

# Dispute management

The *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (CATSI ACT), sections 66-1(3A) and 66-1(3B) require that all [PBC constitutions or rule books](#) include a process for dealing with internal and native title disputes. Under the CATSI Act PBCs can make their own rules to fit their specific circumstances.

## What are disputes

Whilst conflict can be an inevitable, healthy and necessary part of an organisation, how an organisation deals with conflict is an integral element to their success. This section explores conflict and conflict management with reference to PBCs and Aboriginal and Torres Strait Islander corporations in general. This section provides some practical information and advice for how PBCs can help reduce and effectively manage any conflicts that arise.

Disputes arise when one or more people disagree about something and the matter is not resolved. Disputes are part of life and if they are well managed they can have positive outcomes, strengthening a corporation and improving member and community confidence. Poorly handled disputes can have serious consequences for a corporation. Some of the reasons disputes occur within PBCs are because:

- people who assert they are members of the group are excluded
- people or families within a group overrule others and dominate a PBC
- people assert that they alone are native title holders of particular areas
- disagreements arise within a group regarding the distribution of benefits and access to resources
- there is a lack of transparency or fairness in decision-making
- the legitimacy, authority or effectiveness of leaders is questioned
- there is poor communication and/or consultation
- people feel unable to participate in the governance of a PBC.

Conflicts that arise within PBCs are often related to the roles, responsibilities and relationships

amongst members, directors and staff. These are referred to as internal disputes. Below are some common areas of conflict:

- **Between members:** The exclusion or inclusion of people who assert membership of the group is a common cause of conflict within PBCs. Another cause of conflict is when certain groups or families within the membership assert rights and interests that are disputed by other members, or pursue their own interests which are not shared by other members.
- **Between members and directors:** The legitimacy of the board may be challenged by members, or groups within the membership based on factors such as historical issues, perceived lack of representation, access to resources and benefits, lack of accountability and transparency.
- **Among board members:** The development of factions amongst directors, the behaviour of individual directors, and disagreements regarding decision making are major factors leading to conflict between board members.
- **Between directors and the Chief Executive Officer (CEO):** A lack of clear boundaries between the roles and responsibilities of the board and the CEO are a frequent cause of conflict. A lack of trust between the board and CEO is another factor that can lead to conflict.
- **Between staff members:** Conflict between staff members is not uncommon in any organisation. How such conflicts are managed will depend on the size and structure of the corporation and whether there are policies in place that set out dispute management procedures.

Unlike other corporations, PBCs also deal with disputes about native title issues. These disputes are likely to be between the board of directors and one or more native title holders (who may or may not be members). Common areas of conflict about native title include:

- **Between the board and someone applying for membership,** about whether that person is a native title holder.
- **Between members, other (non-member) native title holders and/or the board** about the process that should have been followed to make decisions about native title country.
- **Between members, other (non-member) native title holders and/or the board** about how traditional laws and customs apply to a particular decision, for example, whether a particular person or family should have the final say on a matter or whether everyone should be involved.

- **Between members, other (non-member) native title holders and/or the board** about whether the PBC consulted native title holders properly about a native title decision.

## Overview of dispute resolution

It is important that when conflicts do arise, that PBCs have fair and transparent processes and procedures for managing them. Dispute resolution involves people who are in disagreement coming together to talk about the problem and deciding on a way to solve it. Dispute resolution processes are often used as a way to solve problems without going to court. Out of court dispute resolution is often referred to as Alternative Dispute Resolution (ADR). It involves an independent person who helps people in dispute to try to sort out the issues between them. ADR can be used for almost any kind of dispute; even those that would never go to a court or tribunal. There are different ways people try to resolve disputes using ADR processes. These may involve:

- The people involved in a dispute discuss the matter between themselves to try and reach an agreement.
- An independent person (a mediator) helps people to resolve their dispute. Mediators are often used when people are in conflict with each other.
- The people involved in a dispute present the matter to an independent person who makes a decision. The parties to the dispute are bound by that decision.

Negotiation and mediation allow people to resolve disputes through coming to an agreement with each other. Arbitration means a third person makes a decision about the dispute which the parties must accept.

While ADR may not be suitable for every type of dispute, it has benefits over court-based dispute resolution because it is usually quicker and less expensive and can also provide more flexible outcomes where parties come to an agreement on the outcomes rather than having a resolution imposed on them by a court.

If a dispute cannot be resolved by other means the parties involved may resort to a court-based resolution. Most courts will expect that the parties have attempted to resolve their dispute through ADR before going to court.

