

Ngiya Institute for Indigenous Law, Policy and Practice

Negotiating Shared Responsibility Agreements: A Toolkit

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**Ruth McCausland
for**

**Ngiya Institute for Indigenous Law, Policy and Practice
Jumbunna Indigenous House of Learning**

**University of Technology, Sydney
Level 17, Tower Building, City Campus
PO Box 123
BROADWAY, NSW 2007.**

Phone: (02) 9514 1902 Fax: (02) 9514 1894
<http://www.jumbunna.uts.edu.au>
ruth.mccausland@uts.edu.au



CONTENTS

1.	INTRODUCTION	3
2.	BACKGROUND TO SRAS	4
3.	WHAT IS AN SRA?	5
	Who can SRAs be with?	6
	What can SRAs be about?	7
	What should be included in an SRA?	9
4.	BEFORE NEGOTIATING AN SRA	10
	Principles to consider	10
	Preparation for negotiations	11
	Links to OID framework	12
5.	NEGOTIATING AN SRA	13
	Steps for negotiation	13
	Getting the process started	13
	Getting the right people there	13
	Getting the right information	13
	Setting the ground rules	14
	Identifying issues and priorities	14
	The negotiation process	15
	The draft SRA	15
6.	SIGNING OFF A SRA	16
7.	MONITORING AND EVALUATION	17
	APPENDIX 1:	
	GETTING A BETTER DEAL FOR INDIGENOUS COMMUNITIES NEGOTIATING SRAS	19
	APPENDIX 2:	
	KEY QUESTIONS FOR GOVERNMENT AGENCIES	22
	APPENDIX 3:	
	WHERE TO GET INFORMATION AND ADVICE	24
	APPENDIX 4:	
	CHECKLIST FOR NEGOTIATING SRAS	26

1. INTRODUCTION

Shared Responsibility Agreements (SRAs) are part of the Australian Government's new approach to working with Aboriginal and Torres Strait Islander communities. The Government states that SRAs are about communities identifying one or more local priorities and then entering into an SRA with governments to address those priorities. In negotiating and signing up to SRAs, the community agrees to certain behavioural or other changes in return for extra government funding for infrastructure or services. Some State and Territory Governments are also signing up to SRAs, and agreeing to provide extra resources to Indigenous communities.

SRAs may be a way for communities to access extra government resources that are needed. They may also help communities to commit to making changes that they decide they want to make.

However, it is important that communities have all the information they need when they are negotiating SRAs. While communities may receive extra government funding, SRAs may place obligations on the community that are unreasonable or create new problems. SRAs are usually signed off by individuals or representatives from the community, although they can affect all members of a community.

Governments have a responsibility to be clear about what they will provide to a community if they sign up to an SRA, what they expect in return, what the timeframe is for the funding, implementation and evaluation of the SRA, and what happens if either the Government or the community do not fulfil their obligations.

This Toolkit aims to provide Indigenous communities with independent information and advice about negotiating SRAs. It explains what SRAs are and how Indigenous representatives and advocates can prepare themselves for negotiating with governments. It provides some principles and issues to consider when entering into SRAs, and a Checklist that may assist in getting the best outcomes for Indigenous communities from the SRA framework.

2. BACKGROUND TO SRAS

In 2004, the Federal Government abolished ATSIC and introduced ‘new arrangements’ in Indigenous affairs, to be managed by mainstream government departments. These changes affect how many Indigenous programs are run and the way that some services are delivered to Indigenous people and their communities.

The Government has set up:

- **Office of Indigenous Policy Co-ordination (OIPC)** in Canberra and state and territory capital cities; and
- **Indigenous Co-ordination Centres (ICCs)** around the country to replace the ATSIC offices. The Government says that it wants to listen directly to Indigenous people and work in partnership with communities by negotiating SRAs through the ICCs.

The new arrangements are partly based on the **Council of Australian Government (COAG) trials** that were set up in 2002 to see what changes could be made in Indigenous communities when governments work together better at all levels and across all departments. The COAG trials also wanted to find out what would happen if Indigenous communities and governments worked in partnership and shared responsibility for achieving outcomes.

One region in each State and Territory was chosen as a COAG trial site - Cape York in Queensland; Wadeye in the Northern Territory; the Anangu Pitjantjatjara (AP) Lands in South Australia; Shepparton in Victoria; the East Kimberley region in Western Australia; Murdi Paaki in New South Wales; North Eastern Tasmania; and the ACT.

