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## OCHRE LOCAL DECISION MAKING STAGE 2 ACCORDS NEGOTIATION EVALUATION: SYNTHESIS REPORT

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# *OCHRE* Local Decision Making Stage 2 Accords Negotiation Evaluation: Synthesis Report

D. Howard-Wagner, M. O'Bryan, and M. Harrington

## Abstract

The Centre for Aboriginal Economic Policy Research was commissioned by Aboriginal Affairs NSW (AANSW) to evaluate Accord negotiations in three Local Decision Making (LDM) sites (represented by three Aboriginal Regional Alliances). Accord negotiation is part of the New South Wales (NSW) Government's LDM initiative, which is itself part of the broader *OCHRE* (Opportunity, Choice, Healing, Responsibility, Empowerment) plan for Aboriginal affairs in NSW. LDM aims to redefine the relationship between NSW Aboriginal communities and the NSW Government, based on a new emphasis on partnerships, agreements, and accountability.

LDM and the Accord-making process is currently taking place in several regions across NSW. The research team was commissioned to evaluate Accord negotiations in three LDM sites (represented by three Aboriginal Regional Alliances) over a period of five months. The evaluation focused on the three phases of Accord negotiation outlined below: the pre-negotiation phase, the negotiation phase (including pre-Accord workshops and formal Accord negotiation), and the post-negotiation phase (including Accord implementation). Findings from the evaluation are presented in site-specific reports for each LDM region, and in this synthesis report.

The commissioned LDM Accords Negotiation Evaluation had two main goals. The first goal was to increase understanding of the three phases of Accord negotiation (pre-negotiation, negotiation, and post-negotiation). The second goal was to identify the strengths of the Accord negotiations processes, the challenges encountered, strategies for addressing these challenges, and opportunities for improvement. Those two goals were to be

achieved via interviews with Regional Alliance Accord Negotiators, NSW Public Official Accord Negotiators, and Independent Facilitators, as well as the analysis of various documents (see below). This synthesis report compares the findings of the CAEPR Evaluations with previous Evaluations and situates the LDM Accord negotiation process within the wider context of agreement making, including the 2020 National Agreement on Closing the Gap.

LDM and the Accord-making process focus four important key achievements, which are in line with the objectives of LDM and wider policy agendas in NSW and nationally. It is a vehicle for voices of community and regions to reach NSW Government and NSW Government agencies through bottom-up, Indigenous-led regional governance structures. The negotiation of Accords, and LDM as a whole, promote greater involvement of Aboriginal people in priority setting and decision making regarding how government programs and services are conceived, developed, and implemented. Accord negotiation is an important mechanism for agreement making between government and Aboriginal peoples in NSW. Regional Alliances demonstrate significant strategic foresight and capacity to negotiate in good faith toward resetting the relationship between Aboriginal communities and the NSW Government.

Aboriginal regional governance structures, which engage with communities through community working parties and other forms of community engagement, empower Aboriginal people in their engagement with NSW Government agencies in ways that are complementary to the arrangements instigated under the Closing the Gap Implementation Plan.

**Keywords:** Local Decision Making, Indigenous/state agreement-making, Indigenous service delivery.

## Acknowledgments

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The CAEPR research team acknowledges Country and Elders past, present and future of the Barang, Murdi Paaki and Riverina-Murray Regional Alliance communities.

We wish to thank Alliance members for their detailed engagement in, and commitment to, the LDM Accords Negotiation Evaluation. We also thank and acknowledge the contributions of independent advisors and New South Wales Government public officials.

We wish to thank the New South Wales Coalition of Aboriginal Regional Alliance (NCARA) Members (Des Jones, Vickie Parry, John Fernando, Paul Carr, and Geoff Maher) for their consideration of, and feedback on, the findings of the Report as well as their commitment, time, and engagement in co-developing the recommendations presented in this report.

We wish to thank the *OCHRE* Steering Committee members, particularly Associate Professor Lynette Riley (Chair), Professor Gawaian Bodkin-Andrews, Samantha Faulkner and Ben Barnes for their detailed consideration of, and feedback on, draft versions of this report.

## Acronyms, Abbreviations & Terminology

AANSW	Aboriginal Affairs NSW
ACCO	Aboriginal community-controlled organisation
Accord	A Local Decision Making Accord defines the relationship between the NSW government and participating Aboriginal communities in LDM regions. An Accord includes negotiated and agreed priorities, key actions to achieve desired outcomes, timeframes, resources, responsibilities and how success will be measured.
AECG	Aboriginal Education Consultative Group
ANU	Australian National University
ATSIC	Aboriginal and Torres Strait Islander Commission

CAEPR	The Centre for Aboriginal Economic Policy Research
CAPO	Coalition of Aboriginal and Torres Strait Islander Peak Organisations
CIRCA	Cultural and Indigenous Research Centre Australia
CWP	Community Working Party
FaCS	Department of Family and Community Service
IWAAC	Illawarra Wingecarribee Alliance Aboriginal Corporation
Lead Agency Negotiators	NSW Government agency representatives appointed from the NSW Lead Agencies negotiating a specific Accord with Regional Alliances
LDM	Local Decision Making
MOU	Memorandum of Understanding
MPRA	Murdi Paaki Regional Alliance
MPS	Murdi Paaki Services Limited
NCADA	North Coast Aboriginal Development Alliance
NCARA	NSW Coalition of Aboriginal Regional Alliances
NIAA	National Indigenous Australians Agency
NSW	New South Wales
Ngunggiyalali	Wiradjuri word meaning: habitual agreement making, always talking together and agreeing on the outcome, is a habit. This is the name given by RMRA Accord Negotiators to the RMRA Accord. The terms <i>Ngunggiyalali</i> and Accord are used interchangeably in this report.
OCHRE	Opportunity, Choice, Healing, Responsibility, Empowerment – NSW Government plan for Aboriginal affairs in NSW

RMRA	Riverina-Murray Regional Alliance
TRAA	Three Rivers Aboriginal Alliance

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## Executive Summary

The Centre for Aboriginal Economic Policy Research (CAEPR) at the Australian National University (ANU) has been commissioned by Aboriginal Affairs NSW (AANSW) to undertake an independent evaluation of the negotiation of Local Decision Making (LDM) Accords as a mechanism of agreement making as part of the *OCHRE* LDM Stage 2 Evaluation. The evaluation broadly assesses the extent to which LDM Accord negotiations helps meet the key Closing the Gap priority reforms of formal partnerships and shared decision-making, building the community-controlled sector, transforming government organisations, and shared access to data and information at a regional level, as well as contributing to the Department of Premier and Cabinet's desired outcome of empowering Aboriginal communities.

This LDM Accords Negotiation Evaluation Synthesis Report (Synthesis Report) consolidates the findings and lessons learnt from evaluations of recent negotiations of LDM Accords with the following three Aboriginal Regional Alliances:

- Murdi Paaki Regional Assembly (MPRA), based in the far western New South Wales (NSW) (O'Bryan et al., 2022)
- Riverina-Murray Regional Alliance (RMRA), based in the Riverina-Murray district of NSW (O'Bryan & Thomas, 2022), and
- Barang Regional Alliance (Barang), based in the Central Coast of NSW (Howard-Wagner & Harrington, 2022).

It compares the recent findings to similar previously conducted evaluations of LDM Accord negotiations under the *OCHRE* LDM Stage 1 Evaluation with the following Aboriginal Regional Alliances: MPRA (CIRCA, 2015), the Three Rivers Aboriginal Alliance (TRAA) (Katz et al., 2018a), and the Illawarra Wingecarribee Alliance Aboriginal Corporation (IWAAC) (Smyth & Katz, 2018).

This Synthesis Report considers the findings in relation to: (a) the Premier's Memorandum M2015-01-Local Decision Making (NSW Government Department of Premier and Cabinet, 2015), which provides the enabling framework for LDM; and (b) the Local Decision Making Policy and Operational Framework (AANSW, 2017b), which provides a clear mandate and set of principles for NSW Government agencies entering into Accord negotiations. These principles include sharing decision-making and working in partnership with Regional Alliances to respond to community needs. It is against these policy and operational frameworks that the Accords negotiation processes for the six evaluations were measured.

## Synopsis of Findings

Broadly, the key achievements of LDM and the Accord-making process are as follows.

- LDM and the Accord-making process is a vehicle for voices of community and regions to reach NSW Government and NSW Government agencies through bottom-up, Indigenous-led regional governance structures.
- The negotiation of Accords, and Local Decision Making as a whole, promote greater involvement of Aboriginal people in priority setting and decision-making regarding how government programs and services are conceived, developed, and implemented.
- Accord negotiation is an important mechanism for agreement making between government and Aboriginal peoples in NSW. Regional Alliances demonstrate significant strategic foresight and capacity to negotiate in good faith toward resetting the relationship between Aboriginal communities and the NSW Government.

- Aboriginal regional governance structures, which engage with communities through community working parties and other forms of community engagement, empower Aboriginal people in their engagement with NSW Government agencies in ways that are complementary to the arrangements instigated under the Closing the Gap Implementation Plan.
- If adhered to, the principles for negotiating Accords offer a best practice model for developing formal partnership arrangements to support Close the Gap in regions and their communities.

Building or strengthening Aboriginal regional governance structures and obtaining Aboriginal Regional Alliance and broader Aboriginal community buy-in are significant achievements in themselves. However, what is noteworthy is that LDM and the Accord-making process has the capacity to facilitate and increase control and self-determination over Indigenous service delivery, improve recognition of and support for Aboriginal-led and designed regional Aboriginal governance structures, and enable a genuine Aboriginal voice to filter through and influence how NSW Government agencies deliver services in those regions, and improve working relationships between Regional Alliances and NSW Government agencies.

Also, while the pre-Accord Negotiation phase could be better resourced to support regional Aboriginal governance and to gather data on local and regional needs, this phase is working well. Aboriginal peoples are coming together to form governance models suited to their regions and those governance bodies are working closely with their communities to develop Statements of Claim that identify priority areas and actions to support policy reform to progress outcomes for that region. Under LDM, Statements of Claim are formal agreements between the NSW Government and Aboriginal Regional Alliances.

LDM and Accord-making challenges and sets out to change the fundamental structure of how service delivery projects are pursued by NSW Government agencies, allowing for regional and community-driven, inclusive, and more equitable participation and decision-making for Indigenous service delivery that aims to improve the lives of Aboriginal people. It provides a mechanism for Aboriginal people to be given the opportunity to offer insights and perspectives from their own unique positions and lived experiences.

Over time LDM has produced measurable improvements for regions, as evident in the MPRA Accord II process. The importance of developing relationships between Regional Alliances and NSW Government agencies has been clearly demonstrated during COVID-19. It was reported that rapid responses on the ground were possible due to the existence of Regional Alliances and their pre-existing relationships with senior public servants, and one outworking of this was that Alliance Regions have had close to 100% vaccine take-up.

Despite these achievements and positive outcomes, in providing a detailed stakeholder analysis and review of systemic and structural issues shaping the effectiveness of Accord negotiation as a process of developing formal partnerships and shared decision-making, the evaluations identified that structural constraints and systemic biases exist with and in the 'authorising environment'. Those structural impediments and systemic biases presently also hinder and weaken Accord negotiation as a mechanism of agreement making.

Structural impediments stem from the 'authorising environment', particularly the lack of financial and administrative delegation of Lead Agency Negotiators, who – although they sit at the negotiating table with Regional Alliance Negotiators – lack the capacity to provide legitimacy and support for the priorities of Regional Alliances and their communities. Adding to this, the high turnover of Lead Agency Negotiators also hinders the building of trust and long-term relationships with Regional Alliances. Weaknesses in the Accord-making process itself include: the under-funding and under-resourcing of the Accord negotiation process; the lack of buy-in on the part of NSW Government agencies in terms of redirecting funding to facilitate outcomes aligned with the priorities of Aboriginal Regional Alliances and their communities; the lack of availability of disaggregated data; and competing NSW Government policies.

The way that systemic biases present themselves in the evaluation data include accounts of: Lead Agency Negotiators not changing the way they do business; Lead Agency Negotiators, and public officials more widely,

privileging their views or even dismissing the views of Regional Alliances and Regional Alliance Negotiators; Lead Agency Negotiators not fully understanding Aboriginal protocols around engagement; Accords and Accord Schedules remaining unsigned for long periods of time; and confidentiality agreements conflicting with Aboriginal forms of accountability. These practices might not have a negative intent, but they have negative outcomes. It may be that public officials can rationalise doing business as usual and/or dismissing the views of Aboriginal Regional Alliance negotiators, because they do not fit with the data they hold; an existing policy; or the existing funding priorities of an NSW Government agency. However, without efforts to change the way NSW Government agencies and public officials do business, power imbalances occur, trust-building is made more difficult, and there is potential for harm to be done. What's more, a business as usual approach inhibits the Accord negotiation processes from achieving the intended aims of co-designing government services, empowering Regional Alliances, and creating innovative and holistic solutions. Creating a fair and equitable 'negotiating table' begins with accepting and appreciating the expertise, culture, experiences, and knowledge of Regional Alliance negotiators.

On that note, a synopsis of the findings explained in detail later in this report is provided here.

Accord negotiation is an important mechanism for agreement making between government and Aboriginal peoples in NSW. It increases control and self-determination over Indigenous service delivery, improves recognition of and support for Aboriginal governance, enables genuine voice to filter through and influence government decisions about Indigenous service delivery, and improves relationships.

1. The development of the Statement of Claim by Regional Alliances, through engagement with their communities and the collection of local data, is a mechanism for Aboriginal people in communities to have a say on how to improve their lives and their needs in relation to Indigenous service delivery and Closing the Gap. It is a significant positive outcome of LDM and the Accord-making process. However, there is presently an under-investment in this phase of the Accord negotiation process. This phase could be substantially strengthened via investment on the part of the NSW Government.
2. If adhered to, the principles for negotiating Accords offers a best practice model for developing formal partnership arrangements to support Closing the Gap in Regions and their communities. While an important mechanism for Indigenous agreement making and creating formal partnerships, Accord negotiations are presently not adhering to best practice principles, such as negotiating in good faith. Salient examples include negotiations failing to facilitate outcomes aligned with the Statement of Claim; negotiations failing to foster innovative, creative and holistic solutions; and Accord Schedules remaining unsigned for long periods of time. This is despite the Premier's Memorandum M2015-01-Local Decision Making which sets out that the negotiation of LDM Accords must be open and in good faith with the objective of achieving positive outcomes and fostering innovative, creative, and holistic solutions (NSW Department of Premier and Cabinet, 2015). Such experiences are leading to Aboriginal Regional Alliances and their communities losing faith and trust in NSW Government agencies and the NSW Government.
3. The lack of adequate funding and resourcing of Regional Alliances to engage in the Accord negotiation process is a significant barrier to achieving Accord objectives.

