

7. DEFINITIONS

Alternative Dispute Resolution (ADR)

ADR refers to the use of conciliation, mediation and arbitration to resolve disputes.

Arbitrations

The process by which parties to a dispute submit their differences to the judgment of an impartial person or group appointed by mutual consent or statutory provision.

Dispute

Disputes are disagreements or arguments between two parties.

Litigation

Taking legal action.

Mediation

Mediation is a voluntary process in which those involved in a dispute jointly explore and reconcile their differences. The mediator has no authority to impose a settlement. His or her strength lies in the ability to assist the parties in resolving their own differences.

Rights-based approach

Resolutions based on rights or entitlements.

Conciliation

The process of adjusting or settling disputes in a friendly manner through extra judicial means. Conciliation means bringing two opposing sides together to reach a compromise in an attempt to avoid taking a case to trial.

Investigation

The action of a formal or systematic examination or research.

Chapter 4 NEMA Fair decision making and Conflict Management

For further information, contact
Department of Environmental Affairs

Call Centre: 086 111 2468
Website: www.environment.gov.za



Environmental Conflict & Dispute Resolution



environmental affairs

Department:
Environmental Affairs
REPUBLIC OF SOUTH AFRICA



1. WHAT DOES CHAPTER 4 OF THE NATIONAL ENVIRONMENTAL MANAGEMENT ACT SAY?

Chapter 4 of the National Environmental Management Act, 107 of 1998 ("NEMA"), authorises the use of alternative dispute resolution mechanisms so as to ensure fair decision making and effective conflict management.

The Act (in section 17[2]) provides some guidance in this regard by stipulating that decisions regarding dispute resolution must be made taking into account:

(a) the desirability of resolving differences and disagreements speedily and cheaply;

(b) the desirability of giving indigent persons access to conflict resolution measures in the interest of the protection of the environment;

(c) the desirability of improving the quality of decision making by giving interested and affected persons the opportunity to bring relevant information to the decision making process;

(d) any representations made by persons interested in the matter; and

(e) such other considerations relating to the public interest as may be relevant.

The role of the Conflict Management Unit is to support the DG in performing the functions prescribed in terms of Chapter 4 of NEMA.

2. THE PURPOSE OF NATIONAL ENVIRONMENTAL MANAGEMENT ACT CHAPTER 4 IS TO:

- Coordinate and manage environmental conflicts within the environment sector,
- Facilitate the agreements reached by the disputing parties, only when trust has been broken as a result of a lengthy dispute,
- Resolve environmental disputes through mediation, conciliation and/or arbitration processes,
- Prevent the potential of disagreements and differences arising amongst stakeholders that may lead to full blown disputes.

3. THE APPROACH TO ENVIRONMENTAL DISPUTE RESOLUTION

- Everyone has a responsibility to take genuine steps to resolve or clarify disputes and should be supported by the Department of Environmental Affairs.
- The Conciliation/Mediation Process focuses on negotiating interests.
- If Conciliation/Mediation fails, then disputing parties can explore arbitration legal suits.
- Pro-active and early intervention are also recommended as the best way of dealing with differences, disagreements and disputes.

4. MEDIATION AS OPPOSED TO LITIGATION

In the case of disputes, it is not always necessary to go through litigation. The alternative to this, according to Chapter 4 NEMA, is mediation.

Preference is given to mediation because mediation allows parties to focus on their needs and interests. Very often these overlap or are compatible, and the parties can agree on a solution to the problem.

5. HOW TO REFER A CASE TO THE ENVIRONMENTAL SECTOR CONFLICT AND RESOLUTION DIRECTORATE

Call the Department of Environmental Affairs 086111 2468 to enquire about the referral process for a dispute or visit the Departmental website for more information on the procedure to report an environmental dispute.

6. THE ENVIRONMENTAL CONFLICT MANAGEMENT PROCESS