The first SRAs were negotiated between Indigenous communities and governments in these COAG trial sites. Those SRAs included broad statements of commitment and general areas for action rather than specific issues like the SRAs negotiated under the new arrangements. Many of the SRAs since have also been in these sites, where governments and communities have experience with working together in this way.

Since abolishing the ATSIC Regional Councils, the Commonwealth Government has also said that it wants to negotiate **Regional Partnership Agreements (RPAs)** with representative bodies across the country. It says that it wants those representative bodies to act as the interface between communities and governments, although RPAs have not been part of the SRA negotiation process so far.

3. WHAT IS AN SRA?

An SRA is an agreement between governments and an Indigenous community or group like a family or clan. The Federal Government says that:

SRAs are agreements that spell out what all partners – communities, governments and others – will contribute to help bring about good long-term changes.

SRAs start with ideas from the community on what changes you want to make and how they will be done. They will build towards the kind of future your community wants for your children and grandchildren.

Each SRA will be different, because each community is different.

SRAs will develop over time. As this happens, what governments funds are spent on may also change so that communities get the results they need.

Government programs will also become more flexible so they can respond better to community needs and priorities.

(<http://www.indigenous.gov.au/NewArrangementsBrochure.pdf>)

SRAs are part of the Government's '**mutual obligation**' approach to working with people who receive welfare payments. This approach is a shift from a system where all Australian citizens are entitled to government welfare payments if they are unable for some reason to support themselves through paid work, to an individual contract where people receiving welfare payments must 'give something back' by fulfilling certain obligations set by the government.

SRAs are a change from governments providing infrastructure and services to Indigenous communities through grants, programs or other funding arrangements. Now, some new infrastructure and services are conditional on communities signing up to SRAs and committing to behaviour or other changes. Like mutual obligation welfare contracts, SRAs involve parties – governments and Indigenous communities - that have very different levels of power and choice.

An SRA is not legally binding. It is more like a Memorandum of Understanding, where representatives of Indigenous groups and governments put in writing what they will commit to doing to try and address problems in communities.

For governments to provide the funding they commit to in an SRA, **separate funding agreements** have to be signed with a representative body or organisation to receive funds on behalf of a group or community.

Who can SRAs be with?

Indigenous communities: The Government says that it will negotiate an SRA with anyone who has the authority and capacity to sign up to an agreement on behalf of their community, clan or family – this could be family representatives, clan elders, a community council or community organisation.*

Government: Different Federal Government departments usually take the lead in negotiating and signing up to SRAs with communities. State and Territory Government departments are often parties to SRAs as well. Local governments may also sign up to SRAs.

Other parties: Businesses or non-government organisations may also sign up to SRAs.
(http://www.indigenous.gov.au/rpa/koori_mail_ins.pdf)

*** Although the Government says that it will negotiate SRAs with communities, clans or families, in reality, government departments need to provide the funding committed under SRAs to incorporated organisations, such as a community council or CDEP service provider.**

Governments should be communicating with each other about SRAs through the ICCs. Indigenous representatives should not have to negotiate separately with different government departments, unless they want to.

It is important that whoever signs up to the SRA on behalf of an Indigenous community or group has the authority to do so. It should be clear how they are representative of their community or group, and how they will influence others to work towards the commitments made in the SRA and report back to the community.

All groups and communities who will be affected by the SRA should be consulted with about what is being signed up to on their behalf. The perspectives of and impact on women and children should be considered.

What can SRAs be about?

The Government says that SRAs can be about almost anything. It says:

The Government wants communities to take responsibility for deciding on their own priorities for change and to work out what they can contribute to making things better. This contribution could involve using community assets, such as a community centre, sports facility or community business. Or it could be a commitment to invest time and energy in projects that will help the community. For real change, the community is expected to contribute, in some way, to achieving better results for its people. (http://www.indigenous.gov.au/rpa/koori_mail_ins.pdf)

The Government also says:

The normal services and programs that you receive from the Australian Government are continuing. **SRAs are not about imposing new conditions on the provision of citizen entitlements or essential services.** They don't affect Centrelink benefits. (http://www.indigenous.gov.au/rpa/koori_mail_ins.pdf)

However, what citizenship entitlements or 'essential' services actually are is difficult to agree on. And what are the 'normal' services and programs that governments should fund is also unclear. What governments - Australian, state or territory, and local - say they have an obligation to provide varies greatly from cities to regional towns to remote areas. It can also depend on the size of the community or other factors such as how well community leaders work with governments. Whether governments have an obligation to provide Indigenous-specific services is another issue that governments and Indigenous people often have different views on.

