



OCHRE

The Continuing Conversation

Evaluation | Accords negotiation

OCHRE Local Decision Making Accords – Three Rivers Regional Assembly

Prepared for members of the Three Rivers Regional Assembly

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Ilan Katz, Jan Idle, Wendy Jopson

The Three Rivers Regional Assembly (TRRA) sits on the lands of a number of Aboriginal clans and language groups, 'predominantly located within the Wiradjuri Nation and extends to the Wayilwan and Wongaibon Nations.

The research team from the Social Policy Research Centre acknowledges the traditional custodians of the land we work on and pay our respect to Elders past, present and future and all Aboriginal Peoples in the region.

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Evaluation Team

Michael Barnes, Shona Bates, Jan Idle, Wendy Jopson, BJ Newton, Ciara Smyth, Ilan Katz,

For further information:

Ilan Katz +61 2 9385 7800

Social Policy Research Centre

UNSW Sydney NSW 2052 Australia

T +61 2 9385 7800

F +61 2 9385 7838

E sprc@unsw.edu.au

W www.sprc.unsw.edu.au

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Glossary

AA	NSW Aboriginal Affairs
ACWP	Aboriginal Community Working Party
DoE	NSW Department of Education
DPC	NSW Department of Premier & Cabinet
FACS	NSW Family and Community Services
Health	NSW Department of Health
Housing	NSW Housing
IBA	Industry-based agreement
LALC	Local Aboriginal Land Council
LDM	Local Decision Making
LDMAC	LDM Advisory Committee
<i>OCHRE</i>	Opportunity, Choice, Healing, Responsibility, Empowerment – the community-focussed plan for Aboriginal Peoples in NSW
RPA	Regional Partnership Agreement
TRRA	Three Rivers Regional Assembly

Executive Summary

NSW Aboriginal Affairs commissioned the Social Policy Research Centre (SPRC), UNSW Sydney, to evaluate the Three Rivers Regional Assembly (TRRA) Accord negotiation operating as part of *OCHRE* – Opportunity, Choice, Healing, Responsibility, Empowerment – the community-focussed plan for Aboriginal Peoples in NSW. The key aim of the TRRA Local Decision Making evaluation was to assess whether the Accords negotiations were implemented as intended and what can be done to improve outcomes from similar negotiations in the future.

The evaluation of the TRRA Accords negotiation was designed to answer eight questions. The methods selected to address them were qualitative interviews and focus groups with nine stakeholders involved in the Accords negotiations and qualitative document analysis (minutes, letters, email correspondence, statement of claim, protocols). Summary findings are presented below under each of the key evaluation questions.

Note that the failure to progress the Accord after three years of planning and negotiations has left many stakeholders involved disheartened. Positive experiences of the pre-Accord workshops and Accord negotiations have been overshadowed by this failure summarised in the following research questions.

1. What was the history of the (Alliance¹) Assembly and how did this impact on the operation and outcomes of the negotiations?

TRRA was established in 2014. The TRRA region extends from Lithgow in the east of NSW through to Nyngan in the west, covering some 72,326 square kilometres. It spans two geographical regions – the Central tablelands/Central West and also takes in some of what is known as the Orana region. The Assembly gets the name ‘Three Rivers’ as this area is situated between three rivers.

The TRRA has representatives from the twelve (12) communities of Bathurst, Dubbo, Gilgandra, Mudgee, Narromine, Nyngan, Orange, Parkes, Peak Hill, Trangie, Warren and Wellington. The boundaries incorporate the local government areas (LGA) of these communities which include: Lithgow, Bathurst, Orange, Cabonne, Parkes, Wellington, Midwestern Region (Mudgee), Dubbo, Gilgandra, Narromine, Warren and Bogan Shires.

TRRA comprises of 19 members. Originally 14 of its members participated in the Accord negotiations through four negotiation panels. Over time, this reduced to six delegates plus a chair person (i.e. seven members in total).

TRRA is made up of two representatives from each of the 12 communities from Local Aboriginal Land Councils (LALC) and Aboriginal Community Working Parties (ACWP), who have experience working together and with government. In some areas there are two delegates from the Aboriginal Community Working Party, in others there are two delegates from LALCs if there are no Aboriginal

¹ The original evaluation questions, and many of the policy documents refer to “Alliance” but TRRA is a Regional Assembly and therefore this terminology is used throughout the report.

Community Working Parties. This enabled TRRA to form an effective negotiating team representative of all communities.

2. Have any of the learnings from the negotiation of the Murdi Paaki Regional Assembly been applied to negotiation process and which learnings? What was the impact?

There are mixed views about whether any learnings from the MPRA have been applied to TRRA accord process. We heard that policy guidelines were clear and useful for preparing both sides, government and TRRA for negotiations. We also heard that despite learning that government department negotiators need to have delegated authority to make decisions this was not put into practice, and some government negotiators lacked willingness or authority to conduct negotiations. TRRA were briefed by MPRA before and during the Accord negotiations; however, there was the limited engagement with MPRA, and TRRA established their own approach to the process.

3. What were the governance structures for the government and Assembly parties in the negotiations? What were the strengths, weakness and challenges and how were they overcome?

Although the Accord process was established to accommodate existing government structures, this was not always successful. Governance structures within government departments make it difficult to facilitate community led change. The inherent bureaucratic nature of government departments prevents them from being flexible, responsive and able to change policy by listening to Aboriginal Peoples.

4. What was the negotiation process? What were the strengths, weakness and challenges for the parties in the process and how were these overcome?

The strengths of the Accord process included the TRRA Negotiation Protocols, commitment by Health and Housing to share information and work toward an agreement, commitment and professionalism of TRRA negotiators, establishing communication between TRRA and government departments and developing trust. However, there were many challenges and weaknesses in the process including, the failure to sign the Accord as planned, some of the pre-planning preparations were inadequate, there was a lack of commitment and seniority among government negotiators in some departments, and communication within government departments between negotiations. There appeared to be little flexibility to alter policies to align with TRRA positions, other than where these were already in accordance with current government policy.

The confidentiality agreements signed as part of the Accord negotiations prevented TRRA delegates from keeping community members informed of progress; because of the unexpected length of the negotiations, this resulted in disengagement by communities from the LDM process.²

The issue of Aboriginal governance bodies with existing relationships with government departments not included in the negotiations was identified by government and TRRA as a challenge. Health facilitated the inclusion of local priorities through meetings with local AMS, TRRA

² The confidentiality clause was part of negotiation protocols document. This was focused on sharing of confidential information and was clear that information could be shared if agreed by both parties. TRRA were part of the development of Negotiation Protocols.

and government negotiators. TRRA has attempted to reach out to other Aboriginal organisations in the area.

Another challenge was the absence of Local Government in the Accord process. Local Government is a major employer in the region and provides many of the relevant services covered by the Accord. Although inclusion of Local and Federal Government were discussed with TRRA, based on information provided (neither party bound by same mechanisms as NSW Government) it was agreed not to include them. Nevertheless, in retrospect this was considered by TRRA members to have been a gap in the Accords.

5. What were the positions held by the parties to the negotiation (e.g. seniority, paid or unpaid)? How many hours of their time was spent in preparing for and participating in the Accord negotiations? What did each party do during the process and feel responsible for? What were the challenges encountered in performing this role, including power to contribute and make decisions?

Government positions in the Accord process included Aboriginal Affairs NSW, the Department of Premier and Cabinet, and those departments with oversight of each Accord priority, Health, Education, Housing, and Economic Development.

TRRA delegate negotiators worked in panels and were a strong group.

A key challenge was the length of time the Accord negotiations took and the delay in signing. Delays occurred for a number of reasons including requests for extensions on both sides and Government requesting a last-minute delay to the agreed date for signing the Accord. Challenges for TRRA included confidentiality, where they were not able to report back to the Assembly or Aboriginal community, policy knowledge, and resources (travel costs, especially due to extended time for the process). TRRA members all contributed their time in a voluntary capacity, and unlike Government representatives, were not paid for their participation in the negotiations. Aboriginal Affairs NSW estimated TRRA delegates participated in 660 hours of negotiations, excluding travel and Accord preparation (162 hours).³ One way to think about this is that TRRA delegates collectively volunteered 21.9 working weeks to the Accord negotiations and preparation over the three years.

For government, lack of seniority among some government negotiators, inadequate commitment by some government stakeholders, existing relationship with other Aboriginal governance bodies. The lead negotiator was well-regarded.

One improvement would be to use of policy experts for each Accord priority.

6. What were the personal outcomes for each party to the negotiation as a result of being involved in the negotiation? If there were personal outcomes, does the individual believe this will change their approach in similar circumstances?

The personal outcomes for most stakeholders was negative due to the drawn-out process of negotiating the Accords. TRRA and some government stakeholders explained that this placed pressure on relationships which are critical for the Accords to progress. For TRRA members this

³ 660 (negotiations) + 162 (preparation) divided by 37.5 (5 day working week, 7.5 hours/day) = 21.9 weeks.

involved a significant time commitment which they had not anticipated and also tensions within TRRA and their own communities, which resulted in disengagement from the LDM process from community members.

7. Has the Accord negotiation process changed or influenced the relationships between parties involved and if so, in what ways?

Relationships between TRRA and government have changed. We heard that good working relationships had been established between TRRA and some lead government negotiators. Again, the extended process had strained some relationships, and one relationship (with Education) was made possibly worse. Trust in the NSW Government did not increase during the Accord negotiation process but may be restored if the Accords are comprehensively implemented.

Aboriginal communities in the TRRA region reported considerable levels of racism by government service providers and this will need to change for communities to begin to trust government. There has been progress in Health to date, but not in other TRRA priority areas. Housing has reportedly used Accord negotiations and published results without TRRA permission, further undermining trust.

The presence of very senior officials (Deputy Secretary level) at negotiations has improved the relationship with Education. Other departments should follow suit. Also having Aboriginal peoples as negotiators facilitated mutual understanding and trust.

8. What adjustments, resources or capabilities do the parties to the negotiation believe are required to improve the outcome including structure, process or roles (including administrative, policy, and/or legislative powers or processes)?

There are a number of changes that might support Accord negotiations in the future. For government departments this included - improving government processes and willingness to participate, assigning senior decision makers to the Accord negotiation process, pre-planning, participating in cultural training, and sharing information. Ensure TRRA or other assemblies are fully briefed about policy, have access to policy expertise and are resourced to participate.

