



DISPUTE RESOLUTION PROCESS

Approved by the Advisory Board

on 9 August 2006

The purpose of this Dispute Resolution Process is to facilitate the expeditious and fair resolution of Disputes between the ATR and its Participants, or between two or more Participants.

Feedback: The Advisory Board welcomes any comments on how this process can be improved to increase the efficient resolution of disputes. Please direct your comments to the Secretary of the Advisory Board.

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1. DEFINITIONS AND INTERPRETATION

1.1 In this Dispute Resolution Process:

Administrator means the Co-ordinator of the ATR (or other delegate approved by the Board) tasked with carrying out the administrative duties ascribed to the Administrator in this Dispute Resolution Process.

Advisory Board means the independent advisory board of the ATR operating in accordance with the Advisory Board Charter (a current version of which can be obtained on <http://www.twins.org.au>).

ATR means the Australian Twin Registry as represented by its Director.

Determination means a written determination of a Dispute by the Panel in accordance with clause 11.1.

Director means the Director of the ATR.

Dispute means a dispute that arises between the ATR and a Participant, or between two or more Participants, and which relates to the Participants' participation in the activities, or use of the facilities, of the ATR.

Dispute Resolution Panel is the panel of Independent Members appointed by the Board to hear Disputes and make Determinations in accordance with this Dispute Resolution Process.

Independent Member means a member of the Advisory Board that satisfies the criteria for independence documented in the Advisory Board Charter.

Member means a member of the Panel.

Panel means the Dispute Resolution Panel.

Participant means any party participating in the activities, or using the facilities, of the ATR, including members of the Expert Reference Group, Australian researchers, the Australian Multiple Birth Association, and the volunteers registered with the ATR. **Participants** will be construed accordingly.

Process means the Dispute Resolution Process.

Policies means the policies, processes and procedures as developed or implemented by the ATR from time to time (current versions of which can be obtained on <http://www.twins.org.au>).

1.2 In this Process:

- (a) any use of the word 'includes' or words such as 'for example' or 'such' do not limit anything else that is included in general speech;
- (b) any reference to '\$' or 'dollars' is to Australian dollars; and
- (c) all amounts are GST exclusive;
- (d) 'day' means a day when the offices of the ATR are ordinarily open for business; and
- (e) all notices must be in writing and in English.

1.3 The Advisory Board will interpret all terms of this Process and any such interpretation will be final and binding on every person. The Advisory Board may issue guidelines to assist in that interpretation.

1.4 The Advisory Board may vary this Process from time to time or make such further rules as it deems fit.

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2. PURPOSE

- 2.1 The purpose of this Process is to facilitate the expeditious and fair resolution of Disputes that arise between the ATR and its Participants, or between two or more Participants.
- 2.2 This Process is intended to satisfy the requirements of the 'Enabling Grants Access to Facilities Policy' of the National Health and Medical Research Council ("NHMRC").
- 2.3 This Process takes effect on the date it is approved by the Board.

3. SCOPE

- 3.1 This Process applies to all Participants.
- 3.2 Each Participant agrees that, in consideration for being permitted to (a) use the facilities of the ATR, or (b) participate in its activities, each Participant agrees to submit exclusively to the jurisdiction of the Dispute Resolution Process and agrees that unless and until the Dispute Resolution Process has been exhausted, it will not attempt to resolve any Dispute in a court of law, or by reference to any third party.
- 3.3 This Dispute Resolution Process binds Participants and applies exclusively for the resolution of Disputes.

4. APPOINTMENT AND GOVERNANCE OF THE PANEL

4.1 Appointment

- (a) The Advisory Board will appoint at least four (4) of its Independent Members to act as the Dispute Resolution Panel.
- (b) The Advisory Board will appoint a Chair of the Panel from amongst the member of the Panel. If the Chair is not available to attend a hearing, the Members present at the hearing can appoint a Chair from amongst themselves for the purposes of that hearing.

