Standards Development – SG-008: Committee Dispute Avoidance and Resolution
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STANDARDISATION GUIDE 008:

COMMITTEE DISPUTE AVOIDANCE AND RESOLUTION

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Contents

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Introduction

This Standardisation Guide provides strategies for minimising and, where possible, avoiding disputes that prevent consensus from being achieved between committee members during the Standards development process.

Where disputes cannot be avoided, this document provides guidance on Standards Australia's (SA) dispute resolution processes, including how to effectively facilitate collaborative problem solving between committee members to help them enunciate their concerns and issues, identify common objectives and alternative solutions and work towards a consensus view on mutually acceptable and lasting outcomes.

> NOTE: *Although collaborative problem solving is generally the most effective method for resolving disputes, there are occasions where, due to the nature of the dispute or the relationship between the parties, effective collaboration is unlikely, and more formal mediation or arbitration may be necessary.*

This Guide also provides guidance to SA Project Managers (PM) on how they can support committee Chairs in the management and resolution of disputes, as well as highlighting their roles and responsibilities in the dispute avoidance, management and resolution process.

In instances where disputes cannot be resolved at the committee level, or with the assistance of SA's Project Management teams, this document provides guidelines on how to effectively manage and resolve the dispute as well as defining the appropriate escalation paths and processes.

It is also the aim of SA to monitor and continually improve its dispute avoidance, management and resolution framework and processes to ensure that lasting outcomes are reached in a timely manner, business relationships are strengthened, and resources are used effectively.

Conflict can often be seen as a negative outcome and something to be avoided, however, it can also lead to positive results if it is managed effectively. For example, effectively managed conflict can trigger healthy debate which promotes creative and innovative thinking, encourages closer examination of the issues at hand and motivates parties to achieve positive and beneficial outcomes.

Collaborative problem solving has the potential to resolve disputes effectively as it encourages open and transparent communication between parties, which helps to establish group cohesion, build trust, enable constructive working relationships and allow the parties to formulate solutions that are beneficial to all parties, including stakeholders and the wider community.

Most importantly, effective conflict avoidance strategies and processes play a critical role in reducing the overall occurrences of disputes, and therefore minimises the need to resort to formal dispute resolution, i.e. proactive prevention is favourable to a reactive cure.

1   Scope and objectives

It is intended that the framework and guidelines set out in this Guide are to be used as part of SA's systematic approach to dispute avoidance, management and resolution during the Standards development process, or on an ad hoc basis, as is deemed appropriate.

The primary objective is to avoid disputes, but where this is not possible, SA aims to provide processes that are fair and transparent, and which enable the effective management and acceptable resolution of all disputes encountered during the Standards development process.

> NOTE: *See Appendix A for an overview of SA's Dispute Avoidance and Resolution Process.*

As part of the collaborative business as usual (BAU) Standards development activities, the framework and guidelines in this Guide should be undertaken by committee members and Chairs when effectively managing any 'differences of opinion' in order to avoid disputes. Where issues cannot be resolved, the SA escalation process should be initiated.

> NOTE: *See Appendix B for an overview of SA's Dispute Escalation Process.*

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2   Background

2.1   Benefits of effective dispute management and resolution

Some of the important benefits of effective dispute management and resolution include:

Strengthen and preserve relationships

Due to the nature of SA's Standards development process, many of the Technical Committees (TC) provide ongoing input and support to the process. Therefore, effective and positive communication between the committee members, sector representatives, and SA, can help to strengthen and preserve the ongoing relationships between all parties.

Reduction of costs and time

Many of the committee members provide their time and expertise on a voluntary basis, while also maintaining responsibilities to their employers. Also, SA's project management methodologies dictate that defined project deliverables and timelines are met. Therefore, it is both cost and time effective to maximise collaborative efforts and minimise potential delays that can result from lengthy dispute resolution, or unresolved disputes.

Confidentiality

In order to encourage active and open participation by a range of interests, committee discussions that occur during the Standards development process and during dispute resolution are treated as confidential and are not made available to the general public. This aims to encourage committee members to comment in an honest, transparent and constructive manner to ensure that SA publications provide the maximum benefit to the users of the product and to the wider community.

Solutions based strategies

SA's dispute resolution framework does not focus on the dispute itself, but instead aims to reach agreement from all parties as quickly as possible on the exact problem that has led to the dispute, and then focus on the desired outcomes of all parties and the best available options and strategies to achieve those outcomes.

The framework defined in this Guide provides guidance to all parties involved in the Standards development process on how to use flexible and solution based strategies that enable them to effectively resolve disputes in a proactive, positive and collaborative manner and to reach outcomes that are suitable to all parties, stakeholders, and the wider community.

Effectiveness and durability of outcomes

The key objectives of SA's dispute resolution framework is to facilitate agreement from all parties on the most effective and durable outcomes. The benefits of reaching agreement by way of participatory and collaborative efforts are not only durability of the outcome but a higher rate of compliance with the agreement, a strengthened relationship between parties in future collaborations and the most suitable outcomes for all parties.

Control of process

It is recognised that when parties work together collaboratively to reach mutually acceptable outcomes, they feel that they have been empowered to share in the resolution process and that they have been actively involved in defining the solution. As such, when all parties feel that they are in control of the process and the outcome, truly collaborative outcomes that are both durable and beneficial to all parties can be reached.

The aim of this Guide is to provide guidance and the tools required to allow all parties to share in the control of the process as well as the outcomes.

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2.2 Definitions

2.2.1 Consensus

In broad terms, acceptable and appropriate outcomes would be consistent with the principles of consensus that are defined in SG-001: Preparing Standards.

The *ISO/IEC Directives – Part 1: Procedures* (2019) define consensus as:

"*General agreement, which is characterized by the absence of sustained opposition to substantial issues by any important part of the concerned interests and by a process that involves seeking to take into account the views of all parties concerned and to reconcile any conflicting arguments.*

Consensus need not imply unanimity."

For the purpose of this Guide, 'dispute resolution' is characterised by the committee members reaching agreement on a mutually acceptable solution to the dispute, in line with the principles of consensus, or when necessary, where an appropriate solution is imposed on the committee members by way of a Production Management Group (PMG), or ultimately a Standards Development and Accreditation Committee (SDAC) determination. The PMG, or the SDAC, may approve or request that an independent expert panel or third party mediator is engaged to resolve issues and reach a determination, or they may approve for a product to be published as a lower consensus publication, or where necessary the cancellation of a project, however they do not make decisions on technical requirements contained in a product. An imposed SDAC determination is the final point of escalation.

2.2.2 What is a dispute?

Resolving Conflict – A Practical Approach (Tillet, 1999) defines a **dispute** as follows:

"*A dispute arises when two (or more) people (or groups) perceive that their interests or needs, or goals are incompatible and they seek to maximise fulfilment of their own interests or needs, or achievement of their own goals (often at the expense of others). This may be done through bargaining or negotiating, and the outcome is often reached through compromise: to obtain that which is most important, one party may yield to the other on that which is less important. Disputes are usually settled. That is, either a mutually agreed settlement (usually involving compromise) is reached by the parties to the dispute (either with or without the assistance of a third party, such as a mediator or facilitator), or a solution is imposed upon them by an external authority (for example, an arbitrator).*"

To provide some further context, *ADR Terminology: A Discussion Paper* (NADRAC, 2002) says:

"*Theoretical literature and procedural documents make distinctions among the terms 'disputes', 'complaints' and 'grievances'. A dispute usually refers to an unresolved complaint or grievance, for example, where a request to remedy a situation has been rejected or ignored (sometimes within set timelines).*".... "*Conflict resolution' can be distinguished from 'dispute resolution'. It is possible to resolve a dispute without resolving the conflict.*"

2.3 Policy

SA strives to deliver publications that are established by consensus.

In order to deliver consensus based publications, SA's policy is to minimise and, where possible, avoid disputes that prevent consensus from being achieved, and where conflicts do arise to proactively and effectively manage and resolve them by applying a range of collaborative problem solving techniques, as defined in this guide.

2.4 Codes of Conduct

The Nominating Organisation Code of Conduct and Technical Group and Committee Member Code of Conduct have been endorsed by the Standards Australia Production Management Group (PMG) and they apply to all Nominating Organisations linked to SA and their nominated members, including

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Coordination Groups, Technical Committees (TC), Sub-Committees (SC), Working Groups (WG) and other consensus groups established under the auspices of Standards Australia.

Nominating Organisations and their nominated members are required to be familiar with and operate in compliance with their respective Code of Conduct to support the productive participation by all members in the Standards development process.

> NOTE: *For more information on the roles and responsibilities of Nominating Organisations, see the* [Nominating Organisation Guide](#).

Dispute resolution works if the parties involved agree to the process. If parties do not agree, SA through PMG or SDAC determination, has the authority to determine the necessary action, which ultimately may include dismissing parties from the process. Everyone involved in the Standards development process agrees to operate in accordance with a Code of Conduct and they are expected to abide by the code. SA will proactively manage any breaches to the Codes of Conduct, as is deemed appropriate and necessary.

2.5 Roles and responsibilities

2.5.1 What is the role of the facilitator?

The dispute resolution process requires the effective facilitation of meetings and discussions, irrespective of whether the facilitation is undertaken by the committee Chair, a SA employee or a third party facilitator or mediator.