Under Australia's human rights obligations, all people in Australia have the following rights, whatever their race:

- The right to public health, medical care, social security and social services;
- The right to housing;
- The right to education and training;
- The right to work, to just and favourable conditions of work, to protection against unemployment, to just and favourable remuneration;
- The right to equal participation in cultural activities.

The Aboriginal and Torres Strait Islander Social Justice Commissioner has set out the when and how SRAs might breach the Racial Discrimination Act 1975 (see Social Justice Report 2004, Appendix 2, http://www.hreoc.gov.au/social_justice/sjreport04)

Generally, SRAs should not be the way that funding to communities is provided for basic infrastructure such as schools, sewerage systems and adequate housing, or essential services such as community health care and a clean water supply. Governments should already be providing these to communities. Such citizenship entitlements should not be dependent on the community saying it will make certain reciprocal contributions or behavioural changes.

However, the reality is that governments do not always provide such essential infrastructure and services to all communities. SRAs may often be the only way that communities can access funding from governments for infrastructure and services that they need.

It is very important that communities make sure that they can use the opportunity provided by SRAs to sit down with government departments from all levels and make clear what changes they want to make, and what they need and expect from governments.

Even though SRAs are the government's new way of working with Indigenous communities, not all funding should be provided to communities through SRAs. Existing programs and services should not have to be renegotiated as part of an SRA.

What should be included in an SRA?

All SRAs should include the following contents:

- **Parties** to the SRA – representatives from the Indigenous community organisation, council or representative body, federal and state government departments, and from any other parties. Their roles and authority for signing up to the SRA should be set out, as well as the groups/communities and region affected by SRA;
- Explanation of technical terms and abbreviations;
- **Priorities** – identified at local community and regional levels, and by Australian, State/Territory and local governments;
- **Objective(s)** – what the SRA is aiming to achieve, including what the intended change is and who will be affected. These should be clear, measurable and realistic;
- **Activities** – what will be done to achieve the objective(s);
- **Inputs** – what all parties to the SRA will contribute to the activities, including:
 - Financial commitments/resources;
 - In-kind (non-financial) commitments/resources;
- **Performance indicators/benchmarks** - how change will be measured to see whether the SRA is meeting its objectives. Change should be measured by:
 - Quantitative methods such as statistics;
 - Qualitative methods such as surveys of people's opinions;
- **Outcomes/Outputs** – what the results of the activities are intended to be, in the short and long term;
- **Timeframes** for all commitments, including evaluation;
- **Monitoring** plan;
- **Review and evaluation** plan;
- **Dispute resolution** process;
- Clause that allows for variation of the SRA, or renegotiation if required, and a process for this to happen.

4. BEFORE NEGOTIATING AN SRA

Principles to consider

Here are some important principles that could be considered before entering into negotiations for an SRA:

- ***SRAs should be genuinely based on partnerships between governments and communities***
 - Governments should not tell communities what the focus or outcomes of SRAs should be – they should be listening to what communities say they need and what they want to commit to;
 - Governments and representatives who are involved in negotiating the SRA should consult with everyone who will be affected;
 - Governments should work with communities in a co-ordinated way, being clear about their motivations and priorities;
 - Communities should be adequately resourced to participate in any consultations, negotiations, monitoring and evaluation around an SRA;
 - Any relevant data, information or research held by governments or others such as academics should be available to communities to help negotiate SRAs.

- ***SRAs should not be racially discriminatory***
 - Communities should not have to sign an SRA to get essential infrastructure or services that should already be funded by governments for all Australians;
 - Governments should not make funding for citizenship entitlements like clean water, primary health care and basic education facilities conditional on behavioural change;
 - Any funding for new infrastructure or services under SRAs should not be tied to unrealistic or unfair behavioural or other changes in the community;
 - Communities have the right to what is known as ‘free, prior and informed consent’ in entering into SRAs. Governments have the obligation to provide information about what commitments they are making, what communities are required to do, how that will be measured and what will happen if governments or communities do not do what they say they are going to.

