

# CENTRAL LAND COUNCIL DISPUTE MANAGEMENT FRAMEWORK 2015

## CONTEXT

The CLC is a Commonwealth corporate entity pursuant to the *Aboriginal Land Rights (Northern Territory) Act 1976*, and also a Native Title Representative Body pursuant to the *Native Title Act 1993*. It operates in the southern half of the Northern Territory. The CLC has statutory functions under both these Acts to assist with the resolution of disputes that relate to land<sup>1</sup>.

Consulting with Aboriginal people, and ensuring there is informed consent<sup>2</sup> about land related decisions is a statutory duty central to the operations of the CLC. The CLC makes every effort to ensure consultation processes are appropriate for the group involved, reduce the potential for family or group conflict, and ensure informed consent. Informed consent requires that traditional owners and other Aboriginal people affected by the decision understand the available options, evidence and research on the proposal and the nature and implications of the decision being made. In addition, the CLC has developed a Community Development Framework which articulates the principles and processes of the CLC's development work. Underpinning this work are development principles such as empowerment, self-reliance and community cohesion<sup>3</sup>. Fundamental to this development work is supporting Aboriginal people to design their own processes to manage disputes, drawing on their own dispute management processes along with utilising new methods.

The CLC undertakes a diverse range of functions, including:

- consulting traditional owners over land-use proposals and exploration and mining;
- facilitation of Native Title claims;
- working with traditional owners to manage country;
- exploring enterprise options and coordinating ranger programs;

- managing the distribution of income arising from land-use agreements;
- implementing community development projects;
- management of its corporate legislative responsibilities;
- administration of a large number of private Aboriginal corporations; and
- undertaking research, media and advocacy work.

These various activities each have their own engagement needs and strategies, including compliance with legislative requirements.

There are a growing number of communities, and/or groups in the CLC region where entrenched conflicts are causing significant stress and anxiety for traditional owners and Aboriginal people, and making it very difficult for CLC staff to fulfil their duties. There are also numerous examples of Aboriginal people managing their own disputes using their own systems and processes. The work of the Lajamanu kurdiji or 'law and justice' group is an example.

As the CLC grows and diversifies it is evident that it requires a more systematic approach to ensuring that staff have the appropriate skills and expertise to facilitate effective consultation and engagement processes, with a particular awareness of preventing, recognising and responding to disputes and conflict situations. There is also a need to recognise and support traditional owner and family groups to ensure they can better manage their own disputes. This Framework should be read

<sup>1</sup> See s.25(2) *Aboriginal Land Rights (Northern Territory) Act 1976* and s.203BF *Native Title Act 1993*

<sup>2</sup> See for example s.23(3) *Aboriginal Land Rights (Northern Territory) Act 1976*, and also the United Nations Declaration on the Rights of Indigenous Peoples

<sup>3</sup> CLC Community Development Framework, September 2009, see [www.clc.org.au](http://www.clc.org.au)

in conjunction with the *CLC Effective Consultation Engagement Strategy 2015-2020* which outlines the CLC's approach to helping to prevent disputes through the adoption of effective engagement processes.

In 2012 the CLC management group and Executive identified the need for a Dispute Management Framework to provide greater clarity about the role of the CLC in relation to preventing, recognising and responding to disputes in the region. Staff and CLC Executive members met to explore the issue of dispute management and determine what action the CLC could take.

This Framework draws on the 2012 workshop in order to articulate the CLC's approach to dispute management.

Finalising and operationalising this Framework is specified as a strategy in the CLC Corporate Plan 2015 – 2019. Further, the CLC's risk management plan identifies that the impact of abusive behaviour on individual staff members, sometimes emanating from disputes between CLC constituents, is a key risk and a work health and safety issue, and this Framework will assist in managing that risk.