Dispute Resolution Terms (NADRAC, 2003) defines **facilitation** as follows:

> "*Facilitation is a process in which the parties (usually a group), with the assistance of a dispute resolution practitioner (the facilitator), identify problems to be solved, tasks to be accomplished or disputed issues to be resolved. Facilitation may conclude there, or it may continue to assist the parties to develop options, consider alternatives and endeavour to reach an agreement. The facilitator has no advisory or determinative role on the content of the matters discussed or the outcome of the process, but may advise on or determine the process of facilitation.*"

The role of the facilitator during the Standards development process, but particularly during dispute management and resolution, is expected to be impartial and competent, and is responsible for:

- Managing the process (and controlling the parties where necessary);

- Establishing dialogue between the parties;

- Encouraging open and effective communication;

- Helping the parties to identify mutual interests and objectives;

- Asking relevant questions to elicit information;

- Highlighting potential risks and issues that have not yet been identified;

- Helping parties to determine and assess key issues;

- Ensuring that parties consider and explore alternatives;

- Helping parties to work towards agreement on mutually acceptable outcomes;

- Promoting cohesiveness between the parties and enabling collaborative discussions; and

- Assisting the parties to determine the most appropriate implementation of solutions.

Throughout the process, particularly during negotiations, the facilitator is responsible for facilitating:

- Effective communication (not just overseeing arguments and accusations);

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- Joint clarification between parties of critical issues;

- Joint agreement between parties on which non-critical issues can be eliminated;

- Discussions that remain focussed on the subject matter and agreed issues;

- Joint clarification of each party's needs (rather than wants, demands or positions);

- Joint identification between parties of preferred outcomes and available options;

- Constructive joint evaluation of available options;

- Joint reality testing of the proposed options;

- Negotiation that narrows options and leads towards agreement on the best solutions;

- Agreements that are specific and realistic; and

- Identification and resolution of blocks and problems that are obstructing the process.

The facilitator is also responsible for:

- Assertively maintaining control of the process and ensuring that it remains on track;

- Accurately summarising key points and agreements throughout the process; and

- Helping the parties to clarify agreements, disagreements and unresolved issues.

> NOTE: For more detailed information regarding the responsibilities of the different roles involved in the Standards development process, see *SG-004: Roles & Responsibilities in Standardisation*.

3   Dispute avoidance and identification

3.1   Identify and assess issues (potential or actual) early

An important factor in avoiding disputes is having effective measures in place that help to identify potential or actual issues as early as possible. The sooner an issue is identified the sooner steps can be taken to assess the problem and to implement corrective measures before it escalates into a dispute.

Once issues, potential or actual, have been identified, investigation should be undertaken by the committee and the PM to gather as much information about the issues as possible, and should not only focus on the current issues but also expectations, projections, pressures, interdependencies and past experiences.

Consideration should be given to any historical disputes that have occurred between parties so that the potential for further issues can be anticipated and minimised, for example, it should be determined if aspects of historical disputes are influencing current issues or relationships between the parties.

Known issues should be documented in the initial project proposal and if unresolved before the commencement of a project, they should be tabled for discussion in preliminary meetings as well as at the 'Kick-Off' meeting with the committee.

However, it may be the case that issues do not become apparent until during the drafting process or in the meetings where technical discussions are undertaken in the lead up to the drafting process.

Whenever the issue is identified, immediate and proactive action is required. The framework in this Guide provides guidance for BAU Standards development activities undertaken by PMs, committee members and Chairs when managing 'difference of opinion' in order to avoid disputes.

> NOTE: See *Appendix B* for an overview of SA's Dispute Escalation Process.

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3.2   Prepare well and communicate effectively

Disputes can occur when there is a breakdown in communication, which can be caused by or result in confusion, misunderstanding, and in some cases, hostility.

The key to avoiding disputes is effective communication. To be effective, communication should involve sufficient preparation, clear and precise messages, factual information, disclosure of relevant data, empathy, assertiveness, effective listening, appropriate motivation and a willingness to communicate.

For communication to be effective in avoiding disputes, and throughout the Standards development process, all parties should perform sufficient analysis of the subject matter prior to the commencement of discussions, particularly when preparing to collaborate on complex or potentially contentious topics, so that practical objectives, priorities, key issues and concerns can be brought to the table as early as possible. Without sufficient analysis and planning, messages communicated to other parties can be unclear and objectives uncertain, which can damage relationships, delay progress and create inefficiencies in the Standards development process.

It is important that all attendees prepare for each meeting. This may include reading pre-meeting documents, downloading and reviewing the Standard in question and bringing other research materials to refer to in the technical discussion.

Of critical importance, the facilitator must have strong interpersonal communication skills to ensure that they are able to communicate effectively with the diverse range of interest groups, personalities and cultures that may be encountered during the process, as well as managing productive communication between each of the committees, committee members and other stakeholders.

3.3   Formalise the dispute

Once it has been determined that an issue cannot be resolved and it escalates into a dispute, the Chair should ensure that the following occurs to formalise the dispute:

- Details of the dispute are documented in writing (e.g. meeting minutes);

- Details of the dispute are distributed to all committee members and their agreement on the details and nature of the dispute is obtained; and

- Details of the dispute are forwarded to the PM to ensure they are aware of the dispute; then

- The committee members will attempt to resolve the dispute through direct negotiation.

3.4   Identify mutual interests

Disputes can be prolonged when there are competing interests that may not have mutual interests on which to build. One of the key objectives of the facilitator is to establish dialogue between the parties, and one of the best ways to do this is by helping the parties to identify mutual interests and objectives. Once common interests and goals have been identified, this promotes cohesiveness between the parties and enables more collaborative discussions to occur on the issues yet to be resolved.

Even if agreement can only be reached on seemingly small points, highlighting the mutual interests of the parties helps to develop trust and establish a positive relationship between the groups, which in turn increases the likelihood of resolving the larger issues in a constructive and proactive manner.

3.5   Determine the facts

To be able to successfully determine the facts, the facilitator and the committee members must maintain focussed attention on the discussions and actively listen to the points being presented. The objective of effective listening during the communication process is to ensure that the message being received is the same as the message that was intended, and that the message has been understood.

It can be particularly beneficial for the facilitator to use reflecting skills to ensure that communication between the parties is effective and that all parties have an accurate understanding of the issues,

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intended messages and overall context of the discussions. Useful skills include paraphrasing, clarifying and open ended questioning, reflecting perceived intentions and summarising key points.

By using reflecting skills effectively, the facilitator can maintain a neutral position in the discussions while still helping the parties to reach clarity on the issues and concerns while avoiding ambiguity, uncertainty and misunderstanding.

For each participant, it is necessary to clearly identify the:

- <u>Problem</u> – what are the issues; what is the dispute about?

- <u>Participants</u> – who are the people involved in the dispute, and to what degree?

- <u>Relevant past</u> – what history exists between the parties that may be relevant?

- <u>Priorities</u> – what is motivating the parties; what are their needs; what pressure exist?

- <u>Obstructions</u> – what is preventing the parties from resolving the issues/problems?

3.5.1 Summarising

Once the facts have been determined, it is important to once again summarise the key issues, points, and any agreements that have been made to ensure that all parties have a clear understanding of, and agree on, the facts. The purpose of summarising is to seek clarification from the parties, and not for the facilitator to impose their own interpretation of the issues and discussions.

3.6 Agree to objectives

Objectives should be specific, practical, and achievable.

The more complex a dispute is, the more likely it is that a whole range of objectives will be identified. For dispute resolution to be successful, each party must have a clear understanding of what outcomes are expected of the dispute resolution process and of each individual objective, otherwise discussions will be unproductive and may never reach a satisfactory conclusion.

Where a range of objectives are identified, it can be beneficial to initially focus on reaching agreement on basic, easily achieved objectives as this helps to reinforce the collaborative problem solving process, encourage compromise and create a sense of mutual achievement between the parties.

It is often effective to break down larger and broadly defined objectives into smaller, more specific and therefore more achievable objectives. Once the smaller objectives have been defined and agreed to, it is more likely that the parties will be able to agree on the larger, more complex objectives.

While defining the dispute resolution objectives as well as taking into consideration the overall objectives of the project, the facilitator should help the disputing parties to:

- Confirm and narrow the scope of the dispute;

- Break down larger, broadly defined objectives into smaller, more achievable objectives;

- Understand everyone's negotiating positions and their options should negotiations break down;

- Exchange information openly and in a without prejudice setting;

- Be empowered to act in their own interests while recognising the interests of other stakeholders;

- Agree to what actions are required by each party and when they should be completed by; and

- Determine what limits exist or what boundaries apply to each party;

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3.7 Collaborative problem solving (brainstorming)

The most desirable and time efficient outcome is for committee members and other stakeholders to resolve problems and issues without external assistance and before they escalate into a dispute. One of the most effective ways to achieve this is by having the parties 'brainstorm' the issues and possible solutions as this encourages open communication and creative solutions based thinking, which enables parties to collaboratively work through the problems until a suitable resolution is reached.

Often the open communication itself will lead to resolution when it is established that the problems have resulted from miscommunication or misunderstanding between the parties. At other times, the open communication helps to form a solid foundation for further collaboration and negotiation.