- ***SRAs should be based on clear and realistic objectives and outcomes***
 - Governments should be clear about what they want communities to do, by when and how they will measure that;
 - Communities should understand and agree to any behavioural or other changes the SRAs say they commit to;
 - Communities should be clear about what governments have committed to doing, and know when and how they are going to implement their commitments;
 - Communities should be informed of what happens if they or the government does not live up to their commitments, and what they can do if that happens.

Preparation for Negotiations

There are some things that Indigenous representatives and communities can do to prepare themselves for negotiating an SRA with governments.

Marc Levy from the University of Melbourne (*see Appendix 1*) has looked at why SRA negotiations are biased towards governments over Indigenous communities and strategies that could get a better deal for Indigenous communities. He says that there is a clear imbalance of power between the parties to an SRA, because government representatives are less personally affected by the outcomes of a negotiation than representatives of Indigenous communities, who may not have other options for funding. Without a representative structure such as ATSIC to share information, learning and tactics from other SRA negotiations, communities are at a disadvantage.

From his experience in negotiations, Marc Levy suggests strategies to increase communities negotiating power:

Prepare and plan – this is the key to success in negotiations. Community workshops could be organised with expert facilitators to prepare Indigenous community negotiators for the SRA negotiation.

Conduct power audits – communities can conduct a ‘power audit’ to understand where they are strong and weak, and what areas they can work on to improve their position.

Use professional negotiations advisors – communities can draw on people who have skills in negotiation and other community representatives with experience in negotiating SRAs to support them before and during negotiations. Communities can also employ agents or ‘brokers’ to negotiate on their behalf.

Use the ‘tricks of the trade’ – it is useful for communities to understand these so they can recognise them and use them. For example, never start a negotiation on a weak point, describe things in terms of gains for the government; present a united front; or threaten to go to a representative’s manager or to the media.

Re-building a representative structure – a new Indigenous representative structure could improve processes of sharing information and experience around SRAs, and negotiate principles and parameters for SRAs with governments.

Learn and disseminate knowledge – the power imbalance between governments and communities can be helped by sharing information between Indigenous groups. For example, Indigenous groups could hold community summits and teleconferences; or develop negotiating guidelines and toolkits.

‘Join up’ the other party – through the ICCs, government representatives from different government departments can be encouraged to work together in a more co-ordinated way to advantage Indigenous communities.

Be more political – communities can limit the power of governments through the potential to make the negotiations public. For example, government departments can be exposed as negotiating essential services through SRAs.

Links to Overcoming Indigenous Disadvantage framework

It might be useful to think about linking the focus of your SRA to the Overcoming Indigenous Disadvantage (OID) Framework. The Steering Committee for the Review of Government Service Provision has developed this OID framework to gather statistics and report on Indigenous disadvantage:

