



# NSW Government

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Murdi Paaki LDM Accord negotiation evaluation

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All research conducted by CIRCA for this project was in compliance with ISO20252

# Acknowledgements

The Cultural and Indigenous Research Centre Australia (CIRCA) wishes to acknowledge Aboriginal and Torres Strait Islander people as the traditional owners of Australia and custodians of the oldest continuous culture in the world, and to pay respects to Elders past and present.

We would like to thank the members of the Murdi Paaki Regional Assembly negotiating panel and the NSW Government agency representatives who generously contributed to the evaluation.

We would also like to thank Aboriginal Affairs for their valuable partnership in this evaluation.

# Executive summary

Local Decision Making (LDM) is a new way for Aboriginal communities and NSW Government agencies to work together, providing a pathway for increasing the control Aboriginal communities have over the delivery and coordination of government services in their communities. Central to LDM for each region is its Accord – a formal, negotiated agreement by which the community sets its own priorities for investment and service coordination. The Murdi Paaki Accord, signed on 19 February 2015, was the first such agreement to be implemented.

The Cultural and Indigenous Research Centre Australia (CIRCA), an independent research agency, conducted an evaluation of the negotiation process for the Murdi Paaki Accord. The evaluation approach included a document review and in-depth interviews and small-group discussions with three representatives of the Murdi Paaki Regional Assembly (MPRA) negotiating panel, 12 representatives of NSW Government departments and agencies, and the independent facilitator. The consultations were conducted from 11 December 2014 to 23 May 2015.

Broadly, the aim of the evaluation was to document the Accord negotiation process, to identify its strengths and challenges, and to identify ways it might be improved.

## Overview of the process

The Accord negotiation consisted of three phases:

- ❶ **The pre-negotiation phase**, which ran from February to July 2014. During this phase the MPRA nominated a negotiating panel, and identified community priorities (through a statement of claim). The NSW Government identified the lead agency for the negotiations, the Department of Premier and Cabinet (DPC), as well as the NSW Government agencies and representatives to be involved in the Accord negotiation, based on the priorities identified.
- ❷ **The negotiation phase** which ran from August to mid October 2014. During this time the NSW Government representatives and the MPRA negotiating panel participated in two workshops to discuss the priorities, negotiate actions and draft the Accord.
- ❸ **The signing phase** which ran from October 2014 to 19 February 2015. This included several rounds to review the Accord, the endorsement of relevant Secretaries and the formal signing by the NSW Government and MPRA.

Throughout the process Aboriginal Affairs (AA) provided support to MPRA and DPC, which included sharing information, negotiating with the MPRA on what assistance they required, supporting the MPRA to finalise the statement of claim, and documenting the process, outcomes and decisions.

## Outcomes

Overall, participants saw the Accord negotiation as a professional, transparent and structured process based on good governance approaches that aimed to enhance shared decision making. Generally participants felt that the vast majority of those involved in the negotiations wanted the process to work, and were cooperative, responsive, collaborative, respectful and committed, although a minority of government agency representatives were felt to be disengaged, and attending out of compliance rather than commitment.

When asked about satisfaction with the Accord itself, participants' responses were mixed. Most of those consulted were satisfied with the process, positive that an Accord had been finalised, and committed to implementing the Accord. Some however were concerned that it was a missed opportunity as the Accord did not include significant and strategic changes in the way NSW Government will do business.

Several participants spoke positively about the Accord, saying they were satisfied that it is doable, clear, straightforward and realistic in its ambitions, and includes tangible information so that MPRA and the NSW Government know what is to be done, when, and what will be achieved.

A common theme was that the negotiation process had led to positive relationships. A number of strong relationships were forged as a result of the Accord negotiations, including those between MPRA and NSW Government representatives, and between NSW Government representatives from different departments and agencies.

## Strengths

A number of strengths of the Accord negotiation process were identified in the evaluation:

- ❶ The strong leadership of the MPRA negotiating panel was consistently identified as important for the success of the Accord negotiations. The small size of the negotiating panel for MPRA was also viewed positively, especially as the panel had clear authority to make decisions and sign the Accord on behalf of MPRA.
- ❷ Devoting time and resources from the outset to developing the priorities and the statement of claim was valued.
- ❸ Having an independent facilitator to assist the negotiations was consistently identified as a strength, as it levelled the playing field in the negotiations, provided opportunities for detailed discussions about the issues and proposed responses, and helped set the scene and establish the rules of engagement.
- ❹ Having a lead government negotiator who was impartial, professional, committed, confident, diligent and well connected was important.

- Providing support to MPRA and DPC in relation to facilitating and documenting the negotiation was seen as an important strength. Aboriginal Affairs' role in coordinating and supporting the negotiations was valued.
- Having NSW Government agency and department representatives with the authority to make decisions on the spot was critical to the success of the Accord negotiation. While this was not the case initially, it was noted that it was achieved by the second negotiation workshop.

## Opportunities for improvement

There was considerable discussion of the challenges experienced and opportunities for improvement, as all those consulted were interested in establishing how future Accord negotiations might be improved. The main opportunities for improvement identified in the evaluation are summarised below.

- **Devote more resources to preparing government representatives**  
While those involved were given some support and information ahead of time about the negotiations and what would be expected of them, more was needed. Clear documentation and briefings would improve their understanding and confidence. Better processes should be available for when staff change during the course of the negotiation. The lead negotiator and/or Aboriginal Affairs could provide this preparation, and in future Accord negotiations the lead negotiator should be consulted about how best it might be provided to NSW Government representatives. It would also be beneficial for NSW Government representatives to be allowed more time to consider their response to the statement of claim and provide feedback to the lead negotiator.

The results suggest that LDM has "not been sold well internally" across the NSW Government, and that more information and dialogue are needed to increase understanding of LDM, how the Accord negotiation affects NSW Government departments and agencies, and what the departments and agencies need to do before negotiations begin.

- **Ensure NSW Government representatives have adequate authority**  
Initially, some NSW Government department and agency representatives did not have the seniority or delegated authority to negotiate outcomes. For future Accord negotiations, steps should be taken early and resources dedicated to ensure representatives can engage fully in the negotiations right from the start, because direct negotiation with senior government decision-makers is precisely what distinguishes LDM from negotiations of other types. The research also shows that the lead negotiator should have express authority from the Secretary to influence the negotiations in ways which ensure senior representatives become fully involved, and departments and agencies think creatively about how they might operate in future.

