Other possible parties to the negotiation process – the Commonwealth Government, Local Government and Non-Government Organisations
Acronyms and Abbreviations

CWP - Community Working Parties
LALC - Local Aboriginal Land Councils
Local Decision Making – Local Decision Making
NGO – Non-Government Organisation
NSW – New South Wales
NSWALC – New South Wales Aboriginal Land Council
RLG - Regional Leadership Group
Glossary

**Capacity Strengthening Policy:** The Policy has been developed to guide the negotiation of capacity strengthening strategies and to assist with identifying resources for investment.

**Department Negotiator(s):** Are individuals nominated on behalf of their Department to work openly, constructively and collaboratively with regional alliances to negotiate Accords.

**OCHRE Good Governance Guidelines:** The Guidelines provide an overview of the Good Governance Principles and a description of good governance in the context of Local Decision Making.

**Independent Facilitator:** Engaged by the mutual agreement of both regional alliance and the NSW Government to facilitate the Accord negotiations.

**Lead Negotiator(s):** Individuals nominated to represent the Accord parties (NSW Government or regional alliance) and to bring representatives together to broker collaborative responses to priority issues.

**Local Decision Making: Accord Process:** The document sets out the process for commencing and negotiating an Accord (this document).

**Murdi Paaki Accord Process Review Evaluation Report:** The Report documents the Murdi Paaki Accord negotiation process, including strengths and challenges, and ways it might be improved.

**NSW Government Accord Readiness Self-Assessments:** The Self-Assessment sets out the minimum level of awareness and basic understanding that NSW Government agencies and their representatives will need to participate in Local Decision Making Accord negotiations.

**Premiers Memorandum: Local Decision Making M2015-01:** The Memorandum directs NSW Government agencies to work respectfully, constructively and cooperatively with Aboriginal regional alliances, to develop Accords.

**Regional Alliance Accord Readiness Self-Assessments:** The Self-Assessments set out the key governance principles regional alliances must meet, or have achieved substantial progress towards, before commencing Phase 1 Local Decision Making Accord negotiations.

**Statement of Claim:** A list of priority issues that the regional alliance would like to deal with in the Accord.
Why are the Accords so important?

Accords between NSW Government agencies and regional alliances participating in Local Decision Making are the mechanism to:

- Re-define the relationship between government and Local Decision Making communities, where information and decision-making is shared.
- Direct service delivery redesign and reinvestment according to the needs and priorities defined and negotiated between government and regional alliances.
- Demonstrate to communities the commitment by government agencies to the aims and objectives of Local Decision Making.

The integrity and quality of the Accord making process will directly impact on the integrity and quality of the decisions or agreements made in the Accord. The Accord making process will also have a direct impact on the ongoing relationships between government agencies and the Local Decision Making communities who are parties to the Accords.

The Accord: a negotiated agreement

There is a well-recognised “spectrum of community involvement” in government decision-making and public policy development as identified in national and international research. The spectrum ranges from low levels of public participation, for instance communities are merely kept informed on decisions already made or at best consulted on pre-determined options, to high levels of community involvement such as decision-making occurring between government and communities collaboratively and in partnership. The final step is for decision-making to be handed over to communities, with government merely implementing what the community decide.

In the vast majority of public policy decision making processes, decisions are ultimately made by government agencies or government representatives with little community involvement. Communities rarely have any real decision-making power.

Local Decision Making aims to change the relationship between Aboriginal communities and government and give Aboriginal communities’ greater decision-making powers in relation to how government programs and services, which impact on them, are conceived, developed and implemented. The Accord is the vehicle for re-setting this relationship and ensuring that decision-making between government and communities occurs collaboratively and in partnership.

The development of the Accord will be a negotiated decision making process. Neither government agencies or the regional alliances will be able to dictate or veto outcomes – the expectation is that outcomes will be discussed, negotiated and agreed to by both parties.

Reaching a negotiated agreement through an Accord will rely heavily on problem-solving, questioning, communication and compromise. To develop an Accord, regional alliances and government agencies must be willing to negotiate, which will involve a willingness to consider new ideas and solutions, and to accept compromises and solutions which may not be the original goal of either party or be less than what either party hoped to achieve. To reach a negotiated outcome, the parties may wholeheartedly support a proposal; have reservations about a proposal but decide to accept the proposal; or not fully support a proposal but decide that they can live with it in order to move the negotiations forward.