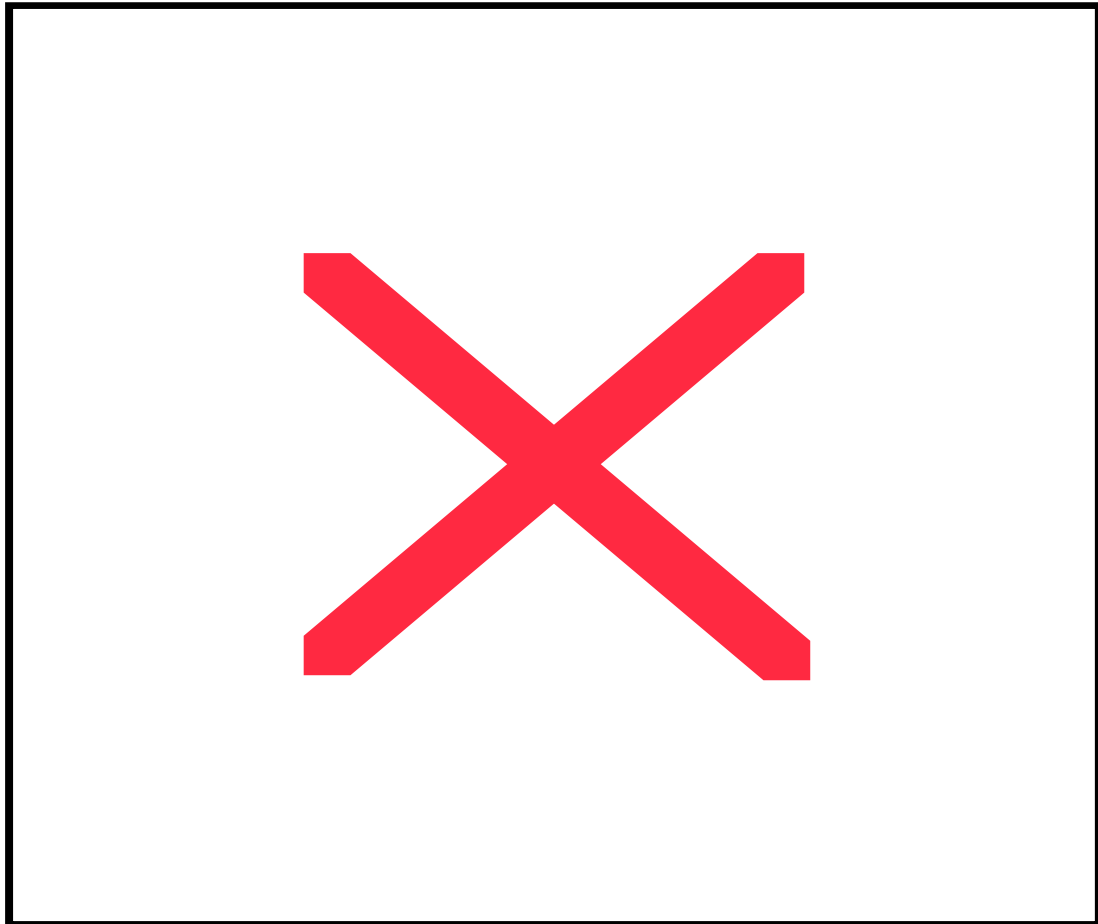


Table from *Overcoming Indigenous Disadvantage: Key Indicators 2005*, Productivity Commission, Canberra, 2005, p. xxii,
<http://www.pc.gov.au/gsp/reports/indigenous/keyindicators2005/keyindicators2005.pdf>

The Productivity Commission has to gather information and data and then report on these indicators in Indigenous communities every two years. It may be useful to include these areas in SRAs where it is relevant, to make governments more accountable to addressing problems in Indigenous communities.

5. NEGOTIATING AN SRA

STEPS FOR NEGOTIATION

Getting the process started

Indigenous community representatives who want to negotiate an SRA should first be clear about their community's needs and priorities. They should approach their **local ICC** when they have an idea for an SRA, and they have a clear mandate and support from members of their community. The representatives of Indigenous communities or organisations should have a clear idea of the priorities of the community or group, including what can be 'traded off' or committed to as part of the SRA. It is important that those representatives are clear what the 'bottom line' is from the beginning – such as what is not up for negotiation, and what should not be included in the SRA.

Community representatives should then approach their **local ICC**. ICCs are responsible for co-ordinating SRAs on behalf of the Federal Government. They will usually approach the government department that is most relevant to the focus of the SRA that the community is proposing to be the 'lead agency' – for example, if it is a health focus, they may contact the Department of Health to be involved. ICCs may also bring in State or Territory Government departments if the SRA is relevant to them as well. It is important to make sure that any government department who will be involved in delivering the programs or services committed to in the SRA are involved in the negotiations.

The ICC representative, in consultation with the community representatives involved in the negotiation, should organise when and where meetings are to be held. **Community representatives should make sure that enough information and time is allowed for them to properly consult with everyone in the community who will be affected by the SRA.**

Getting the right people there

Indigenous **community or organisation representatives** who have support from the community and the authority to sign an SRA should be part of the negotiations. Any negotiations 'broker' or 'agent' acting on behalf of the community should also be there. Remember, funding from governments under SRAs must be provided to an incorporated organisation, so be sure to be clear about who the actual parties signing up to the SRA will be.

Representatives from all the **government departments** who will be signing up to the SRA should be there. It is important to check that the government representatives you are negotiating with have the delegation to speak and make decisions on behalf of their departments. The person from the local **ICC** who the community has been talking to should also be there.