❖ **Focus on developing innovative and holistic solutions**

While most of those consulted were satisfied with the process, positive that an Accord had been finalised, and committed to implementing the Accord, some were concerned that this was a missed opportunity as it did not include significant and strategic changes in the way NSW Government will do business. It is also worth noting that several NSW Government representatives felt restricted in their capacity to develop innovative solutions and do things differently as no additional funding was available. While change in the way government does business is a long-term goal of LDM, more could be done to prepare the way for such change by enhancing understanding of LDM, emphasising its principles (innovative solutions, not business as usual), and confirming senior bureaucrats' commitment to the Accord. Seed funding attached to the Accord process could also encourage innovation.

In approaching the negotiations NSW Government departments and agencies should be encouraged to work with each other and with Aboriginal regional alliances (Aboriginal regional decision making bodies) on both strategic planning and the delivery of services. Departments and agencies should consider how they can pool funds and re-design services with the Aboriginal regional decision making bodies so problems can be approached in new ways.

❖ **Enhance the capacity of regional alliance representatives**

MPRA representatives noted that initially they were unclear about the process and their role, and that it took several meetings before they understood. More time should be invested in building understanding and agreeing to the negotiation process between government and regional alliance representatives before negotiations commence. It should also be born in mind that regional alliance representatives are volunteers and may require training in negotiation. The NSW Government should consider ways to improve their skill in negotiation. Regional alliance representatives should be encouraged to push hard and demand more from the Government once negotiations start.

Regional alliance representatives may benefit from access to independent advice during the negotiations, so they can canvass options with an adviser between meetings when there is time to discuss what was said, what it means and what they will agree to. For regional alliance representatives who are negotiating across a broad range of topics, independent advisers would be valuable who could also provide relevant content expertise. As it has done with the independent facilitator, AA could set up for the regional alliances a pool of skilled advisers with relevant expertise.

❖ **Increase understanding of the roles of the negotiating parties**

The role of the lead negotiator was not well understood. This should be clearly documented, with information on the lead negotiator's power and authority. The dual role of AA was also not clearly understood. This too should be documented as well as explained verbally in meetings

so all parties know AA is both supporting the negotiation process, and negotiating Accord commitments on behalf of AA at the same time.



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# 1. Introduction

Negotiating Accords between NSW Government agencies and regional alliances participating in Local Decision Making (LDM) is the mechanism to:

- redefine the relationship between government and LDM communities as one in which information and decision-making power are shared.
- direct the redesign of and reinvestment in service delivery according to the needs and priorities defined and negotiated between government and regional alliances.
- show communities that government agencies are committed to the aims and objectives of LDM.

The integrity and quality of the Accord process will directly affect the integrity and quality of the decisions or agreements made in the Accord. The Accord-making process will also directly affect the ongoing relationships between the government agencies and the LDM communities who are parties to the Accords.

This evaluation explores the negotiation process for the Murdi Paaki Accord, as this is the first to be signed. Broadly, the aim of the evaluation was to:

- better understand the Accord negotiation process overall, and its specific elements
- identify the strengths and success factors of the process
- discuss the challenges and strategies for addressing them
- identify opportunities for improvement and lessons learnt
- provide information to help guide the overall LDM evaluation (for example, strategies for measuring improvements in relationships, governance structures and shared decision making, and approaches for monitoring the Accord process).

Within this, the evaluation considered a number of specific questions.

- The level of co-operation from those involved. Were the right people at the table? Were those at the table from government and the communities committed to the process and willing to negotiate in good faith? (Did the negotiations go beyond core business? Did goodwill displayed produce commitment to the outcome? Has there been a shift in the way business is done with communities and government?)
- What was different about the process for negotiating the Accord and what (if anything) was new? How has the Accord negotiation process changed or influenced the relationships between government and the regional alliances?

- Was the process transparent? (That is, were all parties equally aware why priorities and commitments were included or not included in the Accord? Was it clear why decisions were made?)
- Is the Accord clear? Do all parties have a clear understanding of what is expected of them (or are aspects open to interpretation)?
- Did the negotiation reflect the code of conduct outlined in the Murdi Paaki Charter of Governance (honesty, integrity, accountability to our communities, transparency, selflessness, professionalism, commitment, leadership, confidentiality)?
- Did the Accord process make clear which level of government, and which agency was responsible for each function or service, and was this appropriate?

## 1.1 Methodology

The evaluation included in-depth interviews/small group discussions with members of the Murdi Paaki Regional Assembly (MPRA) negotiating panel, NSW Government representatives and the independent facilitator, as follows. In total, 16 people participated in the evaluation.