Improve communication – within government departments, modify the confidentiality agreement and provide clear guidance about what the confidentiality does and does not allow, to ensure communication channels are open for TRRA negotiators. Resource appropriately including for the extended time negotiations take.

1 Introduction

NSW Aboriginal Affairs commissioned the Social Policy Research Centre (SPRC), UNSW Sydney, to evaluate the Three Rivers Regional Assembly (TRRA) Accord negotiation operating as part of *OCHRE* – the community-focussed plan for Aboriginal Peoples in NSW. In 2014, TRRA was selected to undertake the initial implementation of Local Decision Making (LDM). LDM aims to devolve decision-making power from government to Aboriginal communities at a local level. The key aim of the TRRA Accord negotiation is to assess whether the Accords negotiations were implemented as intended and what can be done to improve processes and outcomes of similar negotiations in the future.

1.1 About Local Decision Making

***OCHRE* Local Decision Making** aims to:

...fundamentally and positively change the relationship between Aboriginal communities and government and enable Aboriginal communities to participate fully in decision making concerning service design and delivery.

[This approach recognises] ...sovereignty and self-determination are a fundamental factor in generating sustained socio-economic development and wellbeing in Aboriginal communities.⁴

It also acknowledges that governments also need to reform and develop capacity to enable this to happen. The purpose of Local Decision Making is to

...give Aboriginal community-based regional decision-making groups (regional assemblies) an increased say in government service delivery...placing Aboriginal people at the centre of service design, planning and delivery.⁵

The Assembly enters into an agreement called the Accord that defines the relationship, identifies priorities for the region, as well as 'key actions to achieve desired outcomes, timeframes, resources, responsibilities and define what success will look like'. The Assembly's decision-making powers will increase over time but will exclude statutory regulation functions such as policing, justice, child protection and environmental regulation.

The principles of self-determination are embedded in LDM, by the following:

- o Aboriginal peoples have the right to determine their own governance and decision-making structures in accordance with their customs, traditions and in the best interests of their community.

⁴ Aboriginal Affairs NSW (2017). Local Decision Making: Policy and operational Framework, <https://www.aboriginalaffairs.nsw.gov.au/pdfs/local-decision-making/LDM-POLICY-AND-OPERATIONAL-FRAMEWORK-JULY-2017.pdf> Accessed 1 March 2018 p 4

⁵ Aboriginal Affairs NSW (2017). Local Decision Making: Policy and operational Framework, <https://www.aboriginalaffairs.nsw.gov.au/pdfs/local-decision-making/LDM-POLICY-AND-OPERATIONAL-FRAMEWORK-JULY-2017.pdf> Accessed 1 March 2018 p 5

- o Aboriginal peoples have the right to develop and maintain their own tradition, procedures and practices.
- o Aboriginal peoples have the right to recognition and enforcement of any agreements they enter into with the government.⁶

1.2 About the *OCHRE* Local Decision Making Accord negotiations

Process to commence Accord negotiations:

- Step 1 Regional assembly must formally write to Aboriginal Affairs NSW to demonstrate capacity (good governance guidelines) to enter into formal negotiations with government departments and establish key priorities (Statement of Claim) for Aboriginal communities in their region. Regional assembly nominates a lead negotiator
- Step 2 NSW Government nominates a lead negotiator, who works with government departments to establish government readiness to meet government obligations
- Step 3 Aboriginal Affairs decides that both sides (regional assembly and government departments) are ready for Accord negotiations to commence.

Pre-negotiation phase:

- Briefings for all parties about roles and responsibilities of Accord negotiation process and the LDM.
- Establishing negotiation timing, location, participants and protocols, and sharing information.

Negotiation phase:

- Identify core issues, develop collaborative proposals and problem solving, and document decisions made during the process.
- Prepare formal Accord document to reflect the joint decisions.
- Formal signing.

⁶ TRRA would prefer the use of the term Aboriginal Peoples. This is a direct quote from Aboriginal Affairs NSW (2017). Local Decision Making: Policy and operational Framework, <https://www.aboriginalaffairs.nsw.gov.au/pdfs/local-decision-making/LDM-POLICY-AND-OPERATIONAL-FRAMEWORK-JULY-2017.pdf> Accessed 1 March 2018. P 6

Implementation:

- Develop an implementation plan to deliver commitments, an Accord Task Group to oversee the implementation, and implement monitoring and reporting processes.

The key aim of the TRRA evaluation was to assess whether the Accords negotiations were conducted as intended and what can be done to improve outcomes from similar negotiations in the future.

1.3 Evaluation questions and methodology

The evaluation of the TRRA Accords negotiation was designed to answer eight questions:

1. What was the history of the Assembly and how did this impact on the operation and outcomes of the negotiations?
2. Have any of the learnings from the negotiation of the Murdi Paaki Regional Assembly been applied to negotiation process and which learnings? What was the impact?
3. What were the governance structures for the government and Assembly parties in the negotiations? What were the strengths, weakness and challenges and how were they overcome?
4. What was the negotiation process? What were the strengths, weakness and challenges for the parties in the process and how were these overcome?
5. What were the positions held by the parties to the negotiation (e.g. seniority, paid or unpaid)? How many hours of their time was spent in preparing for and participating in the Accord negotiations? What did each party do during the process and feel responsible for? What were the challenges encountered in performing this role, including power to contribute and make decisions?
6. What were the personal outcomes for each party to the negotiation as a result of being involved in the negotiation? If there were personal outcomes, does the individual believe this will change their approach in similar circumstances?
7. Has the Accord negotiation process changed or influenced the relationships between parties involved and if so, in what ways?
8. What adjustments, resources or capabilities do the parties to the negotiation believe are required to improve the outcome including structure, process or roles (including administrative, policy, and/or legislative powers or processes)?

The methods selected to address these questions were qualitative interviews, focus groups and document analysis of relevant correspondence, protocols and negotiations. These methods were co-designed with TRRA.

1.3.1 Interviews and focus groups

Aboriginal Affairs NSW provided the evaluation team with the names and contact details of individuals who were involved in the Accord negotiations to invite to participate in the evaluation.

Phone interviews were conducted with nine government representatives and stakeholders involved in the TRRA Accords negotiations. These included:

- Accords negotiators from NSW Housing (Housing), NSW Ministry of Health (Health), NSW Department of Education (Education)

- Representatives from NSW Department of Premier and Cabinet (DPC)
- Representatives from Aboriginal Affairs NSW.

In addition, the evaluation team had two longer conversations with TRRA as a group, and a further discussion about the contents of the draft report. TRRA delegates were invited to take part in individual interviews if they wished to.

All interviews and workshops were recorded, transcribed in full and analysed thematically using the data analysis software (NVivo).

1.3.2 Document analysis

A number of documents were provided to the evaluation team relevant to the Accord negotiations. Note the evaluation team focussed on key documents relevant to the Accord negotiations. These include:

- Three Rivers Regional Assembly Statement of Claim
- Three Rivers Regional Assembly Regional Priorities Plan
- Three Rivers Assembly Negotiation Protocols
- Pre-Accord workshop summaries and minutes from workshops.

Additional documents from Aboriginal Affairs NSW were accessed to support and inform the data. These include:

- Local Decision Making: Policy and Operational Framework
- Briefing and correspondence documents

The documents were reviewed and analysed in NVivo. The findings, reported under each of the research questions devised by Aboriginal Affairs NSW, are drawn from the qualitative interview and focus group data and the analysis of the supporting documents.

1.4 Caveats and limitations

This report should be read with a number of caveats in mind. First, this report focuses on the Accords negotiation process and does not consider broader issues with respect to Local Decision Making (this is subject to a separate evaluation). Second, the report only includes the perspectives of stakeholders involved in the negotiations and therefore does not include broader community perspectives on the process. Third, the key evaluation questions that guided the data collection were developed by Aboriginal Affairs NSW. Fourth, the document analysis is limited and includes, Three Rivers Negotiation protocols, TRRA Statement of Claim, TRRA Regional Priority Plan, TRRA communication and media policy, TRRA terms of Reference, Summary of Accord workshops.

The crucial limitation of this evaluation concerns timing. Aboriginal Affairs NSW have requested the Accord evaluation be completed by the end of 2018. At the time of reporting, the Accord had not been signed. Therefore, all interviews and workshops with key stakeholders occurred *prior* to the signing of the Accord and may not reflect the whole process of the negotiations.

2 Background context for the Accord evaluation

To contextualise the findings, some background information is presented on:

- TRRA Statement of Claim; and
- the policies, processes and procedures supporting LDM and the Accords negotiations.

2.1 Three Rivers Regional Assembly Statement of Claim

The TRRA Statement of Claim is a 5-page document that describes TRRA as a regional Aboriginal governance body representing the interests of Aboriginal Peoples across the NSW Central West. The statement outlines the roles, responsibilities of TRRA members along with the principles and values which TRRA will adhere to.

TRRA acknowledges the 'cultural diversity represented by varying Aboriginal languages, clans and nations that reside within the TRRA footprint'.⁷ TRRA's statement comes from work they had commissioned to establish the local priorities of the region.

The TRRA has representatives from the twelve (12) communities of Bathurst, Dubbo, Gilgandra, Mudgee, Narromine, Nyngan, Orange, Parkes, Peak Hill, Trangie, Warren and Wellington. The boundaries incorporate the local government areas (LGA) of these communities which include: Lithgow, Bathurst, Orange, Cabonne, Parkes, Wellington, Midwestern Region (Mudgee), Dubbo, Gilgandra, Narromine, Warren and Bogan Shires.

TRRA comprises of 19 members and 14 of its members originally participated in the Accord negotiations, reducing to six delegates plus a chair (seven in total).

2.1.1 Establishing priorities for the Accords

TRRA commissioned Seed Business Solutions to develop the TRRA Regional Priority Plan. The plan outlines local priorities from Local Aboriginal Land Councils (LALCs) and Aboriginal Community Working Parties (ACWPs), where available, from each of the 12 participant member regions and developed the four priorities for the Accord.⁸ These regions include the local government areas of Bogan, Dubbo, Warren, Bathurst Regional, Blayney, Gilgandra, Mid-Western Regional, Lithgow, Narromine, Oberon, Orange, Parkes, Wellington, Forbes Lachlan and Cabonne. The TRRA Regional Priority Plan was developed from 'a desktop audit of community priorities' with additional telephone interviews with key stakeholders and a workshop with TRRA delegates.⁹

⁷ Three Rivers Regional Assembly Statement of Claim, p 2.