Getting the right information

Indigenous community representatives should make sure they have access to all relevant research and information regarding their community or group that helps to identify **what the problems and the gaps are** in current funding or support for services and infrastructure. It is important to be informed about any **baseline data** such as statistics or studies by academics, governments or community based organisations, so that realistic objectives and outcomes from the SRA can be

identified and measured. Representatives should ask for copies of relevant research or data from their ICC so that all parties have equal access to information that might assist them negotiate the SRA.

Setting the ground rules

It is important that all parties are clear about some ground rules from the beginning:

- Who will chair the meetings;
- Who everyone is speaking on behalf of;
- What protocols will be followed;
- What language will be used – including agreeing whether an interpreter is needed, and that government jargon is avoided and plain English used at all times;
- What will be confidential about the negotiation process and outcomes, and what can be made public;
- Who will take formal notes of the meeting and any follow up action, and to who and when they will distribute them;
- Who will draft the SRA, and the time all parties will have to make comments;
- When the SRA will be signed off.

Identifying issues and priorities

Once the right people are there and the ground rules are set, it is important for all parties to understand each other's issues and priorities for the negotiation process. These may be very specific – such as funding to build a new community centre - or very broad – such as improving school attendance. Not all of these issues and priorities may end up in the final SRA, but this is a useful process to go through so that communities and governments understand where each other is coming from. It is also useful for seeing where they may be some **common ground** between the parties, or some room for **compromise or trade off** in the negotiation process.

Once the issues and priorities have been shared, it may be a good time to see if there is more information that any party may need to move the negotiations process forward. For example, if there is any research or data that one party refers to that the other party doesn't have, or issues raised that communities or governments need to go back and consult or discuss with others before they can go ahead with the negotiation, this would be a good time to put off the negotiation process until that can happen. **It is important that everybody is equally informed and prepared for negotiating the SRA.**

The negotiation process

Once everybody is ready and has the authority to begin negotiating the SRA, the negotiation process begins. Here are some general points to keep in mind:

- Let the government representatives talk through what they want from the SRA. Listen to what they are saying, even if you don't agree with it. Take your own notes and think about what they are saying (directly and indirectly) about how much funding they are prepared to commit, and for what sort of things.
- Ask questions if you don't understand what the government representatives are saying. Speak up if you need more information or more time to consult with other representatives or your community.
- Be positive and constructive where you can. If you bring up problems, then also bring up possible solutions. The SRA process is supposed to be community driven, so if your community has ideas about what is needed to bring about change, then they should be taken seriously by Government.
- When it seems like there is agreement on a particular point or commitment, repeat what you understand has been agreed. Make sure that whoever is taking the formal notes writes down the exact words that have been agreed.
- Where issues come up that are beyond the scope of the negotiation of this SRA – such as funding for basic services and infrastructure – make sure that they are also formally noted. You can ask the government representatives at the meeting to follow your issues up with the department that is responsible – that is part of their job.
- Agree on the next steps, and on whose responsibility it is to communicate with all the parties and to organise the next meeting. It is also good to agree on a timeline so that things keep moving.

The draft SRA

A draft of the SRA should be sent to all parties to the SRA, and enough time given for communities to consider the SRA and whether they are prepared to sign up to it.

Communities should speak up if they are not happy with the draft SRA, and tell the ICC if they wish to have further negotiations meetings to discuss the SRA with government representatives.

6. SIGNING OFF AN SRA

Signing off on behalf of a community

The representative(s) of the Indigenous community, group or organisation that has the authority and community support to negotiate the SRA is the person who signs the SRA.

Funding agreements that need to be signed

The separate funding agreements that will accompany the SRA should be signed by the appropriate person from the incorporated organisation who will be receiving and managing the funding from the government.

The final SRA

Copies of the final SRA should be distributed to all parties, and in the community who will be affected by the SRA.

There may be a public announcement that the SRA has been signed, and there may be information put on government websites and some media coverage. Communities should think about whether they want to make the SRA public, and who will be the contact person if journalists or others wish to talk to someone in the community about the SRA.

7. MONITORING AND EVALUATION

It is very important that SRAs include proper processes and resources for monitoring and evaluation. This is to see if and how progress towards the objectives of the SRA is being made; to track if governments and communities are doing what they have said they will do; to identify where the SRA negotiation process might be improved; and to learn about how and where positive change is happening.