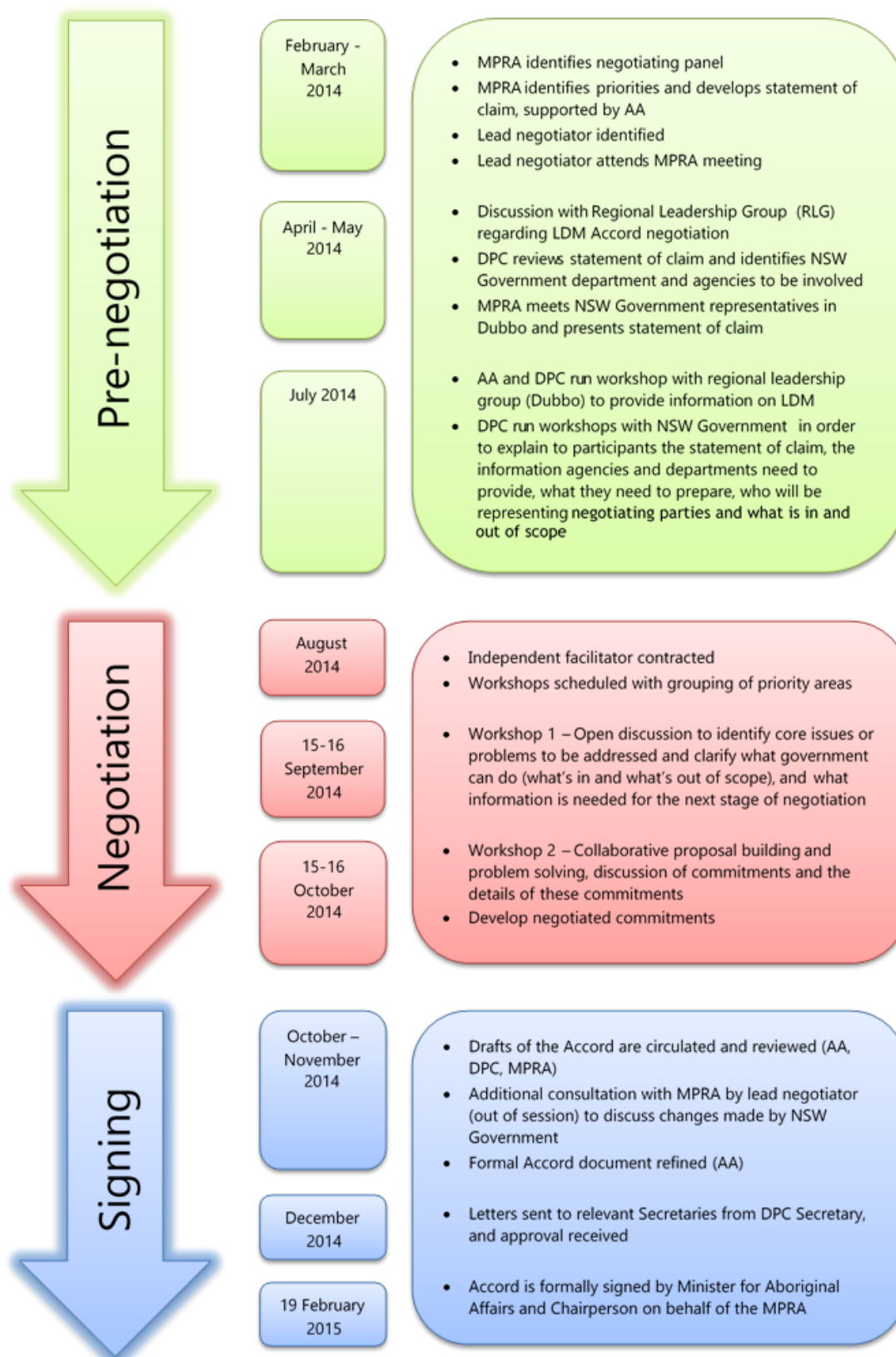
| Number of participants | Representative                | Number of interviews          |
|------------------------|-------------------------------|-------------------------------|
| 1-3                    | MPRA negotiation panel        | 3 interviews (3 participants) |
| 4-6                    | DPC                           | 2 interviews (3 participants) |
| 7-10                   | Aboriginal Affairs            | 2 interviews (4 participants) |
| 11                     | Family and Community Services | 1 interview                   |
| 12                     | Education and Communities     | 1 interview                   |
| 13                     | TAFE Western                  | 1 interview                   |
| 14                     | NSW Trade and Investment      | 1 interview                   |
| 15                     | NSW Public Works              | 1 interview                   |
| 16                     | Independent facilitator       | 1 interview                   |

Interviews were conducted from 11 December 2014 to 12 May 2015.

The evaluation was also informed by a document review. CIRCA reviewed a number of documents, including the Accord, the Statement of Claim, minutes from the workshops, information on the negotiated commitments and program documentation. The documents reviewed are listed in full in Appendix A.

## 2. Overview of the process

The diagram below summarises the process followed in the negotiation of the Murdi Paaki Accord (the Accord). Overall, this was seen as a professional, transparent and structured process based on good governance approaches that aimed to enhance shared decision making.



When asked about the negotiation process overall, participants identified a number of elements as important. Each of these is discussed in the remainder of this section.

## 2.1 Identifying priorities and nominating the MPRA negotiating panel

The MPRA first developed its statement of claim, setting out the priorities it had identified for its region. Developing the statement of claim was an essential precursor to the negotiations because it established which areas would be discussed, who would be involved and what preparations would be needed. AA facilitated this initial process with MPRA, which was felt to be a very important first step. The statement of claim was then sent to Department of Premier and Cabinet (the lead negotiator), and was used to determine which NSW Government departments and agencies would participate in the negotiations. It should be noted that MPRA had already done considerable work identifying priorities as a result of the Regional Partnership Agreement (RPA) implemented as part of the Council of Australian Governments (COAG) trial, which included the development of local action plans.

MPRA nominated a negotiating panel who were given clear authority to represent and make decisions on its behalf. Having a small negotiating panel was felt to be effective in streamlining the negotiation process. DPC attended the MPRA in March 2014 to introduce the LDM Accord process.

The NSW Government covered the cost of MPRA members' participation in the negotiations. This was essential. All Accord negotiations should consider the cost to regional alliances members of taking part.

## 2.2 Preparation for NSW Government and MPRA representatives

A series of workshops, facilitated by DPC, were held with NSW Government departments and agencies in July 2014 to discuss the statement of claim, build their understanding of LDM, and identify who had responsibility for the priorities. NSW Government representatives were asked by DPC to identify who in each department and agency would have responsibility for the Accord and how they would secure senior management support within each department and agency. NSW Government representatives agreed that each department and agency should follow their own internal processes for nominating representatives and securing senior management support. It was suggested that in future Accord negotiations, the approach to senior management should be made formally, rather than internally, so that accountability arrangements are both clear and transparent.

It was also suggested that NSW Government representatives need more time with the statement of claim to consider their response to it and provide feedback to the lead negotiator.

When asked how prepared people had been when entering the negotiations, many stated that initially they had been unclear about the Accord negotiation process and had felt unprepared. While information on LDM and the negotiation process was provided to NSW Government departments and agencies from the outset, it was suggested that LDM had "not been sold well internally" across the NSW Government, and that more information and dialogue were needed to increase understanding of LDM,

how the Accord negotiation affects NSW Government departments and agencies, and what the departments and agencies need to do before negotiations begin.

Information about the process was also provided in advance to the NSW Government's Regional Leadership Group (RLG), the NSW Government's regional decision making body. Some participants commented that existing relationships which had been created by the formation of the RLG had given them more confidence in the Accord negotiation process. Some also commented that the RLG needed to assert its responsibility for the Accord with more vigour.

MPRA representatives also said they had initially been unclear about the process and their role in it, and that it took several meetings before they understood. Meetings with MPRA representatives before the negotiations began had been important for clarifying the process and its expected outcomes.

Significantly more effort should be devoted to explaining to those involved how the negotiation process works, and what is expected of them.

## 2.3 Workshops

Two workshops were conducted to negotiate the Accord. The first, in September 2014, was an open discussion intended to identify the core issues and problems to be addressed, and the second, a month later, a forum for collaborative proposal building and problem solving.

During the workshops, discussion on each priority area was scheduled at different times over a two-day program. The agenda for both workshops included an introduction and agreement on the process, adult literacy, school education, early childhood, quality and supply of housing, social housing policy issues, sustainable local employment, and government procurement. Spreading the topics over two days worked well as it enabled those involved to attend relevant discussions, which was good for maintaining engagement. The only criticism was that this restricted conversations on questions outside the program. While this worked satisfactorily for the first Accord negotiated by a regional alliance, it may be possible, when regional alliances negotiate future Accords, for the structure to be revised in a way which would encourage these broader conversations.

