

# **House of Assembly—No 132**

As laid on the table and read a first time, 5 June 2008

South Australia

## **Neighbourhood Dispute Resolution Bill 2008**

A BILL FOR

An Act to provide an alternative dispute resolution mechanism for residential neighbours.

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## Contents

### Part 1—Preliminary

- 1 Short title
- 2 Commencement
- 3 Interpretation

### Part 2—Neighbourhood Ombudsman

- 4 Appointment of Neighbourhood Ombudsman
- 5 Appointment of acting Ombudsman
- 6 Staff
- 7 Delegation
- 8 Independence of Ombudsman
- 9 Annual report

### Part 3—Applications to Ombudsman

- 10 The making of complaints
- 11 Investigations
- 12 Ombudsman may refuse to deal with certain complaints
- 13 Conciliation of complaint
- 14 Advice to be provided to claimant
- 15 Referrals to police or other agencies

### Part 4—Miscellaneous

- 16 Confidentiality
  - 17 Regulations
- 

## The Parliament of South Australia enacts as follows:

### Part 1—Preliminary

#### 1—Short title

This Act may be cited as the *Neighbourhood Dispute Resolution Act 2008*.

#### 2—Commencement

- 5 This Act will come into operation on a day to be fixed by proclamation.

#### 3—Interpretation

In this Act, unless the contrary intention appears—

*complainant*—see section 10;

- 10 *neighbour* of a person means the owner or occupier of residential premises adjacent to, or in the vicinity of, residential premises owned or occupied by the person;

*Ombudsman* means the Neighbourhood Ombudsman appointed under Part 2;

*respondent*—see section 10.

## Part 2—Neighbourhood Ombudsman

### 4—Appointment of Neighbourhood Ombudsman

- (1) The Governor may appoint a suitable person to be the Neighbourhood Ombudsman.
- (2) The person appointed as the Ombudsman must not be a member of the Public Service.
- 5 (3) The Ombudsman has the following functions:
  - (a) to assist neighbours to resolve disputes expeditiously;
  - (b) to monitor and review the effect of the law and of court practices and procedures on the resolution of disputes between neighbours;
  - 10 (c) to carry out other functions related to the objects of this Act assigned by the Attorney-General;
  - (d) to carry out any other functions assigned under other Acts.
- (4) The Ombudsman is to be appointed on conditions determined by the Governor and for a term, not exceeding 5 years, specified in the instrument of appointment.
- (5) At the expiration of a term of office, the Ombudsman will be eligible for  
15 re-appointment.
- (6) The Governor may terminate the Ombudsman's appointment if the Ombudsman—
  - (a) is guilty of misbehaviour; or
  - (b) becomes physically or mentally incapable of carrying out official duties satisfactorily; or
  - 20 (c) becomes bankrupt or applies to take the benefit of a law for the relief of bankrupt or insolvent debtors; or
  - (d) is absent, without leave of the Attorney-General, for 14 consecutive days, or for 28 days in any period of 12 months.
- 25 (7) Except as provided in subsection (6), the Ombudsman's appointment cannot be terminated.

### 5—Appointment of acting Ombudsman

- (1) If the Ombudsman is temporarily absent, or the Ombudsman's position is temporarily vacant, the Attorney-General may assign a suitable person to act in the Ombudsman's position during the temporary absence or vacancy.
- 30 (2) A person who is a member of the Public Service is eligible to act in the Ombudsman's position.
- (3) The terms on which a person is assigned to act in the Ombudsman's position will be as determined by the Attorney-General.
- 35 (4) A person appointed to act in the Ombudsman's position has, while so acting, all the functions and powers of the Ombudsman.

### 6—Staff

- (1) The Ombudsman will have such staff as is necessary for the effective performance of his or her functions.

- (2) The Ombudsman's staff will consist of Public Service employees.

### 7—Delegation

- 5 (1) The Ombudsman may delegate to a body or person (including a person for the time being holding or acting in a specified office or position) a function or power of the Ombudsman under this or any other Act.
- (2) A delegation under this section—
- 10 (a) must be by instrument in writing; and
- (b) may be absolute or conditional; and
- (c) does not derogate from the power of the Ombudsman to act in any matter; and
- (d) is revocable at will.
- (3) A function or power delegated under this section may, if the instrument of delegation so provides, be further delegated.

### 8—Independence of Ombudsman

- 15 (1) Subject to this section, the Ombudsman is entirely independent of direction or control by the Crown or any Minister or officer of the Crown.
- (2) The Attorney-General may, after consultation with the Ombudsman, give directions and furnish guidelines to the Ombudsman in relation to the carrying out of his or her functions.
- 20 (3) Directions or guidelines under this section—
- (a) must, as soon as practicable after they have been given, be published in the Gazette; and
- (b) must, within 6 sitting days after they have been given, be laid before each House of Parliament.