## UNDERSTANDING DISPUTES IN THE CLC REGION

The CLC recognises that in any society disputes occur, and that there are means for resolving them. There are many complex reasons why disputes occur amongst Aboriginal people in this region, including changes in social structures and demographics, and forced settlement of people into large communities. These factors challenge the local ability to effectively manage disputes. Disputes in the CLC region can be grouped under four inter-related categories: those based on land and traditional ownership, competition for money or resources, family matters, or individual behaviours. The following examples are provided to further explain the different categories of disputes:

Category	Examples
<b>LAND-BASED</b>	Disagreements over traditional ownership responsibilities and outcomes of land claims, the need to better negotiate relationships between community residents and resident or non-resident traditional owners (particularly apparent in community leasing decisions), shifts in traditional ownership and cultural responsibilities for certain areas or tracts of land.
<b>RESOURCES-BASED</b>	Disagreements regarding the distribution of land use benefits (rent, royalties and affected area payments), and disputes resulting from particular families aligning with, or dominating, local organisations, in part to ensure access to available resources.
<b>FAMILY-BASED</b>	Disagreements within or between families that are personal in nature such as custody disputes or marriage arrangements, and situations where the non-application of traditional law results in unresolved conflicts between families.
<b>INDIVIDUAL-BASED</b>	The dominance of certain individuals in a meeting or group dynamic, including by those that exhibit bullying behaviour and the unwillingness of many Aboriginal people to confront such behaviour either directly or indirectly. This can lead to harassment or intimidation of staff and/or other meeting participants.

While the CLC has statutory responsibilities regarding disputes relating to land, it is clear that (a) some disputes cross multiple categories and (b) disputes in any of the above categories may impact on the ability of the CLC to undertake its functions. **Thus, this Framework is not strictly limited to land-based disputes.**

The CLC may respond to any dispute based on an assessment of whether or not the dispute is, or has the potential to, significantly impact on the business and operations of the CLC. However, it is vital that the CLC recognises its limitations with regards to many disputes. This Framework aims to provide clarity about the CLC's options for responding to disputes. It recognises that in many cases disputes may not be resolvable, however the CLC may assist groups to put into place processes and protocols aimed at managing disputes to enable the business of those groups to continue.

## CLC DISPUTE MANAGEMENT PRINCIPLES

**The CLC believes that supporting the capacity and commitment of Aboriginal people to prevent and manage their own disputes is fundamental to the achievement of Aboriginal self-determination. Dispute management processes are critical to building strong Aboriginal governance at all levels: regional, local and organisational. At the heart of good governance lies an effective decision-making process: if relevant and transparent decision-making processes are in place which work for the group many disputes may be alleviated or managed through these processes. The following principles seek to recognise the importance of dispute management in progressing aspirations for more effective Aboriginal governance and practical expressions of self-determination.**

Consistent with the approach articulated in the CLC's Community Development Framework, and the *CLC's Effective Consultation and Engagement Strategy*, the CLC's approach to dispute management reflects the following principles:

- empower Aboriginal groups, families and individuals to identify and manage their own disputes;
- reduce reliance on the CLC or any external parties in relation to mediating disputes;
- 'wait to be asked' to assist but then be able to respond in a consistent and timely manner, recognising that a timely response can lessen the likelihood of exacerbation of a dispute;
- recognise that disputes are nested in systems and structures, meaning that numerous external parties and factors are likely to be causing or exacerbating disputes;
- recognise that the work of the CLC may have unintentionally caused or be exacerbating a dispute;
- recognise that getting the decision-making processes of the group right is a major preventative measure;
- engagement processes should do no harm; and
- CLC support is conditional on disputing parties demonstrating a commitment to managing a dispute and the CLC may withdraw ongoing support, services and resources where parties are not committed.

# CLC Dispute Management Approach

The CLC approach to dispute management has three clear components:

## A. Seek to prevent disputes

Measures relating to prevention are detailed in the CLC's Effective Engagement and Consultation Strategy.

## B. Recognise and assess disputes

The CLC will ensure there are clear and transparent systems for recognising, recording and mapping disputes, and assessing whether the dispute is likely to have an impact on the ability of the CLC to do its work.

Once aware of a dispute, the CLC will ensure there are clear internal processes to:

- map the procedural, substantive and emotional interests of all parties in the dispute;
- determine whether, and if so how, the work of the CLC may have caused or be exacerbating the dispute;
- determine the potential impact of that dispute on CLC engagement or operational processes;
- ensure staff collaborate to share information and adopt agreed strategies relating to that dispute, including by identifying any potential conflicts of interests either for the CLC as an organisation or individual staff members.