A large number of people were present in the negotiations, including observers from the federal Department of the Prime Minister and Cabinet. This was felt to enhance the transparency of the process.

A few stakeholders were concerned that the workshops limited the negotiation that was possible, and that in future the scope of the Accord should be made absolutely clear so that time is not spent discussing models or services that are not open for negotiation.

## 2.4 Independent facilitator

AA appointed an independent facilitator who had been agreed to by the MPRA and NSW Government representatives – an important step. The roles of the independent facilitator in the negotiations included:

- safeguarding a fair, equitable and timely process
- facilitating constructive discussion and debate
- encouraging adherence to, and understanding of, the Local Decision Making (LDM) negotiation principles
- ensuring all parties endorse the Accord and negotiated commitments<sup>1</sup>.

The research consistently identified the benefits of having an independent facilitator assist the negotiations. The role was seen as important because it levelled the playing field in the negotiations, provided opportunities for detailed discussion of the issues and proposed responses, and helped set the scene and establish the rules of engagement. This included identifying the principles of respectful negotiations, and introducing the concept of 'we' rather than 'you'. This concept was referred to frequently in the consultations.

The independent facilitator also led discussions to check that those involved were happy with what had been agreed. This was important because the negotiations involved NSW Government representatives with whom the Assembly had had no previous contact. MPRA representatives noted that while they were confident negotiating with AA, the independent facilitator helped them in the negotiations with other senior NSW Government representatives.

Care will be needed to ensure the independent facilitator does not take on an advocacy role during the negotiations. It was also suggested that the facilitator would benefit from meeting NSW Government representatives before the negotiations to ascertain how prepared they are and what results they expect from the process.

## 2.5 Lead negotiator

The Regional Leadership Group nominated the DPC to have overall responsibility for the Accord, and to be the lead negotiator. DPC played a critical role in briefing and preparing NSW Government representatives, and in directing their involvement and commitment throughout the process. It was also felt that DPC had given important support role for MPRA and NSW Government representatives by answering questions, providing information on what was required of the NSW Government, and clarifying the information included in the Accord. There was a suggestion that DPC was effective in

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<sup>1</sup> Murdi Paaki Local Decision Making (LDM) Accord negotiation: Facilitator report

presenting the NSW Government view, while also pushing the NSW Government representatives to move outside their comfort zone.

In all the research findings, the role DPC played was highly valued and respected, as its representatives were seen as impartial, professional, committed, confident, tenacious, diligent and well connected. In particular, DPC's encouragement for creative and entrepreneurial thinking and risk taking was appreciated, as was the level of authority that DPC applied to its role as lead negotiator. It was felt the intervention of DPC had brought more senior NSW Government representatives to participate in the negotiations. DPC made direct representations to the relevant NSW Government departments and agencies, including to Directors-General, to increase awareness of who needed to be involved, and to encourage senior representatives with the authority to negotiate on behalf of NSW Government to participate (although this was not well received by all NSW Government representatives). MPRA also contacted relevant NSW Government departments and agencies to urge more senior representatives to become involved. Participants commented that agency representatives in the second workshop had greater authority than those in the first workshop as a result of the intervention of DPC and MPRA.

DPC's role in negotiating a whole-of-government position was identified as important in streamlining the negotiations, as it meant not all NSW Government departments and agencies needed to be around the table.

All of the characteristics in the lead negotiator identified above were felt to be critical for effective negotiations, and they should be considered carefully when the lead negotiator is selected for Accord negotiations in other regions.

One improvement would be for the role of the lead negotiator to be defined more clearly in a position description. This should also clearly set out the lead negotiator's authority. Whether the lead negotiator should have a role once negotiations conclude should also be considered.

## 2.6 Aboriginal Affairs

AA provided high-level support to MPRA and DPC throughout the process. Through its Community Development Section, AA coordinated the Accord negotiations by sharing information, negotiating with MPRA on what assistance it required, supporting the MPRA to finalise its statement of claim, and documenting the process, outcomes and decisions. Participants valued the role AA played in facilitating, supporting and documenting the negotiations; some felt that AA's work on the conceptual framework of the Accord had been particularly valuable.

There was some confusion about the role of AA, as some agency representatives were unaware of AA's responsibilities, and did not understand the distinction between its supporting role and its role in negotiating AA commitments for the Accord. In future Accord negotiations this role should be clearly articulated in the documentation as well as verbally, and time should be taken to inform NSW Government representatives who is who, so the different roles of AA representatives are understood (that is, observation, advocacy and economic development).



## 2.7 Authority of NSW Government representatives

There was considerable discussion about whether the right people were at the table for the Accord negotiations. There was concern that in the first workshop some government representatives had neither the seniority nor the delegated authority to negotiate outcomes, and that part players, who were not responsible for a range of areas, were involved. A few NSW Government representatives themselves expressed concern that they were hamstrung in developing creative and innovative solutions because they lacked the authority to do so.

It was noted that as the negotiations progressed, increasingly senior representatives appeared on the NSW Government side, who were in a position to make decisions then and there. Such authority in negotiation is critical for the LDM process, and is what sets it apart from previous negotiations. Assembly representatives commented that they often meet NSW Government representatives who are not able to make decisions.

It is also worth noting that while the location for meetings was originally intended to alternate between Dubbo and Cobar to take into consideration the travel required by both MPRA and NSW Government representatives, in the end both workshops were conducted in Dubbo in order to encourage more senior NSW Government representatives to attend.

It was also noted that the question of authority also refers to the capacity of the NSW Government representatives to direct others in their department or agency to respond once the Accord has been negotiated. It is important that changes agreed to in the negotiations are reflected in changes to the responsibilities of the relevant department or agency. Strong links with staff in the regions are also important here, so that the regional context may be properly understood, and to ensure there is a connection between what the department or agency agrees to do, and the role of regional staff. An example was raised where NSW Government representatives made a commitment in the negotiations, but the regional staff who would be responsible for carrying out the commitment were not made aware of it. One suggestion was for both senior decision makers and regional representatives to be involved in the negotiations, so that what had been agreed to would be clearly understood throughout the department or agency.

There were suggestions that as many Directors-General as possible should be involved in the process, and that subjects for discussion should be scheduled so that each should have to spend no more than half a day in the negotiations. However, the relevant Ministers would have to drive this. The MPRA Accord was negotiated before the Premier, the Hon. Mike Baird, MP, issued the Premier's Memorandum on Local Decision Making<sup>2</sup>.