Collaboration, while a key principle of the entire Standards development process, is also critically important when working through disputes as it involves parties discussing the problems, negotiating appropriate solutions and reaching a mutually acceptable resolution to the dispute.

Negotiation requires the parties to confer until agreement is reached, with each party making and responding to offers, proposals or demands from the other. The negotiation process is underpinned by the understanding that the subject of the dispute is negotiable, and that each party is prepared to make appropriate compromises to ensure that the outcome is mutually acceptable to all stakeholders.

> NOTE: *Although negotiation encourages the disputing parties to be in control of the discussions and the resolution, some issues may be non-negotiable; therefore it is important for the facilitator to proactively manage the process in an assertive, yet impartial manner, to ensure the dispute does not escalate unnecessarily and that additional resolution strategies are introduced into the process when required (e.g. independent third party, expert advice or PMG/SDAC determination).*

3.8 Confirm Nominating Organisation position

Once it has been determined that a formal dispute exists which the committee members have not been able to resolve through direct negotiation, the PM should contact the Nominating Organisation of each member with sustained objections or unresolved issues so that they can be asked to confirm that their representative's position is aligned with their own.

If the Nominating Organisation endorses the position of their representative this should be recorded in writing, (e.g. meeting minutes) and the formal dispute resolution process can commence.

However, if the Nominating Organisation does not support the position of their representative, this should also be recorded in writing, and unless the member changes their position to align with the Nominating Organisation's position, the Nominating Organisation may overrule the committee member and confirm their position directly.

> NOTE: *1. The outcomes of the Nominating Organisation discussions must be recorded in writing.*

> NOTE: *2. Committee members who do not support the position of their Nominating Organisation may be removed from the committee, at the discretion of the PMG or the SDAC.*

> NOTE: *3. Importantly, the framework in this Guide provides guidance for BAU Standards development activities undertaken by PMs, committee members and Chairs when managing 'difference of opinion' in order to avoid disputes. See Appendix B for an overview of SA's Dispute Escalation Process.*

If the dispute is	Then
Resolved	• Go to 5.14 Resolution.
Unresolved	• Continue to 4 Dispute Management.

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4   Dispute Management

4.1   Explain the process

As soon as a dispute has been formally recognised, the dispute resolution process should be clearly explained to all parties to the dispute (e.g. committee members, proponents and other stakeholders).

Generally, the dispute resolution process will follow this sequence:

- SA becomes involved in the meeting facilitation process to help assess the dispute, define the issues, identify mutual interests, explore available options and reach agreement on suitable solutions.

- If the committee members cannot reach consensus on a solution that is suitable to all stakeholders, SA will present details of the dispute to the PMG.

- The PMG may make a determination as to the most appropriate solution to the dispute (and only if necessary, seek a SDAC final determination), or they may make a direct recommendation to SDAC to provide an executive and binding determination.

- SA may determine that the most appropriate means for resolving a dispute is to engage the services of an independent expert panel or third party mediator to assess the dispute and to assist the committee members in reaching an appropriate solution, or to provide a recommendation to PMG so that a final determination can be made.

  In the case of expert panels and mediation, all parties, in principle, should agree on the expert(s) and mediator(s) being used to ensure their interests are sufficiently represented, however, the SDAC is ultimately responsible for determining the most appropriate expert(s) or mediator(s) for each dispute on a case by case basis.

NOTE: Where committees have a history of conflicting views or hostility towards each other, it may be more appropriate to engage an independent facilitator or expert panel or a third party mediator as soon as the dispute is formally recognised. In extreme cases, independent facilitators, expert panels and third party mediators may be engaged even earlier where disputes are anticipated or expected. This is of particular relevance where the committees are likely to have an ongoing working relationship as it is critical that the relationship continues to operate in a professional and effective manner.

Throughout the process, it is important that the facilitator is and is seen to be fair, neutral and impartial. The priority of the facilitator should be to manage the process and ensure that an effective resolution is reached. It is not their role to champion a specific position, resolution, outcome or cause.

The aim of dispute resolution is to ensure that both the process and the outcome are fair. In other words, to ensure that the resolution is effective and long term, it is fundamentally important that all parties have a sense of justice, equity, and fairness in the dispute resolution process and the outcome. This allows for the rights of the parties to be protected, and for their needs and the needs of all stakeholders to be met in as many areas as possible by way of a positive and collaborative problem solving process.

NOTE: As a last resort in cases where the committee cannot progress, the best outcome may be project cancellation, to allow the committee time to research and provide other solutions to the dispute, then a new project proposal may be submitted.

4.2   Determine information and resource needs

To enable effective dispute management and resolution it is essential that all parties to the dispute have appropriate information and resources made available to them. Therefore, prior to formally investigating the dispute, the facilitator and PM should ensure that the following occurs:

- All parties to the dispute must have a clear understanding of the content under dispute as well as the nature of the dispute itself (i.e. what is actually being disputed and why);

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- Determine if more information or expert advice is required before the dispute can be effectively managed or before the resolution process can be facilitated (e.g. is further evidence required to substantiate the 'for' and 'against' arguments that have been presented);

- Assess whether the facilitation approach during the committee meetings has been adequate and effective, and if not, identify where the focus needs to shift to assist with the process;

- Ensure that an adequate location that is accessible to all participants is available to help facilitate fair and open discussions (e.g. private and conveniently located meeting rooms with video and/or teleconferencing, whiteboards and refreshment facilities); and

- All parties should be given sufficient time to permit respondents to consider the input and consult with their constituent groups.

NOTE: *SA will ensure that facilitators, Chairs and PMs are competent in meeting facilitation as well as the dispute management and resolution techniques defined in this Guide.*

4.3 Clarify and agree on issues/dispute

To clarify issues, facilitate discussions with all parties and analyse the dispute until agreement is reached on the specific issue or issues that are preventing consensus from being achieved. It is beneficial to include all parties to the dispute in the precise identification of the core issues, as collaborating and clearly defining the issues in the early stages of dispute resolution promotes a positive working relationship between the parties, which can encourage a more timely resolution to the present dispute as well as promoting efficient resolution of any future disputes.

Dispute resolution is facilitated by enabling the parties to reach an increasing number of agreements throughout the process, even if initially they only agree on the issues and not necessarily the solutions.

Effective facilitation and open communication are essential to ensure that a mutual and holistic understanding of the key issues, preferred outcomes and shared objectives is achieved, as this helps to promote trust, which in turn encourages more effective communication and collaborative problem solving. These are all important factors when working towards a mutually beneficial and agreeable resolution to a dispute.

Often disputes contain a number of mitigating issues that need to be identified and worked through before the core issues can be resolved, therefore it is important to identify and agree to the range of issues under dispute so that they can be prioritised in order of importance and urgency.

4.3.1 What if agreement on the issues has not occurred?

It is essential that all parties agree on the specifics of the issues. If mutual agreement is not reached on the issues, it is extremely difficult to reach a satisfactory and lasting resolution to the dispute.

To avoid unproductive discussion the facilitator must be clear thinking and assertive to help parties:

- identify common interests and objectives;

- present their issues concisely and precisely through focussed questioning and listening;

- identify the range of issues and prioritise them from least to most important;

- explain their issues objectively and in terms that presuppose resolution is possible;

- break down complex and imprecisely defined issues into smaller precisely defined issues;

- hear and understand the context of each other's issues, concerns and requirements;

- clarify and agree on the specific facts of the dispute in neutral and objective terms; and

- clearly identify the facts that the parties agree on, as well as those on which they disagree.

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> NOTE: The degree to which disagreement on the facts can be acceptable and worked through should also be explored by the facilitator and the parties in dispute, i.e. it may be possible to reach a satisfactory resolution to the dispute when varying degrees of disagreement still exist.

Each party should be given the opportunity to respond to the other parties' statements and concerns and it is up to the facilitator to guide the parties through constructive and focussed discussion.

Where the dispute has occurred through misunderstanding or misinterpretation between the parties, assertive communication and facilitated discussion can enable the parties to resolve their differences once they are aware of the facts and have a better understanding of each other's positions.

If the dispute is	Then
Resolved	• Go to 5.14 Resolution.
Unresolved	• Continue to 5 Dispute Resolution Process.

5   Dispute Resolution Process

5.1   Be prepared

To ensure that the dispute resolution process is effective, all parties must be fully prepared with as much information about the dispute as possible before the process begins. Part of the planning and preparation also includes ensuring that the facilitator understands the dispute resolution process as well as the details of the dispute. The facilitator should also be aware of any history between the parties to ensure they are prepared if any historical issues re-emerge.

Each party should prepare by assessing their:

1. own perceptions of the dispute (what is my understanding of the dispute);

2. interests in the resolution (what is my preferred outcome);

3. needs (what are my absolute requirements); and

4. available options (what can I afford to be flexible on).

The facilitator should stress the importance of preparation to all parties to ensure that everyone is fully briefed on what is expected of them and equipped with the appropriate information required to enable informed and effective discussions at the start and throughout the dispute resolution process.