If an agreed negotiated outcome or decision cannot be reached by both parties, then it cannot be included in the Accord.
Research into community participation in public decision-making consistently emphasises that where a truly collaborative negotiated approach is adopted, such as in the Accord process, considerable time and effort needs to be invested in the process by both parties. Effort is required to properly explore options that will effectively address the issue or problem. This means investing time in issue and problem definition and reaching agreement on how these are to be meaningfully addressed.

It should also be recognised parties may have a tendency to default to existing positions or “no change” scenarios when deciding on agreed responses, and not offer anything new, different or innovative. Again, time and discipline will be required in the Accord negotiations if new and original responses are to be developed, which challenge existing “ways of doing”.

**Statement of Claim**

To enable Accord negotiations to commence, regional alliances must submit a Statement of Claim to Aboriginal Affairs outlining the priority issues for their community and the actions they would like to address within the Accord. Regional alliances need to determine:

- What are the key priorities or problems for their region?
- What outcomes are desired?
- What should change?
- What actions are needed to make that change happen?

The Statement of Claim should be strategic and focused. As part of demonstrating good governance principles, including decision-making and self-determined regions and legitimacy, regional alliances should ensure their Statement of Claim is informed by the values and aspirations of their stakeholders and endorsed by their alliance members.

Prior to regional alliances submitting their Statement of Claim, it is recommended that that government engage with the alliance to discuss priority issues and provide regional alliances with the data and information they need to identify proposed actions and prepare their Statement of Claim.

The Statement of Claim is the starting point for negotiation. The NSW Government will be given an opportunity to formally respond to the Statement and may also submit their own priorities or actions for negotiation.

The development of the Accord is a negotiated decision making process. Neither government agencies nor the regional alliances will be able to dictate or veto priorities or actions. Reaching a negotiated agreement through an Accord will rely heavily on problem-solving, questioning, communication and compromise.

It should be noted that where other levels of government or non-government service providers are implicated by priorities and actions, it is at their discretion to engage in Accord negotiation and implementation.
Accord commencement

Consistent with the principles of self-determination underlying Local Decision Making, Phase 1 Accord negotiations will only commence once a regional alliance has indicated that it is ready to enter into an Accord. It is the regional alliance not government who will decide when Accord negotiations will commence.

Consistent with the principle of joint decision-making and collaboration, both regional alliances and government agencies will need to demonstrate readiness to enter into an Accord.

The Local Decision Making Accord Process sets out how NSW Government agencies and regional alliances can openly and transparently demonstrate their readiness to commence Accord negotiations. Each regional alliance must develop key governance processes, including how their regional alliance will run and make decisions, and how they will be accountable to the broader community. As part of this work each regional alliance will need to demonstrate advancement towards some key governance principles, including scope of decision-making, leadership, decision-making, and self-determined regions and legitimacy. The *OCHRE Good Governance Guidelines*. The Guidelines describe what each of these facets of good governance are and provides regional alliances with guidance on how they can be demonstrated or measured.

NSW Government agencies will also need to demonstrate readiness to commence Accord negotiations. *Premiers Memorandum: Local Decision Making M2015-01* requires senior officers with sufficient delegation and authority to work openly, constructively and collaboratively with regional alliances to achieve positive outcomes, including through service innovation, in response to the needs of Aboriginal communities. This includes that they meet or have made substantial progress toward meeting requirements set out in the Premier’s Memorandum. NSW Government agencies participating in Phase 1 Accord negotiations must demonstrate readiness against the *NSW Government Phase 1 Accord Readiness Self-Assessments*, which outline key practice indicators for NSW Government agencies and their representatives participating in the Accord negotiation process.

Once both parties are ready and prepared to commence Accord negotiations, Phase 1 Accord negotiations can commence.

Regional alliance readiness

As outlined in the *OCHRE Good Governance Guidelines*, prior to Phase 1 Accord negotiations commencing, each regional alliance will need to develop key governance processes, including how their regional alliance will run and make decisions, and how they will be accountable to the broader community. As part of this work each regional alliance will need to demonstrate advancement towards some key good governance principles - scope of decision-making, leadership, decision-making, and self-determined regions and legitimacy. The *OCHRE Good Governance Guidelines* describe what each of these facets of good governance are and provides regional alliances with guidance on how they can demonstrate and measure their Accord readiness. Regional alliances must demonstrate readiness against the *Regional Alliance Phase 1 Accord: Readiness Self-Assessments* and develop a list of priority issues they would like to deal with in the Accord, usually called a Statement of Claim.
NSW Government readiness