The Local Decision Making Premier's Memorandum directs NSW Government agencies to work with Aboriginal communities through regional alliances to develop regional Accords. Agencies are obligated to negotiate with regional alliances in good faith, in a timely, open and honest manner, and deliver the

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<sup>2</sup> In March 2015, the Hon. Mike Baird, MP, NSW Premier, issued a Premier's Memorandum which restates the objectives of Local Decision Making and outlines the roles and responsibilities of NSW Government agencies in supporting Local Decision Making.

agreed actions, programs and investment negotiated and agreed through the Accords. The Memorandum outlines that NSW Government agencies also have a positive obligation to find solutions and share information with regional alliances.

It is not clear whether this government direction would have provided the level of authority needed to ensure NSW Government representatives had the appropriate seniority and delegated authority.

## 2.8 Formal signing

The MPRA negotiating panel had clear authority to make decisions and to sign the Accord on behalf of MPRA. This clear authority was felt to be important in making the negotiation process effective and in gaining final approval. For MPRA, the final approval and signing were seen to be relatively quick and easy.

For the NSW Government the process, which was driven by the lead negotiator, was more complicated and time consuming. Several drafts of the Accord were circulated before it was finally approved. The NSW Government made a series of late changes to the Accord after formal negotiations had ended. The lead negotiator took these changes back to the MPRA negotiation panel for approval in November 2014, and then managed the process to achieve formal sign-off from NSW Government.

The process changed towards the end of 2014, partly because of the end of year timing, the upcoming election and the appointment of a new Secretary to DPC. The Secretaries had originally agreed in June 2013 and May 2014 that the Senior Management Council (SMC) would approve the Accord. Instead, letters were sent from the DPC Deputy Secretary to the relevant Secretaries (Department of Education and Communities, Family and Community Services, Trade and Investment and Treasury) requesting their endorsement of the negotiated Accord commitments relevant to their department. The letters of endorsement were received on 8 December 2014. Once each of the Secretaries had endorsed their Accord commitments, the Accord was endorsed by the Secretary of DPC and signed by the Minister for Aboriginal Affairs on behalf of the NSW Government and the Chairperson on behalf of the MPRA.

A few stakeholders were disappointed that the Accord was not endorsed by the SMC, on behalf of the NSW Government. It was felt this was a missed opportunity to present the Accord to this broader leadership group (including clusters who had not been involved in the Accord negotiations), raise awareness of what LDM is trying to achieve, and emphasise the focus of LDM on repositioning relationships between Aboriginal regional assemblies and NSW Government.

The original plan was to sign the Accord on 16 December 2014. This was cancelled at short notice, and the signing was postponed to 19 February 2015.

## 2.9 Timing

The Accord negotiations took about nine months, as the initial discussions with MPRA started in March 2014, and the Accord was finalised the following December. As noted above, the Accord was only signed on 19 February 2015.

There were mixed responses in discussion of the length of the negotiations. Some felt the time taken was appropriate and realistic, whereas others felt the process was rushed. From the outset MPRA had wanted to see the Accord finalised by the end of 2014. It was suggested that this pre-determined timetable put pressure on NSW Government departments and agencies to respond quickly. Other participants suggested the limit on the time devoted to the deliberations may have restricted the scope of what was included in the Accord.

## 3. The negotiations

### 3.1 Negotiating principles

A number of principles for LDM have been identified<sup>3</sup> in the LDM Accord Process document which the Accord negotiation process is expected to be consistent. They are:

- 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.
- The parties commit to making decisions by negotiation and agreement and to working co-operatively and collaboratively.
- The parties commit to taking a proactive and innovative approach to finding creative outcomes and solutions.
- The parties agree to participate actively in the process and that the goal is to reach substantial decisions by negotiation.
- The parties agree to allow for and set aside sufficient time for the negotiations.
- The parties commit to setting and maintaining the ground rules for the negotiations.

In addition to the above, for the present negotiations, all parties agreed to:

- adopt the principle of “we”
- negotiate as equals
- consider what we will do differently as individuals, community representatives and government representatives
- marry resources with issues
- focus on setting long-term foundations.

While the evaluation did not gather specific feedback on each of these principles, there was considerable discussion of the way they had been reflected in the Accord negotiations.

The first principle identified above is that negotiations are conducted respectfully, openly, honestly and in good faith. Generally participants felt that the vast majority of those involved in the negotiations wanted them to work, and were cooperative, responsive and committed (although a minority of government agency representatives were felt to be disengaged, and attending out of compliance rather than commitment). One stakeholder suggested “90% were very cooperative and 10% did not know what

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<sup>3</sup> Local Decision Making: The Accord Process (draft 2 June 2014)

they were doing, and were not thinking about what they need to do differently". In relation to the second, fourth and sixth principles, many spoke of a sense of "we" rather than "you", and discussed a collaborative, responsive and respectful process conducted in "the spirit of working together" and with considerable good will. A consistent response was that the process overall was transparent, and that the process for deliberations in particular was open, frank and transparent. Conducting the deliberations in an open forum and with observers, rather than behind closed doors, was felt to enhance the transparency of the process.

A consistent finding was that the role of the independent facilitator was recognised, respected and valued (principle three). The results also suggest the independent facilitator played an important role in helping set the rules of engagement for the negotiations (principle eight).

It was noted that a small minority of those involved in the negotiations were not cooperative, and that "it still felt like government was on one side of the table, and community was on the other", and that a few representatives were "going through the motions", and sceptical of the process. This was perceived to be because particular representatives did not understand what was expected of them in the negotiations, and either did not know or did not agree that it was important to think seriously about what their agency might do differently. This was a key challenge for the initial Accord negotiations, as commitment to the principle of innovation and creativity (principle five) appears to have been limited – which some felt to be a missed opportunity.

## 3.2 The negotiation process

It was felt that Accord priorities and commitments evolved as a result of the negotiations. Adult literacy was cited as an example: this issue started off as an Accord priority because poor literacy levels were observed as being a barrier to employment and community participation, but as negotiations progressed this priority was revised to include commitments on financial and digital literacy, and to acknowledge the impact of literacy on school engagement.

A number of stakeholders were concerned that the Accord negotiation process did not encourage integrated responses from the NSW Government. An example was given of a session during which a productive conversation between MPRA and a number of NSW Government departments and agencies in relation to several priority areas had created an opportunity to co-design a response which would meet the region's specific needs. Some participants felt disappointed that the departments and agencies did not integrate their response, but maintained their separate silos.