⁸ Seed Business Solutions Three Rivers Regional Assembly Regional Priorities Plan, March 2015

⁹ Seed Business Solutions Three Rivers Regional Assembly Regional Priorities Plan, March 2015 p 4

The TRRA Regional Priority Plan outlines four priorities across the region:

- Housing
- Education
- Employment and economic development
- Health.

The Plan also identifies other local issues across the region, which include:

- Capacity buildings and sustainability
- Youth
- Culture and heritage
- Local Aboriginal Land Council specific concerns.

In 2013, TRRA submitted an Expression of Interest for the new initiative Local Decision Making under *OCHRE*. TRRA was successful in the second-round announcements and signed a Statement of Commitment with the NSW Government on 28 November 2014.

The vision of TRRA is to:

- Foster and nurture leadership.
- Be acknowledged, accepted and known as the voice of Aboriginal peoples within the TRRA boundary.
- Enhance governance and management to strengthen cultural integrity within local and regional communities.
- Encourage transparency, consistency and accountability in all decision making within local and regional communities.¹⁰

The Statement of Claim outlines priority areas for the TRRA communities and reserves the right to bring other issues to the table, including domestic, family and lateral violence, drug and alcohol issues, child safety, and incarceration rates and interaction with the justice system.

The Statement of Claim lists the priority areas and actions to support the adoption or changes in policy to progress outcomes for the LDM (see Tables 1 to 4 below).

¹⁰ Seed Business Solutions Three Rivers Regional Assembly Regional Priorities Plan, March 2015

Table 1: Priority Area 1: Housing – outcomes and proposed actions

Priority Area 1: Housing
Desired outcomes: • Home ownership. • Housing meets the needs and requirements of the TRRA communities. • Transparency exists in social housing management and allocation.
Proposed actions to achieve these outcomes: <i>Home Ownership</i> • Assist the LALCs to develop a rent-to-buy model that supports its members into home ownership and achieves sustainable outcomes for the LALC's. • Work with AHO's/Social Housing (Aboriginal Housing Office) (to develop a rent-to-buy model. • Improve access to information and develop pathways to home ownership in TRRA communities. • Promote home ownership opportunities within TRRA Communities. <i>Housing meets the needs and requirements of the TRRA Communities</i> • Undertake and document a needs assessment and gap analysis in each TRRA community to better understand local needs and gaps in the supply of housing (document number and types of accommodation available and issues in access to housing; against local demand for housing). • Ensure that TRRA is consulted on new acquisitions/changes in the social housing portfolio across the region so that the needs of the community are acknowledged and implemented. <i>Transparency exists in Social Housing Management and Allocation</i> • Negotiate and communicate with each housing provider (mainstream and Aboriginal) the terms that support the streamlining of single wait list for each community. • Streamline the application process. • Develop policies that support Aboriginal peoples to remain in their local communities. • Develop and communicate information that is easily understood about how the rent and rebates are calculated across the TRRA footprint.

Table 2: Priority Area 2: Education– outcomes and proposed actions

Priority Area 2: Education
Desired outcomes: • Retention of Aboriginal children in the school system. • Education – Increasing the number of Aboriginal peoples who have a VET or tertiary qualification.
Proposed actions to achieve these outcomes: <i>Retention of Aboriginal children in the school system</i> Increase the completion rates of Aboriginal children graduation from Year 12 • Conduct a census of Aboriginal school-aged population within the TRRA region to better understand the socio-economic conditions faced by this population.

- Where there are clear clusters of disadvantage, develop a mentoring and resource program that supports disadvantaged children while they are at school (extended access to computers, teaching resources, safe places).
- Discuss the opportunity for Aboriginal Elder participation in the school curriculum; to support the development of cultural identity (and pride).
- Work with the NSW Government to develop an aspirational mentoring program, whereby successful Aboriginal peoples share their story throughout the TRRA communities.
- Shift mentoring/reward programs to have an academic focus, rather than a sporting focus.
- Support programs that provide the opportunity for students to complete Year 12 in a supported environment.
- Seek more in-school employment opportunities for Aboriginal peoples that results in a higher rate of Aboriginal educators in the region.

Increase engagement between the community and education providers

- Ensure that all *Local School, Local Decisions* Accountability Frameworks are working well across the TRRA region. Where the community reports that they aren't, investigate and make recommendations that result in improvements.
- Develop a program for all educators in the TRRA region that sees new teachers undertake local Aboriginal Cultural Competency training.
- Develop a teaching resource for Educators to use that recognises the cultural prosperity of Aboriginal peoples in the region and also, when taught, results in increased knowledge and understanding of future generations (black and white) about the history and stories of Aboriginal peoples in the TRRA region.
- With TRRA community members review policies and procedures regarding suspension that result in in-school suspensions, rather than out-of-school suspensions.
- Undertake an annual program that improves cultural awareness of local school staff that enables them to connect and engage with parents and the community.

Education – Increasing the number of Aboriginal peoples who have a VET or tertiary qualification

Increase the education levels of the Aboriginal peoples within the TRRA region

- Work with the Department of Education to develop and implement a mentoring program that is focused on supporting academic completion and achievement.
- Establish and promote the use of out of home/out of school spaces that include access to computers and the internet and creates an environment for learning.
- Develop an assembly with organisations such as Orana RDA to ensure that their pathways program reaches Aboriginal students.

Create local training opportunities

- Undertake an audit of skilled positions within each local community with a view to identifying future opportunities for local Aboriginal peoples (i.e. educators, nurses, engineers, doctors, administrators, regulators).
- Work with the NSW Government to discover, document and promote traineeships available within NSW Government agencies locally.
- Develop a program that promotes local success stories (not always high profile).
- Facilitate a partnership between the LALCs and major employers in the region (Local Government, clubs, hospitals, mines, accounting firms, Commonwealth agencies) to identify and promote opportunities for Aboriginal on-the-job training.
- Work with employers and professional associations to encourage them to support their Aboriginal employees to undertake higher education, including through cadetship models, scholarships and flexible leave arrangements.

Support Aboriginal peoples into Tertiary Education

- Seek access to decent technology to enable remote learning.
- Seek increased financial support for students who need to shift away.
- Work with local universities to develop cultural flexibility to enable students to meet cultural commitments while studying.
- Establish and resource a TRRA Higher Education Committee.
- Work with the NSW Government to discover, document and promote traineeships and pathways within NSW Government agencies locally, that result in more Aboriginal peoples gaining access and support to tertiary education.

Table 3: Priority Area 3: Employment & Economic development – outcomes and proposed actions

Priority Area 3: Employment and economic development
Desired outcomes: • Build cultural awareness in business. • Begin with the end in mind – prepare an Aboriginal Economic Development Strategy for the TRRA. • Businesses owned and operated by Aboriginal peoples.
Proposed actions to achieve these outcomes: <i>Build cultural awareness in business</i> • Develop and implement a cultural awareness program with major employers in the region. • Engage and seek commitment from major employers in the region to develop and implement Aboriginal Employment Strategies for their businesses/organisations. • Link with the Indigenous Chamber of Commerce to support greater employment outcomes for Aboriginal peoples within the TRRA region. <i>Begin with the end in mind – prepare an Aboriginal Economic Development Strategy for the TRRA region that considers</i> • Employment outcomes. • The development of businesses by Aboriginal peoples. • Cultural tourism opportunities. • Access to infrastructure and education. • Sustainability of Aboriginal culture in the region. <i>Businesses owned and operated by Aboriginal peoples</i> • Work with Business Enterprise Centre (BEC)/Industry Based Agreement to develop and implement a model that results in an increased number of businesses owned and operated by Aboriginal peoples. • Seek funding to develop feasibilities for business ideas for Aboriginal peoples to develop (i.e. cultural tourism, Aboriginal art sales, childcare services, use of land for carbon trading and sustainability projects, etc). • With NSW Trade and Investment [NSW Department of Industry], develop and implement or access an Aboriginal's in Business network and mentoring program.

Table 4: Priority Area 4: Health – outcomes and proposed actions

Priority Area 4: Health
Desired outcomes: • Mobile Aboriginal Health Service. • Aboriginal liaison group to work with health care providers to implement programs that are aimed at improving cultural awareness.
Proposed actions to achieve these outcomes: • Explore the opportunity to establish a mobile Aboriginal Health Service. • Seek the establishment of an Aboriginal liaison group to work with health care providers to implement programs that are aimed at improving cultural awareness. • Community liaison: establish links between local Aboriginal communities to encourage and support the increased use of health services, including Health Assessments and MBS care planning items, and to identify Aboriginal peoples who benefit from improved access to these health services. • Administration and support: assist to identify barriers that may impact on access to health services by Aboriginal and Torres Strait Islander people. • Provide practical assistance: assist identified Aboriginal and Torres Strait Islander people to attend appointments for MBS Health Assessments for Aboriginal and Torres Strait Islander peoples and to access other health services as required, including GP care planning, follow-up care, specialists services, and community pharmacies. • Provide feedback regarding access problems.

2.2 Protocols, policies and procedures supporting LDM and the Accords negotiations

The Accord negotiation process was developed as a framework and mechanism for devolving decision making from government to communities over time. A range of documents and templates were developed by Aboriginal Affairs NSW to support LDM and the Accords negotiations.

Table 5: Protocols, policies and procedures for supporting LDM Accord Negotiations

1. <i>Local Decision Making - Verifying Regional Assembly Readiness</i>: this document included check box <i>Criteria for Accord Readiness</i>
2. <i>Negotiation Protocols: Three Rivers Accord Negotiations</i>¹¹ this document articulated: • negotiation steps • engagement and negotiation principles • recognition and respect for Aboriginal cultural protocols in the negotiation process • participants' roles and responsibilities • in addition to the principles of LDM, the Lead Negotiators for the NSW Government and the TRRA have identified some key principles for the pre-Accord and formal Accord negotiation process in the Three Rivers. The parties: - o agree to work together as <i>one</i>.

