

# Dispute resolution

## (3) An overview

### Guidance note for boards of major DELWP agencies

This guidance note is for use by board members of the over 100 major public entities and other statutory boards, committees, councils, panels, etc. in the Department of Environment, Land, Water and Planning (DELWP) portfolio, including large (category 1 and 2) committees of management of Crown land reserves.

Guidance notes and model policies for these major agencies can be downloaded from DELWP's governance website, On Board ([www.delwp.vic.gov.au/onboard](http://www.delwp.vic.gov.au/onboard)), in particular, see the [Dispute resolution](#) support module.

Guidance for small (category 3) committees of management is available from [www.delwp.vic.gov.au/committees](http://www.delwp.vic.gov.au/committees).

### Introduction

The board is the governing body of your agency. Board members make decisions together in the **public interest** (the best interest of the agency). The board is collectively accountable to the portfolio minister for its decisions.

It is essential to the success of your agency that the board functions together well as a team.

If a dispute arises between board members that unduly affects the board's performance, the dispute must be resolved as soon as possible.

### Dispute resolution policy

Your board is expected to have a *Dispute resolution* policy in place that fulfils its legal obligations and complies with good public sector governance practice.

To assist, DELWP offers a model policy, which is available from the [Dispute resolution](#) support module on On Board.

Your board's policy should be consistent with DELWP's model policy.

If your agency's establishing Act has specific requirements in relation to dispute resolution, the model policy can be adapted to include these.

### Definition of a 'dispute'

#### Not included

A difference of opinion between board members in relation to a proposed decision (e.g. strategic, business, policy, etc.) is not a 'dispute'. It is the normal difference of views which the board talks through in a considered, courteous, and constructive manner before voting to make a decision, in accordance with the board's policy on *Meetings and Decisions*.

#### Included

A 'dispute' is where:

- two or more board members have difficulty working together (e.g. because of ideological differences or a conflict of personalities); and
- it is unduly affecting the ability of a board member, or the board collectively, to perform their duties in an effective and efficient manner.

### Duty to act in good faith

Disputes should be avoided where possible. If a dispute arises:

- the board members in dispute (the parties) have a duty to act in **good faith** to resolve the dispute as soon as possible in the public interest
- the chair (or, if the chair is a party to the dispute, a board member nominated by the board) actively guides the parties towards resolution of the dispute
- the other board members support this process.

### Informal resolution

The board members in dispute are required to make a reasonable, thorough, and conscientious effort to resolve the dispute on an informal basis, under the guidance of the chair.

Sometimes, the chair will formally notify the board of the dispute by placing the matter on the agenda of the next board meeting for noting and/or monitoring. Typically, this would happen if the chair is concerned that the dispute may pose a major risk to the effective operation of the agency. This does not stop the informal resolution process. It just makes the board officially aware of it, if the chair thinks this is advisable.

### Unresolved dispute

If a dispute cannot be resolved informally despite everyone's best efforts, it is placed on the agenda of the next board meeting. At the meeting, the board invokes its formal mediation process if it is satisfied that:

- a dispute exists which cannot be resolved on an informal basis; and
- it is in the public interest to do so.

### Formal mediation process

If the board invokes the formal mediation process:

- An independent, suitably qualified mediator is appointed who is acceptable to all the parties.
- If the parties cannot agree on a mediator, the process in the board's policy for appointing a default mediator is invoked (e.g. a mediator is appointed from the [Dispute Settlement Centre of Victoria](#), which is a free service run by the Department of Justice and Regulation).
- The board members in dispute co-operate with the mediator and provide all reasonable assistance. Under the guidance of the chair, they actively work in good faith to resolve the dispute.
- If the dispute is resolved, unless good reason exists otherwise, the outcome is recorded in writing by the mediator and signed by the parties, who each receive a copy and consent to the chair receiving one.
- If the dispute cannot be resolved and is continuing to unduly affect the operation of the board, DELWP is contacted for advice.

### Major risk

If a dispute poses a major risk to the effective operation of the agency, the Minister and the Secretary of DELWP must be notified.

### Further information

On Board ([www.delwp.vic.gov.au/onboard](http://www.delwp.vic.gov.au/onboard)), in particular, see the [Dispute resolution](#) support module.

DELWP also offers support to its agencies through DELWP divisions and regional offices. Please contact your agency's usual DELWP relationship manager or team or phone the Customer Service Centre on 136 186.

This document is available from the internet at [www.delwp.vic.gov.au/onboard](http://www.delwp.vic.gov.au/onboard)

For more information contact the DELWP Customer Service Centre 136 186

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