5. Accord negotiations are presently structurally hampered by the 'authorising environment', such as the lack of authority and high turnover of Lead Agency Negotiators and the lack of integrated responses between NSW Government agencies.
6. *OCHRE* LDM operates in a broader governance environment in which its policy intentions were sometimes trumped by other NSW policies, which compete with and obstruct the negotiation of Accord schedules and the reform goals of LDM.
7. The lack of cultural competency of some Lead Agency Negotiators in terms of fully understanding protocols around Aboriginal engagement, and their capacity to work within a larger system of interconnected Aboriginal 'stakeholders' of existing peak bodies, community organisations, and Aboriginal Regional Alliances, particularly around certain policy issues, appears to have had unintended consequences, such as creating tension between Aboriginal stakeholders.
8. Access to information and data is critical to the capacity of Regional Alliances to negotiate outcomes on behalf of their communities.
9. Confidentiality agreements contradict the LDM principle of community engagement and conflict with Aboriginal forms of accountability.

While these findings point to limitations, particularly with, and in, the 'authorising environment', and during the negotiation phase, the report identifies that these can be remedied and provides a clear path forward to facilitate more effective ways of working with Aboriginal Regional Alliances. The report thus recommends improvements that would go a long way toward strengthening LDM and the Accord-making process, such as investing in and resourcing of Aboriginal Regional Alliances; reviewing the 'authorising environment' to identify why it is not operating as intended in relation to the Premier's Memorandum M2015-01-Local Decision Making (NSW Department of Premier and Cabinet, 2015) and the Local Decision Making Policy and Operational Framework (AANSW, 2017b), and identifying steps to improve it; and amending mechanisms in relation to confidentiality. Those improvements will better enable negotiations of LDM Accords to respond to regional and local contexts and support local communities to make decisions and determine their own priorities, and ultimately, achieve better shared outcomes for Aboriginal communities.

The findings and recommendations in the Synthesis Report have relevance to related policy areas, in particular, Closing the Gap. In July 2020, all Australian governments committed to sharing decision-making authority with First Nations peoples through policy and place-based formal partnership arrangements in the National Agreement on Closing the Gap (National Agreement). Closing the Gap Priority Reforms aim to: 'strengthen and establish formal partnerships and shared decision-making; build the Indigenous community-controlled sector; and, transform government organisations, so they work better for Indigenous people' (Australian Government, 2020, p. 4). Lessons from this LDM Accords Negotiation Evaluations may provide useful insights for the development of place-based partnerships between governments and Aboriginal peoples both within NSW and across Australia. As these agreements are a key feature of planned process for National Agreement on Closing the Gap 2020, and its priority reform agenda, knowledge gathered through this evaluation, which informs the agreement-making process, will have flow-on benefits for achieving the Premier's Commitments and the NSW Government's commitments under the National Agreement on Closing the Gap.

Lessons from this LDM Accords Negotiations Evaluation may also provide useful insights on how to go about the development of reliable and consistent funding models and what potential barriers may arise in such undertakings. The National Agreement commits governments to ensuring that 'community-controlled organisations have a dedicated, reliable, and consistent funding model designed to suit the types of services required by communities', as well as 'implement[ing] measures to increase the proportion of services delivered

by Indigenous organisations as part of a staged devolution of governance and funding for services' (Australian Government, 2020, p. 4).

## Background

### Local Decision Making

Local Decision Making (LDM) is one of eight initiatives supported by the NSW Government as part of its *OCHRE* (Opportunity, Choice, Healing, Responsibility, Empowerment) plan. The stated purpose of LDM is to 'give Aboriginal community-based regional decision-making groups (Regional Alliances) an increased say in government service delivery' (AANSW, 2017a, p. 5).

According to the Local Decision Making Information Package published by Aboriginal Affairs NSW (AANSW), its 'ultimate aim is to ensure Aboriginal communities have a genuine voice in determining what and how services are delivered to their communities' (AANSW, 2017a, p. 1). The same document states that 'Accords are the mechanism for re-defining the relationship between the NSW Government and Aboriginal Regional Alliances' (AANSW, 2017a, p. 2). The intent is for NSW Government agencies to change the way they work with Aboriginal communities, working in partnership with participating Aboriginal Regional Alliances to build community strengths and address key priorities, as well as change the way NSW Government agencies design, fund, and implement their services and programs (AANSW, 2017b, p. 9). It requires NSW Government agencies and staff 'to respond to community needs and priorities, changing the way they work, and developing new ways of doing business' (AANSW, 2017b, p. 9).

### Aboriginal Regional Alliances

In 2013, three Aboriginal Regional Alliances elected to participate in LDM. This included the MPRA, which represents 16 communities from Far Western NSW; the IWAAC, which represents Aboriginal persons or organisations in the Wingecarribee, Kiama, Shellharbour and Wollongong local council areas; and, the Regional Aboriginal Development Alliance, which represented communities from the Tweed Coast to the Clarence Valley (and which was subsequently renamed North Coast Aboriginal Development Alliance (NCADA)).

Aboriginal communities from across NSW have shown a high level of interest in LDM, and within seven years, six new Aboriginal Regional Alliances were formed. These included:

- Barang Regional Alliance (Central Coast) (2014)
- Three Rivers Regional Assembly (TRRA) (Central West) (2014)
- Northern Region Aboriginal Alliance (New England North West) (2015)
- Riverina-Murray Regional Alliance (RMRA) (2018)
- Western Sydney Aboriginal Regional Alliance (2019), and
- La Perouse Aboriginal Community Alliance (2020).

Over time, there have been changes to the regions that have signed up to LDM. Currently, there are nine Aboriginal Regional Alliances in NSW set up under LDM to negotiate with the NSW Government about the design and delivery of services in the regions they represent.

## The Accords

According to the 2017 Local Decision Making Operation and Policy Framework, Accords are the central mechanism for negotiating the staged devolution of decision making and accountability to Aboriginal Regional Alliances under the LDM policy 'in relation to how government programs and services, which impact on them, are conceived, developed, and implemented' and 'the vehicle for re-setting this relationship and ensuring that decision-making between government and communities occurs collaboratively and in partnership' (AANSW, 2017b, p. 6).

Through LDM, Aboriginal Regional Alliances negotiate formal and binding agreements (Accords) with NSW Government agencies that influence how and what government services are delivered to regional Aboriginal communities. The Accord-making process involves three phases of negotiation: the pre-negotiation, negotiation, and post-negotiation phases. Prior to entering the three phases of Accord negotiation, Regional Alliances must demonstrate that they are Accord-ready and engage with their communities to develop a Statement of Claim. Once their Statement of Claimed is signed by the Minister for Aboriginal Affairs, Accord negotiations commence. In the pre-negotiation phase, the Aboriginal Regional Alliance and the NSW Government are briefed on LDM and the Accord-making process, and their roles and responsibilities. The NSW Government is represented by public officials from lead NSW Government agencies, and those who sit at the negotiating table are formally referred to as 'Lead Agency negotiators'. Regional Alliances are represented by nominated 'Regional Alliance negotiators'. An Independent Facilitator is appointed to facilitate negotiations. The next step is the negotiation phase, which includes pre-Accord workshops where both parties, which are represented by Lead Agency Negotiators and Regional Alliance Negotiators, work together to develop shared goals and shared understandings of what success looks like. The negotiation phase also includes formal Accord negotiations, where both parties work together to establish strategies, activities, resources, and responsibilities to achieve their shared objectives. The Minister for Aboriginal Affairs then signs the Accord. In the post-negotiation phase, agreed strategies, activities, resources, and responsibilities are recorded; indicators, measures and targets are confirmed; and accountability arrangements are negotiated in the form of Accord Schedules. Once the Schedules are signed by the Minister, the process enters the implementation phase in which the Accord and its Schedules are implemented.

While the specific content of Accords varies from site to site, Accords generally include identified priorities, actions, outcomes, timeframes, resources, responsibilities, and measures of success. The Premier's Memorandum M2015-01-Local Decision Making provides the enabling framework for LDM and requires that Accords be negotiated between Aboriginal Regional Alliances and 'senior officers with sufficient delegation and authority' (NSW Department of Premier and Cabinet, 2015, p. 1). It also states that: 'agencies will work respectfully, constructively, and cooperatively with LDM regional alliances'; that negotiations must take place in good faith; and it obliges government agencies to share information with Regional Alliances (NSW Department of Premier and Cabinet, 2015, p. 1; see also AANSW, 2017b, p. 20).

LDM and Accord-making negotiations have taken place in several regions across NSW. The first Accord to be negotiated and confirmed under the LDM initiative was with Murdi Paaki Regional Assembly (MPRA), signed on 19 February 2015. To date, five Accords have been formally signed (AANSW, n.d.c). These include:

- Illawarra Wingecarribee Local Decision Making Accord, signed May 14, 2018
- Three Rivers Local Decision Making Accord, signed December 10, 2018
- NSW Coalition of Aboriginal Regional Alliances Accord, signed February 27, 2019
- Riverina Murray Regional Alliance Local Decision Making *Ngunggiyalali* (Accord), signed August 19, 2020, and

- Murdi Paaki Regional Assembly with two Accords signed: the first signed February 19, 2015; and, the second signed September 9, 2020.

Barang Regional Alliance Local Decision Making Accord was finalised in April 2020. The Barang Accord and Schedules have been signed by the Regional Alliance, but are yet to be signed on behalf of the NSW Government.

### **Accords as legally binding Agreements**

Accords are signed and ratified by the Minister for Aboriginal Affairs on behalf of the NSW Government. Accords are central to, and a significant positive outcome of, *OCHRE* LDM. Sitting above Regional Alliance Accords is the NSW Coalition of Aboriginal Regional Alliances (NCARA) Accord, which was signed by NCARA Chairperson Mr Des Jones on behalf of participating Alliances and the then Minister for Aboriginal Affairs, The Hon. Sarah Mitchell MLC for the NSW Government. That Agreement jointly commits both parties to work together to support, renew and return Aboriginal people to prosperity. The primary focus of the NCARA Accord 'is the wellbeing and prosperity of Aboriginal peoples and communities. Parties commit to the principles of Local Decision Making by ensuring Aboriginal communities participate in the co-design, delivery and implementation of services and projects' (NCARA Accord, 2019, p. 2). In signing the NCARA Accord, the state of NSW acknowledges that the matters dealt with in all Accords are binding on the NSW Government and its agencies. At the time of completing the current evaluation, several Accords have also been signed by the Chairs of the respective Regional Alliances and the NSW Minister of Aboriginal Affairs on behalf of the NSW Government. These include: MPRA Accord I; MPRA Accord II; Murdi Paaki Housing Agreement; RMRA Accord; IWAAC Accord; and the TRRA Accord. The matters dealt with in the Accords are binding on all parties, including NSW Government agencies.

The state of NSW authorises and obliges NSW Government agencies to participate in good faith and in partnership with Regional Alliances and to meet the terms of the respective Accords. Regional Alliances, as a legitimate regional Aboriginal governance bodies, enter Accords on behalf of their member communities and in partnership with the NSW Government and agree to participate in good faith to meet the terms of the Accords.

### **Accord Schedules**

Regional Alliances and NSW Government agencies have also negotiated several Schedules to their Accords. Schedules can be either negotiated at the time of negotiating the formal Accord or after. They set out the administrative arrangements around non-statutory funding in regions related to service delivery, including the strategies, deliverables, performance indicators and measures of progress for the Accord. Schedules focus on specific areas such as Health and Wellbeing, Law and Justice, Housing, Governance and Community Engagement, Employment and Business Development, Education and Training, Aged Care, and Transport. Schedules have the capacity to be a critical mechanism in identifying how NSW Government Agencies and Regional Alliances work together to implement initiatives to close the gap in regions and their communities. For example, the Schedules to Barang's Accord set out how Accord initiatives aligned with investment from various NSW Government agencies also align with Closing the Gap targets and how those initiatives will meet Closing the Gap target outcomes (Howard-Wagner & Harrington, 2022, p. 22).

## Summary of Evaluation aims and methods

### Evaluation aims

The LDM Accords Negotiation Evaluation takes place within the broader, 10-year *OCHRE* Evaluation (Stages 1 and 2).

To date, the Stage 1 *OCHRE* Evaluation has delivered evaluations on seven *OCHRE* initiatives – two Language and Culture Nests, two Opportunity Hubs, and three Local Decision Making (LDM) Accord negotiations (Katz et al., 2018b).

The focus of the Stage 2 *OCHRE* Evaluation has now shifted to evaluating LDM initiatives only, with a broad focus on assessing to what extent LDM helps meet the key Closing the Gap priority reform areas, as well as contributing to the Department of Premier and Cabinet's desired outcome of empowering Aboriginal communities.

The Centre for Aboriginal Economic Policy Research (CAEPR) at The Australian National University (ANU) was commissioned by AANSW to undertake the Stage 2 *OCHRE* Evaluation of LDM. This co-designed, participatory evaluation is taking place over four years from 2020–2023 (including COVID related interruptions).

The evaluation, which is the subject of this report, will provide a more in-depth analysis of the effectiveness of LDM Accord negotiations as a process of agreement making. LDM Accords are formal agreements negotiated between NSW government agencies and Aboriginal Regional Alliances to share decision-making around service delivery.

The LDM Accords Negotiation Evaluation will review all aspects of developing an Accord, from the pre-negotiation stage up until signing of the Accord. It will provide detailed stakeholder analysis and review systemic and structural issues shaping the effectiveness of Accord negotiation as a process of developing formal partnerships and shared decision-making. AANSW contracted CAEPR to evaluate Accord negotiations in five LDM sites over a period of five months.

In summary, the major differences between this LDM Accords Negotiation Evaluation and the broader Stage 2 *OCHRE* Evaluation of LDM is that the former:

- is smaller in scale in terms of the research team, the number of research sites and participants, and in terms of research outputs
- has a much shorter evaluation timeframe
- has a narrower research focus, evaluating only the three phases of the Accord-making process, and
- evaluates the effectiveness of LDM Accords as a mechanism of agreement making.

The aim of the LDM Accords Negotiation Evaluations, are to build an evidence base to increase understanding of regional agreement-making processes such as the three phases of developing LDM Accords; and to identify the strengths of these processes, the challenges encountered, strategies for addressing the challenges, and opportunities for improvement.

The Premier's Memorandum M2015-01-Local Decision Making (NSW Department of Premier and Cabinet, 2015) and the Local Decision Making Policy and Operational Framework (AANSW, 2017b) are key policy and procedural frameworks that detail a clear mandate, set of principles, and processes for each phase of the Accord negotiation process, allowing us to also use the data to assess the degree to which the practices and processes, outcomes and outputs at each of the Accord negotiation phases met and measured up to the mandate and those principles and processes.



The Synthesis Report considers the objective of LDM Accord negotiations in relation to Indigenous agreement making, while also broadly assessing the extent to which LDM Accord negotiations helps meet the key Closing the Gap priority reform areas, as well as contributing to the Department of Premier and Cabinet's desired outcome of empowering Aboriginal communities.

The Synthesis Report also compares the current findings with previous evaluations of Accord negotiation processes.