5.2   Agree to the agenda

Before convening a dispute resolution meeting the PM must provide all participants with an agenda that clearly lists all issues that need to be discussed and details the schedule for the discussions to be held. This will help prevent discussions from being diverted from the key issues, keep the meeting on track and encourage productive discussions which will assist with resolving the dispute effectively.

The agenda items should be prioritised (highest importance to lowest) and the agenda well planned so there can be a realistic expectation that all items can be addressed in the allocated time. The agenda should be explicit and mutually agreed to by all parties as this enables the discussions during the meeting to remain focussed, proactive and collaborative.

The PM is responsible for ensuring that an agenda is prepared and distributed well in advance of the meeting and by agreement between all parties.

If new items are raised before the meeting, they should be added to the agenda and redistributed to all parties, or if required, flagged for attention at a future meeting.

> NOTE: Committee meeting agendas are stored electronically with all other project documentation.

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5.3 Convene dispute resolution meeting

The dispute resolution meeting should be convened with as much notice as possible and at a location that is suitable to all required attendees to ensure that all parties to the dispute are able to attend.

It is important to ensure that the key decision makers are in attendance at each meeting as well as being involved in the entire dispute resolution process, as attendees that are not able to approve options and dispute resolution agreements can inhibit progress, e.g. are committee members able to make decisions on behalf of their Nominating Organisation, or will they need to seek their guidance and approval before committing to a dispute resolution solution?

> NOTE: Consideration should be given to the utilisation of phone/video conferences (e.g. Skype or Zoom) to ensure that parties unable to attend the meeting in person are included in the discussions.

5.4 Confirm mutual interests

Before attempting to resolve the dispute it is important to clarify and reach agreement on the interests and objectives that each party has in common and what they are committed to undertake to resolve the dispute, (i.e. confirm the interests and objectives identified in 3.4 Identify mutual interests).

Agreeing on mutual interests can help the parties to move away from seeing each other as opponents, and instead allow them to work together more effectively as collaborators with common objectives. Although the parties may not agree on everything, by confirming mutual goals the parties are required to recognise their shared needs and purposes as well as the need for cooperative behaviour and discussions during the dispute resolution process.

5.5 Confirm the facts

At this stage of the process the facilitator invites the parties to present their arguments and evidence to each other so that the facts of the dispute that were identified in 3.5 Determine the facts can be discussed further, confirmed, and where possible, agreed to by all parties.

The facilitator is not responsible for making a determination on the information presented; rather, their role is to facilitate the discussions between the parties to ensure that everyone is given the opportunity to present their cases and have them understood so that healthy debate can occur that is based on the facts rather than perceptions or misunderstandings.

The facilitator is also responsible for assisting the parties to thoroughly investigate the details of the dispute and the presented facts so they can assess and analyse the available information and agree on the key issues that are relevant to the dispute as well as its resolution.

5.5.1 What if the parties cannot agree on the facts?

If the parties cannot agree on the facts, it may be beneficial to seek the opinion of a third party technical expert that is mutually acceptable to the parties and/or determined by SA, with the understanding that the opinion of the expert will be accepted as binding (pending PMG/SDAC endorsement, where the appointment cannot be agreed upon by the committee). The expert will generally not be responsible for making a final determination on the resolution of the dispute; merely to form an unbiased opinion on a question of fact or interpretation. PMG (and where necessary the SDAC) has the final approval of the dispute resolution if the committee cannot come to an agreement.

> NOTE: 1. The expert recommendation also needs to be endorsed by the PMG or the SDAC before the process can proceed further, with the SDAC being the final point of escalation for all determinations.

> NOTE: 2. As a last resort in cases where the committee cannot progress, the best outcome may be project cancellation, to allow the committee time to research and provide other solutions to the dispute, then a new project proposal may be submitted.

5.5.1.1 Collaborative problem solving

Throughout the dispute resolution process, it is important for cooperative 'brainstorming' to occur in order to open communication between parties as the basis of collaboration and negotiation.

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Collaborative problem solving can be repeated at different stages throughout the process. For more detailed information, see 3.7 Collaborative problem solving (brainstorming).

5.6 Confirm and define objectives

At this point in the process the facilitator is responsible for confirming the objectives that were identified in 3.6 Agree to objectives as well as helping the parties to determine if any new objectives have subsequently been identified. Objectives must be specific, practical, and achievable.

Once all of the objectives have been confirmed, the facilitator manages the discussions to ensure that the parties sufficiently define each objective, so they are achievable, and their completion is measurable (i.e. what measure determines that an objective is achieved).

It is also important that each party understands and agrees on the expected outcomes of the dispute resolution process and of each individual objective to ensure discussions are productive.

> NOTE: For more guidance on how to determine objectives return to *3.6 Agree to objectives*.

5.7 Explore and evaluate available options

Once the objectives have been defined and agreed to, the next step involves identifying, exploring and evaluating the available options and the resources required to effectively resolve the dispute. One of the most effective ways to identify and explore options is by 'brainstorming' the dispute, which consists of discussing the agreed issues, identifying a range of possible options and discussing their appropriateness, and not just focussing on the solutions that have already been presented.

Brainstorming can be separated into two separate activities.

1. Firstly, the facilitator should help the participants to discuss and compile a list of *all* possible options, regardless of how appropriate each solution might initially appear.

2. The second stage of brainstorming involves prioritising each proposed solution and evaluating each option based on its own individual merit.

Brainstorming encourages positive communication and collaboration and promotes understanding between parties. It also allows the dispute resolution process to be approached with an open mind and enables the creative discovery of appropriate solutions through logical questioning and problem solving. Although brainstorming often results in the spontaneous identification of options that may not yet have been considered, brainstorming is most effective when the participants are thoroughly prepared with as much information as possible before the discussions commence.

The facilitator is responsible for ensuring that the discussions remain focussed on the agreed issues and that the evaluation of the proposed options relates directly to the problem under dispute. This allows for alternatives and proposed solutions to be considered on their individual merit and encourages the participants to remain focussed on finding a solution rather than getting stuck on specific options or side-tracked by unrelated or less important topics.

> NOTE: The facilitator is not generally responsible for promoting solutions themselves; they are responsible for managing the process and ensuring that the discussions are effective and remain on track.

5.8 Agree on appropriate options and desired outcomes

Once all available options have been evaluated, the facilitator helps the participants to agree on the option that is most appropriate for all stakeholders. This will undoubtedly involve some negotiation between the parties until consensus is reached on the precise details of the preferred option.

The agreed option must be carefully measured against the agreed issues as well as the overall objectives of the project. The details of the option must be carefully discussed, precisely defined and clearly documented; including any required actions, responsibilities, timeframes and deadlines (e.g. details should be recorded in meeting minutes).

> NOTE: Options that are not precisely defined will be near impossible to implement effectively.

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Where agreement cannot be reached on options in the allocated time (e.g. more consideration or information is required), a clear process and timeframe should be agreed to by all parties to ensure that options are agreed to within an agreed timeframe that does not delay the resolution of the dispute or conflict with the timelines on the project schedule.

These decisions and commitments should be recorded and distributed to the committee in meeting minutes, with copies of the meeting minutes retained along with the other project documentation.

In addition, the parties must reach agreement on what outcomes they hope to achieve including the outcomes discussed in 5.9 Project outcomes and agreement on solutions as well as any new desired outcomes that were identified during negotiations.

When agreeing to desired outcomes, the following should apply:

- Desired outcomes should be specific, practical, realistic and achievable;

- Outcomes should be focussed on resolving the specific issues under dispute as well as providing solutions that are beneficial to all stakeholders, including the wider community; and

- Agreed desired outcomes should be documented in writing (e.g. meeting minutes) and distributed to all attendees.

5.9 Project outcomes and agreement on solutions

Once the parties have agreed to the most appropriate options, and before determining the best solution, it is important that the parties project and agree on the expected outcomes of each option.

To help determine the most appropriate option, projected outcomes should be assessed in terms of the planned outputs, anticipated risks or barriers, costs and benefits of each option and their relative advantages and potential disadvantages. This is particularly important where multiple options exist.

It is also critical to reach agreement on and document clearly and concisely what specific outcome will constitute resolution of the dispute. This is key to ensuring that all parties agree on the expected outcomes as well as the successful resolution of the dispute. Without clearly defining the criteria that determines resolution, not only does the potential for further conflict increase but it will also be difficult to determine when resolution has been achieved or how successful its implementation has been.

> NOTE: *Clearly defining what constitutes resolution of a dispute is important because it is one of the key measurables that is used to assess individual disputes as well as the overall effectiveness of the SA dispute resolution process.*

It is necessary that all parties agree on how the resolution of the dispute will be managed. This includes agreement on unresolved or future agenda items, future meeting locations, actions required by parties, timeframes for completion of tasks and the implementation of the final solution to the dispute, the involvement of any third parties to assist with the delivery of the outcomes, rules, etc.

Committee members and other key stakeholders are required to commit to the proposed solution in writing to ensure that all parties have the same precise understanding of what each party is committed to doing. Disputes that appear to have been resolved often break down as a result of one or more parties believing that the other has failed to comply with an agreement for resolution due to an incongruous understanding between the parties of the details of the solution.

Most importantly, solutions that are not precisely defined can be near impossible to implement effectively.

