

## Chapter 11

# Resolution of disputes

Disputes should be resolved as quickly as possible.

The Act encourages the negotiation of private procedures for the resolution of disputes. It also established the CCMA, the Labour Court and the Labour Appeal Court for resolving disputes.

The Act established the following dispute resolution institutions:

- the Commission for Conciliation, Mediation and Arbitration (CCMA), an independent body that seeks to resolve disputes through conciliation and arbitration; and
- the Labour Court and the Labour Appeal Court, which are the only courts which can hear and decide most labour disputes.

The Act also promotes private procedures negotiated between parties for the resolution of disputes.

## Dispute resolution institutions

### Commission for Conciliation, Mediation and Arbitration (CCMA)

The CCMA:

- is an independent body even though it is mainly state funded;
- is controlled by a governing body on which government, business and labour have three representatives each. The governing body has an independent chairperson. The CCMA's director is a member of the governing body;
- has an office in each province and a national office in Johannesburg (see Appendix for phone and fax numbers); and
- has both part-time and full-time commissioners who perform conciliation and arbitration functions.

The main functions of the CCMA are as follows:

- **Resolving disputes**

The CCMA must attempt to resolve, through conciliation, workplace disputes referred to it. If conciliation fails, the CCMA must settle the dispute by arbitration if the Act says that the next step is arbitration and if any party to the dispute refers the dispute to arbitration.

- **Assisting with the establishment of workplace forums**

Read more about workplace forums in chapter 6 of this Guide.

- **Giving advice, assistance and training**

The CCMA can assist parties on a range of issues, including advice on dispute resolution design and collective bargaining structures.

- **Accrediting councils and private agencies**

The CCMA can accredit councils or private agencies to conciliate and arbitrate on certain disputes.

## The Labour Court

The Labour Court has the same status as the High Court. The Labour Court has exclusive jurisdiction over most labour matters. The Labour Court has concurrent jurisdiction with the High Court in constitutional matters that arise in an employment context and in cases concerning contracts of employment. The Labour Court may make any appropriate order including granting urgent interim relief, an interdict, an order for specific performance, a declaratory order and an award of compensation or damages.

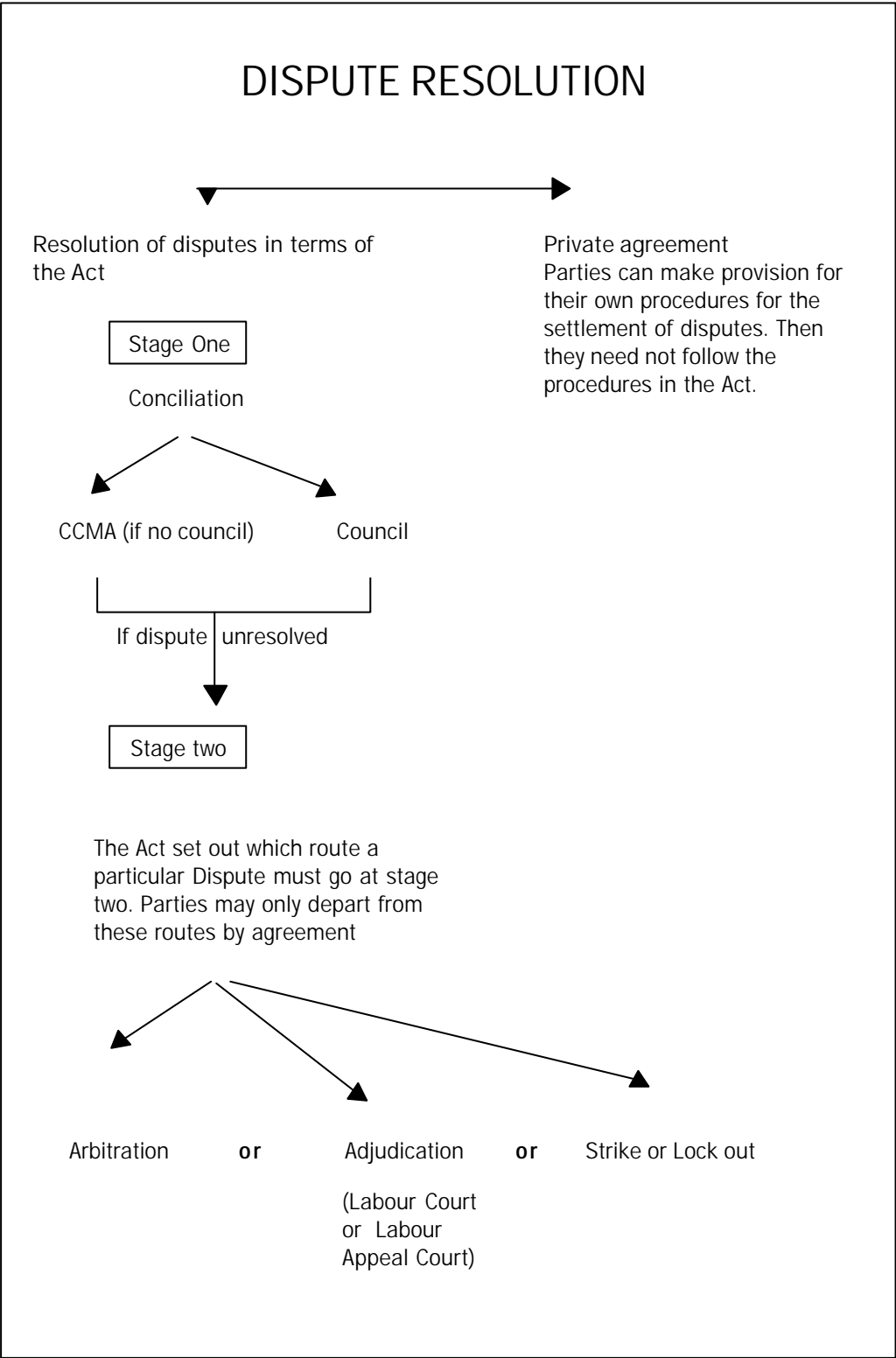
Any person appointed as a judge of the Labour Court must have knowledge, experience and expertise in labour law and must meet the requirements for appointment as a judge of the High Court. Labour Court judges are paid on the same scale as High Court judges.