Prior to Accord negotiations commencing, the NSW Government will also need to demonstrate its readiness to commence Accord negotiations. *Premiers Memorandum: Local Decision Making M2015-01* requires senior officers with sufficient delegation and authority to work openly, constructively and collaboratively with regional alliances to achieve positive outcomes, including through service innovation, in response to the needs of Aboriginal communities. This includes that they meet or have made substantial progress toward meeting requirements set out in the Premier’s Memorandum. NSW Government agencies participating in Phase 1 Accord negotiations must demonstrate readiness against the *NSW Government Phase 1 Accord Readiness Self-Assessments*, which outline key practice indicators for NSW Government agencies and their representatives participating in the Accord negotiation process.

To ensure NSW Government representatives are prepared for Accord negotiations, an Assessment Centre should be held once the Statement of Claim has been lodged to discuss:

- Roles and responsibilities of Lead Negotiators and agency Negotiators and ensure that these Negotiators have the skills and authority to participate in Accord negotiations.
- The NSW Government’s approach to the negotiations, including some discussion around protocols for negotiations and dispute resolution.
- The negotiation envelop including what is in and out of scope of the Accord and any priorities or actions for negotiation;
- The responsibility of NSW Government and the role of the Commonwealth and Local Governments.
- What priorities within the Statement of Claim will need cross government/agency collaboration and how the lead agency can foster these relationships.
- Innovative solutions that can be used to address issues either out of scope or those that are the responsibility of another tier of government.

This will include consulting and liaising with key people within the agency and other agencies if necessary, before negotiations commence.
Assessing Accord readiness

Regional alliance and NSW Government readiness will be assessed concurrently. Once a regional alliance indicates that it is ready to commence Phase 1 Accord negotiations, Aboriginal Affairs will work with the regional alliance and the NSW Government, through the Department of Premier and Cabinet, to determine readiness of both parties to commence Accord negotiations.

Regional alliance

Once a regional alliance determines that it is ready to commence Phase 1 Accord negotiations it must formally write to the Head of Aboriginal Affairs. The letter should:

- Include a written statement by the regional alliance that they have met, or have achieved substantial progress towards, the good governance principles for Phase 1 Accord negotiations, as outlined in the OCHRE Good Governance Guidelines. This should be accompanied by the Regional Alliance Phase 1 Accord Readiness Self-Assessment. Written or other information may be required to support the self-assessment including a Terms of Reference or Constitution, and Policy and Operating Procedures.
- Include a copy of the Statement of Claim outlining priority issues and outcomes the regional alliance intends to take to Phase 1 Accord negotiations. This should be accompanied by an explanation outlining the process by which the Statement of Claim was developed by the regional alliance, consistent with the Phase 1 good governance principles. (For example, an outline of the process undertaken by the regional alliance undertook to determine priorities and the Statement of Claim. This may also include an overview of the community consultations held and the regional alliance process to endorse the Statement of Claim).
- Identify the Lead Negotiator(s) who will represent the regional alliance in negotiations. On receipt of the letter from the regional alliance, Aboriginal Affairs will undertake an initial
assessment to ensure the letter includes the information as outlined above. At this time further information may be requested from the regional alliance.

The Head of Aboriginal Affairs will offer the regional alliance the opportunity for a review of their governance development by an independent party (i.e. someone who is not from within the NSW Government) who has expertise and specialist skills in Aboriginal community governance (including incorporated and non-incorporated community governance bodies).

An assessment will then be undertaken by Aboriginal Affairs to inform a decision by the Head of Aboriginal Affairs as to whether sufficient information has been provided to demonstrate the regional alliance is ready to negotiate an Accord, consistent with the OCHRE Good Governance Guidelines. It should be noted, consistent with the principle of self-determination, that it is a decision of each regional alliance to determine that they are ready to negotiate a Phase 1 Accord. It is also up to each regional alliance to be satisfied that their Statement of Claim has been developed consistent with the good governance principles. The assessment undertaken by Aboriginal Affairs is limited to determining that a regional alliance has provided sufficient information to demonstrate that the regional alliance is ready to negotiate an Accord.

Once the assessment is completed, the Head of Aboriginal Affairs will write to the regional alliance indicating either a) enough information has been provided to demonstrate readiness to commence Accord negotiations, or b) further information is required. If it is b), the Head of Aboriginal Affairs will indicate to the regional alliance what further information is required.