> NOTE: *1. All agreements made during the dispute resolution process must be recorded in writing (e.g. meeting minutes), distributed to all committee members and the decision stored electronically with all other project documentation.*

> NOTE: *2. As a last resort in cases where the committee cannot progress, the best outcome may be project cancellation, to allow the committee time to research and provide other solutions to the dispute, then a new project proposal may be submitted.*

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5.9.1 Collaborative problem solving

Throughout the dispute resolution process, it is important for cooperative 'brainstorming' in order to open communication between parties as the basis of collaboration and negotiation. Collaborative problem solving can be repeated at different stages throughout the process. For more detailed information, see 3.7 Collaborative problem solving (brainstorming).

5.10 Prepare to negotiate

All parties need to be sufficiently prepared before commencing negotiations.

The facilitator should undertake a thorough assessment of the dispute, the parties (e.g. historical relationships or issues that may impact the current dispute), and potential or anticipated problems.

The PM is responsible for preparing and distributing a preliminary agenda to all parties. It is useful to document the existing points of agreement and disagreement before negotiations commence to ensure that all parties are equally equipped with the known facts, issues and agreements.

The decision makers must be present during negotiations to ensure that further delays are not encountered while waiting for proposals and responses to be relayed between parties.

It may be appropriate to schedule negotiations to occur once all parties have had an agreed amount of time to adequately prepare for negotiations.

In preparation for negotiations, each party should reconsider all of the key elements that they have identified at various stages throughout the dispute resolution process, including:

- Have a clear negotiating position, i.e. what must I have, what would I like, what can I do without, what must I not have, where can I be flexible and what can I offer;

- Determine long term versus short term benefits, interests and needs;

- Determine your position in the event that negotiations break down;

- Identify if particular technical experts need to be present during negotiations;

- Ensure technical experts and decision makers are available for the scheduled negotiations;

- Carefully evaluate any resource, cost and time impacts;

- Research and familiarisation of any relevant regulations, laws or legislation; and

- The surroundings and the relationship between the parties are conducive to negotiation.

Before negotiations can commence, it is important for the parties to identify and clearly distinguish their positions or demands from their interests or needs. Making this distinction will make it easier for discussions to be based around 'interest-based negotiation' rather than 'positional bargaining'.

5.10.1 Positional bargaining

Positional bargaining can be ineffective as it often leads to important information being concealed and parties stubbornly maintaining their position, making demands or fighting to win as many demands as possible with little consideration for negotiating mutually beneficial outcomes.

5.10.2 Interest-based negotiation

Interest-based negotiation encourages open discussion of the interests and needs of all stakeholders which in turn strengthens the relationship between the parties and enables collaborative problem solving to occur so that outcomes can be reached that are suitable to all parties.

> NOTE: *It is important, particularly in highly technical areas, for negotiators to have a competent understanding of the topics being discussed, primarily because a facilitator who does not have a clear understanding of the content may find it difficult to effectively facilitate negotiations between parties.*

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5.11 Negotiate

Now that the parties have agreed on appropriate options and projected outcomes, the issues that were under dispute can be viewed as resolved and the facilitator can now assist the parties to negotiate an appropriate solution. Although negotiation should have been occurring throughout the process, the negotiations at this point will focus on reaching consensus on the mutually desired outcomes as well as the specific terms of the agreed solution and its implementation.

> NOTE: In some cases, by way of compromise, an agreement can be reached between parties that results in a satisfactory short term solution to a practical problem without all of the issues having been resolved. In this sense, the dispute has been effectively managed to minimise impacts rather than resolved.

The objective of negotiating an appropriate resolution is to maximise the long term benefits and minimise the disadvantages to all stakeholders, while meeting as many needs as possible for all parties. This is achieved through effective communication and bargaining between the parties.

5.11.1 Successful negotiation tactics

The following tactics can be used to increase the likelihood of negotiations being successful:

- Before negotiations commence, it is best that, where possible, the parties have established some level of trust between each other to enable effective collaborative problem solving and have undertaken adequate analysis and sufficient preparation for negotiations to be effective.

- The facilitator should encourage the parties to enter negotiations with an open mind, a positive approach, a willingness to cooperate and be flexible, a desire to reach a fair and equitable resolution and with an approach that is based on honesty, trust and open communication.

- The facilitator should encourage the parties to recognise any limitations and focus on realistic and achievable goals that can be achieved through creative collaboration and compromise.

- Open displays of cooperation can benefit the negotiation process, e.g. when parties display flexibility, a desire to explore options and a willingness to take the needs of the other parties into consideration, this helps to enable collaborative problem solving and can encourage parties to reciprocate in a cooperative, constructive and positive manner.

- The facilitator needs to remain assertive and encourage productive discussions throughout the process, particularly if bullying, delaying or blocking tactics are being used, to ensure that negotiations remain focussed on the key issues, the agenda is followed, and the process remains on track.

- If blocks are encountered, rather than remaining stuck on them, it may be more effective to move on and focus on other issues, then return to the blocks at a later point, e.g. sometimes blocks can be easier to work through once they have been rested for a while then revisited.

- If legitimate new issues are raised during negotiations, rather than discussing them as they are raised and allowing them to divert discussions away from the agenda, it is preferable to add them to the end of the agenda or record details of the issue and flag for future discussion.

Any agreements reached, decisions made, issues resolved or problems that remain unresolved should be clearly and precisely defined in writing (e.g. meeting minutes).

5.11.2 Potential barriers to negotiation

It is possible that the following tactics may be employed in an effort to delay the process or to gain an unfair advantage:

- Instead of being willing to compromise, some parties might prefer to risk losing everything rather than risk losing face by backing down or conceding ground on particular issues;

- Bullying tactics such as hostility, aggressiveness, heavy handedness, being argumentative, unreasonable negotiations or being deceptive and dishonest;

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- Delaying tactics, e.g. not completing agreed actions on time, not being available for meetings or disrupting meetings by arriving late, continually raising new issues or changing the subject to prolong the process or to divert discussions away from key issues and delaying or preventing key issues from being raised or discussed; and

- Blocking tactics, e.g. introducing and getting stuck on particular points, raising issues or reaching deadlocks that are difficult or impossible to resolve, therefore delaying negotiations and preventing progress or resolution and poorly defined options.

NOTE: Committee members who do not behave according to the Code of Conduct, and who deliberately attempt to delay or hinder the negotiation process may be removed from the committee, at the discretion of the PMG or the SDAC.

5.12 Plan implementation of solution

Planning for the implementation of the solution should be precise and specific, and should include:

- What actions will be undertaken?

- Who will undertake them?

- How will they be undertaken?

- When and where will the actions occur?

- What is the timeframe for the actions to be completed?

- What resources are required?

- When and how will the implementation be reviewed?

- What will determine if the implementation has succeeded, partially succeeded or failed?

NOTE: It is essential that all parties understand and agree with the implementation plan to ensure that everyone is clear on their own responsibilities as well as what is expected from the other parties.

5.13 Implement solution

As far as possible, the implementation of the agreed solution should continue to involve collaboration between the parties. If the implementation of the solution is staged, or due to its complexity is anticipated to take some time to complete, the parties should meet regularly to review the progress of the implementation.

In some circumstances, for example, where not all issues have been resolved but agreement has been reached on a solution to the key issues, it may be appropriate to implement the solution with the understanding that a review will occur at an agreed point in the future, which will provide opportunity to re-evaluate the situation and, if appropriate, make further changes and address unresolved issue during future revisions of the publication.

It should be made clear to the parties that once a solution is implemented, they can still continue dialogue with each other and they will have the opportunity to request for further enhancements to be made to the document by publishing amendments to and revisions of the publication in the future.

If the dispute is	Then
Resolved	• Go to 5.14 Resolution.
Unresolved	• Continue to 6 Escalation.

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5.14 Resolution

It essential that all participants are in agreement that the dispute has been resolved. This does not necessarily mean that all of the conflict between the parties has been resolved, but that a solution to the existing dispute has been agreed to. It may be that the parties have agreed to a short-term solution to resolve the current dispute, but with the agreement that the solution and/or the relevant publication will be reviewed at an agreed future date to reassess its effectiveness.

The details of the resolution agreement should be recorded in writing and retained along with the other project documentation to ensure that there can be no misunderstanding between the parties, as to the terms and details of the agreed resolution and associated issues. If this does not occur there is the potential for the dispute to resurface in the future or continue without a satisfactory conclusion.

Once a resolution to the dispute has been reached the next step in the process will be dependent on the nature of the dispute and the level of collaboration and analysis that has already occurred, for example, it might be appropriate to return to the beginning of section 5 Dispute Resolution Process, or if much of the groundwork has already occurred it may be appropriate to proceed to 5.11 Negotiate.

> NOTE: Where an expert panel or independent expert is engaged to facilitate resolution, the PMG or the SDAC will make a determination and their decision is final. All other dispute resolutions must be aligned with the rules of consensus discussed in 2.2.1 Consensus.

6 Escalation

6.1 When, how and to whom does a dispute get escalated?

Where a committee, Chair or PM cannot resolve an issue or dispute, the PM will seek guidance from the Program Manager (PgM) and/or the Head of Standards Development (HSD), General Manager of Operations (GMO), a Stakeholder Engagement Manager (SEM), Head of Stakeholder Engagement (HSE), or Independent Facilitator.