Monitoring should happen right from the beginning of the SRA and throughout its life, with Indigenous communities and governments collecting data and information relevant to the progress of the SRA. All the parties to the SRA might arrange to meet regularly to discuss how progress is going.

More formal evaluation processes should occur at key milestones that have been agreed by the parties to the SRA. These milestones might also be good opportunities to involve the community in thinking about how the SRA has worked or not worked, and how future SRAs could be better.

A comprehensive review and evaluation should take place at the end point of the SRA that has been agreed by all parties. An independent person or organisation should do the evaluation. As SRAs are a new government strategy that has not been widely trialled or evaluated, this is very important.

It is very important that communities should be provided with resources and training to be able to participate in monitoring and evaluation.

An evaluation of an SRA should consider the following information:

SRA policy objectives, activities, performance indicators, outcomes

- SRA objectives
- Priorities identified at Indigenous local community and regional levels, and by the Australian and relevant State/Territory and local governments
- Roles of key representatives/organisations
- Activities
- Inputs
- Performance indicators/Benchmarks
- Outcomes/Outputs

Data collection

- Quantitative data – for example, numbers of people using services; data on health rates; school attendance;
- Qualitative data – for example, on the progress and experience of the SRA, gathered through consultation with and feedback from key stakeholders in communities and governments;

Evaluation questions

- Has progress towards the stated objectives been made?
- Have governments and communities fulfilled their commitments?

- What issues have come up in the implementation of the SRA?
- Have there been any negative impacts as a result of the SRA?
- Where and how might the SRA negotiation and implementation process be improved?
- How can the resources and change identified in this SRA be sustained or increased?
- What lessons for the SRA framework and other communities can be taken from this SRA?

Analysis

- Consideration of the broader policy context
- Effectiveness of the whole-of-government approach
- Background to the SRA and negotiations between community and governments
- Interpretation of data and information
- Conclusions

Report back and recommendations

- Feedback to governments and communities about conclusions of evaluation
- Processes to consider and implementation of the findings of the evaluation
- Recommendations for governments and communities about the effectiveness of this SRA, and implications for future SRAs and the broader policy framework

APPENDIX 1:
**GETTING A BETTER DEAL FOR INDIGENOUS
COMMUNITIES NEGOTIATING SRAS by Marc Levy**

Like all kinds of mutual obligation, SRAs seem sensible enough on the surface: government departments funding a project or projects that might benefit an indigenous community, and the community agreeing to ‘give something back’ in return for that benefit. However, a deeper look at SRAs reveals that they represent a textbook case of an imbalance of power between two parties to a negotiation. Whatever the intention of the parties to SRAs, structural biases favour government agencies over indigenous communities. This power imbalance means that negotiations focus on narrow agendas rather than joint problem solving. This brief paper explains why structural biases favour government agencies over indigenous communities and what can be done about it.

Why structural biases favour government agencies over indigenous communities

In SRA negotiations, *agents* of government department negotiate with indigenous community *principals*. Agents negotiate on behalf of others, whereas principals negotiate for themselves. Consequently, principals are more emotionally bound to a negotiation; it’s their future that’s at stake. Agents, on the other hand, are generally less personally affected by the outcome of a negotiation, so they can be dispassionate about the outcomes and use tactics that reflect their distance from the negotiation: ‘I’m not in a position to commit on that now, I’ll have to talk your offer over with my boss’.

One way to create power in a negotiation is to have what negotiators call a ‘BATNA’, a Best Alternative To a Negotiated Agreement. Consumers use BATNAs all the time, by—for example—getting quotes from a few different shops when buying a new TV. This enhances their power because they are able to compare quality and price and use this information to get the best deal. The indigenous communities that are party to SRAs have no such BATNA; that is, in most instances they cannot otherwise access government funding for the things they need.

Indigenous representative structures, such as ATSIC, have been broken down in recent years. Faced with a fragmented ‘other party’, government departments can more easily ‘divide and conquer’, separately negotiating SRAs with individual communities, taking different positions and focusing on different issues each time. In essence, this parallels attempts to break down worker representation in industrial relations—and the outcome is the same: less power in the hands of the fractured party.