**NSW Government**

Once the regional alliance is deemed to have provided sufficient information, the Head of Aboriginal Affairs will write to the Deputy Secretary, Department of Premier and Cabinet to notify that prerequisite Aboriginal community good governance requirements have been met, community Accord priorities have been identified and to seek nomination of a lead NSW Government negotiator.

The Head of Aboriginal Affairs will also write to the relevant Secretaries, which are responsible for priority areas identified by regional alliances, to notify them of the commencement of Accord negotiations, to advise the identified community priorities and to seek the nomination of Department negotiator(s). Secretaries will be asked to nominate Department negotiator(s) and confirm they have sufficient delegation and authority to work openly, constructively and collaboratively on behalf of their Department and with regional alliances, to achieve positive outcomes, including through service redesign, in response to Aboriginal community needs.

The Lead NSW Government negotiator, nominated by the Department of Premier and Cabinet, will work with Department negotiators prior to the commencement of negotiations to:

- Clarify roles and expectations.
- Identify areas for collaboration and innovation.
- Identify data and information to be shared with the regional alliance.
- Provide the information requested by the regional alliance in the Statement of Claim.
- Identify any government priorities not included in the Statement of Claim.

The Lead NSW Government negotiator will confirm that Departments have established internal processes to meet accountability requirements as set out in *Premier’s Memorandum: Local Decision Making M2015-01*, and the *NSW Government Phase 1 Accord Readiness Self-Assessments*, including that:

- Department negotiator(s) understand Local Decision Making and its principles; and
• Department negotiator(s) have sufficient delegation and authority to participate in negotiations and have demonstrated cultural competency.

The NSW Government is also expected to develop a strategy to prepare government representatives for Accord negotiations, this includes clear direction and messaging around:

• The roles and responsibilities of agencies, Government Negotiators and observers (if any) and how the NSW Government will prepare negotiators for the Accord process.
• The purpose of the Statement of Claim and the Accord process.
• A communications component to ensure stakeholders impacted by Accord negotiations are aware of Local Decision Making and the Accord process (i.e. those staff who will be working on the outcomes of the Accord).

The NSW Government should also provide an initial response to the Statement of Claim and submit any priorities or actions they have for negotiation.

Once the Lead NSW Government negotiator has confirmed readiness, the Department of Premier and Cabinet will provide Aboriginal Affairs with a written statement outlining how the NSW Government has met, or achieved substantial progress towards, meeting its governance obligations.

Aboriginal Affairs will assess the response and provide advice to the Head of Aboriginal Affairs to determine whether sufficient information has been provided to demonstrate the NSW Government is ready to negotiate an Accord, consistent with the Premier’s Memorandum: Local Decision Making M2015-01 and the NSW Government Phase 1 Accord Readiness Self-Assessment. The assessment undertaken by Aboriginal Affairs will be limited to determining that the NSW Government has provided sufficient information to demonstrate that the NSW Government is ready to commence Accord negotiations.

Once the above assessment has been undertaken, the Head of Aboriginal Affairs will write to the Deputy Secretary of the Department of Premier and Cabinet indicating either a) enough information has been provided to demonstrate readiness to commence Accord negotiations, or b) further information is required. If it is b), Aboriginal Affairs will indicate what further information is required.

Accord commencement

Once Aboriginal Affairs is satisfied that the NSW Government and the regional alliance have provided sufficient information to demonstrate readiness to commence Accord negotiations, Accord negotiations can commence. The Head of Aboriginal Affairs will then write to the NSW Government Lead Negotiator and the regional alliance declaring both parties have provided sufficient information to demonstrate readiness to commence Accord negotiations.
Accord negotiation process

The steps in Accord negotiations outlined below are a general guide only. Each negotiation process will need to reflect the local circumstances and stakeholder needs.

Accord planning

This includes:

- Briefings on Local Decision Making, the Accord negotiation process and the roles and responsibilities of parties. Parties will be briefed to assist them to understand and prepare for the Accord negotiations;
- Establishing when, where and how negotiations will happen. Parties must develop and confirm a timeframe for the negotiation process, so that it is clear what is required by when;
- Determining the ground rules for the negotiation process. The facilitator should arrange to meet with both parties to confirm the rules of engagement, including negotiation principles and protocols;
- Determining the negotiation boundaries (what is in and out of scope for the Accord – see below);
- Reviewing the Statement of Claim and the NSW Government’s response, including any priorities or actions the NSW Government has tabled for negotiation; and
- Identifying who represents the negotiating parties during the negotiation process.