The HSD will consider if an independent facilitator, expert or third party mediator is required. If the committee cannot agree on the appointment of the facilitator, expert or mediator, then a formal request by the PM, PgM or HSD is made to PMG for approval of or input upon this recommendation.

Where PMG approves the recommendation, the PM informs the committee and stakeholders of the PMG determination. The committee and PM undertake to manage the agreed outcome.

PMG will only seek SDAC determination or approval of the recommendation if issues have arisen, and their input is required for an executive and binding determination. In this case, when the SDAC has endorsed a determination, the PM informs the committee and stakeholders of the determination. The committee and PM undertake to manage the agreed outcome.

> NOTE: Escalation may be required at any point in the process. Where it is necessary to escalate, the Dispute Escalation Process in Appendix B should be followed.

6.2 Third-party mediation

6.2.1 When is mediation appropriate?

Although collaborative problem solving between the parties is usually the preferred and most effective way of resolving issues, in some cases mediation may be more effective or even necessary.

Mediation is used to help the parties make decisions when previous attempts at collaborative problem solving between the parties have not been successful, due to the complexity of the dispute, or where a breakdown in the relationship between the parties has occurred.

Mediation aims to help the parties to explore the details of the dispute and to reach agreement on the disputed issues then assist them to work collaboratively to develop options, consider alternatives and work towards agreement on the most appropriate solution to the dispute.

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Where there is a history of conflict between the parties and ongoing difficulties are anticipated, it may be appropriate to introduce mediation much earlier in the process to mitigate the risk of conflict reoccurring and to minimise unnecessary delays in the Standards development process.

Generally, independent third-party mediation is used to facilitate the dispute resolution process when the committee and facilitator (e.g. Chair), with the assistance of SA, are unable to satisfactorily resolve the dispute within a reasonable timeframe.

> NOTE: *For mediation to be effective, it is preferable that all parties agree to participate in mediation, and agree to the mediation process and the mediator. However, this will not always be possible, so the SDAC will have the ultimate authority in determining the most appropriate mediator for each situation.*

NADRAC (2002) defines mediation as:

> *"a process in which the parties to a dispute, with the assistance of a neutral third party (the mediator), identify the disputed issues, develop options, consider alternatives and endeavour to reach agreement. The mediator has no advisory role in regard to the content of the dispute or the outcome of its resolution, but may advise on or determine the process of mediation whereby resolution is attempted."*

For the purposes of the SA dispute resolution process, and depending on the nature of the dispute in question, mediation may fall under the following three categories:

1. **Facilitative** – Facilitative processes involve the engagement of an impartial third party to assist with the dispute resolution process. Generally, their role will be to facilitate the process and they may provide advice on how the dispute might be effectively resolved, but their role is not to advise or make determinations on the content of the dispute or the outcome of its resolution.

   Where the subject matter is highly technical or complex, the mediator may be required to have a competent understanding of the subject and related terminology to enable them to manage the mediation effectively.

2. **Advisory** – Advisory processes involve the engagement of a third party to hear evidence or arguments from the parties, investigate the dispute, help determine the facts and provide advice on the dispute, which may include advising on potential, probable and preferred outcomes and how to achieve those outcomes most effectively.

   This method is most likely to involve a technical expert or panel of experts who have specialist knowledge of the subject matter and are qualified to investigate and provide advice on the facts of the dispute and the most suitable outcomes that resolution should deliver and how they might be achieved.

3. **Determinative** – Determinative processes will generally involve having the PMG investigate the details of the dispute, and where relevant the SDAC assess the recommendations of the PMG, then a technical expert or a panel of experts make a determination on the most appropriate method to resolve the dispute. This determination could ultimately result in the cancellation of the project or the withdrawal of the relevant publications if the dispute cannot be resolved.

   Essentially, the SDAC perform the role of a neutral third-party arbitrator and they are ultimately responsible for making a determination on the outcome to the dispute that they deem to be correct, fair, equitable and just, which is enforceable and binding on the disputing parties.

   Determinative processes can be most appropriate where there is a history of conflict between the parties or where an irreconcilable breakdown in the relationship between the parties has occurred and attempts at facilitative or advisory mediation have failed. In the case of arbitration it is possible that the actual conflict between the parties will not be resolved despite a resolution to the dispute having been achieved, (either through collaboration or a PMG or SDAC determination.

Mediation will employ the same principles already outlined in this Guide, so the mediator is responsible for controlling the resolution process and using their facilitation and mediation skills to minimise the risk of the process being blocked or diverted further.

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The mediator will assist the parties to identify and agree to mutually beneficial solutions and then formulate plans for the implementation of the solution and the resolution of the dispute.

> NOTE: It is important at this stage for the mediator to guide the parties to apply the principles outlined in *5.9 Project outcomes and agreement on solutions* and *5.12 Plan implementation of solution*.

6.2.2 Control and intervention

During the mediation process, the mediator may need to exercise their assertiveness at appropriate times to ensure they maintain control of the process, and to ensure that the process remains effective. Methods that help the mediator to remain in control of the process may include effective time management and regularly referring back to the agenda to ensure the agreed issues remain in focus.

It is important that the mediator knows when to intervene and when it is best not to, for example, it might be appropriate for the mediator to intervene and direct the parties to discuss an issue that they would prefer to avoid, but it may be more appropriate to guide the parties through the process so that the parties can collaboratively resolve the dispute with minimal input from the mediator.

6.2.3 Co-mediation and team mediation

Mediation may involve a single third-party, or due to the group structure of Standards development committees, the use of co-mediation (two mediators) or team mediation (usually no more than three mediators) can be particularly effective, with the mediators carefully selected for their individual areas of expertise and their roles in the process clearly defined before they are introduced to the process.

Resolving Conflict – A Practical Approach (Tillet, 1999) says:

> "The dynamics and logistics of communication and collaboration become complicated with greater numbers, and will essentially require that someone take the role of facilitator; it can obstruct the process if the facilitator is also a participant in the conflict".

7 Evaluation and Continuous Improvement

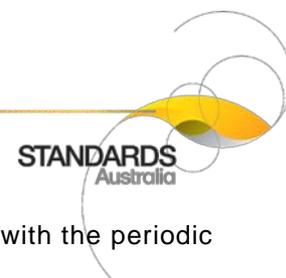## 7.1 Benefits of reviewing solutions and publications

Often people can be reluctant to agree to a particular solution if they feel that the solution is final and there could be a risk that the solution might not deliver what is expected or agreed to. The risk may be perceived or real, for example, the solution may not be as effective in practice as was intended, minor amendments or a major revision of the solution and/or publication might be required, or the solution might completely fail to work as intended.

For these reasons, it is important to establish when and how the solution will be reviewed to ensure that it is effectively delivering the expected outcomes. Agreeing to review a solution, and revise it after its implementation (where required), will help to alleviate any concerns parties might have about getting stuck with an inappropriate or ineffective solution. It also recognises that not all solutions are perfect and accepts that modifications might be required in the future if the solution fails to meet expectations or if circumstances change warranting further change.

While evaluating the solution, the parties are required to provide their open and honest opinions about the implementation of the agreed solution, where it has been effective and where it has failed to meet the objectives of the agreed solution in terms of resolving the original issues that triggered the dispute.

If, as a result of the review of the solution, it is determined that only minor modifications are required, the process may only need to return to section 5.7 Explore and evaluate available options. If, however, major changes are proposed it may be more appropriate to return to section 4.3 Clarify and agree on issue(s)/dispute to reassess the problems before considering new solutions.

Regardless of the level of modifications to the solution, each step in the process should be revisited to ensure that the principles in this Guide are still used to reach resolution, including implementing the modified solution and repeating the review steps.

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In some cases it may be sufficient to review the effectiveness of the solution along with the periodic review of the relevant Standard or other publication.

Regardless of how the review of the solutions occurs, this cyclical process is an effective way of maintaining constructive dialogue between the parties and promoting the use of collaborative problem solving. This helps to strengthen the level of trust and respect between the parties, as well as their overall effectiveness, which is of critical importance, particularly for committees that have an ongoing professional relationship or who are expected to work with each other again in the future.

If the review determines that the solution has been a success, all parties are required to confirm their agreement in writing that the solution has been successful, and therefore formally agreeing that the dispute has been resolved. These agreements should be stored with the other project documentation.

7.2   Post Implementation Review (PIR)

At the completion of all Standards development projects a Post Implementation Review (PIR) should be undertaken to evaluate the overall effectiveness of the project, and the management and resolution of any disputes, including the implementation of solutions and the effectiveness of their outcomes.

In part, the PIR aims to assess the effectiveness of all Standards development processes so that opportunities for process improvement and streamlining can be identified and implemented.

It is also an objective of the PIR to identify where issues have occurred due to non-conformance with agreed policies and procedures, so that corrective action can be taken at an individual level to minimise the risk of the same issues reoccurring in the future.

Particularly where a dispute has occurred, the PIR aims to capture feedback from the parties that were in dispute so that the overall effectiveness of the following can be evaluated:

- The dispute resolution process and principles outlined in this Guide;

- The Chairs, facilitators, mediators, committee members, Project Managers, etc.;

- The appropriateness of the agreed dispute solution;

- The outcomes of the solution (did they deliver fully, partially or not at all?); and

- In general, what worked well and what could have worked better.