¹¹ Negotiation Protocols: Three Rivers Accord Negotiations

- o resolve not respond with *no*, but instead listen and take the time to reflect on the information provided.
- o commit to respectful engagement - *yindyamarra*.
- o agree to create a space to enable all representatives to ask questions and to be heard.
- o commit to taking issues on notice where they are unable to provide informed advice, acknowledge and promote progress and outcomes negotiated.
- o take ownership of the Accord and commitments negotiated.¹²

3. Confidentiality protocols

- To take part in the negotiations, NSW Government may provide sensitive program information to the Assembly that is not publicly available. Participants in these meetings are not to distribute confidential information outside of negotiations unless agreed.

Agendas and minutes for all meetings were taken and circulated by Aboriginal Affairs NSW to relevant stakeholders for comment.

¹² Negotiation Protocols: Three Rivers Accord Negotiation Protocols

3 Evaluation questions

3.1 What was the history of the Three Rivers Regional Assembly and how did this impact on the operation and outcomes of the negotiations?

TRRA was established in 2014. Prior to this, the group operated as the Binaal Billa Regional Assembly, representing Aboriginal peoples in the region through the Aboriginal and Torres Strait Islander Commission (ATSIC; abolished in 2005). The TRRA region extends from Lithgow in the east of NSW through to Nyngan in the west, covering some 72,326 square kilometres. It spans two geographical regions – the Central tablelands/Central West and also takes in some of what is known as the Orana region. The Assembly gets the name ‘Three Rivers’ as this area is situated between three rivers, ‘from the Wiradjuri Nation area description’.

The TRRA Terms of Reference states the Assembly’s role and responsibilities.

Work towards ensuring Aboriginal communities have a real and genuine voice in negotiations/consultations in determining what services are being developed and implemented through mutual respect and understanding.¹³

TRRA has representatives from the 12 communities of Bathurst, Dubbo, Gilgandra, Mudgee, Narromine, Nyngan, Orange, Parkes, Peak Hill, Trangie, Warren and Wellington. The boundaries incorporate the Local Government Areas (LGA) of these communities which include Lithgow, Bathurst, Orange, Cabonne, Parkes, Wellington, Midwestern Region (Mudgee), Dubbo, Gilgandra, Narromine, Warren and Bogan Shires.¹⁴

The Three Rivers Region member communities cover the traditional lands of a number of Aboriginal clans and language groups, however, is predominately located within the North-West of the Wiradjuri Nation and also extends into the Weilwan and Wongaibon Nations.¹⁵

Membership of the Assembly is made up of two people from each of the twelve communities, drawing from Aboriginal Peoples in the local Aboriginal Community Working Party (ACWP) and the Local Aboriginal Land Council (LALC). Conditions of membership include Aboriginality, being an active and or office holder member of an LALC or ACWP.¹⁶

Membership organisations of the TRRA are:¹⁷

- Parkes Aboriginal Community Working Party (two delegates)
- Peak Hill Aboriginal Community Working Party
- Nyngan Local Aboriginal Land Council
- Dubbo Community Aboriginal Working Party

¹³ Three Rivers Regional Assembly Terms of Reference p 2

¹⁴ TRRA Statement of Claim

¹⁵ Seed Business Solutions Three Rivers Regional Assembly Regional Priorities Plan, March 2015. Preferred spelling from TRRA is *Wayilwan and Wongaibon Nations*.

¹⁶ Three Rivers Regional Assembly Terms of Reference, p 2.

¹⁷ TRRA website trra.org

- Dubbo Local Aboriginal Land Council
- Wellington Local Aboriginal Land Council
- Mudgee Local Aboriginal Land Council
- Narromine Local Aboriginal Land Council
- Trangie Local Aboriginal Land Council
- Warren Local Aboriginal Land Council
- Bathurst Local Aboriginal Land Council
- Gilgandra Local Aboriginal Land Council
- Orange Local Aboriginal Land Council
- Orange Aboriginal Community Working Party

TRRA was successful in the second round of announcements of *OCHRE* Accord for Local Decision Making and signed a Statement of Commitment with the NSW Government on 28 November 2014. TRRA outlined their capacity to negotiate for Aboriginal Peoples in the region through membership of Aboriginal Governance bodies in twelve communities, the composition of the Assembly and the Terms of Reference of the Assembly.

The TRRA asserts the rights of its member Aboriginal communities to seek improved and more efficient service delivery in accordance with cultural protocols of Aboriginal peoples across the region. The TRRA also recognises and respects the cultural authority of Traditional Owner groups within the region and does not make decisions that would impinge on the cultural authority and autonomy of these groups.¹⁸

TRRA made the decision to negotiate the detail of the Accord through four separate negotiation panels – one for each of the identified priorities. Each panel had a maximum of six members present at each of the negotiation meetings and some delegates participated in more than one panel.

How did this (the history of TRRA) impact on the operation and outcomes of the negotiations?

All the TRRA representatives have experience of dealing with government through LALCS and ACWPs, and that they had legitimacy in their own communities. TRRA itself has been operating since 2014 and was previously the Binaal Billa Regional Assembly. Thus, the Assembly members have had significant experience in working together and there was a high level of trust within the Assembly.

However, as acknowledged by the membership, they did not have detailed knowledge of policies in the range of areas covered by the Accord negotiations, and there was also a degree of tension between TRRA and other representative bodies such as the AECGs and AMSs whose remit overlaps with that of TRRA.

¹⁸ Seed Business Solutions, Three Rivers Regional Assembly Regional Priorities Plan, March 2015

3.2 Have any of the learnings from the negotiation of the Murdi Paaki Regional Assembly been applied to negotiation process and which learnings? What was the impact?

Findings of the Murdi Paaki Regional Assembly (MPRA) Accord Evaluation, completed in June 2015, highlighted the strengths and areas requiring improvement to optimise Accord negotiations. The evaluation identified the need to improve collaboration and decision making during the negotiation process by:¹⁹

- i) Ensuring NSW Government representatives have delegated authority.
- ii) Enhancing the capacity of Aboriginal governance bodies representatives.
- iii) Focusing on developing innovative and holistic solutions.
- iv) Devoting more resources to preparing government representatives.

There are mixed views from stakeholders about whether learnings from the MPRA Accord negotiations have supported the TRRA Accord negotiations.

One government stakeholder explained learnings from MPRA assisted in developing **guidelines and structures** for the Accord process, including the development of a negotiation protocol. The **government stakeholder** (external to Aboriginal Affairs NSW) said:

I think Aboriginal Affairs have done really good. They've developed guidelines and lots of tools that we didn't have back then. I can go to the policy guidelines and look at things about how government is ready. Tick the boxes to make sure government has done this and there is also the same for the assemblies that yes, they have done this. An example is the cultural competency stuff, making sure that we have letters that state from secretaries that this person is the appropriate negotiator. There are lots of processes in place that we didn't actually have previously. Those things will happen. They will get better over time.

One **government stakeholder** explained negotiations of the Accords relies upon **preparation, readiness and willingness** of government stakeholders to participate in the spirit of the Accord.

We learnt from some of the stuff that we did in the [MPRA] Accord process, the negotiation process itself around how to run them, how to run the meetings, et cetera and we've built that in. One of the things really obvious with Murdi Paaki was that government weren't ready.

However, the general impression from stakeholders was that not all learnings from MPRA had been adopted in the TRRA Accord process. A **government stakeholder** said government preparation was inadequate, and this stalled the Accord.

To be honest, a lot of the things that happened in TRRA were exactly what happened in Murdi Paaki. Murdi Paaki had this roadblock at exactly the same time. When things were ready to be signed by secretaries, the agencies came back and said, "Actually, no, we can't agree to that." We try to apply learning, but in this one, in particular, I think one of the major downfalls was that the

¹⁹ Briefing document NSW Aboriginal Affairs (DOC 15/762170)

government agencies throughout the process, their lack of preparedness really impacted on the success of the negotiations and then how we got here.

The Murdi Paaki negotiations found explicitly that government department negotiators need to have **delegated authority** to make decisions. This factor was not implemented by all departments participating in the TRRA negotiations. Several stakeholders identified a lack of seniority among government representatives at the negotiations. A **government stakeholder** summed up these views.

I'm thinking that we're not always getting someone of the appropriate level or delegation at the table, or that the person that we've got at the table is not understanding the delegation that we're requesting ... we've had the person nominated they've come to the table and have said "Well I can't commit to that. I'll have to take it back" which is not the intent.

One critical learning from the Murdi Paaki negotiations is the approach taken to the Accords. Stakeholders and negotiators need to apply **willingness to conduct negotiations** and push government representatives to work with an open mind, to 'come up with solutions outside the box if necessary' – not say 'no', but go away and come back with other solutions'.²⁰

Other **government stakeholders** interviewed suggested that learnings from Murdi Paaki had not been adopted by government agencies in the TRRA negotiations. One noted that the situation for each Accord, the region, the negotiators and experiences of stakeholders varies, and the negotiation process needs to respond to the situation and location.

Everyone is different. The personalities, the people in the room, it's all very different.

TRRA were briefed by MPRA before and during the Accord negotiations, but there was then limited engagement with MPRA, and TRRA established their own approach to the process. **TRRA stakeholders** felt that through the process:

We started on our own, and we've completed on our own.

3.3 What were the governance structures for the government and Assembly parties in the negotiations? What were the strengths, weakness and challenges and how were they overcome?

The governance structures for the Accord negotiations included the negotiation teams from TRRA for each priority, and the negotiation team from NSW Government departments for each priority. Aboriginal Affairs NSW and the NSW Department of Premier and Cabinet (DPC) worked alongside representatives for each priority, and supported the Lead Negotiator from NSW Environmental Protection Authority.

The Accord process relied on existing government departments' governance structures; however, this did not ensure success. At the time of the interviews, economic development and education negotiations had stalled.

Weaknesses and challenges

²⁰ Additional principle included in Negotiation Protocols Three Rivers Accord Negotiations

- **Government structures** – A **government stakeholder** involved in negotiations explained that the Accord process asks government departments to really listen to communities, act flexibly and make changes. There are inherent problems within the structure of government that make this difficult. Government ‘wants to be agile and flexible, but everything about it says it can’t and it’s almost paralysed’. Government are ‘so regimented in a bureaucratic process. We need a process to follow, we need a policy to adhere to and we need permission granted. Basically, we are risk averse’.

Another **government stakeholder** said:

... when you even ask for delegated authority to make those types of decisions, you’re pretty much having to look at a secretary who can turn the bus around because most of these business units are huge massive machines with no one person holding enough delegated authority to be completely authentic and say, “Yep. I could do anything to meet community’s needs.” I think that is not possible.