## The Labour Appeal Court

Parties may apply to the Labour Court for leave to appeal to the Labour Appeal Court (LAC) against any final order or judgement of the Labour Court.

The LAC is the final court of appeal against decisions of the Labour Court. The persons who hold the positions of judge president and deputy judge president in the Labour Court also hold the same positions in the LAC.





## Basic procedures for the resolution of disputes

The Act tries to ensure that disputes are resolved as quickly as possible. It provides for a basic two-step procedure which will apply whenever the parties in dispute have not agreed to a private dispute procedure in a collective agreement which covers the issue in dispute.

**Step one** is conciliation. **Step two** is one of the following: arbitration or adjudication or industrial action depending on the type of dispute. The second step is taken only if the first step fails. An important innovation in the 2002 amendments to the Act is that the CCMA may now resolve disputes by 'con-arb'. In 'con-arb' the arbitration starts immediately after the end of the conciliation if the dispute is not settled. 'Cob-arb' must be used in –

- disputes about probation; and
- dismissals for misconduct or incapacity, unless a party objects.

### Step one: Conciliation

Firstly, an attempt must be made to conciliate the dispute. A genuine attempt should be made to arrive at a resolution at this stage.

#### *What is conciliation?*

Conciliation occurs when the parties in dispute get together with a third, neutral party, a conciliator. The conciliator does not decide who is right or wrong, but attempts merely to assist the parties to reach agreement. The Act states that conciliation can include mediation, fact-finding or the making of a recommendation to the parties. It is up to the conciliator to decide on which is the most appropriate process.

### *Who can conciliate?*

Disputes may be conciliated either by:

- a commissioner of the CCMA;
- a council (statutory council or bargaining council); or
- a private agency.

The general rule is that if a council has been established for a sector, then the council must conciliate the dispute and not the CCMA. To perform this role a council must either become accredited itself or use the services of an accredited agency.

The CCMA will normally only conciliate a dispute if there is no council covering the parties in dispute.

However, certain disputes may be conciliated only by the CCMA, even if there is a council covering the parties in dispute, for example, disputes over picketing rights.

The Table in the Appendix tells you which kinds of disputes are conciliated by which body.

### *Are there time limits for the conciliation process?*

Where disputes relate to unfair dismissals, these must be referred for conciliation within 30 days of the dismissal or, if it is a later date, the employer's final decision to dismiss (eg when the employer rejects the employee's appeal).