It is recommended that the pre-planning phase include:

- Cultural competency training for NSW Government representatives. To be organised by regional alliances and tailored to the specific region and context in which negotiations are taking place. The training will ensure that all government negotiators have an understanding of the cultural context and Aboriginal history of the region in which they are negotiating.
- Assessment Centre for NSW Government representatives. To be coordinated by the NSW Department of Premier and Cabinet, the Assessment Centre will ensure that the right representatives are at the table, that they are informed about their roles and responsibilities and have the necessary negotiation skills.
Pre-Accord negotiation

- Identifying the core issue(s) or problem(s) to be addressed;
- The sharing of relevant information (including information on existing services and programs being delivered to Aboriginal communities in priority areas); and
- Collaborative proposal building or problem solving.

It is recommended that as a part of the pre-Accord negotiations that parties begin to develop a Results Logic Framework for the Accord to:

- Capture shared priorities for the regional alliance and NSW Government; and
- Establish and confirm expected results or outcomes for the Accord.

In keeping with the principle of self-determination, which underpins Local Decision Making, the Results Logic Framework must be jointly developed by the regional alliance and the NSW Government to ensure that both the Results Logic Framework and the monitoring and reporting system present meaningful information to Aboriginal communities and government.

Formal negotiations

This includes:

- Refining options or activities;
- Developing final commitments and activities, and what needs to be done to achieve the outcomes proposed;
- Documenting of the decisions made during negotiations; and
- Confirming governance and accountability arrangements.

Preparation of the formal Accord document

The formal Accord document will be developed during the negotiation process to reflect the joint decisions made by the negotiating parties. The Accord will set out agreed priorities and projects, and the rules on how decision-making will be shared between the NSW Government and regional alliances and how commitments will be monitored, reported and evaluated.

It is recommended that as a part of the preparation of the formal Accord document, that parties finalise the Results Framework to:

- Relate options, activities and investment to expected results or outcomes;
- Set performance indicators;
- Allocate responsibilities; and
- Communicate information on the Accord and Local Decision Making goals concisely and unambiguously.

Formal signoff of the Accord

Negotiating parties formally sign the Accord. The Minister for Aboriginal Affairs will sign the Accord on behalf of the NSW Government. The regional alliance will determine its own sign off process prior to commencing Accord negotiations.
Before the Accord is signed, it must be endorsed by:

- Lead negotiators for the NSW Government and the regional alliance;
- Independent Facilitator; and
- Secretaries Board.

The Independent Facilitator must sanction that the Accord and negotiated commitments are endorsed by all parties. This is done through the Independent Facilitator Report.

**Accord implemented**

The NSW Government and regional alliance form an Accord Task Group which will report to the relevant Regional Leadership Group and monitor and report on the implementation of the Accord.
Negotiation principles and protocols

Principles

Accord negotiations need to proceed consistent with the principles of Local Decision Making and for NSW Government agencies, consistent with the directions outlined in the *Premier’s Memorandum*. For the Accord negotiation process this includes:

- all engagement and negotiations are conducted respectfully, openly, honestly and in good faith;
- Aboriginal cultural protocols are recognised and respected in the negotiation process;
- the parties recognise and respect the role of the independent facilitator;
- parties commit to making decisions by negotiation and agreement and to work co-operatively and collaboratively;
- parties commit to taking a proactive and innovative approach to finding creative outcomes and solutions;
- parties agree to actively participate in the process and that the goal is to reach substantial decisions by negotiation;
- parties agree to allow for and commit sufficient time to the negotiations; and
- parties commit to setting and maintaining the ground rules for the negotiations.

Protocols

In addition to the above principles, parties may also identify some key protocols and processes to guide negotiations in each specific site. These protocols may differ across sites but will generally cover the following areas:

- Attendees, including roles and responsibilities
- Scheduling, including dates and timeframes
- Facilitation
- Agendas, minutes and record keeping
- Confidentially
- Preparedness
- Behaviour and communication
- Decision making processes, including break outs and issues on notice
- Absenteeism
- Dispute Resolution, including nomination of Dispute Resolution Officer/Panel
- Loss of Faith
- Accord sign-off process
The Accord Parties

• Determine issues and topics that are “in scope” or “out of scope”
• Specify the geographic scale at which issues will be discussed
•Nominate a negotiation panel
•Establish accountability processes and structures for reporting back to constituents
•Identify key priorities and issues to include in the Accord