The mapping and assessment process above will determine how the CLC proceeds:

1. Where a dispute is clearly beyond the functions of the CLC and will not specifically impact on the ability of the CLC to do its work, the CLC will maintain a 'business as usual' approach but will take extra care to ensure any actions do not exacerbate tensions between individuals, families or communities.

Disputing parties will be advised that the CLC is not in a position to provide assistance.

2. Where a dispute is clearly a land-based dispute, or has been assessed as having a significant impact on the ability of the CLC to do its work, the CLC will respond as set out below.

## C. Respond to disputes

Where a dispute has been assessed as being land-based, or having the potential to significantly impact on the ability of the CLC to undertake its functions, the CLC will develop a response strategy.

This does not mean the CLC will necessarily play a mediation role in relation to the dispute. There are two distinct aspects to this response strategy. The first being to determine the relationship and agreed process between the disputing parties and the CLC. While the second relates to the relationship and agreed processes between the disputing parties themselves.

### RELATIONSHIP BETWEEN THE DISPUTING PARTIES AND THE CLC

- Seek anthropological advice;
- Meet with those involved in the dispute, taking care to meet with all disputing parties, as well as other key stakeholders, to discuss possible options and actions, and to provide clarity about the ongoing role of the CLC;
- Work with disputing parties in order to reach agreement about the way the CLC will engage with each party in relation to CLC work;
- Document the agreement between parties and the CLC in relation to CLC engagement processes and ensure this is presented transparently and in a visual format to all parties.

### RELATIONSHIP BETWEEN THE DISPUTING PARTIES THEMSELVES

- Where requested, and subject to resourcing and expertise, the CLC may be able to work with disputing parties to assist to design and implement an agreed approach to addressing, or resolving, a dispute. This work may include working with some or all of the disputing parties (subject to their agreement) to:
- Hold meetings and discussions, including on country, as required;
  - Review existing governance arrangements (where appropriate) and develop agreed strategies to support effective governance;
  - Determine whether a third party community facilitator/mediator is required;
  - Investigate resourcing and support needs if an external third party is required;
  - Identify any capacity building requirements of the parties, and investigate options for supporting that capacity building;
  - Discuss options in the event that parties cannot agree on how a dispute is to be managed or addressed, including external arbitration, facilitating senior people to make required decisions, etc
  - Put in place processes for implementing and monitoring the agreed approach to the dispute and agree action to be taken in the event of a breach; and
  - Assist to document any agreements reached between the parties.

### CLC EXECUTIVE OVERSIGHT

The CLC undertakes to ensure the CLC Executive is briefed annually about progress under this Framework. Further, the CLC Executive will be advised of any instances where parties repeatedly breach agreed processes and show little or no interest in attempting to better manage a dispute. The CLC Executive may make a decision to withdraw CLC services to the disputing party or parties for a period of time.

## MONITORING AND EVALUATION APPROACH

**To ensure the continuous improvement of this Framework and to assess its outcomes for CLC constituents, a comprehensive Monitoring and Evaluation Strategy will be developed once the Framework has been endorsed. It is anticipated this will be based on the following approach.**

Monitoring will be undertaken on an annual basis. Drawing on the annual monitoring data collected and analysed over the period of the strategy an external evaluation will be undertaken in 2019.

The monitoring and evaluation focus will be scaled up as the Framework is implemented, with more comprehensive monitoring being done on the implementation of the 'response' component of the Framework.

Qualitative and quantitative data will be collected and analysed as part of the annual monitoring process. Monitoring outcomes in relation to the component relating to recognition and mapping are likely to rely more on qualitative data including staff, delegate and constituent perceptions of the CLC's capacity to effectively recognise and map disputes, although the numbers of disputes mapped and reported to Executive will also be monitored.

Effectively assessing the outcomes of the CLC's work to respond to disputes will require a more sophisticated Monitoring and Evaluation strategy which will be developed with external assistance once the necessary resources have been secured to implement this Framework. The budget submission for this area of work should include funding for the associated Monitoring and Evaluation design and implementation.