The process of negotiating the Accord with the NSW Government was identified as different from previous negotiations, and better. MPRA representatives said the process was different because

- ❶ they were able to negotiate directly with the relevant senior government representatives
- ❷ they were negotiating with the government as a whole
- ❸ in some cases they were negotiating directly with the decision-makers.

Previous negotiations with the NSW Government had often been conducted through AA. MPRA would negotiate with AA, which would then negotiate on MPRA's behalf with the NSW Government.

Some on both sides said as a result the process felt like a more equal partnership between the NSW Government and MPRA. On the government side, a few noted that the process gave departments and agencies an opportunity to engage formally with community representatives, which was important in enhancing their understanding, and encouraging a more equal dialogue. This was felt to differ from past approaches, in which service providers alone would propose ideas and solutions.

However, several stakeholders felt the relationship was still unequal, both because power lay mostly with one side, and because government representatives had had access to professional development of a kind which MPRA representatives, volunteers for an organisation with limited funds for professional development and governance capacity building, mostly lacked. As one stakeholder noted, while representation was equal, it would be wrong to assume power was equal or that the negotiation was equitable. The phased approach of LDM aims to address this power imbalance over the long term, a goal which will require considerable investment and development over time.

There was considerable discussion about how the Accord negotiation process had affected relationships. A common theme was that most of those involved had approached the negotiations professionally, respectfully and with good will, and this was felt to have led to positive relationships. As mentioned above, MPRA representatives viewed positively the direct engagement they had had with senior representatives with whom they had not previously worked. They also felt there would be opportunities to build on these relationships. Some strong relationships were also forged as a result of the Accord negotiations, both between MPRA and NSW Government representatives, and between representatives from different NSW departments and agencies. There was a sense that the process had increased the trust among those involved.

A few government representatives also noted that existing strong working relationships among NSW Government representatives had helped in coordinating responses to the Accord.

The process also enhanced participants' understanding of the context in which the various parties involved worked. For example, MPRA representatives felt the process had led some government representatives to understand community needs better, while several agency representatives also felt MPRA representatives had gained a better understanding of government processes and service delivery across the different sectors. A few government representatives suggested this enhanced understanding had helped the negotiations to progress, because it meant the discussion was about current community contexts, policies and strategies, and about issues for which the government is responsible. A few agency representatives also said they understood other NSW Government agencies better, because the negotiations had let them comprehend their operational issues and see their priorities. They felt this would improve relationships within government.

## 4. The outcome

### 4.1 The Accord overall

When asked about the final Accord, those consulted gave a mixed response. Most were satisfied with the process, positive that an Accord had been finalised, and committed to implementing the Accord. Some were satisfied that the Accord is doable, clear, straightforward and realistic in its ambitions, and that it includes tangible information for MPRA and the NSW Government on what is to be done, when, and what will be achieved.

A few however disagreed. They felt the Accord could have included more specific information on what is to be delivered and when. Others, too, felt an opportunity had been missed, as the Accord included no significant and strategic changes to the way the NSW Government will do business. While most participants felt the negotiations between the NSW Government and the community over the LDM initiative had been different from other negotiations, some did not feel the Accord which resulted differed greatly from other agreements with the NSW Government.

Several stakeholders were satisfied that the Accord had deferred some issues<sup>4</sup>, as they felt these required longer conversations, and it was important that the Accord identified them as requiring focus in the future. (It was decided late in 2014 to defer these issues because they could not be discussed adequately without extending the timetable.) It was felt that this deferral had allowed the negotiations to focus on areas where agreement was possible.

### 4.2 Monitoring

Monitoring was raised consistently as an important priority. Effective monitoring and accountability were felt to be essential if the Accord's outcomes were to be achieved.

A consistent theme across the research was that monitoring of the progress and achievements of the Accord should be reported to senior NSW Government representatives, so that they would have oversight. A number of suggestions were provided.

- Regular reporting should be directed to the relevant Secretaries or Deputy Secretaries.
- Quarterly reports should be sent to the SMC.
- Reports should also be sent to the NSW Ombudsman.

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<sup>4</sup> Deferred priorities were domestic, family and lateral violence issues; child safety; Aboriginal incarceration rates and interaction with the justice system; and activities to support Aboriginal culture and language development.

- Secretaries should nominate one representative for each cluster, and this sub-group should report regularly to the Regional Leadership Group, so that the RLG has overall responsibility for monitoring (although it was noted that the Accord crosses over two RLGs).

While the Accord provides details of governance for the monitoring and evaluation group, it does not clarify the lines for reporting to senior levels of the NSW Government. There was also some confusion about the roles and responsibilities of those in the monitoring and evaluation group.

As well as reporting on progress to senior levels of the NSW Government, monitoring and evaluation processes should allow those responsible for achieving the Accord outcomes to reflect on and review progress periodically. Public forums were suggested as a way to bring people together to discuss progress, reflect on achievements and activities and focus on continuous improvement. This process might also ensure priorities do not slip.

A few stakeholders commented that the Accord was “light on KPIs” (Key Performance Indicators), and that resources need to be devoted to developing (and gathering agreement on) meaningful KPIs. It was suggested that meaningful KPIs had not been identified for more complex actions within the Accord, and this tended to refer to those actions that include assessing the feasibility of or scoping and developing strategies.



## 5. Considerations and opportunities for improvement

### A missed opportunity for innovative, creative and holistic solutions

It was suggested that not all agency representatives approached the negotiations with the understanding that the Accord is about change, but rather with the attitude that it was about their core business – that is, business as usual. As well, some NSW Government representatives felt restricted in negotiating as they did not feel able to identify innovative and creative solutions. These representatives expressed the view that the commitments in the Accord reflect “what we already do”. The overall perception was that the Accord did not result in NSW Government doing anything significantly different.

Several NSW Government representatives felt restricted in their capacity to develop innovative solutions and do things differently as no additional funding was available. This was seen as a “massive” challenge: for government to do things differently requires departments and agencies to reallocate, by means of the Accord negotiations, funds that are already committed. There is limited interest in this. This challenge is all the greater at present, when most agency budgets are under increased stress.

It is worth repeating though that, as stated earlier, there were positive responses to the Accord as practical, with achievable and realistic goals.