Regional alliances

NSW Government

Aboriginal regional alliances

Accords will be between regional alliances and NSW Government. Before negotiations commence the regional alliances will need to:

• **Determine what issues or topics are ‘in scope’ or ‘out of scope’**
  Regional alliances may decide to exclude issues from their remit, for instance regional alliances may specify in their Charter of Governance or Statement of Claim that it is the responsibility of Traditional Owner groups to make decisions on cultural heritage matters, or Land Councils to make decisions on land matters. Regional alliances must be clear on what issues and topics they have the authority to negotiate on and wish to address in the Accord.

• **Specify the geographic scale at which issues will be discussed**
  Regional alliances are regional bodies and need to be clear about the geographic span of their decision-making. Issues and solutions in the Accord will be defined at a regional level.

• **Decide who will undertake direct Accord negotiations on behalf of the regional alliance**
  The regional alliances may be large and diverse and it may not be practical that all regional alliance members be part of the direct negotiations to develop the Accord. In addition not all regional alliance members may want to, or be able to, commit to the negotiation process. In similar processes to the Accord negotiations such as national park co-management negotiations and native title agreements, Aboriginal communities have selected a small group (a negotiating panel) to negotiate on their behalf. The group or negotiating panel must have the authority to represent and make decisions on behalf of the regional alliance.

• **Ensure the processes and structures are in place so the regional alliance is accountable to their communities for the decisions they make during negotiations**
  This includes ensuring that the governance of the regional alliance is representative and inclusive of the Aboriginal communities, which they represent. The regional alliance should have processes in place to ensure they can provide feedback to the community as negotiations progress.

• **Identify key priorities and issues to include in the Accord, which reflect community aspirations and sentiment**
These priorities and issues will effectively set the scene for the negotiations in relation to areas for discussion, determine who will be involved and what information needs to be prepared. To provide clear direction to NSW Government representatives, the regional alliance should ensure these priorities are specific and focus on a few key areas, rather than being global or broad.

**NSW Government represented by senior government agency staff**

The other party in the Accord negotiations will be the NSW Government represented by the appointed Lead Negotiator within Government for each Local Decision Making Accord and nominated senior agency staff. Before negotiations commence the NSW Government will need to:

- **Determine what aspects of service delivery are open to Accord negotiations**
  The Local Decision Making Policy and Operational Framework make clear that some aspects of service delivery will be out of scope for Local Decision Making Accord negotiations. These are statutory regulatory functions undertaken by agencies, which are non-discretionary and are not policy or program based. It is important to distinguish the broad statutory powers or roles given to agencies through legislation, where the services delivered are determined by past practices, policy, budget imperatives and discretionary decision-making. The majority of services government deliver fall into the former category not the later. Examples of statutory regulatory functions undertaken by agencies which are out of scope for Accord negotiations include:
  - Policing, but not discretionary programs such as community policing activities and liaison or policy issues;
  - Justice, including operations of the courts, but not discretionary programs such as preventative juvenile justice;
  - Child protection, but not discretionary programs related to family support and child wellbeing; and
  - Environmental regulatory powers, such as statutory powers associated with prosecution for environmental offences or damage to Aboriginal cultural heritage, but not discretionary programs focussing on land management.

- **Establish a clear operational and accountability framework within government**
  This will ensure Accords are developed and implemented effectively, and that agencies work together as ‘whole of government’, not as individual agencies (see above).

- **Nominate a lead negotiator**
  The lead negotiator will be responsible for briefing and preparing NSW Government representatives and directing the involvement and commitment of these representatives throughout the negotiation process. The lead negotiator should be able to answer questions, provide information on what is required of NSW Government, and clarify the information included in the Accord. The lead negotiator should effectively present the view of the NSW Government, while also encouraging NSW Government representatives to develop creative and innovative solutions. The lead negotiator should also work with relevant NSW Government departments and agencies, including Director-Generals, to increase awareness of who needs to be involved and encourage participation of senior representatives who have authority to negotiate on behalf of NSW Government.

- **Identify what NSW Government agencies should be part of the negotiations**
  The key priorities and issues, identified by the regional alliance, will determine what agencies will be involved in Accord negotiations.