4.2 Retirement, Resignation, Removal and Replacement of Members

- (a) A Member may retire or resign his/her office at any time and is requested to provide written notice to the Advisory Board of his/her decision to do so.
- (b) The Advisory Board may vote to remove Members.
- (c) In the event that Members resign, retire or are removed from the Board or the Board decides to increase the number of Members on the Panel, the Advisory Board will appoint new Members.

4.3 Jurisdiction

The Panel has jurisdiction to determine Disputes referred to it in accordance with this Dispute Resolution Process.

4.4 Conflict of interest

- (a) A member of the Panel cannot hear or determine any Dispute if that member has a conflict of interest, actual or perceived, including, without limitation, if there is any reason where a private or personal interest could influence the way the member performs his or her duties.
- (b) With good cause, the Advisory Board may at its discretion determine that a Member does not have a conflict of interest or the conflict is not sufficiently material to disqualify a Member from participating in the hearing and determination of a Dispute.

4.5 Voting & Quorum

- (a) Each member of the Panel has a single vote and all decisions of the Panel will be made by majority vote. If there is an equality of votes, the Chair has the casting vote.

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- (b) A quorum will consist of three (3) members of the Panel.

5. ADMINISTRATION OF DISPUTE RESOLUTION PROCESS

5.1 Appointment of the Administrator

- (a) The Co-ordinator of the ATR will act as the Administrator and assist the Panel in the administration of the Process.
- (b) In the event that the Administrator is unavailable for any period exceeding fourteen (14) days, the Chair will appoint a delegate to act as Administrator for that period.

5.2 Duties of the Administrator

The Administrator must be the central point of contact for the parties to a Dispute and perform all tasks prescribed to the Administrator and any incidental tasks necessary to ensure the smooth and efficient operation of this Dispute Resolution Process, including, without limitation:

- (a) ensuring that all timeframes and requirements are met by the parties;
- (b) convening all hearings of the Panel as soon as practicable and, if an urgent hearing is required, convening an urgent hearing;
- (c) collating all documents and evidence received by the parties or relevant to the Dispute; and
- (d) providing copies of notices and Determinations to the parties to the Dispute.

5.3 Administration and Expenses

The ATR must meet all administrative costs of the Administrator and the conduct of this Dispute Resolution Process.

5.4 Notice

- (a) A notice under this Dispute Resolution Process must be in writing and in English.
- (b) A notice will be deemed received by a recipient:
 - (i) if delivered by hand to the recipient's address, on the date of delivery, as long as delivery is acknowledged in writing by the recipient;
 - (ii) if sent by post, three (3) days after the posting; and
 - (iii) if sent by email or facsimile on a working day at the recipient's normal place of work, on the date of transmission, or if sent on a non-working day at the recipient's normal place of work, on the next working day (in both cases as long as the sender's email or facsimile machine records a successful transmission).

6. CONFIDENTIALITY

6.1 A party to a Dispute must not make any statement to any party not directly involved in the Dispute that:

- (a) is disparaging of another Participant or of the ATR or its officers or employees;
- (b) comments on any matter currently the subject of a Dispute; or
- (c) materially injures the reputation and goodwill of another Participant or of the ATR or its officers or employees.

6.2 Any Participant who acquires confidential information, whether oral or documentary, in the course of that party's participation in the activities, or use of the facilities, of the ATR will not disclose or use that information in any manner which will harm any other Participant, or the ATR or its officers or employees.

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- 6.3 A party to a Dispute who acquires confidential information, whether oral or documentary, in the course of the Dispute Resolution Process will not disclose or use that information except in accordance with this Process unless and until the information becomes public knowledge otherwise than by a breach of this clause 6.
- 6.4 A party to a Dispute may discuss information that comes to their knowledge in the course of the Dispute Resolution Process for the purpose of the Process with their legal advisers and insurers and within their respective organisations on the condition that it is only used to assist in the expeditious and fair resolution of the Dispute and that any confidential information is not further disclosed unless and until it becomes public knowledge otherwise than by a breach of this clause 6.
- 6.5 If any Participant breaches any part of clause 6, the Panel may determine that the Participant is banned from further participation in, or use of the facilities, of the ATR. The Panel may, in its discretion, also allow the party suffering damage as a result of such breach to pursue their legal rights without further reference to the Dispute Resolution Process.

