by-law that requires that a person obtain a licence from the council to carry out an activity at a particular place unless the council has express power to do so under an Act.

25. The Full Court's conclusions on the application of s246(2) turned upon his construction of the word "licence".[52] The Full Court held that the word "licence" in s246 did not include the mere grant of permission to engage in certain conduct. Rather, s246(2) was concerned with licences to occupy "*particular* places for the purpose of commercial or other business-like activities which are conducted continuously, regularly or frequently from that location."[53] This conclusion was informed by the legislative and governmental history of municipal authorities, and by reading the provision in conjunction with s246(3) which expressly provides that a by-law may operate subject to specified conditions or provide for exemptions.[54] Adopting this construction, the Full Court found that the permission system contained in the By-law was not akin to a licence such that s246(2) of the 1999 Act had not been infringed.

26. The Appellant accepts and adopts the reasoning of the Full Court on this issue.

Electronic Transactions Act 2000 (SA)

27. The Second Respondent contends that the Full Court erred in finding that the certificate of validity by a legal practitioner met the requirements of the *Electronic Transactions Act 2000* (SA). In particular, the Second Respondent submits that the Full Court erred by finding, on the one hand, that s249(4) of the 1999 Act required the Council to obtain a certificate stating that the by-law is within the power of the Council and, on the other hand, by finding that this certificate was provided via an email that satisfied the requirements of the *Electronic Transactions Act 2000*. The Second Respondent asserts that no certificate was provided and that what was provided did not meet the requirements of ss9(1), 10(1), 10(2) and 11(2)(a) of the *Electronic Transactions Act 2000*. According to the Second Respondent, the Court ought to have taken into account the fact that there was no signature or date on the certificate.

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52 *Corporation of the City of Adelaide v Corneloup* [2011] SASCFC 84, [24]-[26] and [130]-[136]; (2011) 110 SASR 334, 341, 367-368

53 *Corporation of the City of Adelaide v Corneloup* [2011] SASCFC 84, [26]; (2011) 110 SASR 334, 341.

54 *Corporation of the City of Adelaide v Corneloup* [2011] SASCFC 84, [132]-[134]; (2011) 110 SASR 334, 368.

28. The Full Court held that the requirement for a certificate, signed by a legal practitioner, as provided for in s 249(4) of the 1999 Act, was "an essential condition to the validity of a by-law".[55] However, the Full Court went on to find that this requirement that the certificate be signed by a legal practitioner was satisfied by virtue of s9 of the *Electronic Transactions Act 2000*.

29. It is common ground that a legal practitioner engaged by the City of Adelaide prepared a certificate, as required under s249(4), to certify that he had he had examined the By-law and to certify that in his opinion it was within the power of the Council and not in conflict with the 1999 Act or any other Act. The certificate was prepared in accordance with the prescribed form (Form 8). It was produced in Microsoft Word format. The Certificate of Validity was not signed but the legal practitioner's name appeared in bold type, accompanied by the words "legal practitioner". Underneath the text comprising the Certificate of Validity the text of the By-law was reproduced. On 3 May 2004 the legal practitioner sent this Microsoft Word document by email to an officer of the Council who was authorised to receive it.[56]

30. The Full Court found that the provision of the certificate via email, and the statement of the legal practitioner's name, was sufficient to identify the legal practitioner. In particular, his Honour noted that:

> The accompanying email made it clear to P that the legal practitioner expected that the certificate of validity of the by-law would be printed by P and put before the council for the purpose of making the by-laws. Plainly then the provision of the certificate, albeit unsigned, unequivocally signified that the named legal practitioner held the view that the by-law was valid and subscribed to the opinion required by the certificate although he had not signed it.[57]

31. In addition, the Full Court rejected the finding of the trial judge that the method of electronic communication could not be considered 'reliable'. The Full Court held that the intention of the *Electronic Transactions Act 2000* is to "assimilate the position of subscription to a view or position by electronic communication with subscription [to a view] by hand written signature".[58] Accordingly, his Honour concluded that the circumstances in which the certificate was provided, via email to the Council officer, sufficiently identified the legal practitioner and "unequivocally showed that he subscribed to the view expressed in the certificate even though he did not sign it."[59]

32. The Appellant accepts and adopts the reasoning of the Full Court on the meaning and effect of s 9(1) the *Electronic Transactions Act 2000*. The objects of the *Electronic Transactions Act 2000* further support the Full Court's reasoning.

33. Contrary to the submission of the Second Respondent, there is no inconsistency in the Full Court's reasoning, on the one hand, that a signature was required, and, on the other hand, that requirement was satisfied by meeting the requirements of the *Electronic Transactions Act*

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55 *Corporation of the City of Adelaide v Corneloup* [2011] SASCFC 84, [145]; (2011) 110 SASR 334, 370. See also [29], 342.

56 *Corporation of the City of Adelaide v Corneloup* [2011] SASCFC 84, [146]-[148]; (2011) 110 SASR 334, 370.

57 *Corporation of the City of Adelaide v Corneloup* [2011] SASCFC 84, [150]; (2011) 110 SASR 334, 371.

58 *Corporation of the City of Adelaide v Corneloup* [2011] SASCFC 84, [152]; (2011) 110 SASR 334, 371.

59 *Corporation of the City of Adelaide v Corneloup* [2011] SASCFC 84, [29]; (2011) 110 SASR 334, 342.

2000. In addressing the submission put in the Full Court, the focus of the Court's reasoning was on the requirement that the certificate be signed and hence on s9 of the *Electronic Transactions Act 2000*. However, to the extent that reliance may need to be placed on ss10 and 11 of the *Electronic Transactions Act 2000* there is no reason why these provisions are not equally applicable to the circumstances of this case. It is unclear why the Second Respondent refers to the absence of a date on the certificate. Section 249(4) require that a certificate be signed, but does not require that it be dated.

Issues raised other than by the notices of contention

34. The Third Respondent asserts that cl2.3 and 2.8 of the By-law are contrary to ss248(1)(d) and 248(1)(e) of the 1999 Act without providing any submission in support.[60] The Third Respondent has not raised these issues by way of notice of contention.

35. The relevant paragraphs of s248 of the 1999 Act provide as follows:

> **248—Rules relating to by-laws**
> (1) A by-law made by a council must not—
> ...
> (d) unreasonably interfere with rights established by law; or
> (e) unreasonably make rights dependent on administrative and not judicial decisions.

36. It is unclear what "rights" the Third Respondent is alleging may be interfered with by the By-law, contrary to s248(1)(d), or made dependent on an administrative decision, contrary to s248(1)(e). The Appellant reiterates that the freedom of political communication derived from the *Commonwealth Constitution* does not confer a personal right; rather, it is a limitation on legislative power. Further, for the reasons advanced by the Appellant in its Written Submissions, and above, any interference with the freedom of political communication is reasonably appropriate and adapted to serve a legitimate end. Thus, even if the Third Respondent could demonstrate that the By-law did infringe rights or make them dependent on an administrative decision, the By-law cannot be said to have done so "unreasonably" for the purposes of ss248(1)(d) or 248(1)(e).

Dated 13 July 2012

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60 Third Respondent's Written Submissions, [77]-[79].