- **Ensure the right NSW Government agency staff are nominated to represent the NSW Government in the Accord negotiations.**
Government representatives should have the appropriate seniority, authority and delegation to appropriately negotiate outcomes. NSW Government representatives must work within their department and agency to determine their negotiation space so that they are able to develop creative and innovative solutions that meet the needs of both the regional alliance and NSW Government. NSW Government representatives should also be capable of directing others in their department or agency to respond to the requirements of the negotiation process and the Accord. NSW Government representatives must ensure that they understand the regional context, and that they communicate what has been agreed across the department or agency.
Government governance arrangements supporting the Accord

The NSW Government recognises that the Accord development process requires a clear operational and accountability framework within government, to ensure Accords are developed and implemented effectively. It also needs to ensure agencies work together as ‘whole of government’, not as individual agencies. Accordingly the government has implemented the following operational and governance arrangements:

Local Decision Making Premier’s Memorandum

The Premier’s Memorandum directs government agencies to negotiate Accords with regional alliances in good faith, and in a timely, open and honest manner, and deliver the agreed actions, programs and investment negotiated and agreed through the Accords. It also outlines that government agencies have a positive obligation to find solutions and share information with regional alliances.

Secretaries Board

The Secretaries Board made up of Department Secretaries will approve and commit to the Accords negotiated between regional alliances and government agencies.

Aboriginal Affairs

Aboriginal Affairs is the lead agency for Local Decision Making and is be responsible for co-ordinating the Accord negotiations including operational matters.

Regional Leadership Executive

Regional Leadership Executives (RLEs) are existing regionally based cross government co-ordination groups, made up of senior agency staff. RLEs will be directly responsible for the regional delivery of Accord commitments and expected to work with the Lead Negotiator.

Agency staff involved in Accord negotiations must have sufficient delegation and decision-making power so they have the authority to respond flexibly and innovatively to the needs and aspirations of the regional alliances.

NSW Government Lead Negotiator

The Lead Negotiator for the NSW Government is nominated by the relevant Regional Leadership Executive to represent the NSW Government in the Accord process and to bring representatives together to broker collaborative responses to priority issues.

The Lead Government Negotiator will lead the relevant agencies throughout the negotiation process to respond flexibly and innovatively to the needs and aspirations of the regional alliances.

The primary purpose of the NSW Government Lead Negotiator is to:

- bring NSW Government representatives together to broker collaborative responses to priority issues;
- have an extensive understanding of the Local Decision Making process;
- have an extensive understanding of the negotiation protocols and principles;
- participate in any dispute resolution processes (should they be required);
- undertake cultural awareness training in preparation for the negotiation process;
• work closely with the NSW Department of Premier and Cabinet and Aboriginal Affairs to ensure that agency negotiators are prepared and have a clear negotiation position;
• form working relationships with government and regional alliance negotiators;
• ensure that government negotiators work openly, constructively and collaboratively throughout the negotiation process;
• undertake regular priority briefings with government negotiators throughout the negotiation process;
• clearly communicate and negotiate the government’s commitments throughout the negotiation process;
• oversight the development of Accord monitoring and reporting mechanisms, including Accord governance arrangements; and
• lead the implementation of the Accord, in partnership with the NSW Department of Premier and Cabinet, on behalf of the NSW Government.

A copy of the NSW Government Lead Negotiator role description can be found here.

**NSW Government Lead Agency Negotiator**

Agency Negotiators are nominated on behalf of their Department to work openly, constructively and collaboratively with regional alliances to negotiate Accords.

Agency Negotiators will have sufficient delegation and decision-making power to have the authority to respond flexibly and innovatively to the needs and aspirations of the regional alliances.

The primary purpose of the Lead Agency Negotiator is to:
• have sufficient delegation and decision-making power;
• have an extensive understanding of the Local Decision Making process;
• have an extensive understanding of the negotiation protocols and principles;
• participate in any dispute resolution processes (should they be required);
• have completed cultural awareness training in preparation for the negotiation process;
• form working relationships with key stakeholders including Aboriginal Affairs, the NSW Department of Premier and Cabinet, as well as government and regional alliance negotiators;
• work openly, constructively and collaboratively throughout the negotiation process;
• bring together team of experienced agency staff from their region to successfully negotiate an Accord;
• attend regular priority briefings throughout the negotiation process;
• clearly communicate and negotiate cluster commitments throughout the negotiation process;
• participate in the development of Accord monitoring and reporting mechanisms, including Accord governance arrangements; and
• nominate cluster representatives to participate in the implementation of the Accord on behalf of the NSW Government.