### 9—Annual report

- 25 (1) The Ombudsman must, on or before 30 September in each year, present a report to the Attorney-General on the operations of the Ombudsman during the previous financial year.
- 30 (2) The Attorney-General must, within 12 sitting days after receipt of a report under this section, cause copies of the report to be laid before each House of Parliament.

## Part 3—Applications to Ombudsman

### 10—The making of complaints

- 35 (1) A complaint may be made to the Ombudsman by a person (the *complainant*) who is involved in a dispute with a neighbour (the *respondent*).
- (2) A complaint—
- (a) must be in writing and set out the details of the acts or omissions the subject of the dispute; and
- (b) must be lodged with the Ombudsman.

- (3) A complaint must be lodged within 6 months of the act or omission the subject of the dispute or, if the dispute involves a series of acts or omissions, within 6 months of the last of those acts or omissions.
- (4) On a complaint being lodged under this section, the Ombudsman must cause a written summary of the particulars of the complaint to be served, personally or by post, on the respondent named in the complaint.

### 11—Investigations

- (1) On a complaint being lodged, the Ombudsman may conduct an investigation into the subject matter of the complaint.
- (2) For the purposes of an investigation, the Ombudsman may, by notice in writing given personally or by post to the respondent, require that person to produce to the Ombudsman such books, papers or other documents as may be specified in the notice.
- (3) Subject to subsection (4), a person to whom a notice is given pursuant to subsection (2) must not refuse or fail to comply with the notice.
- Maximum penalty: \$1 250.
- (4) A person is not obliged to produce any books, papers or documents pursuant to this section if their contents would tend to incriminate the person of an offence.
- (5) The Ombudsman may retain any books, papers or documents produced pursuant to this section only for so long as is reasonably necessary to peruse their contents and take copies of them.

### 12—Ombudsman may refuse to deal with certain complaints

- (1) Where, in the opinion of the Ombudsman, a complaint that has been lodged—
- (a) is frivolous, vexatious, misconceived or lacking in substance; or
- (b) does not relate to acts or omissions of a person who is a neighbour of the complainant,

the Ombudsman may, by notice in writing addressed to the complainant, decline to recognise the complaint as one in relation to which action should be taken by the Ombudsman.

- (2) A decision by the Ombudsman not to recognise a complaint as one in relation to which action should be taken under this section may be made at any time, notwithstanding that to some extent action under this Part has already been taken on the complaint.

### 13—Conciliation of complaint

- (1) Where the Ombudsman is of the opinion that a matter (not being the subject of a complaint to which section 12 applies) may be appropriately resolved by conciliation, the Ombudsman must make all reasonable endeavours to resolve the matter by conciliation.
- (2) The Ombudsman may, by notice in writing given personally or by post to the respondent, require that person to attend at a time and place specified in the notice for the purpose of conciliation.

- (3) A person who refuses or fails to comply with a requirement of the Ombudsman under this section is guilty of an offence.

Penalty: \$1 250.

- (4) A party to proceedings is not entitled to be represented, or assisted, by a legal practitioner in conciliation proceedings under this section except with the authority of the Ombudsman.

- (5) Evidence of anything said or done in the course of conciliation proceedings under this section is not admissible in any proceedings under this Act or any other Act or law.

#### **14—Advice to be provided to claimant**

Where—

- (a) conciliation under section 13 has failed to resolve a matter; or
- (b) the Ombudsman is of the opinion that a matter (not being the subject of a complaint to which section 12 applies) cannot be resolved by such conciliation or that it would be appropriate to resolve the matter in some other way,

the Ombudsman must advise the complainant of that fact and make recommendations to the claimant in relation to the resolution of the matter.

#### **15—Referrals to police or other agencies**

The Ombudsman may, if the Ombudsman thinks fit, refer any complaint for investigation by police or any other agency.

### **Part 4—Miscellaneous**

#### **16—Confidentiality**

- (1) A person engaged or formerly engaged in the administration of this Act must not divulge or communicate personal information obtained (whether by that person or otherwise) in the course of official duties except—

- (a) as required or authorised by or under this Act or any other Act or law; or
- (b) with the consent of the person to whom the information relates; or
- (c) in connection with the administration of this Act.

Maximum penalty: \$5 000.

- (2) Subsection (1) does not prevent disclosure of statistical or other data that could not reasonably be expected to lead to the identification of any person to whom it relates.
- (3) Information that has been disclosed under subsection (1) for a particular purpose must not be used for any other purpose by—
- (a) the person to whom the information was disclosed; or
- (b) any other person who gains access to the information (whether properly or improperly and whether directly or indirectly) as a result of that disclosure.

Maximum penalty: \$5 000.

## **17—Regulations**

The Governor may make such regulations as are contemplated by, or necessary or expedient for the purposes of, this Act.