As significant change in the way the NSW Government does business is a long-term goal, little progress can be expected in the short term. However, additional resources could be devoted to the preparations for LDM, to enhance understanding, to emphasise the principles of LDM which call for innovative solutions rather than business as usual, and to confirm senior bureaucrats’ commitment to the Accord. It was also suggested that processes were needed to relay the commitment of Secretaries and senior NSW Government representatives to those engaged in the negotiations. Seed funding associated with the Accord process could also encourage innovation.

For Accord negotiations, NSW Government departments and agencies, and the regional alliances, should be encouraged to cooperate on designing integrated services and on strategic planning. Departments and agencies should be encouraged to innovate: they should actively seek ways to work together, pool their funds and, with the community, redesign services. The lead negotiator – given the relevant authority – could oversee and encourage this process.

### Understanding the roles of the negotiating parties

The role of the lead negotiator was not well understood. Given that it is critical to the negotiations the role should be clearly documented. The description should also set out clearly the lead negotiator’s authority.

The dual role of AA was also not clearly understood. This too should be documented, and also explained verbally at meetings so all parties are aware that AA both supports the negotiation process, and negotiates Accord outcomes in its own right.

### Time commitment

Several stakeholders mentioned the time the negotiations took, and that they were expected to add them to their existing responsibilities. When the Accord was not central to their agency's concerns it was hard to give it a high priority.

### Clear timeframes and deliverables

A few stakeholders felt that timetables should be improved, so it is clear what is required and when. This is especially true of scoping work. Although approaches with a broad scope were acknowledged to be valuable, departments and agencies should be able to know quickly what is expected of each individual department or agency by a given date. Several participants raised the issue, because they felt that without clear tasks and timeframes, agencies may make only a token effort.

Responses differed on the time needed for negotiations. Some felt the process was rushed; others that the tight timeframe and clear deadline helped ensure agreement was reached.

One suggestion was that MPRA representatives should be allowed more time between sessions to take stock, reflect and discuss among themselves the outcomes of the negotiations and their response. A few people pointed out that the negotiations placed unequal demands on the NSW Government and MPRA representatives. Where the MPRA negotiating panel was engaged in the negotiations for two full days, NSW Government agencies attended specific sessions usually for only half a day. It was felt a break would help. However, this is likely to increase further the time MPRA representatives need to dedicate to the negotiations which, given their other responsibilities, may be difficult. Before future negotiations it may be useful to discuss this option with regional alliance representatives to assess their preferences.

### State and Federal jurisdictions

A consistent theme in the research was the challenge of negotiating solely with the NSW Government, when many programs and services are funded by the Commonwealth Government. (Housing was given as an example, where 90% of the funding is from the Commonwealth). Although it was acknowledged this would be difficult, for negotiations about service delivery it would be valuable to have the funders around the table. Concern was also expressed that if NSW Government departments and agencies are responsible for engaging the Commonwealth on these issues, they likely to be forgotten due to other priorities.

Participants noted that the boundaries of the administrative regions used by different NSW Government departments and agencies can vary – which causes problems with data, and makes engaging with stakeholders across multiple boundaries a challenge.

## Authority of NSW Government representatives and the regional alliance representatives

The MPRA panel was viewed as having conducted effective and efficient negotiations with the NSW Government. Its strong leadership and clear authority to represent the MPRA provided an important model for future talks with the NSW Government. Within the NSW Government there was concern that the support from the top was limited. It was felt that more high-level support would make the negotiation process more effective. As mentioned earlier, the Accord was negotiated before the Premier's Memorandum was issued in March 2015. It is unclear whether this will affect future Accord negotiations.

It was also felt a clear view of what the NSW Government has in mind should be provided from the highest level. A few agency representatives said they would have appreciated being informed of "where the government wants to get to with the Accord ... and what is the end game". For example, it was suggested that if the goal is to restructure or redefine how the NSW Government delivers services in the Murdi Paaki region, this should have been stated clearly from the outset. It was understood that the government position was likely to be modified as negotiations proceeded, but even so a clear initial goal would have been valuable.

Despite this comment, the documentation does clearly identify the goal of LDM as to "direct service delivery redesign and reinvestment according to the needs and priorities defined and negotiated between government and regional alliances"<sup>5</sup>. This message should be communicated clearly to all those involved in the Accord negotiations.

The process would be helped greatly if the lead negotiator's role and authority were explicitly defined in a clear statement. The Secretary of DPC could perhaps write to the Secretaries of the other clusters to outline the lead negotiator's authority, and to encourage them to consider how their departments and agencies might change their methods of operation. The lead negotiator could then consult each cluster to identify who should be involved in the negotiations and who is responsible for ensuring those people in fact become involved. It was not clear that the Premier's Memorandum would address this, as it was felt the Secretaries need to pass the authority to managers in the relevant region. It was also recommended that the Senior Executive Council be informed clearly of the lead negotiator's role and the purpose of LDM.

There were concerns that the appropriate senior NSW Government representatives were not at the table when negotiations began. Future Accord negotiations should "get this right from the start". A lead negotiator who had greater authority could help here, as could taking more time and devoting more resources to ensuring NSW Government departments and agencies understand LDM adequately before the negotiations begin.

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<sup>5</sup> Source: Murdi Paaki LDM – Agenda for Workshop 15 & 16 September 2014

## Level of understanding and preparation of government representatives

Across the research a common theme was that several NSW Government representatives were not aware of what LDM and the Accord process were about, what was expected, and who should be involved. While DPC provided an initial briefing, more resources should be devoted to helping NSW Government representatives understand and prepare for the Accord negotiations. Clear documentation and verbal briefings would be valuable. Better processes should be available for when staff change during the course of the negotiation. The lead negotiator and/or Aboriginal Affairs could provide this preparation, and in future Accord negotiations departments and agencies should consult the lead negotiator about how best to provide this support to their representatives.

Senior bureaucrats should also be briefed along these lines by the lead negotiator and the independent facilitator to encourage their creativity and risk taking.

It is important that all NSW Government representatives attend the initial sessions with the independent facilitator to discuss the rules of engagement.

Documentation currently being developed to explain what preparations NSW Government agencies should undertake will help address this gap.

## Capacity of the regional alliance

The regional alliance's strong leadership was consistently identified as important for the success of the Accord negotiations. The leader's experience in negotiating with government was viewed positively, but it was also suggested that there is value in the negotiating panel including people of varying experience.

The MPRA's small panel of negotiators was viewed positively, especially as they had clear authority to negotiate on behalf of MPRA. An alternative might be to use small groups to negotiate specific areas, as the NSW Government representatives did. The MPRA representatives were involved in all negotiations.