## **Evaluation methodology, participants, and methods**

The LDM Accords Negotiation Evaluations followed a similar methodology to that employed in the wider Stage 2 *OCHRE* Evaluation of LDM described in the Evaluation Blueprint (CAEPR, 2019). Our methodological approach ('weaving knowledges') weaves Aboriginal ways of knowing, being, and doing together with those of the public sector and academia. This approach positions Aboriginal peoples and knowledges at the centre of the research process as experts and partners (CAEPR, 2019).

Initially the AANSW brief was to conduct evaluations of Accord negotiations in five LDM sites. However, due to the impacts of COVID-19 as well as Tribal Wave Regional Alliance and Northern Regional Aboriginal Alliance no longer being active LDM sites, evaluations were undertaken in only three LDM sites: MPRA LDM, Barang LDM, and RMRA LDM.

Representatives from each of the Aboriginal Regional Alliances were interviewed along with the relevant NSW Lead Agency Negotiators and Independent Facilitators for each of the three separate Accord negotiations. All participants had been involved at some level in Accord negotiation phases: the pre-negotiation phase, the negotiation phase (including pre-Accord workshops and formal Accord negotiation), and/or the post-negotiation phase. The research team aimed to engage an equal proportion of representatives from NSW Government agencies and Aboriginal Regional Alliances.

In keeping with the research methodology and data governance arrangements for these LDM Accords Negotiation Evaluations and the broader Stage 2 *OCHRE* Evaluation of LDM, the research team also engaged with NCARA in analysing the findings and developing the Synthesis Report recommendations.

These LDM Accords Negotiation Evaluations also entailed a review of all key documents, including a review of previous evaluations of LDM Accord negotiations (see below).

For more details on the research approach, questions, and methods see the individual LDM site reports for MPRA (O'Bryan et al., 2022), RMRA (O'Bryan & Thomas, 2022), and Barang (Howard-Wagner & Harrington, 2022). Data collection methods varied slightly for each of the three Accord negotiations reviewed.

## Synthesis of findings of the Accord Negotiation Evaluations

The objective of this Report is to synthesise the findings of Accord Negotiation Evaluations to date in order to increase understandings of LDM Accord negotiations through analysis of the effectiveness of LDM Accord negotiations in relation to the three phases of developing LDM Accords. It identifies the strengths of these processes, the challenges encountered, and opportunities for improvement. The recommendations section identifies strategies for addressing the challenges. The findings are situated in the context of Accord negotiations as a process of agreement making, while also broadly assessing the extent that LDM Accord negotiations helps meet the key Closing the Gap priority reform areas, as well as contributing to the Department of Premier and Cabinet's desired outcome of empowering Aboriginal communities.

The following two sections present and consider the findings from the evaluations in this context. The first section identifies findings from comparing the capacity of RMRA, Barang, and MPRA to engage in each phase of the Accord negotiation process. The findings of all Accord negotiation processes are significant in building this understanding, so the second section identifies the key findings of the valuations conducted by CAEPR researchers alongside previous evaluations. We then outline a list of recommendations.

### Comparing the RMRA, Barang, and MPRA Accord negotiation processes

This section compares and synthesises the evaluation findings in relation to the capacity of RMRA, Barang and MPRA to engage in each phase of the Accord negotiation process.

#### RMRA Accord negotiation process

##### *Establishment and role of RMRA*

RMRA is the youngest of the three Regional Alliances that participated in this evaluation. RMRA has been operating since 2015 and was formally launched as an LDM body in 2016. With the reduction of government services, in particular the closure of the AANSW regional office in Wagga Wagga, concerned community members saw the need for a regional governance structure to coordinate the provision of services across the Riverina-Murray region. Through RMRA, communities collectively identify priority issues and engage with government and key service delivery stakeholders to develop targeted service responses and solutions, and to directly influence how those services are delivered. RMRA is not an incorporated body but is instead comprised of representatives of Community Working Parties (CWPs) from member communities. Current RMRA member communities are Albury, Cootamundra, Cummeragunja (non-active member), Deniliquin, Griffith, Hay, Leeton, Narrandera (non-active member), Wagga Wagga, and Tumut.

##### *RMRA personnel and funding sources*

Despite the benefits of LDM, it is a finding of this evaluation that LDM was not adequately resourced or funded, and this limited the efficacy of the Accords making process. Even relative to other Aboriginal Regional Alliances, RMRA was at a clear disadvantage because it did not have access to additional sources of funding such as Closing the Gap or Empowered Communities<sup>1</sup>, although it did receive some specific project funding from the Commonwealth.

RMRA is resourced by a Chair who works at 80%, and a Project Officer who works at 60% of a full-time equivalent position. RMRA receives approximately \$100 000 per annum from the NSW Government to fund these positions. RMRA Negotiators were remunerated at the government rate of \$220 per day for their

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<sup>1</sup> Although Deniliquin is an Empowered Community, members reported that this did not produce any appreciable benefits to the Accords process.

involvement in the negotiation phase, but this did not include time spent in preparation work or travel. Many RMRA delegates were required to take leave of absence from their paid employment to participate in Accords negotiations. This resulted in an asymmetry of power between RMRA delegates and Lead Agency Negotiators.

### *Pre-negotiation process*

Prior to commencing Accords negotiations, RMRA delegates worked together with consultants Think Impact to determine RMRA priorities and develop their methodology of choice. They worked 'really hard' to construct a case-study narrative following the experiences of a (fictional) single family as they engaged with a wide range of government services. This innovative approach is unique to RMRA and was adopted with the express intention of highlighting the importance of understanding social issues within a holistic frame. It reflects RMRA delegates' sophisticated understanding of how issues interconnect and challenges Government negotiators to understand how their portfolio intersects with others.

It is a finding of this evaluation that RMRA's distinctive pre-negotiation work using a case study methodology (see O'Bryan & Thomas, 2022) although time consuming, increased its capacity during the Accord negotiation phase.

### *Negotiation process*

RMRA commenced negotiations with the NSW Government in 2019. In June 2020, Accords Negotiations protocols were agreed between RMRA and the Government, and the process was rebranded a *Ngunggiyalali*. The RMRA *Ngunggiyalali* was signed on August 19, 2020. It includes statements of key principles and processes intended to shape the over-arching structure of future negotiations.

This Evaluation finds that negotiating an Accord separate to the Schedules is more likely to lead to the former being signed quickly. That is, RMRA opted to negotiate the Accord first, and to then negotiate the schedules to the Accord once it was signed.

As a legally-binding agreement, the RMRA *Ngunggiyalali* (Accord) requires the NSW Government to:

- consult RMRA on Accord activities and negotiate in good faith, in a timely, open, and honest manner
- deliver the agreed actions, programs, and investment which they are responsible for, as negotiated through this Accord
- share information with RMRA including data on relevant service funding (including Aboriginal-specific and mainstream programs) in the region with the exception of private or confidential information
- report on outcomes in accordance with reporting frameworks mutually agreed by RMRA and the NSW Government
- collaborate with each other where responsibilities for service and program planning and delivery extend across agency boundaries
- communicate to RMRA and to relevant negotiators in NSW Government agencies the higher-order Government motivations, expectations and priorities underpinning this Accord and explicitly articulate the Government's overarching intent to focus negotiation of the Schedules to this Accord around strategic and innovative initiatives
- collaborate with RMRA to seek solutions and achieve tangible outcomes and to foster partnerships with each other, and
- operate consistently within the principles of LDM and ensure the Aboriginal cultural competence of their staff to improve the quality of services delivered, and to better respond to the needs of Aboriginal communities in a culturally safe manner (Ngunggiyalali, 2020, p.4).

### *Post-negotiation process (progressing the Accord)*

Since the signing of the *Ngunggiyalali*, negotiations have centred around developing Schedules to the Accord. These schedules are to specify how the intent and objectives of RMRA's Strategic Plan will be realised. Shortly after the signing of the *Ngunggiyalali* in August 2020, the Health and Wellbeing Schedule was agreed and endorsed by RMRA and Government Lead Negotiators in November 2020 but, as of April 2022, it remained unsigned by the Minister for Aboriginal Affairs. The Schedule was not available for the research team to review. The delay has not been in the development of the Schedule, but rather the signing-off by the Minister. Other Schedules will focus on Law and Justice, Housing, Governance and Community Engagement, Employment and Business Development, Education and Training, Aged Care, and Transport. Each Schedule anticipates whole-of-government involvement, although agencies will be more involved in some areas than others.

Despite RMRA's proactive case study narrative approach (see O'Bryan & Thomas, 2022) the development of its Statement of Claim, and of pre-negotiation documents framing the subsequent negotiation process, all stakeholders queried how legitimately the RMRA Accord negotiation process could be described as 'co-designed'. RMRA delegates, Lead Agency Negotiators and independent consultants all questioned the extent to which the negotiation process fostered innovation. It is a finding of the RMRA Evaluation that Lead Agency Negotiators often fell into a 'business as usual' mindset, failing to provide adequate data and/or ideas to help generate possible new approaches to service delivery. The failure of the NSW Government to sign the Health and Wellbeing Schedule in a timely manner resulted in a loss of faith in the LDM process. Despite these shortcomings, RMRA delegates reported that the process of working together with representatives from across the region and with Lead Agency Negotiators had been an empowering process.

### **Barang Accord negotiation process**

#### *Establishment and role of Barang*

In 2013, local Aboriginal organisations on the Central Coast came together to formalise governance arrangements in the region. Prior to this, a loose alliance of local Aboriginal organisations collaborated and supported one another to advocate on behalf of the Central Coast Aboriginal community. Barang, which describes itself as a 'backbone' organisation for the Aboriginal community (and communities on the Central Coast), was formally founded as a governance structure in 2016. Barang is a corporate entity which, as an LDM Aboriginal Regional Alliance, brings together seven 'opt-in' Aboriginal community-controlled organisations (ACCOs) from across the Central Coast region, with equal board representation.<sup>2</sup> According to the minutes from Barang Pre-Accord Workshop 7, Barang receives funding of \$79 000 from AANSW (Barang Regional Alliance, 2019, p. 15). In 2019, they also shared in a one-off payment of \$3 million split equally between all LDM Aboriginal Regional Alliances, and received a one-off grant from AANSW (Barang Regional Alliance, 2019, p. 15).

In contrast to RMRA, Barang is a long-term governance entity. It is also the backbone organisation for Empowered Communities on the Central Coast.<sup>3</sup> Also, unlike RMRA, Barang had spent several years developing its governance structure and became incorporated. Like RMRA, Barang spent considerable time and effort identifying community priorities in the development of its Statement of Claim (Barang, 2018). Barang has become central to supporting, building, and achieving Aboriginal-led reform on the Central Coast. For over five years, Barang has provided a single point of access for government at all levels to increase their ability to

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<sup>2</sup> The seven alliance organisations include: Bara Barang Corporation, Darkinjung Local Aboriginal Land Council, Gudjagang Ngara li-dhi Aboriginal Corporation, Mingaletta Aboriginal Corporation, NAISDA Dance College, The Glen Centre, and Yerin Eleanor Duncan Aboriginal Health Services. Barang is an incorporated Aboriginal organisation.

<sup>3</sup> Empowered Communities is a Commonwealth funded initiative in which Indigenous leaders from ten regions across Australia work with the Australian government to reform how Indigenous policies and programs are designed and delivered in their region.

engage with the Central Coast community. LDM, along with Empowered Communities, has significantly empowered Aboriginal governance at the local level for the Central Coast region. Its governance arrangements have been refined over time – with opt-in/opt-out opportunities now being available to all incorporated Aboriginal organisations. Associate members include youth, independent Indigenous businesses, Elders, the Wollotuka Institute at the University of Newcastle, and the local community legal service. Barang does not simply represent the members of incorporated organisations, but local Aboriginal people and communities on the Central Coast of whom many are not members of incorporated Aboriginal organisations. Even if some organisations and community members choose not to engage, they have the option to do so. Today, Barang Regional Alliance is an exemplar of Indigenous governance and regional representation in terms of the form it takes for building the capacities of Aboriginal people living on the Central Coast and in terms of its ability to negotiate.<sup>4</sup> This is a significant positive outcome of *OCHRE* LDM.

### *Barang personnel and funding sources*

Unlike RMRA, Barang receives Commonwealth funding through the Empowered Communities program and NSW Government funding through LDM, which means that it came from a place of strength when entering into the Accord negotiation process. Importantly though, funding from other sources subsidised Barang's participation in the Accord negotiation process in terms of funding personnel time, keeping the community engaged in the LDM process while negotiations were being conducted, and collating local data (Barang Regional Alliance, n.d.b, p. 6). For example, having access to funding from other sources meant that, beginning in 2017 and continuing to date, Barang had the capacity to conduct extensive and ongoing community consultation, surveys, and workshops to identify regional priorities. Barang collected local data from surveying the local community that was critical to its understanding of local community needs in relation to service delivery and informed the development of its Statement of Claim and later its negotiation of initiatives with Lead Agencies. It compiled data from local organisations and peak bodies, as well as 'hitting the ground hard and surveying the hell out of local Aboriginal people' (Barang Regional Alliance Accord Negotiator).

### *Pre-negotiation phase*

Between 2018 and 2021 Barang also engaged in further activities in preparation for the development of a Statement of Claim. In February 2019, Barang hosted the first 'Empower Youth' Summit, enabling approximately 150 local Aboriginal young people to have their voices, views and opinions amplified and included in relation to regional decision making. In March 2020, Barang hosted the second 'Empower Youth' Summit, enabling approximately 120 local Aboriginal young people to have their voices, views and opinions again amplified and included in relation to regional decision making. In April 2020, Barang developed its Regional Youth Strategy, which aimed to enable the voices of youth to be directed to government through the process of negotiation. In August 2020, 'Nginyang Wayama' was formally established. It is the first Aboriginal led and community controlled Aboriginal Regional Data Network in the country, involving collaboration with and support from state, federal and regional agencies (both government and non-government), academic institutions, and think-tanks in addition to ACCOs, local services and grass-roots community members.

During this period, Barang further facilitated the fostering of a deeper relationship with government through the establishment of community panels and the roll out of Joint Decision Making; its involvement in the establishment and ongoing participation in NCARA; and the co-ordination of the Healing Forum.

Barang submitted its Statement of Claim to the NSW and Commonwealth governments on April 18, 2018. In August 2018, the pre-negotiation phase commenced for the negotiation of an Accord between Barang and the

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<sup>4</sup> While we were able to observe that the Barang Alliance clearly improves Aboriginal representation, we are yet to examine in-depth through the Barang Evaluation the process of community engagement – means of communication, information transfer (in both directions), monitoring of consent, and effective policy input from local Aboriginal people.

NSW Government under the *OCHRE* LDM framework. It marked the commencement of its collaboration with NSW and Commonwealth partners with a two-day cultural immersion workshop attended by 10 Commonwealth and state departments, the Central Coast Council, Central Coast Aboriginal organisations, youth and community members. The negotiation phase formally commenced in May 2019.