- **Time** – the process of negotiating takes time, and government staff move around. One **government stakeholder** said ‘I think it’s just a hard process. It’s hard work but well worth it in the end and I think the issue is whether people are prepared to stick at it’.
- **LDM and existing department policies** – Some existing policies undermine the Accord process. For example, TRRA wanted to look at school suspensions. However, the education representative felt unable to make commitments due to the *Local Schools, Local Decisions* policy, and Education’s relationship with NSW Aboriginal Education Consultative Group Inc (AECG). A government observer was critical that in this negotiation *OCHRE* Local Decision Making was being defaulted to school principals, saying ‘We can’t bring 180 principals to sit around the table’.
- **Local Decision Making** – A **government stakeholder** explained

I think there is a little bit of a disconnect between what Local Decision Making is and the naming of it. We call it Local Decision Making but really, its regional decision making. They’re not doing things that are really small, defined base or over a region.

3.4 What was the negotiation process? What were the strengths, weakness and challenges for the parties in the process and how were these overcome?

The negotiation process demands time and commitment from TRRA delegates and from NSW Government departments. All participants need to understand their roles and responsibilities within the negotiations and be willing to participate in good faith. Negotiations for TRRA have taken place over three years, with the relevant representatives.

The three key phases of the Accord negotiations were:

- Statement of Claim
- pre-Accord workshops
- formal Accord negotiations.

3.4.1 Statement of Claim

The TRRA Statement of Claim was developed from the Regional Priorities Plan.²¹ The Regional Priorities Plan provides an overview of local plans in the region collated and synthesised into regional priorities. This was submitted to the government in September 2015. As explained above, the Statement of Claim outlined four priority areas – housing, health, education and economic development.

3.4.2 Pre-Accord workshops

An initial pre-Accord meeting was held on 19 February 2016. Working groups and pre-Accord workshops for each priority were conducted in July and August of 2016, and Turn the Curve workshops with the Results Leadership Group took place in February and March 2017.²²

Table 6 Dates of initial TRRA Accord priority workshops

Priority	Date
Housing	21 July 2016
Health	27 July 2016
Education	28 July 2016
Economic development	12 August 2016

Workshops were an opportunity for lead negotiators and TRRA delegates to develop relationships, seek information and establish the negotiation protocols; 'to negotiate and confirm the strategic objectives for each priority area and to share both community and government information and data on the priority area'.²³

Each workshop began with an introduction to the Negotiation Protocols developed by TRRA, and a commitment by agencies to take questions on notice and undertake to provide timely answers. Participants were requested to maintain confidentiality of the discussion.

While TRRA held negotiation skills workshops, **TRRA stakeholders** were clear that there should have been policy workshops prior to the negotiations.

We should've had [policy] workshops, before we had any important negotiations, which is what we kept pushing for, but it didn't happen.

²¹ Seed Business Solutions Three Rivers Regional Assembly Regional Priorities Plan, March 2015

²² Turn the Curve workshops work with groups and use a five-step method for developing new ways of thinking about data and planning.

²³ Pre-Accord workshop summary, Priority area: Housing

Knowledge of policies could support the negotiations, know 'those policies back to front, because they will change their policies to suit our Accord negotiations...'.²⁴

During pre-Accord workshops there was some discussion about processes used by government departments to confirm Aboriginality in the Health and Economic development workshops.

Housing

The Housing pre-Accord workshop involved government stakeholders explaining the roles of the three agencies which are part of the negotiations of the Housing priority of the Accord, including NSW Housing, NSW Land and Housing Corporation, and the Aboriginal Housing Office (AHO).

Feedback was positive, TRRA appreciated the open and respectful communication and explanation of the Housing processes. Aboriginal Housing Office appreciated TRRA's commitment to work together and importance of communication to progress the negotiations.²⁴

Education

The Education pre-Accord workshop provided information about the role of AECG, Aboriginal Education Officers and Aboriginal Student Liaison Officers. TRRA raised the concern about accountability and lack of transparency for communities about School Plans, resource allocation model (RAM) funding and student suspension policies. TRRA requested that there be better communication with communities about the available services and support for Aboriginal students and families. TRRA noted that there is a need for cultural competency training among staff. TRRA also highlighted the need for Aboriginal committees in schools with an AECG representative, and to work with communities to find ways to improve education levels in the area, transitions to other education and work, and supporting young people to stay at school (particularly to change or look at local suspension policies).

Feedback from TRRA was that they now had a better understanding of rights for parents, and school policies to make informed decisions. This meant that TRRA knew how to make requests for further information about School Plans, student liaisons and *Connected Communities* (a NSW Government Strategy) activities. It was a positive process.²⁵

Health

The priority area for Health is the Western Local Health District (Western LHD). The LHD includes 35 Facilities and Health Services (approx. 55% of state), including three Base Hospitals at Orange, Bathurst, Dubbo; four procedural hospitals at Parkes, Forbes, Cowra, Mudgee; rural and remote facilities, and birthing facilities at Orange, Bathurst, Dubbo, Mudgee, Parkes, Forbes and Cowra. Discussion centred on identified positions, recruitment, Aboriginal Liaison Officers, drug and alcohol facilities, community support and transport, support for young mothers, culturally safe practices, and concerns about losing services. TRRA would like a central point of contact with Health to improve communication.

²⁴ TRRA Pre-Accord Workshop Housing, July 21, 2016 Minutes

²⁵ TRRA Pre-Accord Workshop Education, July 28, 2016 Minutes

Feedback from the workshop was positive and TRRA appreciated that information was provided in a respectful way.²⁶

Economic development

The workshop presented an overview of Aboriginal Affairs NSW policies regarding economic development, including 'Industry Based Agreements between NSW Government and key industry groups, to improve employment and other economic outcomes for Aboriginal people'.²⁷ NSW Department of Industry and Training Services NSW presented information to the workshop about employment and training.

Feedback from all parties was positive, that people involved had come along to listen and develop better understandings of what services are in place. It was noted that there needs to be improved communication and up to date information for negotiations. The minutes note that participants had increased confidence in the Accord process.²⁸

3.4.3 Formal Accord negotiations

There were a number of negotiations for each of the four priorities (identified in Table 7 below). Outside of official Accord negotiations there was some interaction between the government departments and TRRA to provide additional information and respond to questions on notice.

Table 7 Accord negotiation timetable²⁹

Accord negotiations	Date	Total negotiations
Health	31 March 2017, 6 June 2017, 19 February 2018, 9 April 2018 (Governance)	4
Economic development	6 April 2017, 19 July 2017, 7 November 2017, 12 February 2018, 9 April 2018 (Governance)	5
Education	7 April 2017, 18 July 2017, 30 October 2017, 19 February 2018, 9 April 2018 (Governance), 1 November 2018	6
Housing	15 May 2017, 14 June 2017, 9 April 2018 (Governance)	3

Strengths

Stakeholders identified a number of strengths to the process:

- Negotiation Protocols were useful
- There was a commitment by Health to share information and work with TRRA

²⁶ TRRA Pre-Accord Workshop Health, July 27, 2016 Minutes

²⁷ TRRA Pre-Accord Workshop Economic Development, August 12, 2016 Minutes

²⁸ TRRA Pre-Accord Workshop Economic Development, August 12, 2016 Minutes

²⁹ Includes pre-accord meetings. A minimum of two pre-accord meetings were held for each priority.

- Housing had the right people taking part in the negotiation and committed to working together to negotiate the Accord
- TRRA negotiators were professional and committed
- Trust was developing between government representatives and TRRA, through 'open and frank discussions'
- Networks and lines of communication were being established between TRRA and government departments.

One **government stakeholder** indicated that:

The only one that, in my opinion, has had a positive outcome would be Health. Also, because Health are already doing some awesome things in that space, and they've got a lot of wonderful Aboriginal people working in that space. It's a very different dynamic.

Another **government stakeholder** involved in that agreement emphasised the importance of commitment to negotiations and also looking forward to accountability:

The strength in these processes are that there is a strong commitment from both government and from the TRRA group to ensure accountability on whatever's been committed. That's going to take tough conversations at times, other times it will take some good recognition of the work that's been done. I'd hate to see that we have gone through this process and that we get to the back end of it and have only had half a crack at what we were supposed to.

Challenges and weaknesses

- Stakeholders identified a number of challenges and weaknesses to the process. There was a failure to sign the Accord as planned.
- Some participants from TRRA felt that the pre-planning processes were sometimes inadequate. Policy information and advice needs to be provided for TRRA and Local Decision Making guidelines and commitments provided to government department representatives.
- Government department stakeholders were not always culturally competent, although guidelines and protocols were established. As one government stakeholder noted, 'I would suggest that government was not respectful of the process', and did not negotiate in good faith. **TRRA stakeholders** were critical.

.. not all of us were involved in the actual negotiations but we did all sit around the table in earlier meetings and we ...from day dot, meeting with anyone from Education, they were dismissive, disrespectful to all of us, that's how I felt. They didn't see us as... Well, I don't feel that they valued what we had to say and they've just proven that today. That they don't value us.

Another **TRRA stakeholder** added:

...what we're actually trying to do is make everything better for our communities. Everything that we're trying to stop with the discrimination and prejudice and everything and the disrespect and the disvalue has just come to the table. It hit

us like a bomb just falling on us, what they done today. Anything that we're trying to change they've just...

They don't want to change.

- There was a power imbalance between government negotiators and TRRA negotiators. Government staff attend in a paid capacity, whereas TRRA participants attend in a voluntary capacity, with many taking time off work and travelling long distances to participate. There was also a power imbalance in terms of information – as one participant highlighted, government still 'acts as if they hold all the information'.
- There was a lack of seniority and consistency (in one priority) of government negotiators – despite letters of authority from department secretaries.
- The absence of Local Government in the Accord process was perceived by TRAA members as a weakness and challenge. Local Government is a major employer in the region and provides many of the relevant services covered by the Accords.
- Negotiations took much longer than planned, which had implications for the lead negotiator who was seconded from outside DPC.
- There was poor communication from government negotiators with their departments about the Accord negotiations.
- Government departments lacked commitment to the process, appeared not to prepare between Accord negotiations, and did not provide timely feedback on minutes recording the negotiation process.
- Housing agreements were changed to become 'measurable benefits' by a consultant engaged by Aboriginal Affairs NSW. This was resolved by Housing representatives, TRRA and the lead negotiator having discussions without the consultancy group.
- There was some concern about recognition of TRRA by government stakeholders. One issue was that Health and Education have existing relationships and obligations with Aboriginal Medical Services and the AECG, and were uncertain how these relationships were going to be affected by the Accord agreement.
- TRRA members reported that the wording of the Accord did not always reflect what had been agreed in meetings.
- TRRA had a panel of negotiators for each priority and were critical of the confidentiality clause; this meant they could not discuss how matters were progressing with other members of the Assembly or with their communities. The confidentiality agreements prevented TRRA delegates from keeping community members informed of progress; this resulted in disengagement by communities from the LDM process.