## Indigenous dispute resolution

There are many different Indigenous communities across Australia with their own laws and customs for managing disputes. Such [processes](#) are different from those used in the non-Indigenous Australian legal system.

In order to achieve successful outcomes dispute resolution processes must reflect local needs, be community driven and recognise local culture, law and language. Where traditional dispute resolution mechanisms exist, incorporating them into PBC dispute resolution practices provides cultural legitimacy to the process.

The [Indigenous facilitation and mediation project](#) proposes the following best practice principles in Indigenous decision-making, agreement-making and dispute management processes:

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- 1 Conflict is natural and can have positive outcomes when managed appropriately.

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  - 2 Indigenous people have the right to:
    - Free, Prior and Informed Consent (FPIC) to processes and agreement outcomes
    - say no to any processes or agreements
    - manage and own their decisions and disputes.

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  - 3 Indigenous decision making and dispute management processes are complex and should not be rushed.

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  - 4 Processes should do no harm.

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  - 5 How agreements are negotiated will have a major bearing on their sustainability: decisions must be owned by Indigenous parties to be sustainable.

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  - 6 'Quick fix' solutions are to be avoided at the expense of long term resolution.

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  - 7 No one size fits all - processes should:
    - reflect, support and be tailored to local needs and ideas of how authority should be organised and decisions should be made

- embody Indigenous values and Indigenous law
- recognise that some Indigenous disputes may not be amenable to resolution and that their dynamics should be managed and accounted for in solutions
- build on and support local capacity.

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8 Early intervention and prompt responses can de-escalate conflict.

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9 Agreement-making processes and negotiations require arm's length facilitation.

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10 Indigenous decision-making, agreement-making and dispute management processes should be integrated with other processes and services in Indigenous communities in whole-of-government and whole-of-community approaches.

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Adapted from [Final Report of the Indigenous Facilitation and Mediation Project](#), T Bauman, AIATSIS, Canberra, 2006.

## PBC dispute management

To effectively manage conflict PBCs need to have rules, policies and procedures in place to identify and resolve disputes, and to implement decisions and solutions. These rules are written down in the PBC's constitution or rule book. The [Indigenous Governance Toolkit](#) suggests that a dispute resolution process should clearly set out:

- who should be involved in different complaints
- the roles, rights and responsibilities of those involved
- the procedures and options available to them
- the way communications and discussions will be carried out
- the kind of cultural input and factors that should be taken into account
- other kinds of external expertise available, including allowing individuals to resolve their grievance through any external legal means at any stage of the process
- the need for timeliness so that disputes are resolved in the simplest and most cost-effective

way

- requirements for full documentation of the process and outcomes.

Having a [governance structure](#) in place that is well understood and clear policies and procedures can help to prevent disputes and provide guidance on how to manage disputes when they arise.

Training for PBC directors and staff in conflict management and mediation is also good practice. PBCs with in-house dispute resolution skills can respond quickly to conflicts before they escalate, and can apply local knowledge of the cultural context and the parties involved to the dispute resolution process.

## The PBC rule book

Each PBC has governance rules that set out how they should be run. Suggested dispute resolution processes for both the corporate and native title aspects of PBC functions can be found in ORIC's [Model rule book for RNTBCs](#). The basic process involves:

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### 1 Informal negotiations:

If a dispute arises, the parties must first try to resolve it themselves.

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### 2 Notice of dispute:

If the dispute is not resolved within 10 days, any party may give a dispute notice to the other parties.

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### 3 PBC directors meeting:

The directors must help the parties resolve the dispute within 20 business days after the corporation receives the notice.

The parties or the PBC may also choose to seek external assistance (for example, mediation) including from a Native Title Representative Body, the National Native Title Tribunal or ORIC.

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#### 4 General meeting:

If the directors cannot resolve the dispute, it must be put to the members to resolve it at a general meeting.

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The default rules in ORIC's [Model rule book for RNTBCs](#) can be changed to reflect the specific needs of PBCs. This can include the incorporation of traditional laws and customs that deal with disputes, such as the establishment of an elder's council to resolve disputes in the event that they cannot be resolved through informal negotiation.

## Changes to [the CATSI Act in 2021 regarding dispute resolution](#)

Prior to the 2021 changes to the CATSI Act, PBCs only had to have a dispute resolution clause in their rule book for resolving internal disputes. Now, PBCs must also have a dispute resolution process in their rule book about native title disputes, that native title holders can use to resolve disputes with the PBC about:

1. Whether or not a person is a native title holder
2. The way the PBC is dealing with native title business

The dispute resolution process for these native title disputes can be the same as the PBC's existing dispute resolution process, or it can be different. Even if it is the same, PBCs still needed to change their rule books so that it says native title holders can use the dispute resolution process (even if they are not members of the PBC).