### *Barang Accord negotiation process*

Barang Regional Alliance Negotiators came into the Accord negotiation process extremely well prepared to negotiate important outcomes. For example, the community survey data Barang collected also became critical to its ability to engage in the negotiation process, including its capacity to contest information and data that public officials presented to make their case during the negotiation process. However, because Barang subsidised the collection of key data and keeping communities engaged in the negotiation process, it redirected important personnel, resources, and funding away from other initiatives. While Barang's strength and capacity to collect meaningful local data is a positive outcome for *OCHRE* LDM and the Accord negotiation process, it came at the redirection of valuable resources from elsewhere and was not funded under the Accord negotiation process.

Barang sought 'structural reform outcomes that embed community led decision making into the regional governance structures for core and discretionary funding programs driving service delivery in the region' (Barang Statement of Claim, 2018, p. 7). Its Statement of Claim set out that Barang and the Central Coast community 'aimed at achieving 4 key objectives to enable [Barang and the Central Coast community] to achieve a long term, sustainable shift from control to empowerment' (Statement of Claim, 2018, p. 11). Those objectives are: (1) Aboriginal community-led decision making; (2) Tailored services based on local and regional community identified need – Pathway to Empowerment Model; (3) Regionally driven investment; and (4) Regional accountability. As the Statement of Claim declares:

*The deficit approach of Close the Gap is too heavily weighted on the provision of basic and specialist services. Too often these services tick the boxes without building community capability or aspiration, resulting in individuals cycling through the service system again and again.*

*This over-investment in 'band aid solutions' reinforces a cycle of disempowerment and despair. It removes community control and puts it in the hand of well-meaning mainstream organisations who meet their 'outcomes' without actually having any lasting impact on community. We call this recurrent cycle through basic and specialist services the 'Crazy 8'. We are seeking a reform process that invests in building genuine 'Pathways to Empowerment' (Barang Statement of Claim, 2018, p. 11).*

Barang Alliance Accord Negotiators hoped that, with this change, there could be a level of innovation and change in government service delivery to Aboriginal people on the Central Coast. In line with Closing the Gap 2020, Barang had not only identified the problem, but also the solution.

Unlike most Regional Alliances under *OCHRE*, Barang set out to negotiate Accord Schedules at the same time as the Accord itself; many other Regional Alliances, like RMRA, have opted to negotiate and sign an Accord first, and negotiate Schedules in a separate process. So, the objective of negotiations between Barang and the NSW Government was to reach agreement on an Accord and determine Schedules to the Accord. Through that process, Barang Regional Alliance demonstrated significant foresight and a capacity to align its priorities with potentially competing state and Commonwealth policy objectives including LDM, Empowered Communities, and Closing the Gap. Barang Alliance Accord Negotiators also had significant experience and expertise among them in terms of working in public sector environments in senior positions and as Chief Executive Officers of incorporated Aboriginal organisations, which meant that they (individually and collectively) had the capacity to understand what needed to change in terms of government service delivery from within the public sector. They felt that put Barang in a strong position to negotiate. Once negotiations were underway, this foresight and

capacity was shown when the 2020 National Agreement on Closing the Gap was signed between all governments in Australia and the Coalition of Peaks (Australian Government, 2020). Barang swiftly adapted to the change in focus of the NSW Government, demonstrating how its Accord initiatives were matched to Closing the Gap targets and outcomes (see Figure 4 in Howard-Wagner & Harrington, 2022, p. 16).

Despite the extensive and sustained work undertaken, what the Barang Regional Alliance Accord Negotiators put on the table in their Statement of Claim (dated April 2018) differed from the Accord Initiatives agreed to as part of the Barang Accord (as of April 2021). The final agreed initiatives are much more limited in scope, and mostly related to specific service delivery (Evaluation Discussion Circle, Barang Regional Alliance Discussion Circle). Barang Alliance Accord Negotiators did not secure Schedules (initiatives) that they felt would lead to meaningful change for Aboriginal people living on the Central Coast. The Barang Accord Schedules were also ultimately funded through the reallocation of existing resources from within agency budgets. This meant that the Accord negotiation process did not result in any net gain for the Central Coast Aboriginal community, as represented by the Barang Accord Negotiators. This is despite the fact that the Barang Regional Alliance was extremely well-prepared going into the Accord negotiation and had a well-researched and developed Statement of Claim, informed by extensive community engagement. Barang is one of the best resourced and most experienced Regional Alliances participating in LDM. It is a finding of this evaluation that this outcome significantly affected Barang Accord Negotiator's perception of the process.

In April 2020, Barang Regional Alliance produced a document outlining the Formal Accord Negotiation Principles and Protocols, but these were not strictly adhered to. The document sets out clear structures and administrative arrangements for the Accord negotiation process, and incorporates key Aboriginal principles. It sets out that throughout the negotiation parties had to privilege Aboriginal ways of knowing and doing, practice cultural protocols, and commit to cultural safety. The document:

*assert[ed] Barang's inherent and inalienable right to Indigenous Data Sovereignty. This is the right of Indigenous peoples to exercise ownership over Indigenous Data. Ownership of data can be expressed through the creation, collection, access, analysis, interpretation, management, dissemination, and reuse of Indigenous Data (Barang Formal Accord Negotiation, 2020, p. 4).*

It is a finding of this evaluation that, despite the existence of these principles and protocols, the negotiation process did not always follow Aboriginal ways of knowing and doing, nor was it always culturally safe.

It is also a finding of this evaluation that it was at the stage when Lead Agency Negotiators stepped into the process to negotiate funding that difficulties arose. The difficulties that Barang Accord Negotiators experienced in their efforts to negotiate Barang's Accord Schedules provide important insights about how limitations with the 'authorising environment' resulted in this outcome. Factors identified as impeding effective negotiations include: the lack of authority of Lead Agency negotiators; the lack of creative, holistic and innovative solutions; the lack of integrated responses; lack of flexibility in spending; lack of remuneration for Barang Accord Negotiators; and the barriers in relation to data (see Howard-Wagner & Harrington, 2022).

While the Accord negotiation process did build relationships, and the Independent Facilitator called it 'massive' that the NSW Government brought senior position holders from Lead Agencies together at the same table as community members, it was considered by Barang Regional Alliance Accord Negotiators and Lead Agency Negotiators to have led to a 'business as usual' approach. Barang Regional Alliance Accord Negotiators commented that they approached the Accord negotiation process as an exercise in self-determination, rather than leading to self-determination. They stated that, if they knew what the outcome was going to be upfront, they would not have engaged in the Accord negotiation process. They were deeply disappointed in the outcome. We believe that the outcome significantly influenced their negative perceptions of the process, and this was reinforced through our in-depth discussion of the findings with Barang Regional Alliance Accord Negotiators.

### *Post-negotiation process (progressing the Accord)*

The post-negotiation phase covers the period following the signing of the Accord, and in the case of Barang, it would potentially cover the period after both the Accord and Schedules are signed. At the time this report was written, the Barang Accord had been finalised, but remained unsigned due to an unresolved issue about implementation funding. It is a finding of the evaluation that this outcome also significantly affected Barang Regional Alliance Accord Negotiator's negative perceptions of the process. Given that the Accord and Schedules had not been signed and were not being implemented, post-negotiation performance could not be measured against the Schedules.

That the Accord and Schedules remain unsigned is inconsistent with 'negotiating in good faith', which as mentioned above is not only a best-practice principle of agreement making, but also a key principle to be adhered to in the LDM and Accord-making process as set out in the Premier's Memorandum M2015-01-Local Decision Making (NSW Department of Premier and Cabinet, 2015). It also goes to other well-established principles of agreement making with Indigenous peoples, such as 'understanding Indigenous aspirations', 'complying with agreed negotiation procedures and principles', and 'not causing unnecessary delays' (see, e.g., The Federal Government's Joint Working Group on Indigenous Land Settlements developed Guidelines for Best Practice Flexible and Sustainable Agreement-Making, August 2009). It is our finding that those principles do not appear to have informed the Accord negotiation process in this case.

Nonetheless, Barang has pushed forward with its priority agenda of empowering young people on the Central Coast. It has leveraged its working relationships with NSW Government agencies to secure funding for many of the opt-in ACCOs for programs that achieve this end. Examples of this are the Bara Barang's Dream Builders program – a cultural education, work education and career planning package for Aboriginal young people, which promotes Year 12 completion and transition to further education and is delivered in schools, community centres, youth services and employment agencies; and its Barranggirra Employment and Mentoring Program, which aims to support Aboriginal young people seeking jobs in ongoing education and training to secure employment and create employment pathways. It has secured recurrent funding for five years for Gudjagang Ngara li-dhi, allowing it to keep its doors open and continue to deliver early-intervention initiatives for babies right through to Aboriginal Elders on the Central Coast. It has secured funding for Yerin Eleanor Duncan Aboriginal Health service to target the empowerment of young people through a diversionary program directed at keeping young people at risk in school, while addressing the risky behaviour, building capacity around that young person, and providing that young person with support.

### **Murdi Paaki (MPRA) Accord II negotiation process**

#### *Establishment and role of MPRA*

The MPRA is the peak body representing the communities of the Murdi Paaki region in negotiations with governments. It pre-dates the *OCHRE* strategy by more than 20 years. Indeed, along with its precursor, the Murdi Paaki Regional Council, the two bodies have provided a model for regional Aboriginal representation since the 1990s. The popularly elected Murdi Paaki Regional Council was established in 1990 under the auspices of the Aboriginal and Torres Strait Islander Commission (ATSIC). Later, in 2004, MPRA was constituted to represent the 16 communities of northern and western NSW: Bourke, Brewarrina, Broken Hill, Cobar, Collarenebri, Coonamble, Engonia, Goodooga, Gulargambone, Ivanhoe, Lightning Ridge, Menindee, Walgett, Weilmoringle, Wentworth/Dareton, and Wilcannia (MPRA, n.d.c). MPRA has been part of the LDM program since its inception in 2013 (Katz et al., 2018a, p. 52) and, in 2015, became the first Regional Alliance to sign an Accord with the NSW Government.

As stated in its Regional Plan, the MPRA has 'a long and proud history of prosecuting a visionary agenda for regional autonomy and self-determination in the Murdi Paaki Region' (Murdi Paaki, 2016, p. 2). Its community-



led governance model comprises the MPRA and the 16 CWP, giving equal representation to the region's principal communities. CWPs are the peak local bodies for representation and decision making. CWP structure and composition are decided by the communities to suit local ways of engaging and decision making, as are the processes used to give effect to the CWP. While CWP structures vary across communities, each CWP governance model as a whole works to a consistent set of values and practices around probity, inclusiveness, and other matters of shared importance. Each CWP is bound by a Charter and Code of Conduct under which it operates. Each CWP's role includes assessing local community development needs, undertaking strategic planning, advocacy, and negotiation, and representing the voice of the community at the regional level (MPRA Lessons Learnt, 2019, p. 14).

The MPRA model is based on equitable representation and participation for all Aboriginal people in the region. The business of the Assembly is conducted to an agreed set of rules led by an Independent Chairperson. The Assembly is authorised to speak on behalf of communities through its relationship with the CWPs.

MPRA's vision as espoused in its Charter of Governance is to:

*establish Aboriginal jurisdiction in the Murdi Paaki region based on recognition of our human rights as Aboriginal Peoples, political, social, and cultural respect for Aboriginal and Torres Strait Islander people in Australian society, and equitable participation in the economic development in the Murdi Paaki region (MPRA, 2015, p. 5).*

The goals of MPRA are to:

- ensure Aboriginal people participate in all decision-making that affects their lives
- connect Aboriginal people with all service delivery arrangements
- have a legislative regime which reinforces the connection between Aboriginal participation and accountable service delivery by government agencies to provide an authoritative and consistent framework of shared responsibility and accountability
- influence and control the way policies and services are implemented (MPRA, 2015, p. 5).

The MPRA is governed by a Charter of Governance which is described as reflecting a commitment to 'the highest standard of governance, accountability, advocacy, and direction' and which supports 'the principles of responsibility, strong leadership, commitment and partnership' (MPRA, 2015, p. 7). The Charter provides a facilitating and representative framework which ensures that community members are able to participate in government decision making over matters that are fundamental to their lives and wellbeing (p. 4).

The MPRA is unincorporated, but after Accord I was signed, MPRA established Murdi Paaki Services Limited (MPS) as its operational arm and gave it responsibility for undertaking strategic activities. In 2018 and within the framework of LDM, the Murdi Paaki Social Housing Agreement was signed. Under the agreement, the Regional Aboriginal Housing Leadership Assembly was established and given \$15 million in funding to address housing issues in the region.<sup>5</sup> On September 9, 2020, a second overarching Accord (Accord II) was signed between the NSW Government and MPRA.<sup>6</sup>

The MPRA Accord II stipulates that, in implementing the agreement, Aboriginal owned and operated service organisations and enterprises in the MPRA region will be given 'primacy' (NSW Government & MPRA 2015, p. 2).

### *Pre-negotiation phase*

<sup>5</sup> <https://www.aboriginalaffairs.nsw.gov.au/working-differently/local-decision-making/accord-negotiations/signed-accords/>

<sup>6</sup> <https://www.aboriginalaffairs.nsw.gov.au/working-differently/local-decision-making/accord-negotiations/signed-accords/>

MPRA Accord Negotiators (who included the MPRA Chair, and the Chairs of respective CWP), Lead Agency Negotiators, and the Independent Evaluator, who were interviewed for the Accord Negotiation Evaluation of the MPRA Accord II negotiation process, reflected positively on the value of LDM. In the words of one Lead Agency Negotiator, 'this is a vehicle and we've got to keep on with it' (O'Bryan et al., 2022, p. 15). The longevity of the Accords process is seen as a positive because it has provided time for more people to understand and 'buy into' Accords negotiations. As one interviewee put it, 'the goodwill had gone up a bit and there was less cynicism in the second round.' Shared decision-making requires mutual commitment, capability, and trust, and these aspects of the relationships between MPRA and NSW Government agencies have taken time to build.

### *MPRA Accord II negotiation phase*

It is our finding that in negotiating Accord II, MPRA's cumulative experience and financial capability put it at a relative advantage compared to the other Aboriginal Regional Alliances.

The Accord II negotiations provided MPRA Accord Negotiators with the opportunity to identify shortcomings of earlier agreements and their implementation, and improve on the outcomes of Accord I. There was a consensus that outcomes of Accord I were disappointing and fell short of what either MPRA or government negotiators had expected. In the words of one MPRA delegate, 'the Accord is not being honoured in practice'. An example of why this is important became evident in discussions around economic development in the MPRA region. MPRA delegates expressed frustration that multi-million dollar contracts were being awarded to contractors from outside the region without local community members seeing any benefits in terms of employment. In this way, LDM and the on-going work of negotiating and renegotiating Accords themselves provided a forum to keep Government accountable. MPRA delegates used Accord II negotiations to remind senior public servants that there was an onus on government to ensure awareness of the binding undertakings made through Accords across all departments and at all levels.