Challenges specific to TRRA

- TRRA would benefit from policy support in the negotiations – for example, in Health, some of the requested policy changes were already in place.
- The combination of the confidentiality clause and the delay in signing the Accord put pressure on **TRRA delegates**:

Speaker one: ...so then we're the ones that are going back and letting our communities down. That's how they're going to see it. We're letting them down.

Speaker two: ...They sort of look at us and say "But what the hell do you do in Dubbo two days in every month?". We're not getting anything out of this. What can you say? Makes its hard.

Speaker three: I'd like to tell you what my community says. [Laughter] When they ask questions you try to fill them in to the certain point because... but it just comes back to TRRAs, full of, secret society ... shit.' ... That's what my community says to me about what we're doing because I can't elaborate. Give them certain information, they say "nothing will happen. Same old, same old, been there, done it." That's the attitude in my opinion. And guess what? Some are right. It's never happened.

Accord process

Surveys collected by Aboriginal Affairs NSW following negotiations in rounds one and two (held in 2016 and 2017) indicate **TRRA delegates** found the actual process 'respectful' and 'frank'. Some negotiations were positive with government stakeholders commended for their preparation, in others there was 'a lot of discussion, which was ok, but needed to be more action oriented, but not much action'. **Government and TRRA stakeholders** found most discussions respectful, but not all.

However, there were some significant criticisms by both TRRA and government participants of how the Accord negotiations were conducted, who participated in them, and the process itself. One **government stakeholder** was particularly critical of the time taken to date to negotiate the Accord:

If we're going to continue to do the bureaucratic process, then we have to put a time frame on it. It can't be wishy-washy. TRRA have gone for over three years now. They put in the Statement of Claim in 2015, September. So, they've been going down this process for three years, and still haven't got it signed off. I think that's a bit appalling that it's taken that long to try and negotiate something. So, I think there needs to be a time frame on it. That just means that government probably have to free themselves up, rather than having a full diary. Give a bit of commitment to what this is all about.

The process is, I think, with government, whilst the rhetoric is that they want an equal partnership, the government is not ready to give away any power regardless of what the policy says. The government is definitely not ready to give away power. I think the Assemblies have to be more political. If government is committed to this process, and government don't deliver, then the assemblies have to tell the public that they're just not following through. They've got to take their own power, and go out, and raise these issues.

One **TRRA negotiator** said:

... with the memorandum of understanding from government, that government bodies needed to come to the table and hear what we had to say, and try and work up to an agreement. I really don't know where these government heads are actually taken, whether they're taking it seriously or not, because up to today, it doesn't seem as though they are.

Another **TRRA negotiator** said:

... we were very disillusioned from the beginning where we, under the MOU [memorandum of understanding], we were supposed to be meeting with the directors that could make decisions. It happened in some cases, not all - those send other people along. You have to go away and get, you know, there would be a load of process. It was absolutely disgusting. Right up to the level now.

Feedback surveys from some negotiation priority areas were often negative. One **TRRA delegate** wrote – 'Disillusioned with Schools, still not fully engaging, taking us as a joke.'

Negotiations were further complicated by changes in policy during the process, but outside the negotiation remit. The economic development Accord was not ready at the proposed August signing date as there was some disagreement about how the Accord was worded. Aboriginal Affairs NSW explained that while the wording was in discussion, 'Government released revised policy (Aboriginal Procurement Policy (APP) and the Aboriginal Participation in Construction (APIC) Policy) which further muddled the waters'.³⁰

A key finding is that the Accord negotiations are not conducted on 'a level playing field'. One **government stakeholder** explained

Government yet again got a free consultation out of Aboriginal people. They got all their intellectual property out of their minds for nothing. It was free. Then, they still didn't listen to it, and just did poor business.

One **government stakeholder** made the observation that agencies did not attend to the Accord between negotiations and this delayed the process.

It seemed obvious to TRRA the government weren't taking this seriously. It also caused massive delays because we would have to call time-outs every ten minutes so that government could go outside of the room and finalise what position they wanted to take on the assembly was putting on the table. Whereas if they'd done work in-between, they would already come with a prepared position ready to negotiate. We were walking backwards every time we went into the room.

One **government stakeholder** said when asked about advice for future Accord negotiations

Don't do it. Don't go through a formal accord process ...

³⁰ Aboriginal Affairs communication November 2018.

... It seems as if government does hide behind their policies, and they won't change those.

Preparation to begin the Accord negotiations

TRRA negotiation panels were reported to be very good and had good support from Aboriginal Affairs NSW. However, the process for the TRRA Accord did not build collaborative pre-planning into the process. A **government stakeholder** involved in several Accord processes suggested pre-planning meetings, where government departments supply policy information and work with TRRA delegate negotiators to strengthen (co-design) the Statement of Claim. Another government stakeholder suggested it would be useful for TRRA to work with an advisor who has some expertise and broader knowledge of the Accord priority. For example, some requests from TRRA were already in operation and information was available online. Pre-Accord preparation and knowledge exchange, from government to TRRA delegates would support the negotiations. Observations by **TRRA** supported this view.

I think what would've been good if we knew more about policies before we went into negotiations so, then we could know what policies we could exactly target that we wanted changed and there was no one at the table, on some sides, that had direction.

Government willingness to negotiate

Government and TRRA stakeholders commented on the negative outcomes of the Accord. TRRA priorities were not always taken seriously and despite the Negotiation protocols the process was difficult. One **government stakeholder** said:

Government just did poor business. There was nothing innovative in the Accord. It was just core business. They were very much set in their ways of what they were going to do, and there was not much flexibility, or innovative solutions to what the TRRA had put up.

A **TRRA delegate** said:

Well, I can remember the first conversations that we had with Education was, some of the preambles that we had up of what we were allowed to say and what we're not allowed to say. One of them was, "you're not allowed to say no." First conversation with the guy from Education, "no, we can't do that." Threw it straight out, the water.

One **government stakeholder** felt that:

The economic development is a bit of a tricky one because they're not really committing to anything. All TRRA are asking is that they be consulted when government contractors come into the region. That's all they're asking for. It did go back and forth being paid for the consulting, et cetera, et cetera. The wording landed on is that they just want someone to come in and advise them with what's going on and, "This is what's going to happen." There's nothing controversial in it. I think, from what we can gather. Procurement is sceptical because it does say contracting agencies. They're saying, "We can't commit on behalf of these

agencies.” However, these contracting agencies are NSW Government. This is a NSW Government Accord.

One government stakeholder said that the lack of seniority at the negotiating table and departmental commitment to implement change stalled signing of the Accord, despite agreement reached in meetings.

This is particularly relevant for TRRA where we've got down to the pointy end of it where we think we've just about got everything locked down and then we'll find out the agency is not prepared to commit to what was negotiated and that they then want to revisit which throws everything into disarray and is not how it's supposed to work.

Government negotiators did not come to the table willing to change or engage with policy shifts. One **government stakeholder** said often responses were, 'Sorry. We've already got a policy. We can't do it. Sorry. Sorry. Sorry.'

TRRA stakeholders felt there was a lack of understanding of communities and respect for community representatives, from Education in the negotiation. One **TRRA stakeholder** said:

And, they don't understand community issues. They sit at their jobs nine to five, we sit at our jobs 24/7. So, they have no idea what goes on, at the ground floor they don't believe you when you tell them the story of what's going on. They think it's not possible.

Another **TRRA stakeholder** said:

You see why we don't feel they believed us is that we're the ones here living it. They looked at us as if we were just, excuse my term, black fellas off the street. They didn't know that we come with some knowledge, they didn't respect anything we had to say and I know I got questioned in one of the negotiations, "Oh, what would you know?" And my job specifically, I deal with these families, as a lot of others around here, we deal with these families, we live it. They disrespected this.

Time and resources for the Accord process

Without a commitment from government departments the agreements cannot be completed. There needs a willingness and openness on behalf of the government to be prepared and look at making change. Time and resources had been spent without the Accord being signed. One **government stakeholder** said:

It's insane. I think it will be over three years. They submitted their Statement of Claim. LDM is a learning process. We're learning every single day as we go along. However, there were a whole multitude of things that could have been done better to stop this from being dragged out for so long. The fact that the TRRA panel sitting around the table don't get paid. We're talking about senior staff who are on upwards of \$190,000 a year sitting next to someone who's taken leave without pay to sit across from you five times.

It is meant to be an equal negotiation table. It's not.

3.5 What were the positions held by the parties to the negotiation (e.g. seniority, paid or unpaid)? How many hours of their time was spent in preparing for and participating in the Accord negotiations? What did each party do during the process and feel responsible for? What were the challenges encountered in performing this role, including power to contribute and make decisions?

The key parties to the negotiations were TRRA negotiators, lead negotiator (EPA), and government priority area negotiators, Housing, Health, Education, and Economic Development. Other key individuals include advisors, observers and government staff from Aboriginal Affairs NSW and DPC.

This section presents general comments concerning the parties involved in the negotiations. These are followed by findings concerning each key party involved in the negotiations and addresses the questions above. The reported findings are drawn from conversations with parties involved in the negotiations.

3.5.1 Parties involved in the negotiations

The roles of people involved in the Accord negotiations included: **negotiators**, with the appropriate delegation to negotiate and speak on behalf of their assembly/agency; **advisors**, with appropriate delegation to advise lead negotiators but cannot negotiate or speak on behalf on the assembly/agency, who may be called upon to provide assistance to the negotiators as required; and **observers**, who observe conversations only and cannot speak during negotiations.³¹

At the time the conversations for the evaluation of TRRA Accord took place, the process had stalled due to wording in the Education priority and Economic Development priority of the Accord agreement. Negotiations for other Accord priorities – Housing and Health– had been finalised. Issues about the wording of the Economic Development priority was then resolved – leaving just Education outstanding. Failure to finalise and sign the Accords significantly influences views of the overall process.