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8   References

Standards Australia acknowledges that many of the principles set out in this Guide take into account the lessons learnt and the processes used by numerous sectors involved in conflict and dispute resolution, as well as incorporating methodologies that are promoted by the following resources:

The following reference sources were used for research purposes when creating this Guide:

1. ***ADR Terminology: A Discussion Paper*** (NADRAC, 2002). Retrieved February 15, 2010 from:

    https://www.ag.gov.au/LegalSystem/AlternateDisputeResolution/Documents/NADRAC%20Publications/ADR%20Terminology%20A%20Discussion%20Paper.pdf

2. ***ADR Terminology – Responses to NADRAC Discussion Paper*** (NADRAC, 2003). Retrieved February 15, 2010 from:

    https://www.ag.gov.au/LegalSystem/AlternateDisputeResolution/Documents/NADRAC%20Publications/ADR%20Terminology%20Responses%20to%20NADRAC%20Discussion%20Paper.pdf

3. ***A Framework for ADR Standards*** (NADRAC, 2001). Retrieved February 15, 2010 from:

    https://www.ag.gov.au/LegalSystem/AlternateDisputeResolution/Documents/NADRAC%20Publications/Framework%20for%20ADR%20Standards%20Body%20of%20Report.pdf

4. ***AS 4269-1995 – Complaints handling***. Document available from the Standards Australia Webstore at: https://www.techstreet.com/sa

5. ***AS 4608-1999 – Guide to prevention, handling and resolution of disputes***. Document available from the Standards Australia Webstore at: https://www.techstreet.com/sa

6. **Dispute Resolution Terms** (NADRAC, 2003). Retrieved August 24, 2010 from:

    https://www.ag.gov.au/LegalSystem/AlternateDisputeResolution/Documents/NADRAC%20Publications/Dispute%20Resolution%20Terms.PDF

7. ***ISO/IEC Directives – Part 1: Procedures for the technical work, 2019***. Retrieved May 6, 2019 from:

    https://isotc.iso.org/livelink/livelink/fetch/2000/2122/4230450/4230455/ISO_IEC_Directives_Part_1_-_2019_%2815th_Edition%29_-_pdf.pdf?nodeid=20448337&vernum=-2

8. The ***National Alternative Dispute Resolution Advisory Council*** (NADRAC): https://www.ag.gov.au/LegalSystem/AlternateDisputeResolution/Pages/NADRACpublications.aspx

9. Tillett, G. (1999). ***Resolving Conflict – A Practical Approach*** (2nd edition), Oxford University Press, South Melbourne, Victoria, Australia.

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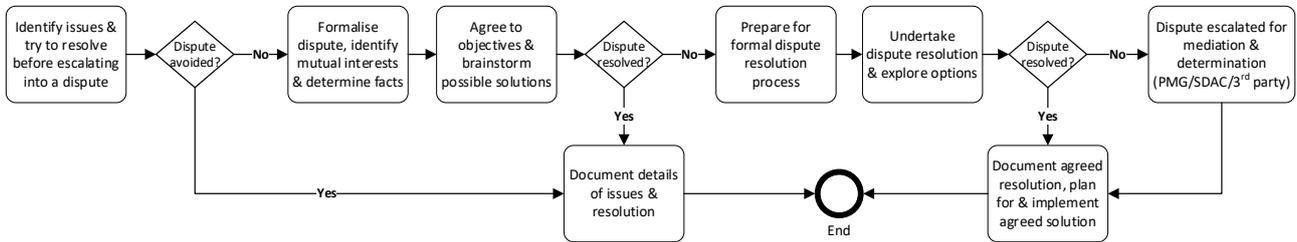## APPENDIX A – Overview of Dispute Avoidance & Resolution Process

Figure A.1 Dispute Avoidance and resolution process
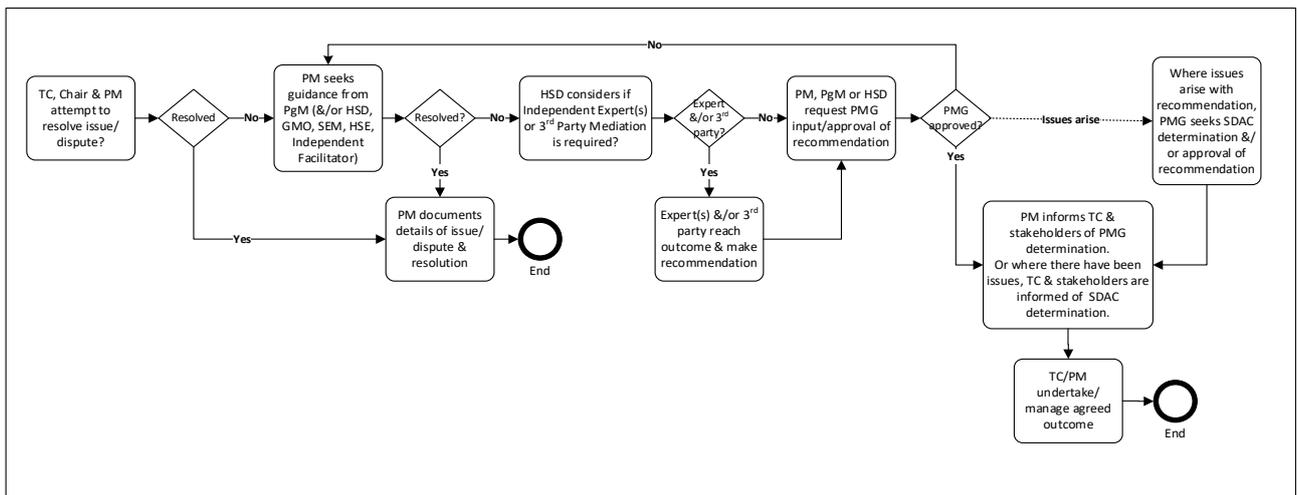
APPENDIX B – Dispute Escalation Process Overview

Figure B.1 Dispute escalation process

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APPENDIX C – Dispute Avoidance and Identification Summary Sheet (Section 3)

SA employee, (e.g. Project Manager, Independent Facilitator), Chairs, Committee members	
Avoid or identify and assess (Clause 3.1)	▪ To avoid a dispute, early identification is important. ▪ BAU framework means at any stage in a project a dispute is identified and can be managed.
Prepare and communicate (Clause 3.2)	▪ Prepare clear and precise messages, factual information, and disclose relevant data. ▪ Portray empathy and assertiveness. ▪ Listen effectively, be appropriately motivated and have a willingness to communicate.
Formalise dispute (Clause 3.3)	▪ Where a dispute has been identified, document details in writing (e.g. meeting minutes). ▪ Circulate documentation to committee members.
Identify mutual interests and determine facts (Clauses 3.4 and 3.5)	▪ Establish a dialogue between parties. ▪ Common interests and goals promote cohesiveness, enable collaborative discussions and develop trust. ▪ Clarify the problem, participants, relevant past, priorities and obstructions. ▪ Allow parties to summarise key issues, points and agreements.
Agree on objectives (Clause 3.6)	▪ Keep objectives specific, practical and achievable. ▪ Breakdown larger, complex objectives into smaller, more specific and achievable objectives.
Brainstorm (Clause 3.7)	▪ Brainstorm the issues and/or solutions to encourage open communication and creative solutions-based thinking. ▪ Work through until a suitable resolution is reached.
Confirm Nom Org position (Clause 3.8)	▪ Where a dispute has been identified, and no resolution has been developed, contact Nom Org to confirm that their representative's position is aligned with the Nom Org. ▪ The position, whether it is aligned or not, should be recorded in writing. ▪ If there is no alignment between the representative and their Nom Org , the Nom Org can overrule the representative and the representative may be removed from the committee.

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APPENDIX D – Dispute Management Summary Sheet (Section 4)

SA employee, (e.g. Project Manager, Independent Facilitator), Chairs, Committee members	
Explain process (Clause 4.1)	▪ Clearly explain the dispute resolution process to all parties to the dispute. ▪ Act in a fair, neutral and impartial manner. ▪ Ensure the resolution is effective and long-term.
Determine information and required resources (Clause 4.2)	▪ All parties shall be clear about: o What is being disputed and why; o Is further evidence required to substantiate the 'for' and 'against' arguments that have been presented; o Assess whether the facilitation approach during committee meetings was adequate or whether focus needs to shift to assist the process; o Ensure an adequate location that is accessible to all participants to facilitate fair and open discussions; and o Give all parties sufficient time to consider and discuss the input.
Clarify and agree on issues or dispute (Clause 4.3)	▪ Help parties to: o Identify common interests and objectives; o Present issues concisely and precisely through focussed questioning and listening; o Identify the range of issues and prioritise from least to most important; o Explain issues objectively and in terms that presuppose resolution is possible; o Break down complex and imprecisely defined issues into smaller precisely defined issues; o Hear and understand the context of each other's issues, concerns and requirements; o Clarify and agree on the specific facts of the dispute in neutral and objective terms; and o Clearly identify the facts that the parties agree on, as well as those on which they disagree.