7. STAGE 1: ATTEMPT BY PARTIES TO RESOLVE THE DISPUTE

- 7.1 If a Participant (**complainant**) has a Dispute with the ATR or another Participant (**respondent**), the following procedure exclusively applies:
- (a) the complainant must first discuss the Dispute with the respondent and each party must act in good faith and use his or her best efforts to resolve the Dispute;
 - (b) if the Dispute is not resolved to the satisfaction of the complainant, then within fourteen (14) days of all such actions being completed, the complainant must serve a written notice on the Director requesting a determination of the Dispute. The notice must:
 - (i) specify the relevant facts, the reason for the Dispute, any relevant contractual terms and the requested remedy; and
 - (ii) copy all other parties to the Dispute.
 - (c) Upon receipt of such notice, the Director will discuss the Dispute with each party and, within fourteen (14) days after receipt of the complainant's notice, notify the parties to the Dispute of his/her decision in writing.
- 7.2 If the Director determines the Dispute, the notice must inform the parties of their right to refer the matter to the Panel in accordance with Clause 8.1.
- 7.3 If the Director is unable or unwilling to Determine the Dispute, the notice must inform the parties that he/she will immediately refer the Dispute to the Panel for Determination. The Director must then immediately refer the Dispute to the Panel in accordance with Clause 8.2.

8. STAGE 2: REFERRAL OF DISPUTE TO THE PANEL

- 8.1 If any party to a Dispute, acting reasonably, is not satisfied with the decision of the Director made in accordance with clause 7.2, and wishes to refer the Dispute to the Panel, that party must:
- (a) give written notice to the Administrator, within fourteen (14) days after receipt of the notice under clause 7.2, that it wants a hearing before the Panel;
 - (b) specify the relevant facts, the reason for the Dispute, any relevant contractual terms and the requested remedy; and
 - (c) copy the Director and all other parties to the Dispute.

The party referring a Dispute to the Panel in accordance with this clause 8.1, must pay an administration fee to the ATR of \$500. A bank cheque for the amount made payable to the 'Australian Twin Registry' must be included in the notice referred to in paragraph (a) immediately

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above. If the final Determination of the Panel is in favour of the party who made the referral, the fee will be refunded to that party.

- 8.2 Notwithstanding clause 7, the Director may refer a Dispute to the Panel at any time. If the Director wishes to refer a Dispute to the Panel, the Director must:
- (a) give written notice to the Administrator that he/she wants a hearing before the Panel;
 - (b) specify the relevant facts, the reason for the Dispute, any relevant contractual terms and the requested remedy; and
 - (c) copy all parties to the Dispute.

9. STAGE 3: PREPARATION FOR THE HEARING

- 9.1 Once the Administrator receives a notice under clause 8.1 or 8.2, the Administrator must liaise with the Chair and set a hearing date and time within fourteen (14) days of receipt of that notice.
- 9.2 Any timeframes specified in this Dispute Resolution Process may be extended only by:
- (a) written agreement of the parties; or
 - (b) the Administrator where an extension would be just and reasonable.
- 9.3 The Panel may, in its discretion (acting reasonably), refuse to hear any Dispute where more than two (2) years has elapsed since the subject matter of the Dispute first arose. The Panel will however hear any such Dispute if it reasonably believes it is in the best interest of the ATR to do so.
- 9.4 At least five (5) business days before the start of the hearing, each party to the Dispute must provide to the Administrator and to the other parties to the Dispute:
- (a) a written summary of the issues in dispute, the arguments that the party intends to rely on, and the nature of the determination that the party is seeking; and
 - (b) a copy of any other written submissions, materials or documents it intends to rely on in the hearing.
- 9.5 A party will not, without the leave of the Panel, be permitted to raise any issue, make any argument, or submit any written submissions, materials or documents into evidence, at the hearing, if that issue, argument, written submission, material or document was not provided to the Administrator and to the other parties to the Dispute in accordance with clause 9.4.