Where disputes relate to unfair labour practices, these must be referred for conciliation within 90 days of the alleged unfair labour practice occurring or within 90 days of the employee becoming aware of the unfair labour practice.

Once a dispute has been referred to conciliation, the commissioner must attempt to resolve the dispute within 30 days, although the parties may agree to extend this period.

## Step two: Arbitration or adjudication by the Labour Court or industrial action

If conciliation fails, parties can proceed to Step two. At this second stage there are three alternate routes for dispute resolution:

- arbitration;
- adjudication by the courts; or
- industrial action.

The Act determines which process a particular type of dispute must follow. Parties must comply with the Act, unless they have agreed to follow their own private dispute resolution process.

### Arbitration

#### *What is arbitration?*

In arbitration the dispute is referred to a neutral third party, called an arbitrator, who hears both sides of the dispute, and then makes a decision about who is right. The arbitrator will issue an arbitration award which is binding on the parties. There is no appeal against a decision of an arbitrator, but a review might be possible.

#### *Who can arbitrate?*

The Act specifies that certain disputes may be arbitrated by-

- a commissioner of the CCMA;
- a council; or
- a private agency.

The body which conciliated the dispute should also arbitrate. If there is a council for the sector, the council will conciliate and then arbitrate if the dispute remains unresolved. If there is no council, then the CCMA will arbitrate the dispute after conciliation. Councils and private agencies must be accredited.

### *Are there time limits for arbitration?*

Disputes must be referred for arbitration within 90 days of the CCMA or council issuing a certificate that the dispute remains unresolved.

Arbitrators must issue an arbitration award giving brief reasons for their decision within 14 days of the conclusion of the arbitration proceedings.

## Adjudication (Labour Court disputes)

Some disputes go to the Labour Court for a decision instead of to arbitration. These disputes must be referred to the Labour Court within 90 days of the CCMA or council certifying that the dispute remains unresolved.

It is also possible for parties to a dispute to agree that instead of referring the matter for adjudication by the Labour Court, it will be referred to arbitration conducted by the CCMA.

A party can appeal against a decision of the Labour Court to the LAC, if leave to appeal is granted.

## Enforcing awards and orders

Often an arbitrator or Labour Court will award an award in favour of an employee and the employer will not comply with this award. Previously the employee then had to apply to the Labour Court to enforce the award. The 2002 amendments to the Act simplify this. A party may apply to the Director of the CCMA to have an arbitration award certified. A certified award may be enforced in the same fashion as a Labour Court order. If the award is for money, the party may request the Sheriff of the Court to seize the other parties' goods and sell them to raise the money. This usually leads to the party paying the money owing. Other awards, such as reinstatement orders, must be enforced through contempt proceedings in the Labour Court.



## Industrial action

Parties can embark on industrial action - strikes or lock-outs - only if:

- the Act does not provide that the dispute may be referred for arbitration or adjudication; and
- specific restrictions in Chapter 4 of the Act do not apply. See chapter 7 on Industrial Action for more details.

## Private dispute resolution procedures

The Act recognises private dispute resolution procedures. In other words, the parties themselves may reach agreement on procedures for the resolution of disputes. If they do this, they need not follow the procedures set out in the Act, provided the dispute is finalised.

## Further information

### Relevant sections in the Act

Sections 112 – 126:	Commission for Conciliation, Mediation and Arbitration
Sections 133 – 150:	Resolution of disputes under auspices of Commission
Sections 151 – 166:	Labour Court
Sections 167 – 183:	Labour Appeal Court
Section 191:	Disputes about unfair dismissals
Schedule 4:	Dispute resolution flow diagrams

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### Forms to fill in

LRA Form 7.1	Council applies for accreditation
LRA Form 7.2	Private agency applies for accreditation
LRA Form 7.3	Certificate of accreditation of council
LRA Form 7.4	Certificate of accreditation of a private agency
LRA Form 7.8	Council applies for subsidy
LRA Form 7.9	Private agency applies for subsidy
LRA Form 7.11	Referring a dispute to the CCMA for conciliation
LRA Form 7.12	Certificate of outcome of dispute referred for conciliation
LRA Form 7.13	Request for arbitration
LRA Form 7.16	Supoena by commissioner
LRA Form 7.18	Application to certify CCMA award and writ of execution
LRA Form 7.18A	Application to certify council award and writ of execution