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APPENDIX E – Dispute Resolution Summary Sheet (Section 5)

SA employee, (e.g. Project Manager, Independent Facilitator), Chairs, Committee members	

Prepare (Clause 5.1)	▪ All parties should be fully prepared with as much information as possible.
	▪ Each party should prepare:
	  o What is their understanding of the dispute;
	  o What is their preferred outcome;
	  o What are their absolute requirements; and
	  o What can they afford to be flexible on?

Agree to agenda (Clause 5.2)	▪ Clearly outline all issues to be discussed. ▪ Prioritise items (highest to lowest). ▪ Circulate well in advance of the meeting.
Resolution meeting (Clause 5.3)	▪ Convene meeting with as much notice as possible. ▪ Involve key decision makers in all aspects of the resolution process, e.g. attending all resolution meetings.
Confirm mutual interests, facts and objectives (Clauses 5.4, 5.5 and 5.6)	▪ Confirm mutual goals to recognise shared needs and purposes. ▪ Invite parties to present their evidence to each other. ▪ Assist parties with investigating the dispute's details and the presented facts so agreement upon key issues can be resolved. ▪ Where facts cannot be agreed upon, seek the opinion of a mutually accepted third-party technical expert. ▪ Keep objectives specific, practical and achievable. ▪ Each party shall understand and agree on expected outcomes.
Explore and evaluate options (Clause 5.7)	▪ Identify, explore and evaluate options and resources required to resolve the dispute. ▪ Brainstorm the dispute collaboratively. ▪ Keep parties focused upon the agreed issues. ▪ Ensure proposed solutions directly relate to the problem under dispute. ▪ Manage the process, but do not necessarily promote solutions.
Agreed options and desired outcomes (Clause 5.8)	▪ Outcomes should be specific, practical, realistic and achievable. ▪ Focus outcomes on resolving the specific issues under dispute. ▪ Provide beneficial solutions to all stakeholders, including the wider community. ▪ Document outcomes in writing (e.g. meeting minutes) and distributed to all attendees. ▪ Evaluate all options. ▪ Assist parties to agree on the option(s) for all stakeholders. ▪ Negotiation is the key element to agreement. ▪ Discuss, define and document, e.g. actions, responsibilities, timeframes and deadlines. ▪ Distribute documented options to all committee members.
Agreed project outcomes and solutions (Clause 5.9)	▪ All parties to agree on how the resolution will be managed. ▪ All parties to commit to the proposed solution in writing to ensure understanding is clear.

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Prepare to negotiate (Clause 5.10)	▪ Thoroughly assess the dispute.
	▪ Circulate preliminary agenda to all parties.
	▪ Schedule negotiations once all parties have had agreed time to prepare.
	▪ Each party should reconsider key elements:
	  o What must I have, what would I like, what can I do without, what must I not have, where can I be flexible and what can I offer;
	  o Long term versus short term benefits, interests and needs;
	  o Your position in the event that negotiations break down;
	  o Identify if technical experts need to be present;
	  o Evaluate any resource, cost and time impacts; and
	  o Research relevant regulations, laws or legislation.
	▪ Tactics for successful negotiations:
	  o The parties have a level of trust between each other to enable effective collaborative problem solving.
	  o The parties have undertaken adequate analysis and preparation for effective negotiations.
	  o The facilitator encourages parties to enter negotiations with an open mind, a positive approach, a willingness to cooperate and be flexible to reach a fair and equitable resolution based on honesty, trust and open communication.
	  o The facilitator encourages the parties to recognise limitations and be focused on realistic and achievable goals achieved through creative collaboration and compromise.
	  o The facilitator remains assertive and encourages productive discussions throughout the process.
	  o Ensure negotiations remain focussed on the key issues, the agenda is followed, and the process remains on track.
	  o If blocks are encountered, move on and focus on other issues, and return to the blocks later.
	  o If legitimate new issues are raised during negotiations, add them to the end of the agenda or record details and flag for future discussion.

Negotiate (Clause 5.11)	▪ Focus on reaching consensus on the mutually desired outcomes and the specific terms of the agreed solution and implementation.

Plan implementation solution and implement (Clauses 5.12 and 5.13)	▪ Planning should be precise and specific, and include:
	  o What actions will be undertaken?
	  o Who will undertake them?
	  o How will they be undertaken?
	  o When and where will the actions occur?
	  o What is the timeframe for completion?
	  o What resources are required?
	  o When and how will the implementation be reviewed?
	  o What will determine if the implementation has succeeded, partially succeeded or failed?
	▪ Involve collaboration between the parties during implementation.
	▪ Continue dialogue during solution implementation with the opportunity to request for further enhancements to be made in future.

Resolution (Clause 5.14)	▪ All parties must agree that the dispute has been resolved. ▪ Record details of the resolution agreement in writing and retain along with the other project documentation. ▪ Once a resolution has been reached the next step is dependent on the nature of the dispute and the level of collaboration and analysis that has already occurred.

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APPENDIX F – Escalation Summary Sheet (Section 6)

SA employee, (e.g. Project Manager, Independent Facilitator), Chairs, Committee members	
When, how and to whom is a dispute escalated? (Clause 6.1)	▪ Where an issue or dispute cannot be resolved, the PM seeks guidance from the Program Manager (PgM) and/or the Head of Standards Development (HSD), General Manager of Operations (GMO), a Stakeholder Engagement Manager (SEM), Head of Stakeholder Engagement (HSE), or Independent Facilitator.
Third-party mediation (Clause 6.2)	▪ Independent third-party mediation is used to facilitate the dispute resolution process when the committee and facilitator (e.g. Chair), with the assistance of SA, cannot resolve the dispute within a reasonable timeframe. ▪ Three categories of mediation: 1. Facilitative processes involve engagement of an impartial third party. Generally, their role is not to advise or make determinations on the content of the dispute or the outcome of its resolution. If the subject matter is highly technical or complex, the mediator needs a competent understanding of the subject and related terminology to enable effective mediation. 2. Advisory processes involve the engagement of a third-party to hear evidence or arguments from the parties, investigate the dispute, help determine the facts and provide advice on the dispute (e.g. potential, probable and preferred outcomes and how to achieve those outcomes most effectively). This method is most likely to involve a technical expert or panel of experts who have specialist knowledge. 3. Determinative processes generally involve having the PMG investigate the details of the dispute, and where relevant the SDAC assess the recommendations of the PMG, then a technical expert or a panel of experts decide on the most appropriate method to resolve the dispute. This determination could ultimately result in the cancellation of the project or the withdrawal of the relevant publications if the dispute cannot be resolved. The SDAC performs the role of a neutral third-party arbitrator and they are ultimately responsible for deciding on the outcome to be correct, fair, equitable and just, which is enforceable and binding on the disputing parties. This method is most appropriate where there is a history of conflict between the parties or where an irreconcilable breakdown in the relationship between the parties has occurred.

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Head of Standards Development (HSD)	
When, how and to whom is a dispute escalated? (Clause 6.1)	▪ Considers if an independent expert or third-party mediator is required. If the committee cannot agree on the appointment of the independent expert or mediator, then a formal request by the PM, PgM or HSD is made to PMG for approval of or input upon this recommendation.
PMG or SDAC	
When, how and to whom is a dispute escalated? (Clause 6.1)	▪ Where PMG approves the recommendation, the PM informs the committee and stakeholders of the PMG determination. The committee and PM undertake to manage the agreed outcome. ▪ PMG will only seek SDAC determination or approval of the recommendation if issues arise, and their input is required for an executive and binding determination. In this case, when the SDAC has endorsed a determination, the PM informs the committee and stakeholders of the determination. The committee and PM undertake to manage the agreed outcome.
Mediator	
Third-party mediation (Clause 6.2)	▪ A mediator is assertive at appropriate times, maintains control of the process, and ensures that the process remains effective. ▪ Knows when to intervene and when not to. ▪ The use of co-mediation (two mediators) or team mediation (usually no more than three mediators) may be effective.

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APPENDIX G – Evaluation and Continuous Improvement Summary Sheet (Section 7)

SA employee, (e.g. Project Manager, Independent Facilitator), Chairs, Committee members	
Review solutions and publications (Clause 7.1)	▪ Establish when and how the solution will be reviewed to ensure effective delivery of outcomes. ▪ Agree to review solution and revise after implementation (where required). ▪ Not all solutions are perfect, and modifications might be required if the solution fails to meet expectations or if circumstances change.

Post Implementation Review (PIR) (Clause 7.2)	▪ Upon completion of Standards development projects, a Post Implementation Review (PIR) should be undertaken to evaluate the overall effectiveness of the project.
	▪ The PIR captures feedback from the parties that were in dispute so overall effectiveness of the following can be evaluated:
	  o The dispute resolution process and principles outlined in SG-008;
	  o The Chairs, facilitators, mediators, committee members, Project Managers, etc.;
	  o The appropriateness of the agreed dispute solution;
	  o The outcomes of the solution (did they deliver fully, partially or not at all?); and
	  o In general, what worked well and what could have worked better.

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Content History

To follow details the history of this document:

Date	Author	Release Details
06/03/20	Process & Procedures Coordinator/Technical Writer	v1.0 – First release of SDAC approved guide.
12/03/2020	Process & Procedures Coordinator/Technical Writer	v1.1 – Inclusion of summary sheets.