10. STAGE 4: HEARING BY THE PANEL

- 10.1 Hearings are not bound by the rules of evidence usually applicable to proceedings in courts of law, but all hearings must be conducted in accordance with the principles of natural justice, including, without limitation, that a respondent to a Dispute has had:
- (a) reasonable and sufficient notice of the Dispute; and
 - (b) the opportunity to be heard and to make submissions in relation to all issues.
- 10.2 Hearings of the Panel may be heard in person or by phone. If in person, hearings will be conducted at the premises of the ATR.
- 10.3 At a hearing:
- (a) a party may attend in person or by phone;
 - (b) a party may be legally represented;
 - (c) a minor must be represented by a parent or guardian;
 - (d) the Director and management of the ATR reserves the right to be heard and to make submissions;

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- (e) the Panel may refuse entry to any person who is not directly involved in the Dispute, including the media; and
 - (f) any witness that a party intends to call to give evidence in a hearing must remain outside the hearing room until called to give evidence.
- 10.4 If a party fails to attend a hearing, the Dispute can be heard and determined in that party's absence.
- 10.5 Subject to clause 10.7, the hearing will proceed as follows:
- (a) the Administrator will:
 - (i) open proceedings with a summary of the Dispute;
 - (ii) report on the dispute resolution steps previously undertaken by the parties;
 - (iii) table the evidence as received by the parties; and
 - (iv) advise as to any relevant Policies;
 - (b) the complainant will present his/he submission;
 - (c) the respondent will present his/her submission;
 - (d) provided the ATR is neither a complainant or respondent, and provided it elects to do so, the ATR will present its submission;
 - (e) the Panel will call for submissions from any additional parties required by it to attend the hearing;
 - (f) the hearing will then end and the Panel will make its deliberations. The Determination of the Panel will be made, and notified to the parties in accordance with clause 10.
- The Panel will inform each party of the time permitted for oral submissions, and the Panel may interrupt submissions at any time to ask questions of the parties.
- 10.6 The Panel has the right to determine all procedures to be adopted in hearing a Dispute and may during the course of any hearing:
- (a) admit and request the production of documents or any relevant written evidence available to a Participant or any other person, including reports from the ATR, declarations from the parties and witnesses, expert opinion and video or audio recordings;
 - (b) request the attendance of any person for the purpose of asking questions relevant to the Dispute; or
 - (c) grant or order an adjournment to provide parties with additional time or to consider additional information.

11. STAGE 5: DETERMINATION AND COSTS

- 11.1 The Panel:
- (a) must determine all Disputes by reference to:
 - (i) relevant Policies; and
 - (ii) considerations of general justice and fairness;
 - (b) must within fourteen (14) days after the end of a hearing, provide a Determination of the Dispute setting out its reasons; and
 - (c) may at any time correct, vary or set aside a Determination if there is a manifest error in the expression of that Determination.
- 11.2 The Administrator will send a copy of the Determination to all parties to the Dispute.

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- 11.3 The Administrator must keep a register of all Determinations made by a Panel and make those Determinations available to a Participant on request.
- 11.4 There is no appeal from the hearing of the Panel and its decision will be final and binding on all parties.
- 11.5 Each party must meet its own costs and expenses incurred in initiating or defending a Dispute, including preparation and attendance costs and airfares and accommodation expenses.
- 11.6 Notwithstanding clause 11.5, the Panel may order one party to pay part or all of the costs of the other parties to the Dispute and the ATR if the Panel is of the opinion that a party vexatiously or frivolously initiated or defended a Dispute.