TRRA negotiator delegates

TRRA negotiators were tasked with negotiating with NSW Government representatives on behalf of Aboriginal communities from the Three Rivers region. Prior to engaging in the Accord negotiations TRRA established the priorities for the Accords and identified a negotiation panel for each priority. TRRA members and delegates have been critical of the confidentiality agreements which have restricted their capacity to report back to both TRRA and their communities about the Accord processes and progress.

TRRA decided to negotiate the Accord using four negotiation panels – one for each priority. Each panel up to six TRRA members present at each of the negotiation meetings and 14 TRRA members were originally part of these panels which reduced to seven delegates as the

³¹ Aboriginal Affairs NSW documents

negotiations progressed. It is widely understood that Accord negotiations demands a substantial investment of time from TRRA negotiators, who are participating in a voluntary capacity.

Strengths

Stakeholders from government agencies commented that the commitment and diversity of the TRRA negotiation panel was important and valuable. The negotiation panel was viewed as representative of community and, through the Accord negotiation process, different panel members became 'much more confident and felt much more capable and comfortable in their knowledge to speak up'.

The TRRA had a really good negotiation panel. The panel were varied across life experiences, ages and I think that worked really well. There were some Elders that were in the room, they had a historical point of view. There was also the younger ones that were up and coming and those in the middle, I suppose, that had been around a while. (**Government stakeholder**)

Strengths would have been the grace of the Assembly making yet again one more attempt to have government listen to the concerns of the community. Venting their frustration at a lot of inaction over many, many decades. The cogent way they presented their arguments.

Challenges

- **Confidentiality – TRRA** highlighted in the co-design workshop that the confidentiality agreement used during the Accord negotiations 'has not worked well' and has made 'it hard for us, [and] for people around the negotiation table, when we go back to our community, we've got nothing'. TRRA were concerned that the process appeared to be 'secretive'. Effectively the confidentiality agreement prevented TRRA from working with their communities, and within the Assembly, which challenges processes of community-control and self-determination.³²
- **Policy knowledge** – Knowledge of policy areas, on both sides, strengthens the negotiation process. TRRA's capacity to challenge government negotiators required policy expertise. As outlined earlier, one **TRRA delegate** said more information about policies could have helped them target what they wanted to change. This was supported by a government stakeholder who commented that in other Accord negotiations the Assembly had engaged an expert in the field to support them. The stakeholder explained that TRRA delegates would have benefitted from support and policy advice. Instead, in the negotiations, **government stakeholders** said:

They were really relying on government being completely truthful and creative in the negotiations, which didn't happen. They didn't have that expertise to challenge government because they didn't know that they could, in some areas.

In terms of TRRA, one of the most frustrating things that I found – and it's completely up to the Assembly – they didn't engage an advisor in this sense. A lot of the people sitting for TRRA around the table are not experts in the field that we're discussing.

³² Confidentiality agreements can undermine Aboriginal community control.

[...]. When we sat through the education negotiations, and Department of Education were saying things that I knew were blatant lies, it was very frustrating to see TRRA take that as the truth and then move onto something. No one around the table probably had the knowledge or the expertise to challenge government on that. That was extremely frustrating.

- **Resourcing – Government stakeholders** were critical that TRRA negotiators were not adequately resourced. Many expressed the views ‘that it was inappropriate that we were expecting so much from them [TRRA members], even their advice’.

The issue of resourcing became a ‘sticking point’ during the Health negotiations. Health representatives conducted consultations across the 12 local community sites to develop local health action plans. Consultations included Aboriginal Medical Services, Primary Health Networks and health stakeholders, together with TRRA negotiators. Local Health District stakeholders were paid to attend. However, additional money had to be found to fund participation of the TRRA Chair in those consultations. Although this was satisfactorily resolved the incident highlighted the lack of resources available to TRRA.

- **TRRA representation** – TRRA is recognised by NSW Government as a representative body for Aboriginal peoples in the region and expectations of TRRA are high. There are also existing Aboriginal representative bodies in the region, including the Aboriginal Medical Service (AMS), Aboriginal community-controlled health services, individual LALCs, and the AECG. **Government stakeholders** expressed some concern that TRRA or their regional priorities may not be recognised by these organisations. This adds some tension to LDM Accord negotiations – particularly as membership is made up of LALC and ACWPs. TRRA indicated they have invited AECG to work with them and they would like to work with the AMS.

The **Education representative** held the view that the Accord would undermine the existing relationship between the Department of Education and the AECG. The government stakeholder stated that ‘we just wanted to acknowledge the sensitivity around having another Aboriginal community-based partnership in theory sitting alongside an existing one’.

Department of Premier and Cabinet

DPC is a lead agency in championing Local Decision Making in the NSW Government. The primary responsibility for DPC was ‘corralling government to come to the table’, and ‘organise all the government attendees, support government through the negotiation process’.

In the TRRA Accord process the lead negotiator was from the EPA (Environmental Protection Authority), based in the region and well known and respected. The lead government negotiator is chosen for their negotiation skills. The role is usually assigned to someone from the DPC, who has more authority across government agencies and understanding of LDM. A **government stakeholder** said:

I think there are some advantages to having the DPC person there. One is you are bringing a whole of government mandate with you as well as also being signed off through the secretary’s board. That carries a little bit more stick sometimes. Around that sort of stuff, and also I think from maybe the Assembly’s point of view.

Government and TRRA stakeholders thought the lead negotiator worked well. Captured here by a **government stakeholder** who said that an external lead negotiator 'allows the director [DPC] to directly intervene a little easier with some agencies and stuff in the background'.

I think one of the reasons we brought in that person is they're based in the area. They had strong connections with the community up there already.

Challenges

The evaluation team heard there were a number of challenges:

- The Accord process took three years, rather than 6 months originally estimated. This put a strain on the department of the lead negotiator.
- One government stakeholder said the lead negotiator was 'not the right fit for the role'.
- DPC carries weight across government departments.

One **government stakeholder** said government representatives were not pushed to perform by the lead negotiator, which could have slowed the process.

There was a lack of direction from the lead negotiator. The government representatives would come into the room, and five minutes before the negotiation went ahead, that would be their briefing time. We sometimes had one, two, three, four months in-between negotiations where they hadn't spoken to each other. A lot of the time, when we sat in the room, we were repeating the same stuff over and over again because people hadn't committed to doing any work in the meantime. I think that's why we had to visit things up to four times because it took so long to get people to actually do any work in-between that time.

Government priority area negotiators

Once the Statement of Claim priority areas were established the relevant government departments were contacted and asked to nominate an appropriate delegation to be part of the Accord process. To ensure success in Accord negotiations government negotiators need to be familiar with Local Decision Making and have enough authority to make commitments on behalf of their departments. Each government representative at the negotiations had a letter confirming they held this authority. A **government stakeholder** stated:

...there was a letter received from the Deputy Secretary of the relevant agency that delegated the power to these individual peoples to negotiate on behalf of their agency. They negotiated on behalf of their agency. There was an agreement made. That draft Accord went back to their agency, and two of those agencies are not happy with the wording in there, and what things changed. So, that just blows in the face of what all this was about in terms of if there's a letter there on file to say that that person had delegation to negotiate. You can't change the goal post at 11:30 when you're about to sign it off.

Failure to have people with the appropriate delegation at the negotiating table delayed signing of the Accord. One **government stakeholder** said

... the process is totally wrong. So, the policy says that the agencies advise who the lead negotiator is. So again, it comes back to, 'Here's a NSW Government policy and procedure.' That was followed, but then government decided to say, 'No. We don't like that policy. It's not so much we don't like that policy. We don't like what's agreed to, so we're going to say, no. They didn't have the authority to agree to that.' So, it's like they're just changing the rules.

Housing representatives were from three agencies, including Family and Community Services, Aboriginal Housing Office and the Land and Housing Corporation. The three agencies collaborated to come to agreement, and the lead government negotiator was commended for their work. One stakeholder said, 'Housing was difficult because Housing is difficult.' And another said, 'Housing was difficult...but we came to an agreement at the end of the process'.

Health representatives were well-regarded by government and TRRA negotiators. They had the authority needed to participate in the negotiations and were prepared to work together. The lead negotiator was supported by their director, who attended negotiations when needed. Health representatives went into the Accord process positively and provided information to co-design planning and strategies for Health and to progress the negotiations.

A government stakeholder suggested that it was a benefit that the lead negotiator for Health was an Aboriginal person from the area, with the backing of the director. This highlights the importance of cultural knowledge and cultural competency. Negotiations worked smoothly due to mutual understanding and respect.

When that person has had a lived experience of the stories that people around the table are telling, and then applying practical solutions to that, that relate to those people, that makes a lot of difference. **(TRRA stakeholder)**

A **TRRA delegate/negotiator** supported this observation.

Out of all of them for me Health was the best negotiating body that I believe has worked around the table.

Another **TRRA stakeholder** said:

Aboriginal people in authority understand us, mostly and the Health guy was one of those.

Education representative changed during the negotiations, and the lead negotiator was on extended sick leave when the Accord was being finalised. A senior officer of the Department of Education disagreed with wording of the Accord and raised concerns about the department's existing agreement with the AECG.

The Education agreement was not signed. **TRRA members** commented that:

Education was always the hardest nut to crack in this process and they're not budging now on the wording that's been put in there and we have to come back and negotiate something else with them.

They had to get approval and that we weren't taken serious. It was just another talk yes, tick the box, yeeha we've done it, let's move that on now, we're not going to sign off. So, it's wasted three years of our time.

Economic development representatives changed over the course of the negotiations. There was some lack of understanding of the LDM process and cultural understanding with negotiators at the beginning stages. One government stakeholder suggested that commitments under this part of the Accord are of 'very little substance'. **TRRA delegate/negotiators** said:

... we started off on employment for our people and changing employment and then it went on to procurement and different policies of how we can get things happening and then it kind of got side-tracked and ended upEnded up lost.