While MPRA's strengths were acknowledged, some stakeholders noted that in phases two and three of LDM, MPRA's internal governance will come under scrutiny (although it should be noted that the existing governance structure of MPRA and the Community Working Parties was identified as a strength). Here, an independent external review could help MPRA to progress to the next stage. It was felt that a review conducted independently of AA would strengthen confidence among NSW Government department and agency representatives.

Some concerns were expressed that some MPRA panel members lacked experience in negotiating with government, and that as volunteers they do not have access to training in negotiation skills. Consideration should be given to how negotiation skills can be improved. An alternative might be to let the panel discuss issues privately during the negotiations, to make allowance for differences in the ways the MPRA and government representatives negotiate.

It is important for MPRA representatives to demonstrate good governance and leadership, so as to gain the confidence of the NSW Government representatives, some of whom may have negative perceptions. There was also some criticism that the MPRA representatives brought up past aspects of service delivery in the negotiations. This is challenging, as it is culturally inappropriate to expect regional representatives not to bring this historical perspective of disadvantage to the negotiations. In preparing for the negotiations this cultural understanding should be made clear to NSW Government representatives; on the other side, regional alliance negotiators should also be encouraged to discuss these historical perspectives in ways that do not reduce the government representatives' confidence.

The regional alliances should also be encouraged to push hard in the negotiations and demand more from the NSW Government. An independent adviser throughout the negotiations could help here. Given their extensive experience advocating for their communities, some regional alliances may also need to be encouraged to adopt a regional rather than a local focus. Other regional alliances may need help to develop governance structures which allow them to adopt a regional focus.

The evaluation found MPRA representatives, who have a responsibility "to go back to their communities" need support to keep those communities informed. A brief dot point summary of what is different in the Accord might be used to report back, along with more general promotion of LDM in communities, where awareness of the process was felt to be limited.

In discussing the lessons for future negotiations, several stakeholders noted that the process may be difficult for other regional alliances which lack MPRA's experience, its longevity, and its demonstrated capacity to maintain relationships with government at senior and local levels.

### Lead negotiator

The research indicated that it is important that the lead negotiator be impartial, professional, committed, confident, tenacious and well connected, and it will be important that these attributes are considered when choosing the lead negotiator for other regions. The research also indicated that the lead negotiator should have express authority from the DPC Secretary to influence the negotiation process, in particular by ensuring senior representatives are involved and by pushing departments and agencies to think creatively about how they might operate in future

### Evidence based discussions

Strong evidence is important for effective negotiations, so it is important that the process give regional alliance representatives access to information that will allow informed discussions. Several examples were given where MPRA representatives were given information that they felt was valuable in discussing priorities for the Accord, access to which had changed the conversation.

## Independent adviser

Regional alliance representatives may benefit from independent advice during the negotiations. They can canvass options with an adviser between meetings, with time to discuss what has been said, what it means and what they will agree to. While an independent facilitator supported the negotiations, their independence would have been compromised if they had provided advice of this kind to regional alliance representatives. Independent advice could cover relevant content expertise for regional alliance representatives who are negotiating across a broad range of topics. As it has with the independent facilitator, AA could set up a pool of expert advisers' on relevant topics for the regional alliances to access.

## The conflict between broad goals and specificity

Developing the statement of claim was a key element of the process, which effectively laid the groundwork for the negotiations by establishing who would be involved, what preparations were needed, and which areas would be discussed. While participants were generally satisfied with the way the statement of claim was developed, and the role it played in directing the process, responses about the level of detail required were mixed.

On the one hand, some NSW Government agency representatives felt that the statement of claim should have been more specific, rather than global, so that it might provide clearer direction to the relevant NSW Government departments and agencies. It was felt AA and/or the lead negotiator should work with the MPRA representatives to develop this further. A few NSW Government representatives noted that narrower priorities have benefits as they focus attention on a few areas, which can help drive change. On the other hand, a goal of LDM is to generate innovative, creative and strategic solutions, and broader priorities in the statement of claim mean that innovation is not inhibited. It was also noted that it is difficult for a statement of claim to be clear and specific in some areas such as economic development, because it is broad and complex, and a clear delineation between economic development and job creation is lacking.

A few participants felt the statement of claim was relatively specific, that the negotiations led to greater specificity, and that this may have limited the outcomes.

Stakeholders also noted that the discussion evolved as the negotiations proceeded, and that while the earlier discussions were "too broad" (about which there was some cynicism in response), as they progressed they became more focused. Eventually the focus narrowed to two issues – realistic service delivery, and accountability to ensure funds are allocated in an auditable way. The Accord thus moved from a "wish list to something more practical".

## Regional focus

The MPRA provided an opportunity for the government to negotiate at a regional level, and it will be important in future Accord negotiations that the governance structures for the regional alliances ensure the discussions can focus on regional rather than local concerns.

## New technology

Two stakeholders asked whether new technology could help address the tyranny of distance, and the time constraints on those involved in the negotiations. Technology could also make the process more transparent. As both MPRA and DPC represent a large number of people, information provided digitally and online throughout the process could inform them about it, and persuade them of its value. If it were interactive, they could post comments. The negotiations would be in public view, so that the community could understand why some things were in or not in discussion, and expectations would be more easily managed.

# Appendix A: References

Murdi Paaki Accord, Murdi Paaki Regional Assembly & NSW Government, 19 February 2015

## Unpublished papers

Assessing government performance: Establishment and start up (Draft v1.2 checklist)

Assessing governance capacity: Establishment and start up (Draft checklist)

Local Decision Making: The Accord process (Draft 2 June 2014)

Local Decision Making draft MPRA Statement of Claim July 2014

Minutes (handwritten) – 15 & 16 September, and 15 & 16 October

Murdi Paaki LDM Accord Workshop Agenda 15 & 16 October 2014 (Version 1 13/10/2014)

Murdi Paaki LDM Accord Workshop Agenda 15 & 16 September 2014 (Version 2 1/9/2014)

Murdi Paaki LDM Workshop Summary (Minutes) 15 and 16 September 2014 (revisions document date 23/9/2014)

Murdi Paaki LDM Workshop Summary (Recommendations) 15 and 16 September 2014 (revisions document date 26/9/2014)

Murdi Paaki LDM Accord Negotiation: Facilitator Report

Negotiated Commitments for Murdi Paaki Accord, Version 1 16/10/2014

NSW Government Agencies Inputs and Proposals, including FACS (draft 13 October 2014); NSW DEC (Schools) (13 September 2014); TAFE NSW Western Institute response; DPC Response; State Government Procurement; DEC Aboriginal Affairs.

OCHRE LDM Roles and Responsibilities Table





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