Both Lead Agency Negotiators and MPRA Accord Negotiators showed a commitment to working together more closely on the negotiation and implementation of Accord II priorities than was the case for Accord I. Both MPRA delegates and the Lead Agency Negotiator for the Department of Communities and Justice reflected positively on achievements such as including a MPRA delegate in evaluations of tenders from out-of-home care providers. That delegate also reflected positively on the experience and reflected that he 'wanted to see more' such collaborations.

Negotiators from both MPRA and NSW Government Agencies stated that real benefit of Accord II could be seen in the relationships built, understandings gained, and goodwill established between the negotiating parties. The genuine engagement of senior government agencies figures, who listened to community perspectives and participated in the process of re-imagining community-Government relations, was seen as a particularly significant.

The negotiation of Accord II demonstrates both the strengths and weaknesses of LDM and the Accords-making process. Accord II proved to be an effective mechanism for increasing the efficacy of agreements, and provided an opportunity to build on the lessons learnt during negotiations for Accord I. At the same time, numerous on-going structural issues affected the negotiation process. These include the lack of resourcing of Accord initiatives; difficulties in obtaining and providing readily accessible, relevant data; and the high turnover of Lead Agency Negotiators. Underlying all these issues was a power imbalance between Lead Agency Negotiators and MPRA Accord Negotiators. Despite these limitations of the process, all parties stated that the Accord II negotiations process was more effective in achieving concrete outcomes than Accord I, and served as an important forum for holding Government accountable.

Findings from each of the research sites will be discussed in more detail in the following section.

## Comparative summary of findings

As is evident from the summaries above, RMRA, Barang and MPRA each has a distinct history of working with government, a different governance structure, and are at a different stage in the Accord negotiation process. Yet, all three Regional Alliances were well prepared, committed to negotiating important outcomes for the communities they represent, and demonstrated a high level of commitment and capacity to negotiate important outcomes for those communities. All three Regional Alliances demonstrated significant foresight and capacity to negotiate in good faith toward resetting the relationship collaboratively and in partnership with NSW Government agencies to give their communities greater decision-making powers in how government programs and services are conceived, developed, and implemented. All three aligned community priorities with potentially differing state and Commonwealth policy objectives including LDM, Empowered Communities, and Closing the Gap.

Yet, several external factors affected their capacity to enter into Accord negotiation processes. Those factors included the following:

- whether the Regional Alliance had prior experience with Accord negotiations going into the process (i.e., MPRA was negotiating its second Accord)
- whether the Regional Alliance negotiated Schedules as part of the approach (i.e., Barang negotiated Schedules as part of the Accord-making process, whereas RMRA only negotiated an Accord)
- whether the Regional Alliance had additional financial capacities (i.e., Barang and MPRA had access to Commonwealth funding, which subsidised the process, and RMRA did not)
- the expertise of their personnel (i.e., Barang had Negotiators with significant public sector experience, and RMRA did not;<sup>7</sup> as the longest standing Regional Alliance, MPRA delegates have a long history of negotiating with government)
- whether a Regional Alliance had the capacity to remunerate personnel (i.e., Barang and MPRA drew on funding from other sources to remunerate personnel)
- the capacity of Regional Alliances to resource community engagement and innovation (i.e., Barang held several youth and other community forums; between 2017 and 2019, RMRA hosted a variety of events to support health and wellbeing, but none since), and
- the capacity of Regional Alliances to access administrative data or collect further local data on local needs (i.e., Barang and MPRA were, to a degree, able to collect some data to assist them in understanding local needs, whereas RMRA could not).

As such, the different histories and significantly different financial capacities of the respective Regional Alliances did affect the ability of Regional Alliances to engage in Accord negotiations. This is clearest in the distinction between RMRA, which is relatively new and has no external funding, and MPRA which, as the longest-established Regional Alliance, benefited from experience in negotiating its second Accord with the NSW Government. The benefits of this experience are evident in the report on the MPRA Accord, which found that the signing of a second Accord ‘provided an opportunity to improve on the shortcomings’ of the first (O’Byrne et al., 2022, p. 16).

Despite this, each Regional Alliance reported on challenges that they encountered, including access to data; remuneration of personnel; resourcing of innovation; and the lack of capacity on the part of public officials to be innovative in government service delivery. Of these challenges, prior experience going into the process and

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<sup>7</sup> A caveat here is that RMRA had Jason Ardler and Glynis Ingram advising them (albeit on a largely pro bono basis).

significantly different financial capacities had the greatest effect on the ability to engage in Accord negotiations. Those issues point to an imbalance of power and lack of true co-design.

While there are limitations, participating regions all report that they benefit from LDM. Interviewees from across the Regional Alliances, along with Lead Agency Negotiators, advised that those limitations are not due to shortcoming in LDM principles. All the right mechanisms are in place with both the Premier's Memorandum M2015-01-Local Decision Making (NSW Department of Premier and Cabinet, 2015) and the Local Decision Making Policy and Operational Framework (AANSW, 2017b), but its day-to-day implementation and failure to adhere to those mechanisms is where it falls short.

## Synthesis of key findings across evaluations, present and past

This section is a synthesis of key recurring and new findings of the evaluations conducted by CAEPR researchers as part of the *OCHRE* LDM Evaluations Stage 2, and, where relevant, the findings of previous evaluations from *OCHRE* LDM Evaluations Stage 1. In comparing the evaluations of the MPRA, Barang, and RMRA Accords negotiation processes, the research team made findings that were common across all research sites. In many cases, those findings were also consistent with previous LDM Accord negotiation process under the *OCHRE* LDM Stage 1 evaluations.

The five previous LDM Accord negotiation process evaluations are as follows:

- 'Murdi Paaki LDM Accord Negotiation Evaluation', which is the first evaluation of the MPRA Accord negotiations (CIRCA, 2015)
- '*OCHRE* Evaluation Stage 1: Implementation and early outcomes. Murdi Paaki Regional Assembly Local Decision Making', which is the second evaluation of MPRA Accord negotiations (Katz et al., 2018c)
- '*OCHRE* Local Decision Making Accords: Illawarra Wingecarribee Alliance Aboriginal Corporation', which is an evaluation of the IWAAC Accord Negotiation (Smyth & Katz, 2018)
- '*OCHRE* Local Decision Making Accords: Three Rivers Regional Assembly', which is an evaluation of the TRRA Accord Negotiation (Katz et al., 2018a), and
- '*OCHRE* Evaluation Stage 1: Implementation and early outcomes' (Katz et al., 2018b).

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**Finding 1: Positives of Accords as a mechanism of Indigenous agreement making**

Accord negotiation is an important mechanism for agreement making between government and Aboriginal peoples in NSW. It increases control and self-determination over Indigenous service delivery and Closing the Gap, improves recognition of and support for Aboriginal governance, enables genuine voice to filter through and influence government decisions about Indigenous service delivery, and facilitates effective, long-term working relationships, and has the capacity to facilitate shared decision-making.

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It is a finding of the CAEPR evaluations and previous evaluations that the Accord negotiation process has a number of positive attributes. As the discussions of the three phases of Accord negotiation in relation to RMRA, Barang and MPRA illustrate above, it accommodates regional differences in Aboriginal-designed and community-led governance arrangements. It is also improving working relationships. Furthermore, while LDM is a three-phase process toward shared decision-making, and only MPRA has negotiated its second Accord, there are signs that negotiating Accords has the potential to give communities a genuine voice, facilitate shared decision-making, and tackle huge, systemic, real issues.

**Accommodates Aboriginal-designed and community-led governance arrangements**

First is the positive way *OCHRE* LDM accommodates local and regional differences in Aboriginal-designed and community-led governance arrangements. Aboriginal Regional Alliances vary in form, and the CAEPR evaluations found that *OCHRE* LDM is enabling communities to create their own regional models of representative governance suitable to their circumstances.

It is also a finding of the CAEPR evaluations that each of those differing Aboriginal Regional Alliances are exemplars of Indigenous governance. In some cases, those governance arrangements existed and regions, like Murdi Paaki and Barang, have opted-in to the LDM model and Accord negotiation process as a mechanism for meeting the needs of their communities. This is consistent with an important feature of good agreement making with Indigenous peoples. Aboriginal regional governance structures, which engage with communities through community working parties and other forms of community engagement, empower Aboriginal people in their engagement with NSW government agencies to accelerate key policy issues, of concern in those regions, and regional and local progress on Closing the Gap through Accords as a form of Indigenous agreement making.

**Facilitates effective working relationships**

Second, a further positive of the Accord negotiation process is that it facilitates long-term working relationships. This was particularly evident in MPRA Accord II, where relationships established and tested over time were identified as building trust and ensuring the accountability of government. This too is consistent with an important feature of good agreement making with Indigenous peoples. Similarly, NSW Government agencies and Lead Agency Negotiators reflected on the need to build long-term, mutually beneficial relationships between NSW Government agencies and Aboriginal Regional Alliances. Indeed, improving the relationship between government and community was identified by all parties as the greatest benefit of LDM, and the most effective mechanism to drive change. It is also a finding of this evaluation that negotiating Accords has had positive personal and professional benefits for Lead Agency Negotiators and Independent Facilitators. Many reflected positively on the personal and professional benefit of the LDM initiative.

There are many additional related positives of the Accord negotiation process consistent with the principles of agreement-making with Indigenous peoples. The CAEPR evaluations and past evaluations found that all parties perceive Accords as potentially increasing control and self-determination over Indigenous service delivery and changing the relationship between government and community because it provides Aboriginal Regional Alliance representatives and Lead Agency Negotiators a forum to meet and negotiate as equals (CIRCA 2015; Howard-Wagner & Harrington, 2022; Katz et al., 2018b; O'Bryan et al., 2022; O'Bryan and Thomas, 2022)

### **Capacity to give communities a genuine voice**

Aboriginal Regional Alliance Negotiators welcomed the NSW Government's commitment to ensuring communities have a genuine voice in determining what and how services are delivered to their communities. The formation of Alliances to negotiate Accords has brought communities together and allowed them to align, unify, and strengthen their mutual interests. Aboriginal Alliance Negotiators reflected on the ways in which involvement in the Accords-making process increased their personal capacity and that of the communities they represent.

### **Capacity to facilitate shared decision-making and tackle huge, systemic, real issues**

Lead Agency Negotiators generally felt that the Accords negotiation process positively changed the way they approach issues that affect Aboriginal communities and allowed them a chance to work across agencies. For example, one Lead Agency Negotiator commented on the potential for Accords-making and the wider LDM process 'to tackle the huge, systemic, real issues' (Lead Agency Negotiator 7, MPRA) which confront Aboriginal people in regional NSW, although he also acknowledged the importance of engaging with smaller, more immediately achievable needs of communities. That same interviewee reported that the COVID-19 pandemic had revealed the benefits of having local voices shape local service delivery priorities:

*Where we've got Community Action Plans that have got strong investment from Community Working Party Chairs, that has meant that they've got all their resources straight out, almost 100% vaccinated already, double dosed, and really super-effective relationships with all the pillars of health (Lead Agency Negotiator 7, MPRA).*

The NSW Coalition of Aboriginal Regional Alliances (NCARA), which is comprised of Chairs from five of the nine Regional Alliances (MPRA, TRAA, Barang, IWAAC and RMRA) also reaffirmed that it was LDM regions that had the best response to COVID outbreaks in 2021 and the greatest COVID-19 vaccination rates.

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## Finding 2: Statement of Claim

The development of the Statement of Claim by Regional Alliances, through engagement with their communities and the collection of local data, is a mechanism for Aboriginal people in communities to have a say on how to improve their lives and their needs in relation to Indigenous service delivery and Closing the Gap. It is a significant positive outcome of LDM and the Accord-making process. However, there is presently an under-investment in this phase of the Accord negotiation process. This phase could be substantially strengthened via investment on the part of the NSW Government.

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The Statement of Claim is the starting point for formal negotiations. Statements of Claim, which are developed by Regional Alliances in the pre-Accord negotiation phase, are detailed and focused governance documents. They set out the priority issues for Aboriginal communities which Alliance members wish to be addressed within the Accord. As noted above, informants in the current evaluations report that the Accord negotiation processes are working to achieve LDM's aim of supporting Aboriginal governance at the regional and local level (AANSW, 2017b, p. 8). Statements of Claim provide evidence that Regional Alliances complied with key governance principles before commencing LDM Accord negotiations. They reflect strong community engagement and reaffirm the importance of local decision-making to self-determined regions, where strategic priorities are informed by the values and aspirations of local stakeholders. The NSW Government is given an opportunity to formally respond to the Statement and may also submit their own priorities or actions for negotiation. Regional Alliance Chairs report that the Statement of Claim establishes governance arrangements for Accord negotiations. Those Statements of Claim are then endorsed and signed by the Minister for Aboriginal Affairs on behalf of the NSW Government before the formal negotiation phase. This is a positive outcome of the pre-negotiation phase of the Accord negotiation process.

While the development of a Statement of Claim is an extremely positive outcome of the *OCHRE* LDM and the Accord negotiation process, it is a finding of the evaluations that this phase could be further strengthened in the following three ways:

- i better resourcing of Regional Alliances to engage with their communities and collect data (i.e., engaging consultants, surveying communities, determining priorities, developing their methodologies of choice, and developing innovative approaches, building the capacity of communities to hold data)
- ii investing in Regional Alliances to create Aboriginal led and community-controlled Aboriginal Regional Data Networks, and
- iii through the development of strong governance, integrity, and communication annexures to the Statement of Claim for accountability, monitoring and reporting purposes, which could be developed as part of the preparation for Accord negotiation.

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### Finding 3: Accord-making not adhering to best practice principles for agreement making

While an important mechanism for agreement making, Accord negotiations are presently not adhering to best practice principles, such as negotiating in good faith. Salient examples include negotiations failing to facilitate outcomes aligned with the Statement of Claim; negotiations failing to foster innovative, creative, and holistic solutions; and Accord Schedules remaining unsigned for long periods of time. This is despite the Premier's Memorandum M2015-01-Local Decision Making setting out that the negotiation of LDM Accords must be open and in good faith with the objective of achieving positive outcomes and fostering innovative, creative, and holistic solutions. Such experiences are leading to Aboriginal Regional Alliances and their communities losing faith and trust in NSW Government agencies and the NSW Government.

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The Premier's Memorandum M2015-01-Local Decision Making set out that 'NSW agencies identified in an LDM Accord will negotiate openly and in good faith, with the objective of achieving positive outcomes and to foster innovative, creative, and holistic solutions' (NSW Department of Premier and Cabinet, 2015, p. 1). It is our finding that significant problems emerge around negotiating in good faith around the negotiation of Accord Schedules. It is also at this stage that regional and community objectives identified in the Statement of Claim have, on occasions, been derailed.

#### **Negotiating the Accord and its Schedules**

Although both the Local Decision Making Accord Negotiation Process (2017b) and the *OCHRE* Good Governance Guidelines (2017) detail a series of steps which Regional Alliances and NSW Government stakeholders must work through prior to commencing formal negotiations, Lead Agency Negotiators and Regional Alliance Negotiators felt that more should be done to ensure that Accords, and the parties who negotiate them, are set up to succeed, particularly in relation to the Accord Schedules.