Aboriginal Affairs NSW

Aboriginal Affairs NSW has oversight of the LDM Accord process, briefs the Assemblies on the process, and provides administrative support and secretariat support for negotiations. Aboriginal Affairs NSW support TRRA and NSW Government in the Accord process. One **government stakeholder** said:

[Aboriginal Affairs NSW] AA were very good at scheduling the negotiation meetings, circulating minutes especially when you're doing minutes for five different briefs of which you have no subject matter expertise. They did a good job with that. So, the administrative support was really good.

3.5.2 Time spent preparing for and participating in the Accord negotiations

TRRA members all contributed their time in a voluntary capacity, and unlike Government representatives, were not paid for their participation in the negotiations. Aboriginal Affairs NSW estimates that TRRA members spent 65 hours in formal meetings. Their conservative estimate is that TRRA delegates participated in 660 hours of negotiations, excluding travel. Additionally, Aboriginal Affairs NSW estimates TRRA delegates collectively spent 162 hours in pre-planning for Accord negotiations and debriefing.³³ One way to think about this is that TRRA delegates (collectively) volunteered 21.9 working weeks to the Accord negotiations and preparation over the three years.

This does not include travel time, which is extensive for some delegates given the geographic distances travelled. When asked about how long they expected the negotiations to last, **TRRA responded:**

Speaker one:	12 months?
Speaker two:	Not that long.
Speaker three:	12 months we thought.
Evaluation team:	12 months?
Speaker one:	A very long process.
Speaker two:	Taken three years.
Speaker one:	Bless those three years.

³³ 660 (negotiations) + 162 (preparation) divided by 37.5 (5 day working week, 7.5 hours/day) = 21.9 weeks.

Speaker four: I was going to buy a house in Dubbo, I was down here that many times.

3.6 What were the personal outcomes for each party to the negotiation as a result of being involved in the negotiation? If there were personal outcomes, does the individual believe this will change their approach in similar circumstances?

Not all stakeholders talked about how the negotiations impacted on them personally. The personal outcomes for most stakeholders was negative due to the drawn-out process of negotiating the Accords. TRRA and some government stakeholders explained that this placed pressure on relationships which are critical for the Accords to progress. For TRRA members this involved a significant time commitment which they had not anticipated and also tensions within TRRA and their own communities, which resulted in disengagement from the LDM process from community members.

The Accord process demands commitments and relationship building for all involved – government and TRRA delegates, DPC and Aboriginal Affairs NSW. Several stakeholders, government and TRRA delegates, explained that the time taken for the process and failure to sign the Accord as planned has been difficult. **TRRA delegates** explained:

You know so, the commitment's here, we have all committed, but it's been a long process to get to the end and we thought we were at the end today and we've got to go and negotiate again.

TRRA delegates take time away from family and work to participate in the Accord negotiations.

It's a lot of time out of our services to come and sit around this table to negotiate or make decisions or have our monthly meetings, you know? A lot of time, personal time out of our services, we've put into this...

One **government stakeholder** said that maintaining relationships after failure to sign the Accord was challenging.

... a bit upsetting. When you go into the meeting, you don't know how people are going to respond to you. I have to work extra hard each time to build that rapport back up again.

Another **government stakeholder** said:

I don't want to put a damper on it, but I feel quite disheartened by this process, which is a real shame. I'm looking forward to it being finished. Not because of what it's going to achieve, just because it's incredibly exhausting, getting so far and then being knocked back so far as well.

Stakeholders made clear that not all government representatives understand the impact the Accord process, and failure to sign has on Aboriginal communities, TRRA delegates and regional representatives. 'I still don't think some of the agencies understand that this is people's lives, and their credibility as well. They're representing their community.' TRRA is placed in a very difficult position, if government do not deliver on promises, 'it will have a terrible impact on those

community representatives'. This also has a significant impact on government stakeholders who live in the community, particularly where they are also members of the local Aboriginal community.

3.7 Has the Accord negotiation process changed or influenced the relationships between parties involved and if so, in what ways?

Relationships between TRRA and government have changed. We heard that good working relationships had been established between TRRA and some lead government negotiators. Again, the extended process had strained some relationships, and one relationship (Education) was made possibly worse. Trust in the NSW Government has not increased from the Accord negotiation process but may be restored if the Accord is comprehensively implemented.

Aboriginal communities in the TRRA region still report considerable levels of racism by government service providers and this will need to change for communities to begin to trust government. There has been progress in Health to date, but not in other TRRA priority areas. Housing has reportedly used Accord negotiations and published results without TRRA permission, further undermining trust.

The presence of very senior officials (Deputy Secretary level) at negotiations has improved the relationship with Education. Other departments should follow suit. Also having Aboriginal peoples as negotiators facilitated mutual understanding and trust.

Stakeholders remarked on the importance of relationships and maintaining relationships through what was often a difficult negotiation process. Stakeholders were positive about some of the negotiations and commitment to outcomes for the region that will follow.

I think TRRA have developed good relations with a number of the lead negotiators, which I think will lead to good outcomes in the future. They've been very vocal in their thanks to some of those lead negotiators that have really listened, and developed those relationships, and maybe changed the perception on the way TRRA may have used some of the agencies. So, that's come down to those personalities, and the relationships that have been developed. So, I think that's a good strength outcome. (Government stakeholder)

Failure to sign the Accord on the original date agreed has impacted on relationships between government and TRRA. **TRRA delegates** said:

Speaker one: It's very hard to stay positive, even in a very negative community. But we try.

Speaker two: But look they've got the right to be negative, it's been three years then we tell them that we're signing off today and it all goes...

Speaker three: Pear shaped?

Speaker two: Haywire again. So, you're going to go back to them a second time and say, oh no, well, it didn't happen.

Speaker one: They're right. They're right. They've seen it. The last 20 years. Same old same old.

Speaker three: Tick a box committee.

Speaker one: That's right. We're only there to tick a box with the government.

A **government stakeholder** explained:

I think everyone's hearts just sunk. Incredibly disappointing to get to this point. Especially building expectations of not only us, who'd done all the hard yards to get there, but TRRA. These people are volunteers, and yet again, we have to go back saying, "Government can't get their act together. We're going to have to postpone this event you've told all your friends and family about and invited people to." You can see how it's really hard to keep TRRA fired and enthusiastic about this process when things like this happen.

One **government stakeholder** said that relationships between TRRA and Education is possibly worse than it was before the Accord negotiations.

Education is often one of the most important priorities across all the regions. Particularly for TRRA. It's probably been the biggest let down as well. I think that the TRRA representatives are more frustrated with the outcome than when they originally went in.

3.8 What adjustments, resources or capabilities do the parties to the negotiation believe are required to improve the outcome including structure, process or roles (including administrative, policy, and/or legislative powers or processes)?

To be honest, there are lots of things in TRRA that you could probably put down as how not to conduct an accord. (**Government stakeholder**)

In summary, participants in the evaluation identified a number of potential changes that could improve the Accord negotiation process:

- Improve resourcing for TRRA to participate in Accord negotiations, especially recognising the burden of distance.
- Improve pre-planning to ensure policy information is shared or have an expert advisor working with TRRA negotiators.
- Ensure government department delegates are consistent and clear that they are delegated to to make decisions.
- Ensure government departments are prepared and willing to negotiate on 'fixed' policies and need to adopt different attitudes.
- Develop and adhere to negotiation protocols and behave in a culturally acceptable way during negotiations. Provide training as necessary. Accord negotiations need to accommodate Aboriginal cultural processes. A government stakeholder explained 'always try to have equal numbers, a good mix of male and females'. Modify the confidentiality agreement for TRRA negotiators to communicate with their communities about the Accord and Accord progress.
- Invest in cultural training across government departments and ensure all negotiators are culturally competent.
- Develop, implement and support a communication strategy about the progress of the Accord negotiations for communities and government departments.
- Allocate time and resources for the Accord negotiations for both the Assembly and government, recognising that the time taken to develop and progress to signing the Accord was extensive and demanding particularly for TRRA delegates. As one government stakeholder said, 'One of the key learnings is that it takes as long as it takes'.
- One stakeholder suggested the negotiations adopt a different approach, with layers of workshops to ensure information is developed and shared with Aboriginal communities and the Accords are co-designed to ensure a shared outcome.

4 Conclusion

The Accords negotiations are perceived by TRRA members and government stakeholders as potentially providing a template for Aboriginal self-determination, where Aboriginal representatives and Government delegates are able to meet and negotiate as equals, and where Government is held to account by Aboriginal peoples for the policies implemented in their region.

The consensus from both TRRA and many of the government stakeholders, however, has been that the process for developing the Accord has been very challenging and difficult for both sides of the negotiation, and that to date, despite three years of negotiations, there is little to show for the efforts of the participants. The process took its toll on participants and was very challenging in terms of time and resource commitments. The length of time between the statement of claim and the eventual signing of the Accord was not expected and has taken up resources and undermined trust and goodwill. However, this is not true for all the priority areas. The experience of TRRA was mixed across the priority areas with Health in particular being seen as a positive negotiation with a good outcome, whereas Education and Economic Development were considered to be most problematic. This could have been driven by a number of factors – for example, the individuals involved in the negotiations from government, or what community negotiated for (and how different this was to existing policy and practice). There were challenges where TRRA negotiators requested changes to existing policy or programs, and fewer challenges where TRRA negotiators requested changes consistent with existing policy or programs. Overall the TRRA Accord negotiations appeared to demonstrate that there was rather limited scope for policy innovation and flexibility within this process.

The Accord negotiations highlighted other issues which are likely to affect LDM as it progresses. One of these is the need to keep communities engaged in the LDM process while negotiations are being conducted with Government. This is challenging for members and adds to the demands on their time and resources. The fact that the negotiations were confidential, and that they took considerable time, added to these tensions. The other issue raised in this process was the ongoing relationship between the Regional Assembly and other Aboriginal governance and representative structures already interacting with Government departments. In the case of TRRA this is in some ways less of a problem than for other regional assemblies or alliances, in that membership is made up of LALC and ACWP representatives.

It is important for the Accords to demonstrate some 'quick wins' so that communities will be able to see concrete changes arising from the LDM process. Trust in government and the LDM process is low because of the length of time it has taken to negotiate the Accords, and the fact that some accords had to be re-negotiated at the last minute. This will only be repaired by real changes 'on the ground'.

Overall, therefore, while the Accords and the process for negotiating these have the potential to play a significant role in improving the relationship between Aboriginal communities and the NSW Government, in the case of TRRA, and at the time of writing, this has not yet eventuated.