A copy of the NSW Government Lead Agency Negotiator role description can be found here.
The NSW Department of Premier and Cabinet will champion any service delivery reform and change management that results from Accord commitments across the NSW Government. The Department of Premier and Cabinet will also oversee government participation in the Accord negotiation process.

Other participants in the Accord process

Aboriginal Affairs will co-ordinate the Accord negotiation process. It is recognised that as a key government agency that Aboriginal Affairs may be a party to the negotiations as well. To avoid any potential conflict, Aboriginal Affairs Regional Managers will have the role of being a party to the negotiations if required, including negotiating any Aboriginal Affairs commitments which may be included in the Accords. The Community Partnerships Directorate within Aboriginal Affairs, which is responsible for co-ordinating the implementation of Local Decision Making, will co-ordinate the operational aspects of the negotiation process. The two roles within the agency will be clearly delineated with separate reporting lines to ensure the integrity of the process.

Independent Facilitator

The research and literature strongly supports the use of experienced independent facilitators in any negotiated decision-making process. The facilitator role is important as it helps create a more level playing field in the negotiations, it provides opportunities for detailed discussions about the issues and proposed responses, and it helps set the scene and establish the ‘rules of engagement’.

It is recommended that an independent facilitator be engaged for the pre-negotiation and formal negotiation process. The independent facilitator must have experience working with Aboriginal communities, have an understanding of cross-cultural communication and respect for the cultural issues, which may arise for community members during the negotiation process. All negotiating parties should approve the appointment of the independent facilitator.

The independent facilitator will have a number of roles, including:

- Briefing parties prior to the formal negotiation process to ensure they are prepared and to determine their expectations;
- Safeguarding a fair, equitable and timely process;
- Facilitating constructive discussion and debate;
- Encouraging adherence to, and understanding of, the Local Decision Making negotiation principles; and
- Sanctioning that the Accord and negotiated commitments are endorsed by all parties.

The Independent Facilitator role description and information package can be found here.

**Unusual suspects**

Recent research into effective community development projects, so called collective impact programs, has emphasised the importance of the role that ‘unusual suspects’ can play in social and community development projects and programs. Collective impact is the term applied to a community development and change program, which is initiated through a negotiated decision-making process where all relevant parties come together to define core issues and agree on outcomes to achieve change. Where collective impact has been successful, often a key indicator has been the involvement of what has been termed ‘unusual suspects’. These are key people either in the communities themselves or from outside the community, who may not appear to have a direct role in the issues the negotiating parties are trying to address, but who could make an important contribution to the negotiation process, due to either their particular skills and knowledge, the respect they have amongst the negotiation parties, or their ability to motivate, communicate or bring a fresh perspective. In Accord negotiations, involving unusual suspects such as local or national business leaders, key representatives from Non-Government Organisations, leading figures in a particular field, academics or national figures, would broaden the debate, open opportunities, and potentially assist regional alliances to level the negotiation playing field (see above). If unusual suspects are involved in Accord negotiations then their involvement should be agreed upon by all the negotiating parties.

**Other possible parties to the negotiation process – the Commonwealth Government, Local Government and Non-Government Organisations**

The NSW Government is committed to negotiating an Accord with regional alliances, but cannot bind the Commonwealth Government, Local Councils or Non-Government Organisations (NGOs) to be part of the Accords. However, many decisions and actions of the Commonwealth and Local Governments have direct impacts on Aboriginal communities. In addition, many of the priority issues and problems identified by regional alliances may require the involvement of the Commonwealth and Local Government for the issues to be effectively addressed.

Depending on the priority issues and problems identified by each regional alliance, and in negotiation with each regional alliance, the Commonwealth Government, Local Councils and/or NGOs could be invited to be a part of the Accord process. This could occur in one of two capacities – either as another negotiating party or as an observer. If the Commonwealth Government or Local Council is invited to be an observer to the negotiation process, both of the negotiating parties must agree and rules should be established to determine what an observer can and cannot do and their role, if any in the negotiation process.

Similarly, the negotiating parties may agree to ask the Commonwealth Government, Local Councils and/or NGOs to be an actual party to the Accord. If this occurs, then the Commonwealth Government, Local Council or NGOs need to fully participate in the Accord making process. It should be acknowledged that the NSW Government cannot require other levels of government or non-government organisations to attend or participate in Accord negotiations, and their participation will be at their discretion.
LOCAL DECISION MAKING