In negotiating an Accord, Regional Alliance negotiators and NSW Government Lead Agency Negotiators also engage in a process for developing priorities, actions and deliverables under the Accord through the negotiation of Accord Schedules. The Schedules— which can be either negotiated at the time of the Accord or after the Accord is signed – set out the strategies, deliverables, performance indicators and measures of progress for the Accord, focusing on specific areas such as Health and Wellbeing, Law and Justice, Housing, Governance and Community Engagement, Employment and Business Development, Education and Training, Aged Care, and Transport Schedules.

#### **Actioning the Statement of Claim via Accord Schedules**

While the evaluations conducted by CAEPR researchers and past evaluations found that the development of the Statement of Claim was a key element of the process (CIRCA, 2015, p. 21; Howard-Wagner & Harrington, 2022, pp. 15, 30), the negotiation of Accord Schedules is not facilitating outcomes aligned with the Statements of Claim (endorsed and signed by the Minister for Aboriginal Affairs prior to negotiations), Accords (which are legally binding documents), or the principles underlying LDM. Significant compromise is required on the part of Regional Alliances because public officials are adopting a 'business as usual' approach to the negotiation of the Schedules (administrative arrangements). Evaluations conducted by CAEPR researchers and past evaluations found that the degree to which Accords fostered innovation was questioned by Accord Negotiation parties and informants reflected that the Accord-negotiations process represented a missed opportunity for innovative,



creative, and holistic solutions (CIRCA, 2015, p. 16; Howard-Wagner & Harrington, 2022, pp. 24-26; O'Bryan & Thomas, 2022, pp. 26–27).

For example, all research participants from Aboriginal Regional Alliances, both those engaged in the CAEPR evaluations and in past evaluations, indicated that they had invested considerable time and resources in the pre-negotiation phase and development of a Statement of Claim and an Accord, only to discover that Lead Agency Negotiators did not have the appropriate delegation to negotiate and approve Schedules, including the funding of initiatives, during the formal negotiation phase of the administrative arrangements under the Accord. Many volunteered their time to prepare for and negotiate Accords and Schedules at significant financial and personal cost. This contributed to a fundamental imbalance of power that was detrimental to Aboriginal Regional Alliances and their members. Also, while negotiations were structured in a way that should have clarified what was within scope of the Accords prior to their commencement, it appears that this was not the case. It also contributed to a 'loss of faith and trust' in the Accord negotiation process.

### **Trust in NSW Government**

Despite the existence of signed Accords, the evaluations conducted by CAEPR researchers and past evaluations also found that trust in the NSW Government, NSW Government lead agencies, and the LDM process is low. This is due to problems in the period following the Accord-signing phase. This reflects the length of time and significant resources expended in developing and negotiating Accords and the fact that some Accords had to be re-negotiated at the last minute. Despite this investment, Schedules remained unsigned (Howard-Wagner & Harrington, 2022, p. 32; Katz et al., 2018b, p. 43; O'Bryan and Thomas, 2022). In their own way, negotiators from both NSW Government lead agencies and Regional Alliances each felt the large amount of time invested in the Accords-negotiation process without implementation has strained relationships between those Lead Agencies and Regional Alliances and eroded community engagement and confidence in the process (Howard-Wagner & Harrington, 2022, p. 32; O'Bryan and Thomas, 2022, p. 5, 19; Smyth & Katz, 2018, p. 1;). This is not a new problem. The SPRC's evaluation of IWAAC negotiations found that 'the time taken to finalise the negotiations made it difficult to maintain community engagement and eroded confidence in the process' (Smyth & Katz, 2018, p. 1). This was exacerbated by 'for the time lag between the official end of negotiations and the signing of the Accords' (Smyth & Katz, 2018, p. 6).

Whether a Regional Alliance negotiates their Schedules at the same time as negotiating the Accord does matter. Barang negotiated its Accord and Schedules at the same time. At the time of writing, it is not only the Barang Accord that remains unsigned, but the Schedules – which were finalised in April 2020 – remain unsigned too. RMRA has only negotiated one Schedule, which remains unsigned. This is resulting in a loss of faith and trust. These findings go to the principle of negotiating in good faith. The Premier's Memorandum M2015-01-Local Decision Making (2015) sets out that LDM Accords will be negotiated openly and in good faith, with the objective of achieving positive outcomes (NSW Department of Premier and Cabinet, 2015). The Premier's Memorandum also requires that negotiations foster innovation, creative and holistic solutions. Despite the existence of these negotiating principles, the evaluations conducted by CAEPR researchers and past evaluations found that Aboriginal Regional Alliance negotiators question the degree to which Accords are broadly negotiated in good faith. Finding 4 expands on this finding in relation to the 'authorising environment'.

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#### Finding 4: Funding and resourcing Regional Alliances

The lack of adequate funding and resourcing of Regional Alliances to engage in the Accord negotiation process is a significant barrier to achieving Accord objectives.

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The Local Decision Making Policy and Operational Framework states that: 'NSW Treasury will establish flexible funding arrangements for each LDM location, to enable a re-direction of government spending (if required) consistent with Accord priorities' (AANSW, 2017b, p. 21). With such mechanisms in place, LDM promises 'greater flexibility in spending' (NSW Government, 2013, p. 22). Alongside this, the vision is for Regional Alliances to be 'resourced as equal partners' (*OCHRE Implementation Plan, 2017-2020*, p. 3). Despite the existence of these mechanisms and principles, the evaluations conducted by CAEPR researchers and past evaluations found that they are not adhered to, and funding and resourcing are significant barriers to achieving LDM objectives. Issues pertaining to funding and resourcing play out in three distinct, but interrelated, ways.

#### **Non-statutory funding priorities**

First, information pertaining to existing non-statutory funding priorities and future regional non-statutory budgetary allowances for all programs that affect Regional Alliances were not provided.

#### **Greater flexibility in spending**

Second, while LDM promised 'greater flexibility in spending' (NSW Government, 2013, p. 22), there was no evidence of this in the negotiation of Accords to date (Howard-Wagner & Harrington, 2022, p. 27; O'Bryan & Thomas, 2022, p. 25). No actual budgets are allocated to fund Accord Schedules, and this has consistently presented as a principal obstacle to negotiations (Howard-Wagner & Harrington, 2022, pp. 26-27; O'Bryan & Thomas, 2022, p. 27).

Negotiators from all three Regional Alliances and Lead Agency Negotiators indicated that no new specific funds were set aside to deliver Accord Schedules, with NSW Government Agencies expected to draw from their existing budget allocations to fund agreements made through negotiations. This was identified by interviewees across the board as a fundamental flaw and principal obstacle of the process. The effect is that Accord Schedules are relying on the redirection of existing funding, which is leading to a 'business as usual' approach being the default position of public officials. The evaluations found that the result of this 'business as usual' funding approach is that it is leading to inflexibility around co-designing funding solutions and the funding of Schedules, and initiatives under those Schedules (Howard-Wagner & Harrington, 2022, p. 34). This, in and of itself, frustrated expectations that Accords would take place through a collaborative and genuine co-design process.

For example, Barang Alliance Accord Negotiators entered the Accord negotiation process with a clear mandate from members about redefining their relationship with government and improving service delivery for Aboriginal people on the Central Coast. However, once Accord Negotiations were underway, the issue of funding Schedules became a key obstacle to effective negotiations. No funding was specifically allocated toward the formulation of Accord Schedules or their implementation. All participants (including public officials) identified the lack of funding committed to Accords as a principal obstacle to negotiations. Barang Alliance Accord Negotiators came away from the negotiation process with a collective perception that the negotiations had broadly failed to achieve the objectives of Accord negotiations.

## Remuneration of Regional Alliance Negotiators

Third, Regional Alliance Negotiators are not inadequately remunerated for the work required to properly participate in Accord negotiations (Howard-Wagner & Harrington, 2022, p. 30; O'Bryan & Thomas 2022, p. 27). Inadequate funding and resourcing also diminish the capacity of Regional Alliances to discharge their responsibilities. As the NSW Ombudsman *OCHRE* Review Report states, 'Aboriginal leaders have consistently argued that the funding available is inadequate for Alliances to discharge their responsibilities under the initiative, and to address the power imbalance between government and Alliance representatives. Alliance officers are not paid salaries or otherwise remunerated for their time and expertise. Many hold full-time jobs and have had to take personal leave to attend to LDM business' (NSW Ombudsman, 2019, p. 104). It was also a finding of the evaluations conducted by CAEPR researchers and past evaluations (Howard-Wagner & Harrington, 2022, p. 30; Katz et al., 2018b, p. 10; Katz et al., 2018c; p. 34). For example, Barang Regional Alliance negotiators suggested that their involvement in Accord negotiations and LDM more generally should be properly costed so that there is concrete evidence to support the funding of Alliances. Regional Alliances recommended additional resources be allocated to allow Aboriginal Regional Alliances to undertake necessary pre-negotiation work to increase their capacity in the Accord negotiation process, survey communities, determine priorities, develop their methodologies of choice, and be innovative.

It is also a finding of the evaluation that Recommendation 20 of the NSW Ombudsman's *OCHRE* Review Report has not been implemented. That is, there was no evidence presented in the evaluations to indicate that a business case for adequate funding for Alliances and LDM initiative over the full forward estimates, considering comparative programs and experience to date in estimating the required investment, had occurred (NSW Ombudsman, 2019, p. 105).

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### Finding 5: The structural constraints within the 'authorising environment'

Accord negotiations were structurally hampered by the 'authorising environment', such as the lack of authority and high turnover of Lead Agency Negotiators and the lack of integrated responses between NSW Government agencies.

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The Premier's Memorandum M2015-01-Local Decision Making states that 'Agencies are obligated to adhere to the principles of LDM, to negotiate openly and in good faith...' (NSW Government, 2015, p. 4). The Premier's Memorandum M2015-01-Local Decision Making and the LDM Policy and Procedural Framework (AANSW, 2017b) provide several benchmark principals to instruct negotiations and guide those who are charged with 'negotiating openly and in good faith'. While it appears that NSW Government agencies work respectfully and cooperatively with Regional Alliances to develop Accords, one of the clear barriers to innovation and good practice is the capacity of Lead Agency Negotiators to constructively engage in the Accord negotiation process. The 'authorising environment', including the capacity of Lead Agency Negotiators, is critical to the successful negotiation of Accords in line with LDM objective as set out in the Premier's Memorandum M2015-01-Local Decision Making (NSW Department of Premier and Cabinet, 2015) and the LDM Policy and Operational Framework (AANSW, 2017b). It is a finding of the CAEPR evaluations that, despite the *OCHRE* LDM documents outlining how the 'authorising environment' is to operate, including the governance requirements and who has decision making power, and the roles of decision-makers being well tailored and documented, it has not been operating as intended.

### **Executive Sponsors are not Lead Agency Negotiators sitting at the negotiating table**

It is a finding of the evaluations that Executive Sponsors, who are the decision-makers, work at arms-length from the Accord Negotiation process. Lead Agency Negotiators, who engage in the negotiations with Aboriginal Regional Alliances, lack authority, and sometimes their lack of understanding of the policy intent of Accords. Their lack of delegation and authority hampered the Accord negotiation process. This was exacerbated by the high turnover of Lead Agency Negotiators, and the failure to ensure a whole-of-government approach to Accords negotiations.

The lack of decision-making power of Lead Agency Negotiators, who were sometimes Assistant Secretaries, but mostly Directors from NSW Government agencies, hinders the Accord negotiation process in three distinct, but interrelated, ways. First, Regional Alliance Negotiators and Lead Agency Negotiators consistently claimed that most Lead Agency Negotiators lacked the authority necessary to agree to Accord Schedules or funding allocations proposed during the negotiating process (Howard-Wagner & Harrington, 2022, p. 24; O'Bryan and Thomas, 2022, p. 26). While they were the face of the government at the negotiating table, decisions about what could be agreed upon were made at more senior levels of each department. This usually meant Executive Sponsors, who are Deputy Secretaries, but, in at least one department, Ministerial approval of accord initiatives was necessary. In the case of the local health district, decisions had to be taken to the board of directors. This fragmented governance structure – in which the person negotiating was not the person making the decisions – was identified as a principal obstacle to the negotiation process by negotiators from both the Regional Alliance Negotiators and Lead Agency Negotiators. Many considered it to be one of the primary weaknesses of the Accords negotiation process.

### **Lead Agency Negotiators lack authority to develop innovative solutions**

Second, interrelated with this, is a claim made by Lead Agency Negotiators that they felt hamstrung in terms of their capacity to develop creative and innovative solutions because they lacked the authority to do so (Howard-Wagner & Harrington 2022, p. 24; O'Bryan & Thomas, 2022, p. 26). This concern dates back to the evaluation of the MPRA Accord I process by CIRCA (CIRCA, 2015, p. 8). However, with the MPRA Accord I process, as the negotiations progressed, increasingly senior representatives from Lead Agencies appeared on the NSW Government side, who were in a position to make decisions then and there (CIRCA, 2015, p. 8), but this was not the case for MPRA Accord II, the Barang Accord, and the RMRA Accord negotiation processes (Howard-Wagner & Harrington, 2022, p. 24; O'Bryan & Thomas, 2022, pp. 29-30).

### **Lead Agency Negotiators lack understanding about LDM**

Third, this was further exacerbated by the broad lack of understanding about LDM among public officials who were Lead Agency Negotiators. The interview data revealed that confusion exists about the purpose of LDM and that this limited what was possible to negotiate. This was a finding of the first MPRA evaluation (CIRCA 2015, p. 19) and a finding here (O'Bryan & Thomas, 2022, p. 30). As discussed in Finding 6 in more detail, several Lead Agency Negotiators reflected that they came to the Accords negotiations with little understanding of the aims and objectives of LDM, and how it related to other national and state Indigenous affairs policies and structures. Some Lead Agency Negotiators were also unsure of how LDM articulates with the 2020 Closing the Gap Agreement (see also Findings 5 and 6).

### **High turnover of Lead Agency negotiators**

In addition to the effect of the lack of authority of Lead Agency Negotiators, the Accord negotiation process was hampered by the high turn-over of Lead Agency Negotiators, which was also identified as an issue across several Accords evaluations (Howard-Wagner & Harrington 2022, p. 23; O'Bryan & Thomas, 2022, p. 26). The

high turn-over of Lead Agency Negotiators contributed to the broad lack of understanding and delays in the process.

### Silos continue

Importantly too, the evaluations conducted by CAEPR researchers and past evaluations found that there were concerns among Regional Alliance Negotiators that the Accord negotiation process did not encourage integrated responses from the NSW Lead Agencies who entered into the Accord negotiation process on behalf of government (CIRCA, 2015, p.8; Howard-Wagner & Harrington, 2022, p. 24-25; O'Bryan & Thomas, 2022, p. 23).

