

PROCEDURAL GUIDELINE 1

What is a reasonable attempt to resolve the dispute?

This Procedural Guideline is issued pursuant to section 65 of the *Land Access Ombudsman Act 2017*. Its purpose is to provide further information on the practices and procedures for land access dispute referrals and investigations under the Act. Nothing in this Procedural Guideline supercedes or overrides the requirements of the legislation.

1. Section 32(2) of the *Land Access Ombudsman Act 2017* (LAO Act) provides that a party to a land access dispute may not refer the dispute unless the party has made a reasonable attempt to resolve the dispute with the other party.
2. The Land Access Ombudsman must refuse to accept a land access dispute referral if satisfied that the referring party has not complied with that provision (LAO Act, s 36(2)(b)(i)).
3. The purpose of this Procedural Guideline is to provide information and guidance about what may constitute a reasonable attempt to resolve the dispute with the other party.

Examples

4. Although not an exhaustive list, the following are examples of what may constitute a reasonable attempt to resolve the dispute:
 - (a) attempting, at reasonable times, to contact the other party to discuss the dispute — via phone, email or in person
 - (b) notifying the other party of the issues in dispute, and offering to discuss them, at a reasonable location and time, to try to resolve
 - (c) following up with the other party if no response is received
 - (d) providing relevant information and documents to the other party to enable them to understand the issues involved and how the dispute might be resolved
 - (e) reasonably attempting to negotiate with the other party about the disputed issues
 - (f) participating in good faith in a non-binding alternative dispute resolution (ADR) process — such as a case appraisal, conciliation or mediation — facilitated by an independent person
 - (g) using, or attempting to use, the dispute resolution process, if any, in the conduct and compensation agreement (CCA) or make good agreement (MGA)
 - (h) for disputes involving a CCA, asking for, and genuinely participating in, a “concerns conference” with the other party conducted by an authorised officer under the relevant Resources Act¹
 - (i) for disputes involving a MGA, asking for, and genuinely participating in, either of the following processes under chapter 3, part 5, division 4 of the *Water Act 2000*:
 - (i) a departmental conference with the other party conducted by an authorised officer
 - (ii) an ADR process facilitated by an independent person.
5. The Land Access Ombudsman will consider all the circumstances of the case in order to determine whether a reasonable attempt has been made to resolve the dispute. This may include but is not limited to:
 - (a) how and when approaches were made to the other party
 - (b) the number of approaches made

¹ See, for example, the *Mineral Resources Act 1989*, s 335F(2); the *Petroleum and Gas (Production and Safety) Act 2004*, 734B(2); the *Petroleum Act 1923*, s 103A(2); the *Geothermal Energy Act 2010*, s 312(2); the *Greenhouse Gas Storage Act 2009*, s 377A(2).

- (c) the reasonableness of proposals to convene face-to-face meetings
- (d) the reasonableness of proposals to arrange a departmental conference or ADR process to be facilitated by a third party
- (e) whether any face-to-face meetings occurred
- (f) how parties conducted themselves at any meetings or conferences
- (g) the nature and complexity of the dispute.

Dispute resolution conditions

6. By virtue of s 36(3) of the LAO Act, the Land Access Ombudsman may be satisfied a party has made a reasonable attempt to resolve their dispute even if they have not used, or attempted to use:
 - (a) the dispute resolution process, if any, in the CCA or MGA; or
 - (b) in the case of a MGA, the statutory dispute resolution process in chapter 3, part 5, division 4 of the *Water Act 2000*.
7. A party does not incur any civil liability for breach of the dispute resolution condition in their agreement if they refer the dispute to the Land Access Ombudsman after making other reasonable attempts to resolve the dispute (LAO Act, s 34).

JANE PIRES
LAND ACCESS OMBUDSMAN

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