See ORIC's webpage [Rule book changes for RNTBCs](#) for more information, or have a look at rule 20 in ORIC's [model rule book for RNTBCs](#) for an example.

## Dispute resolution policy

As well as a dispute resolution procedure in their rule book, PBCs should also develop a dispute resolution policy to show how the dispute resolution procedure works in practice.

By developing a dispute resolution policy PBC provide practical steps on how to manage disputes when they arise. At a minimum, the policy should include: the purpose of the policy; definition of a dispute; who is affected by the policy and when it applies; dispute resolution procedure; and, the roles and responsibilities (who is responsible for what in applying the policy). The dispute resolution policy should follow the steps set out in the rule book, but the policy will provide more detail.

A dispute resolution policy template can be found [here](#).

## Complaints policy

Some disputes can be avoided if a PBC can respond fairly, effectively and promptly to complaints as they arise. A complaint (or grievance) policy sets out the process for managing complaints. A complaints policy should clearly outline who is covered by the policy; the roles and responsibilities of those involved; what happens when a complaint is made; and, the complaint procedure and the steps that will be taken to address complaints.

A PBC should provide separate complaints policies for PBC staff and members as they have different roles within the organisation. For guidance with staff grievances please refer to [FairWork Australia](#) and [Community Directors](#)

## Where PBCs can go for dispute resolution assistance?

The main sources of assistance available to PBCs for the resolution of disputes are [Native Title Representative Bodies/Service Providers](#) (NTRB/SPs), the [Registrar of Indigenous Corporations](#) (ORIC) in matters about corporation governance, and the [National Native Title Tribunal](#) (NNTT) in native title matters.

**NTRB/SPs** have dispute resolution functions under s [203BF\(1\)\(a\)\(ii\)](#) of the [Native Title Act 1993 \(Cth\)](#) (NTA) and the assistance of NTRB/NTSPs to resolve conflicts can be included in a PBC's rule book. For instance, rules that involve the assistance of NTRB/NTSPs may include using them to help resolve membership disputes, or listing them as one of several options in assisting PBCs to resolve disputes.

NTRB/SPs often have good on-ground knowledge of the background to PBC disputes, as well as access to anthropological material that can support dispute resolution. Some NTRB/SPs have developed their capacity to provide mediation assistance by providing selected staff with formal mediation training. NTRB/SPs may also be able to source independent mediators if requested.

**NNTT** is uniquely resourced to provide specialist conflict resolution and mediation services, with a number of accredited and highly experienced mediators. The NNTT has mediation functions in relation to a wide range of native title matters, and can provide dispute resolution assistance to PBCs under s 60AAA of the NTA. The NNTT is also available to provide training and information to a range of native title stakeholders on matters relevant to its statutory role and functions.

**ORIC** offers assistance with mediation and dispute resolution in regards to corporate governance and can provide:

- an advisory opinion—a formal letter giving an opinion about the situation in dispute
- advice—by telephone, face-to-face or email to try to quickly fix issues that are not too complex
- conferencing—facilitated informal meetings of parties involved in the dispute
- ORIC staff—to attend corporation meetings as observers, to present information or provide advice.

It is important to note that the right to request assistance from the ORIC Registrar does not create a right to request formal mediation. However, in an appropriate case the registrar may provide assistance in having the matter resolved.

## Independent mediation

An independent mediator may be useful in circumstances where a PBC does not have the in-house capacity to mediate disputes. Even in cases where a PBC does have dispute resolution capacity, disputing parties may wish to have a matter dealt with by an independent person in order to keep the details of the dispute confidential, or because of real or perceived concerns on the part of either party that an in-house mediator may not be impartial.

PBCs may wish to include a provision in their rule book that allows for independent meditation as an option at any point in their dispute management process, or as a last step if all means of resolving the dispute fail.

Where external mediators are required, they need to be clearly impartial and have the trust and respect of the parties involved. They should have skills in conflict analysis, building rapport and consensus, as well as good local knowledge and an understanding of the cultural context, the issues and disputes.

## The **Magani Lagaugal (Torres Strait Islanders)** **Corporation** experience

The Magani Lagaugal (Torres Strait Islanders) Corporation, administers land on behalf of the Iama people and Tudulaig people. Ned David, Chair of Maganai Lagaugal, talks about how their organisation arrived at a rule for dispute resolution.