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#### Finding 6: Structural constraints within the broader governance environment

*OCHRE* LDM operates in a broader governance environment in which its policy intentions were sometimes trumped by other NSW policies, which compete with and obstruct the negotiation of Accord schedules and the reform goals of LDM.

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The evaluations conducted by CAEPR researchers and past evaluations found that the difficulties with funding and decision-making authority discussed as part of Finding 3 and Finding 4 were symptomatic of a broader governance environment in which the policy intentions of *OCHRE*/LDM were trumped by other NSW policies, these compete with and obstruct the negotiation of Accord Schedules and the reform goals of LDM (Howard-Wagner & Harrington, 2022, p. 27-28; Katz et al., 2018a, p. 23; O'Bryan & Thomas, 2022, p. 26). For example, in 2018, the SPRC's evaluation of IWAAC negotiations identified 'the inflexibility of policy frameworks' as a challenge (Smyth & Katz, 2018, p. 3). It found that community negotiators 'experienced frustrations with the inflexibility of policy frameworks' (Smyth & Katz, 2018, p. 2), and that 'making commitments that were undermined by other decisions made within their agencies' was a challenge for government negotiators (Smyth & Katz, 2018, p. 4). Similarly, the SPRC's report of the TRRA negotiations notes that 'There appeared to be little flexibility to alter policies to align with TRRA positions, other than where these were already in accordance with current government policy' (Katz et al., 2018a, p. 5). This issue came through in the RMRA and Barang Accord-process Negotiation Evaluation. Two examples were given of other NSW policies competing with and obstructing the negotiation of Accord schedules and the reform goals of LDM.

First, CAEPR's evaluation of RMRA negotiations and Barang negotiations both found that the state-wide school suspension policy obstructed change on the ground (Howard-Wagner & Harrington, 2022, p. 27-28; O'Bryan & Thomas, 2022, p. 26). In 2018, the SPRC's evaluation of TRRA negotiations had also found that the state-wide suspension policy was given as an example of the policy obstructing change on the ground (Katz et al., 2018a, p. 5). Second, policies in relation to funding were another example given by Barang Regional Alliance Negotiations of how other NSW policies 'trumped' LDM, such as procurement policies (Howard-Wagner & Harrington, 2022, p. 27-28).

Learnings from past evaluations were not applied to the Accord negotiations evaluated here, in which government policies again prevented the acceptance of proposals put forth by the respective Regional Alliances.

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**Finding 7: Systemic bias of a 'business as usual approach' with Aboriginal 'stakeholders'**

The lack of cultural competency of some Lead Agency Negotiators in terms of fully understanding protocols around Aboriginal engagement, and their capacity to work within a larger system of interconnected Aboriginal 'stakeholders' of existing peak bodies, community organisations, and Aboriginal Regional Alliances, particularly around certain policy issues, appears to have had unintended consequences, such as creating tensions between Aboriginal stakeholders.

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The Local Decision Making Policy and Operational Framework states that Aboriginal Regional Alliances need to 'actively work with existing Aboriginal peak bodies and community organisations in their regions' (AANSW, 2017b, p. 5). However, the evaluations conducted by CAEPR researchers and past evaluations found that the Accord negotiation process has consistently created tensions between Aboriginal Regional Alliances and other Aboriginal governance and representative structures already interacting with NSW government departments and agencies (Howard-Wagner & Harrington 2022, p. 26; Katz et al., 2018b, p. 43; O'Bryan & Thomas 2022, p. 26). It is the finding of the evaluations conducted by CAEPR researchers that there are barriers to Aboriginal Regional Alliances 'actively work[ing] with existing Aboriginal peak bodies and community organisations in their regions' (AANSW, 2017b, p. 5).

**Lead Agency Negotiators fail to operate in accordance with Aboriginal protocols around Aboriginal engagement**

Much of the tension between Aboriginal Regional Alliances, existing Aboriginal peak bodies, and community organisations occurred because of the way that public officials engaged with them. For example, it appears that some Lead Agency Negotiators failed to recognise the need to engage widely with different representative Aboriginal peak bodies and community organisations, and were confused by the position of Aboriginal Regional Alliances alongside the NSW Government's existing relationships with other representative peak bodies and community organisations (for example Aboriginal peak organisations belonging to the representative body Coalition of Aboriginal and Torres Strait Islander Peak Organisations (CAPO)). Some Lead Agency Negotiators also had a sense of allegiance to other Aboriginal peak organisations, who did not support the LDM process, and this created some resistance to the Accord negotiation process. Other Lead Agency Negotiators felt torn between the competing priorities of these different Aboriginal representative groups. One example given was the Department of Education's decades-long partnership with the Aboriginal Education Consultative Group (AECG) which, according to one Lead Agency Negotiator, is 'a principal source of advice and engagement and support. However, the AECG has not supported the LDM process, and this placed some negotiators in a double-bind' (O'Bryan & Thomas 2022, p. 26).

**What is meant to happen is not happening**

The Local Decision Making Policy and Operational Framework sets out that 'Regional alliances may collaborate and work with other bodies to jointly examine the intersection between existing roles and relationships, and decide how they will work together on issues or delineate responsibilities' (AANSW, 2017b, p. 5). Despite this, the Evaluations to date reveal that there are no mechanisms in place to enable 'negotiation with other bodies and organisations to decide who takes the lead on certain issues and to scope their decision-making powers and influence' (AANSW, 2017b, p. 5). So, while the Local Decision Making Policy and Operational Frameworks sets out that 'it is not government's role to step in and 'fix' intra-community disputes about community governance as this is contrary to self-determination', it is a responsibility for Lead Agency Negotiators to avoid

division among and within Aboriginal communities (AANSW, 2017b, p. 7). It is also a responsibility of NSW Government agencies and the public officials that represent those agencies to acknowledge and proactively manage existing relationships, build rapport and effective working partnerships with all Aboriginal stakeholders, and consideration needs to be given to how NSW Government agencies can assist Aboriginal Regional Alliances to 'actively work with existing Aboriginal peak bodies and community organisations in their regions' (AANSW, 2017b, p. 5).

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#### Finding 8: Structural constraint: accessing critical information and data

Access to information and data is critical to the capacity of Regional Alliances to negotiate outcomes on behalf of their communities.

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The Premier's Memorandum M2015-01-Local Decision Making states that: 'Agencies are obligated to... share service provision and indicator data with Aboriginal Regional Alliances' (NSW Department of Premier and Cabinet, 2015, p. 4). Furthermore, the Local Decision Making Policy and Operational Framework states, 'Regional Alliances and government will have to share information and talk openly and honestly about community needs and government service delivery, so they can set the right priorities for future investment and improvement in services' (AANSW, 2017b, p. 17). This is further reinforced later in the Framework with the statement that: 'Government Agencies have a positive obligation to find solutions and share information with Regional Alliances' (AANSW, 2017b, p. 21).

#### **Sharing information and the need for meaningful localised administrative data**

The evaluations conducted by CAEPR researchers and past evaluations confirm the importance of sharing information and the timely provision of accurate and meaningful localised administrative data to the capacity of Regional Alliances to negotiate outcomes on behalf of their communities (CIRCA, 2015, p. 20; Howard-Wagner & Harrington, 2022, pp. 33-34; O'Bryan & Thomas, 2022, p. 30; O'Bryan et al., 2022, p. 25). Despite this, it is a finding of the evaluations that relevant NSW Government agencies and departments are not providing all negotiating parties (Independent Facilitator, Lead Agency, and Regional Alliance Negotiators) or Aboriginal Regional Alliances with access to all up-to-date, localised, disaggregated administrative data in an agreed form in relation to the areas of potential Accord initiatives prior to, nor during, negotiations. Under the Local Decision Making Operational and Policy Framework, agencies are obligated to share service provision and indicator data with Aboriginal Regional Alliances (AANSW, 2017b, p. 4), a number of NSW Lead Agency Negotiators claimed that the provision of data in this form is presently beyond the capacity of NSW Government agencies not only because of privacy issues but the way that data is collected in that state.

Even so, Regional Alliance Negotiators declared that when they were given data, they were not given accurate and meaningful data. The release of data was determined by existing NSW Government agency's policy expectations, regional aggregate data was only provided on request and during the negotiation process, and that data was inconsistent with local data collected and held by Regional Alliances, and Lead Agencies did not have clear positions on their agencies role/policy for facilitating access to data. There were also reported inconsistencies between Regional Alliances Negotiators and Lead Agency Negotiators as well as reported inconsistencies between administrative data held by NSW Government agencies compared with local data

collected by Regional Alliances, with each set of data providing a different picture as to what is happening on the ground.

### **Regional Alliances find their own data solutions, but not funded to do so**

It is also a finding of the evaluations conducted by CAEPR researchers that Regional Alliances are having to find their own solutions to data issues (Howard-Wagner & Harrington, 2022, p. 33-34; O'Bryan et al., p. 25). Since Accord I, MPRA representatives report that they have been proactively collecting their own data to better inform investment in the region. Similarly, the Barang Accord Negotiation Evaluation illustrated how Barang Regional Alliance aimed to provide local solutions drawing on data, but was only able to access regional, aggregated data as it was advised that this is the only data available (Howard-Wagner & Harrington, 2022, p. 25). So, on their own initiative, Regional Alliances are increasing their access to Aboriginal-led data in their regions. Barang redistributed funding and resources from other initiatives to collect its own data, which included surveying the community, going into the Accord negotiation process (see above). Barang not only collected local data on, for example, numbers of local Aboriginal children and young people in out-of-home care, suspension rates and youth needs, going into the Accord negotiation process but also created a Regional Aboriginal Data Network, Ngiyang Wayama. Barang is also exercising their right to decide what Indigenous data sovereignty means for that region, and what data needs to be collected that is meaningful and relevant to its local communities and organisations, but it is not resourced to do so. Barang's vision is for LDM to be a mechanism for it to achieve the power and authority over the design, ownership, access to and use of data for the region. Barang has established strategic partnership with the University of Newcastle's Wollotuka Institute, the Indigenous Data Network (University of Melbourne) and the Australian Bureau of Statistics through the establishment of our Regional Aboriginal Data Network, Ngiyang Wayama. The collection of data and the establishment and running of Ngiyang Wayama is not funded under LDM. This finding, in itself, points to the need for additional resourcing around data, such as resourcing for Regional Alliances to pull together their own data, including to allow for the surveying of communities going into the Accord negotiation process to determine community priorities and local Schedules, as well as their methodology of choice for co-design, which would highly beneficial to the Accord negotiation process (see above). Additionally, resourcing and training also needs to be provided to enable Aboriginal Regional Alliances to decide what Indigenous data sovereignty means at a local level and, if they wish, to establish regional Indigenous data governance structures.

### **Closing the Gap, sharing access to data and increasing Aboriginal and Torres Strait Islander-led data**

The findings in relation to access to data and how Regional Alliances are finding their own data solutions are important not only for LDM, but also Closing the Gap. Priority Reform 4 of the new National Agreement on Closing the Gap concerns the requirement to 'share access to data and increase Aboriginal and Torres Strait Islander-led data'. The NSW Implementation Plan for Closing the Gap sets out that ownership of data can be expressed through the creation, collection, access, analysis, interpretation, management, dissemination, and use of Indigenous Data (AANSW, 2021, p. 32).



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### Finding 9: Systemic bias of confidentiality agreements

Confidentiality agreements contradict the LDM principle of community engagement and conflict with Aboriginal forms of accountability.

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Relatedly, the evaluation conducted by CAEPR researchers and previous evaluations also identified how the requirement on the part of Regional Alliance Negotiators to sign confidentiality agreements that prohibited them from communicating with or updating communities on negotiations prior to the signing of an Accord, was a contributing factor in the erosion of community confidence (Howard-Wagner & Harrington, 2022, p. 33; Katz et al., 2018a, p. 5; Katz et al., 2018b, p. 43; Smyth & Katz, 2018, p. 6). This structural constraint exposes a systemic bias toward western approaches to negotiation in confidence, which conflicts with Aboriginal forms of accountability. Thus, the use of confidentiality agreements contradicts the LDM principle of community engagement. It also pertains to the importance of transparency to avoid conflict between Regional Alliance Negotiators and the broader Alliance membership and communities. Accord making needs to encourage transparency and accountability within regional alliance contexts.

Previous reports made similar findings. For example, the SPRC's evaluation of IWAAC negotiations found that 'some stakeholders noted that the requirement for IWAAC to sign confidentiality agreements meant that community felt excluded from the process' (Smyth & Katz, 2018, p. 6). The SPRC's evaluation of TRRA negotiations found similar problems, including that, 'the confidentiality agreements signed as part of the Accord negotiations prevented TRRA delegates from keeping community members informed of progress' and that 'because of the unexpected length of the negotiations, this resulted in disengagement by communities from the LDM process' (Katz et al., 2018a, p. 5). It went on to state that 'the combination of the confidentiality clause and the delay in signing the Accord put pressure on TRRA delegates' (Katz et al., 2018a, p. 29).

Likewise, The MPRA Accord I evaluation and the Barang Accord evaluation found that the fact that negotiations are confidential, and that they take considerable time, creates challenges for Regional Alliance negotiators particularly in relation to community confidence in the process (Howard-Wagner & Harrington 2022, p. 33; Katz et al., 2018b, p. 43). For example, as part of this process, Barang Accord Negotiators developed the document 'Formal Accord Negotiations Principles and Protocols: Barang Regional Alliance'. This document states that, 'parties commit to ongoing communication and engagement with community and community stakeholders on the progress of negotiations' (Barang Formal Accord Negotiations Principles and Protocols, 2020, p. 2). However, in what could present a contradiction, it also states that 'Barang and NSW Government representatives are not to distribute confidential information outside of negotiations, unless agreed to by Barang and the NSW Government' (Barang Formal Accord Negotiations Principles and Protocols, 2020, p. 7).

In effect, the imposition of confidentiality agreements conflicts with the official 'stages' of the LDM Accords process. The first of five stages of the LDM Accord Process is 'Formation', in which 'Aboriginal Community becoming a Regional Alliance' and they 'establish an Alliance and consult with Community' (NSW Government and Barang Regional Alliance, 2020, p. 4). However, consultation is then inhibited because of confidentiality agreements (Howard-Wagner & Harrington, 2022, p. 33).

## Recommendations

Across all research sites, participants emphasised the significant benefits of the *OCHRE* Accord negotiation process. These include enhancing Aboriginal governance and representation in the regions and building long

term, mutually beneficial relationships between NSW Government agencies and Regional Alliances. At the same time, there was unanimous agreement that for the Accords-making process to achieve optimum results, certain reoccurring issues need to be acknowledged and resolved.

The evaluations conducted by CAEPR researchers and past evaluations found that parties felt that effective monitoring and accountability are essential if the Accord outcomes are to be achieved (CIRCA, 2015, p. 14; O'Bryan et al., 2022, p. 18). Although the MPRA Evaluation argues that having a second Accord acted as an accountability mechanism, the evaluations conducted by CAEPR researchers and past evaluations found that the degree to which Accords foster accountability was questioned (CIRCA, 2015, p. 14; O'Bryan & Thomas, 2022, p. 24).

In light of this issue, and the findings presented above, we make the following 13 recommendations.

### **Recommendation 1:**

With regard to the preparation phase in the lead up to the development of a Statement of Claim, it is recommended that additional resources be allocated to allow Aboriginal Regional Alliances to undertake necessary pre-negotiation work to increase their capacity in the Accord negotiation process, particularly in relation to engaging community and collecting and owning local data. This may include engaging consultants, surveying communities, determining priorities, developing their methodologies of choice, and developing innovative approaches, building the capacity of communities to hold data. We recommend that communities retain ownership of that data.

### **Recommendation 2:**

With regard to the Statement of Claim and preparation for negotiations, it is recommended that, in addition to the development of Formal Accord Negotiation Principles and Protocols prior to Accord negotiations, a Statement of Claim be supported by strong governance, integrity and communication annexures and that those annexures be developed as part of the preparation for Accord negotiation.

### **Recommendation 3:**

With regard to the pre-negotiation phase of the Accord negotiation process, that in addition to the service mapping process stipulated in the Premier's Memorandum M2015-01-Local Decision Making and identified in both the NSW Ombudsman's *OCHRE* Review Report of 2019 and in NSW Treasury's Interim Indigenous Expenditure Report (2021), it is recommended that the NSW Government should prepare a statement detailing existing non-statutory funding priorities and future regional non-statutory budgetary allowances for all programs that affect Regional Alliances. This information should be made known to all parties before the Accord negotiation process begins. This would ensure clarity and transparency around existing regional non-statutory funding allocations and budgets, which is essential to the efficacy of LDM and Accords negotiations. It would help identify competing policies and programs, assist to break down silos within NSW Government Agencies, and empower Regional Alliances to influence how funding is directed. It would also ensure that initiatives negotiated under the Accord are financially achievable.

### **Recommendation 4:**

With regard to the Accord-negotiation phase, it is recommended that relevant NSW Government agencies provide all negotiating parties (Independent Facilitator, Lead Agency and Regional Alliance Negotiators) with

access to all relevant, up-to-date, localised, disaggregated administrative data in an agreed form at the outset of negotiations.

### **Recommendation 5:**

With regard to the Accord-negotiation phase, it is recommended that Aboriginal Regional Negotiators be adequately remunerated by the NSW Government for their participation in the Accords negotiation process in line with the arrangement for the Riverina-Murray Regional Alliance (\$220 per day government rate, not including lead up work or travel) with payment and management of remuneration being administered by the Alliance. This should include an allowance for time spent preparing for formal negotiations.

### **Recommendation 6:**

With regard to the Accord negotiation process, it is recommended that improved financial and administrative delegation be given to Lead Agency negotiators, including the capacity to provide legitimacy, support and consensus around the priorities set by Regional Alliances and their communities and that adherence to the principles of good faith (which is legally binding under common law), positive outcomes, and innovative, creative and holistic solutions set out in the Premier's Memorandum M2015-01-Local Decision Making (NSW Department of Premier and Cabinet, 2015) and LDM Policy and Operational Framework (AANSW, 2017b) be facilitated through greater buy-in from NSW government agencies, greater involvement of Executive Sponsors, and a designated high-level public official in AANSW or Department of Premier and Cabinet overseeing the Accord negotiation process. The high-level public official would:

- a. aid the Accord negotiation process and work across NSW Government agencies to ensure a more consistent, transparent, and culturally safe approach to negotiations on behalf of the NSW Government
- b. be trained in best practice principles for flexible and sustainable agreement-making with Aboriginal communities – these include a commitment to 'negotiating in good faith', which is reflected in the Premier's Memorandum M2015-01-Local Decision Making, as well as other well-established principles such as 'understanding Indigenous aspirations', 'complying with agreed negotiation procedures and principles', and 'not causing unnecessary delays'
- c. work closely with the Independent Facilitator to build understanding and respect (steps for good faith negotiating) – this may include developing a Memorandum of Understanding (MOU) about the negotiation process, so that, from the outset, parties agree on negotiation processes and procedures, including agreeing on the style of negotiation, and ensuring that the overall aims of Regional Alliances and Lead Agencies are articulated to each party, so each party's objectives and needs are clear
- d. take carriage of solving issues of delegated authority, budget allocation, and conflicting policies, and
- e. ensure that Lead Agency Negotiators are culturally competent in terms of fully understanding protocols around Aboriginal engagement, and their capacity to work within a larger system of interconnected Aboriginal 'stakeholders' of existing peak bodies, community organisations, and Aboriginal Regional Alliances, particularly around policy issues identified in the Accords and their Schedules.

### **Recommendation 7:**

With regard to the 'authorising environment' and preparation for Accord-negotiation phase, it is recommended that the NSW Department of Premier and Cabinet review the 'authorising environment' to identify why it is not operating as intended in relation to the Premier's Memorandum M2015-01-Local Decision Making (NSW

Department of Premier and Cabinet, 2015) and LDM Policy and Operational Framework (AANSW, 2017b) and consider steps to improve the 'authorising environment'. Those steps should include:

- a. enhanced training for Lead Agency Negotiators, including training in cultural safety and training in the principals of and best practice in Indigenous agreement making
- b. Government agencies addressing the current high turnover of Lead Agency Negotiators to ensure stability of personnel, benefits of cultural immersion training provided by Regional Alliances, and shared understanding of the principles of Indigenous agreement making by following the lead of those Agencies (e.g. NSW Treasury) which ensure that staff charged with negotiating Accords remain in that role even should their position within the Agency change
- c. Lead Agency Negotiators being provided with sufficient authority to commit to initiatives and funding.

### **Recommendation 8:**

With regard to the Accord negotiation phase, it is recommended that NSW Treasury review the 'authorising environment' to identify why it is not operating as intended in relation to fostering innovation and change, and why NSW government agencies are adopting a 'business as usual approach' particularly around the allocation of funding. It is recommended that this involve the identification of what impediments to funding and allocations of funding exist within Lead Agencies, and the enactment of measures to improve how Accords are funded. This could be achieved by:

- a. involving directly in the Accord negotiation process representatives from NSW Treasury and/or public officials with the necessary financial delegations, including senior positions holders from finance teams within relevant NSW Government agencies
- b. giving Lead Agency Negotiators the necessary financial sub-delegation via section 9.11(4) of the *NSW Government Sector Finance Act 2018* to ensure that they have the authority to formally endorse and allocate funding to proposals agreed on during negotiations
- c. establishing a mechanism to ensure the goals of LDM can be accommodated within, or in exception to, other government policies, including procurement policies
- d. changing procurement policies so that they can accommodate the goals of LDM
- e. allocating process funding to departments engaged in Accords negotiations
- f. allocating a specific budget for the implementation of Accords and their Schedules, and/or
- g. allocating Regional Alliances with a set amount of funding for the negotiation of Schedules (O'Bryan & Thomas, 2022, p. 25).

### **Recommendation 9:**

With regard to the Accord negotiation process, it is recommended that AANSW develop ethical guidelines to assist NSW Government agencies and public officials to engage with Aboriginal peoples, organisations, and community. It is recommended that those ethical guidelines explain how equity and respect and trust are built through engaging in the following practices, for example:

- when community views are expressed that they are not dismissed, irrespective of how those views fit with the value set of public officials or the funding arrangements or policy requirements as they stand
- the verification of a public official's cultural competency through the way they engage in and create spaces for safe conversations and interactions

- through conversations over time, through the time spent with communities to understand their needs and aspirations, and through the commitment of time and the building of long-term working relationships, and
- through delivery on agreed outcomes.

It is recommended that additional resources also be allocated to Regional Alliances to host cultural immersion workshops on country with Lead Agency Negotiators to provide a deeper intercultural understanding of the local Aboriginal community and protocols before commencing the Accord negotiation process.

### **Recommendation 10:**

With regard to the Accord negotiation phase, it is recommended that mechanisms in relation to confidentiality be amended to require that, while certain information should remain confidential, broad information should be released to recognised governance structures within communities at intervals throughout the negotiation process on matters pertaining to types of initiatives being negotiated, updates on negotiations, and a broad statement that an agreement had been reached.

### **Recommendation 11:**

With regard to the post Accord phase in relation to the signing of Accords by the NSW Government, it is recommended that the Premier's Memorandum M2015-01-Local Decision Making be amended to include a provision requiring the Minister for Aboriginal Affairs to sign Accords and Schedules within a reasonable time of their completion in good faith and in accordance with their legal obligations under the signed Statement of Claim and legally binding Accord.

### **Recommendation 12:**

With regard to facilitating broader governance arrangements around Accord and Local Decision Making, it is recommended:

1. That discussion occur around Regional Alliance representation on all negotiating bodies, for example the Regional Leadership Executive. Currently Regional Alliances, including Barang and RMRA, are negotiating at the sub-committee level. A model for how this could work is for Regional Alliance Chairs to sit on the Regional Leadership Executive and for Regional Alliance Project Officers to work at the sub-committee level.
2. That AANSW invest in and support Regional Alliances, through their delegated organisations and representatives, to host regional workshops on the ground to assist Regional Alliances to 'actively work with existing Aboriginal peak bodies and community organisations in their regions' (LDM Policy and Operational Framework, AANSW, 2017b, p. 5). This may include funding and other support to host and facilitate the workshops to allow 'negotiation with other bodies and organisations to decide who takes the lead on certain issues and to scope their decision-making powers and influence. Regional alliances may collaborate and work with other bodies to jointly examine the intersection between existing roles and relationships, and decide how they will work together on issues or delineate responsibilities' (LDM Policy and Operational Framework, AANSW, 2017b, p. 5).

## Recommendation 13:

With regard to the broader governance arrangements around Accords and Accord negotiation, that effective monitoring and accountability mechanisms be established through the following mechanisms.

- a. Executive Sponsors playing a significant role in ensuring that the Accord negotiation process is in line with the principles and mechanisms (i.e., Premier's Memorandum M2015-01-Local Decision Making (NSW Department of Premier and Cabinet, 2015) and LDM Policy and Operational Framework (AANSW, 2017b)) and that all parties are held accountable to those principles and mechanisms in negotiating Accords.
- b. Executive Sponsors playing a significant role in ensuring that NSW Government agencies, on behalf of NSW Government, are more transparent in their practices around service delivery in regions where Regional Alliances exist.
- c. NSW Government agencies reporting to the NSW Minister for Aboriginal Affairs on what has happened across each region during that quarter and the NSW Minister for Aboriginal Affairs reporting to the New South Wales Coalition of Aboriginal Regional Alliance on a quarterly basis.
- d. The formalisation of governance arrangements between the NSW Government and Regional Alliances established under Accords being adhered to and those bodies meeting four times per year.
- e. Regional Alliances being included as members on the Regional Leadership Executive.
- f. Legislation being developed, with caution, and through engagement with governance structures within local communities, to ensure they retain power and ownership.

## Conclusion

Contributors to this evaluation have expressed an equally strong and shared opinion that, were LDM to be abandoned, this would weaken Aboriginal policy in NSW and result in greater cynicism towards government. Overall though, the findings from the evaluations conducted by CAEPR researchers and past evaluations show that negotiating parties have different expectations about the goals of Accord negotiations (Howard-Wagner & Harrington, 2022; Katz et al., 2018b; O'Bryan & Thomas, 2022). The expectations of Aboriginal Regional Alliances align with the policy intent; the understanding and practices of Lead Agency Negotiators do not. To a large extent, the findings of the three evaluations conducted by CAEPR researchers mirror earlier evaluations of Accords-making in NSW.

Together the findings of the current and past evaluations demonstrate the key institutional systemic barriers to the Accord negotiation process. Issues reoccur across regions in relation to the lack of genuine co-design; varying levels of preparedness of negotiating parties to engage in Accords negotiations; high turnover of public officials; inadequate resourcing and the imbalance of power between public officials and Aboriginal representatives; the lack of clarity around funding and the failure to adequately fund initiatives under LDM; inadequate access to data; overlap with other policy settings; and timeliness of implementation. There are clear limitations in relation to the capacity of Lead Agency Negotiators to effectively engage in the Accord negotiation process. It is also clear that, although the LDM Policy and Operational Framework (AANSW, 2017b) provides a clear set of principles for NSW Government agencies entering into Accord negotiations, which includes sharing decision-making and working in partnership with Regional Alliances to respond to community needs, Regional Alliance Negotiators and Lead Agency Negotiators identified a range of operational shortcomings that hamper this goal on the side of NSW Government agencies.

Notwithstanding these significant issues, Aboriginal Regional Alliance Negotiators and Lead Agency Negotiators from across all regions, and in every evaluation, reiterate the value of LDM as a policy setting. Importantly too, the limitations of current arrangements are not insurmountable; improvements to policy and operational approaches within NSW Government agencies would facilitate more effective ways for NSW Government agencies and Lead Agency Negotiators to work with Regional Alliances to ensure knowledge and power sharing, improve collaboration and negotiation, and prioritise genuine partnerships between the NSW Government and local Aboriginal communities around the Accord negotiation process. Those involved in the evaluations, to date, believe that these improvements will enable the process to respond to regional and local contexts and support local communities to determine their own priorities and make decisions, and ultimately, achieve better shared outcomes for LDM communities.

Lead Agency Negotiators and Aboriginal Regional Alliance Negotiators across all three sites felt that the LDM model has potential to drive substantive change in Aboriginal affairs in NSW. Based on this collective belief in the value of the LDM model and the Accord-negotiations process, it is also the belief among all parties that adherence to, and implementation of, the LDM Policy and Operational Framework (AANSW, 2017b) should be strengthened within NSW Government agencies to improve the objectives of that framework.

The Report has importance beyond the Accord negotiation process itself, arriving at an important moment in Indigenous public policy in Australia. In July 2020, all Australian governments committed to share decision-making authority with First Nations peoples through policy and place-based formal partnership arrangements in the National Agreement on Closing the Gap. As was explained above, Barang swiftly adapted to this change. It set about demonstrating how its Accord initiatives were matched to its Closing the Gap Target Alignments and Target Outcomes (see Figure 4 in Howard-Wagner & Harrington, 2022, p. 16). This demonstrates how *OCHRE* LDM is facilitating capacity around Aboriginal regional governance in NSW and that the governance structures that have been created on the ground are enhancing the capacity for shared decision-making authority on the ground. The rapid response to COVID-19 outbreaks and high vaccine take up in Regional Alliance communities reinforce this. Consequently, lessons from the evaluations may not only inform the development of place-based agreements between Australian governments and First Nations polities both within NSW and across Australia, but also the importance of recognising and enabling Aboriginal-led governance to such outcomes in NSW. As these agreements are a key feature of planned process for Closing the Gap (i.e. improving Indigenous health, socioeconomic and cultural outcomes), knowledge which informs the agreement making-process can have flow on benefits to other domains.

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