Written by **Michael Cawthorn, consultant anthropologist** (updated 16.10.2020) and updated on 11 May 2023 by AIATSIS' **Indigenous Country and Governance Unit**.

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## Further resources

## Finding independent mediators:

- [Mediation for Aboriginal and Torres Strait Islander peoples](#), works with communities to deliver culturally appropriate services, Queensland Government
- [Aboriginal Mediation Service](#), provides culturally appropriate dispute resolution services to Aboriginal and Torres Strait Islander people to assist in addressing conflict or disputes between individuals and/or groups, including families and communities, Western Australia Department of Justice
- [Native title mediator list](#), many with experience in native title and Indigenous dispute resolution and agreement making, Federal Court of Australia.
- [Register of nationally accredited mediators](#), Mediator Standards Board
- [Resolution Institute](#), provides details of dispute resolution practitioners throughout Australia.

## Mediator training:

- [Training programs in alternative dispute resolution](#), the Resolution Institute
- [Training in dispute resolution](#), provides training in mediation for Indigenous people, organisations and communities, Mediation for Aboriginal and Torres Strait Islander peoples, Queensland Government
- [Aboriginal dispute resolution training](#) in conflict resolution, mediation and lateral violence awareness, Dispute Settlement Centre of Victoria

## General resources:

- [Indigenous Governance Toolkit](#), Australian Indigenous Governance Institute (AIGI), 2012
- [Internal disputes](#), Australian Charities and Non-for-profits Commission (ACNC)
- [Alternative Dispute Resolution](#), Attorney General's Department
- [Indigenous Dispute Resolution and Conflict Management](#), National Alternative Dispute Resolution Advisory Council (NADRAC):
- [Restorative Justice programs](#) (Aurukun, Mornington island), Queensland Government
- [The Missing piece of infrastructure: Indigenous dispute management, agreement making and decision-making services](#), AIATSIS
- [Aboriginal Victoria Right People for Country Program](#), Victorian Government
- [Best practice mediation service](#), Department of Prime Minister and Cabinet
- [Rules for dispute management](#), PBC website
- [Complaints](#), DIY Committee Guide, UK

## Templates and guides:

- [Taungurung dispute-management guide](#), Taungurung Land and Water Council & AIATSIS, 2019
- [Board dispute resolution policy template](#), Effective Governance
- [Fact sheet dispute resolution](#), ORIC, 2013
- [Disputes involving corporations](#), ORIC, 2013
- [Post determination assistance fact sheet](#), NNTT, 2021
- [Post determination assistance infographic](#), NNTT, 2021
- [Notice of dispute template](#), ORIC
- [Complaints and how to manage them](#), ORIC, 2015
- [What can we do? Solving disputes as a group](#), AIGI, 2012
- [What can we do? Conflict analysis tool](#), AIGI, 2012
- [Check-up: Our dispute resolution processes](#), AIGI, 2012
- [Complaints processes form](#), DIY Committee Guide, UK
- [Managing conflict: a guide for boards](#), Governing Good, Canada

## Reading:

- Indigenous Conflict Management Strategies: Global Perspectives, J Adjei et al, Lexington Books, Plymouth, 2014
- [Two Way Learning and Culturally Appropriate Mediation Training in Remote Communities](#), W Crawford, & R Thwaites, *Indigenous Law Bulletin* 8, no. 4, pp. 24–27, 2013
- [Solid work you mob are doing: Case studies in Indigenous dispute resolution and conflict management in Australia](#), T Bauman & J Pope, AIATSIS, Canberra, 2009
- [Final Report of the Indigenous Facilitation and Mediation Project](#), T Bauman, AIATSIS, Canberra, 2006.

## Tags

[Board](#)  
[CATSI Act](#)  
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[Culture](#)  
[Decision making](#)  
[Directors](#)  
[Dispute management](#)

[Governance](#)  
[Indigenous law](#)  
[Language](#)  
[Meetings](#)  
[Members](#)  
[NTRB \(Native Title Representative Body\)](#)  
[NTSP \(Native Title Service Provider\)](#)  
[ORIC](#)  
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Aboriginal and Torres Strait Islander people should be aware that this website may contain images, voices or names of deceased persons in photographs, film, audio recordings or printed material.

The PBC website acknowledges the traditional owners of country throughout Australia and their continuing connection to land, culture and community.

**We pay our respects to elders past, present and emerging.**



National  
Native Title  
Tribunal



Australian Government  
National Indigenous  
Australians Agency

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