Capitalising on ‘asymmetry of information’ is a well-known negotiations tactic. Negotiators seek to boost their side’s power by accessing privileged information and/or limiting the other party’s access to information that might advance its position. Without regional or national representative structures to actively share relevant information and learnings from previous SRA negotiations, indigenous communities are at a significant disadvantage when negotiating with a bureaucracy that has a more transparent view across multiple agreements.

The power that comes from superior access to information is not the only power source that favours government departments. Other sources of negotiations power that favour government departments include:

- Referred power—the endorsement of the Prime Minister and other prominent ministers and some indigenous leaders;
- Positional power—the authority of representative government;
- Threat of sanctions—government department negotiators are in a position to withhold funding and services;
- Resources—departmental representatives have access to more resources than their indigenous community counterparts; and
- Community support—like other forms of mutual obligation, SRAs have a simplistic, seductive logic to them, which appears to strike a chord in the wider community.

There are cultural issues that put indigenous community negotiators at a disadvantage too. For example, indigenous communities' may have less hierarchical leadership structures and different ways of dealing with conflict and different preferences in relation to action and reflection.

What can be done about it?

Indigenous communities need to increase their negotiating power to improve the outcomes they achieve from SRAs. They can employ the following strategies to do so.

Prepare and plan —Preparation and planning are key to success in negotiations. In addition to establishing objectives, spelling out intended positions, setting limits and so on, indigenous communities could benefit from organising structured workshops with community leaders in advance of SRA negotiations. Facilitated by professionals who understand government and negotiations, these workshops could be used to train indigenous community negotiators, develop a broader range of issues for negotiation and plan for alternative scenarios that might emerge during SRA negotiations.

Conduct a power audit—As a negotiator, power is partly about what you know about your position and how you feel about it. Indigenous communities can conduct power audits to understand where they are strong and weak and how they might work on those areas where they have the most to gain from improving their position.

Use professional negotiations advisors —indigenous communities could create a negotiations support network, a web of negotiations experts, including community representatives with prior experience of SRA negotiations, to provide support immediately before and during negotiations. Supporters could—for example—be in indigenous community negotiators corner during breaks, help prepare responses to big issues that arise during the negotiation, share learnings on strategies that have worked in previous SRA negotiations and bring indigenous community negotiators back on track if they lose sight of their objectives or stray too far from their strategy.

Use agents or brokers —As part of the negotiations support network referred to above, indigenous communities should consider using agents—people from other communities or experts—to negotiate on their behalf. This may have many advantages, including access to skills and experience, greater objectivity, and lesser

likelihood of breaching negotiating limits. Use of an experienced and impartial mediator could also address power imbalances.

Use the 'tricks of the trade'—Indigenous community negotiators should be aware of tricks of the negotiations trade, so that at the very least they can recognise them. For example, never start a negotiation on a weak point, as it sets the tone for future issues. As people are generally risk seeking when facing gains, and avoid risk when facing losses, it is important to frame options as gains for the other party. There are a host of others, from surprise tactics to presenting a united front and from bypassing or escalation (e.g. contacting the other party's superiors) to the threat of media exposure and last minute demands. Some of these tactics are inherently negative and assume that the other party favours a bargaining style of negotiation rather than joint problem solving, but they can be very useful if employed appropriately.

Rebuild representative structures for SRA negotiations—Indigenous communities need to combat the government's 'divide and conquer' strategy, whether it is intentional or not. The negotiations support network referred to above would help, as would building a representative structure for the purposes of SRA negotiations. A new representative group or groups could improve processes associated with garnering community support and negotiate a set of principles and parameters for SRAs with the Federal Government.

Learn and disseminate knowledge—Asymmetry of information between government departments and indigenous community negotiators is one of the major structural biases referred to above. The following could help address the power imbalance: conducting community summits; convening teleconferences with others community leaders who have been involved in negotiations; eliciting learnings from sympathetic community organisations that deal with governments; and developing negotiating guidelines and toolkits.

'Join up' the other party—It could be advantageous for indigenous communities to encourage government negotiators to use a more 'joined up' negotiations model, where government stakeholders from different departments responsible for administering and delivering indigenous policy are party to SRA negotiations. This would help with the agent/principal problem too in that these bureaucrats must work with whatever gets negotiated. There would have to be a reason for government to buy into this and the media could play a role.

Be more political—There may be ways to limit options open to the other party, based on the potential for the detail of negotiations to be made public; for example, exposing that government departments are withholding what might be perceived to be essential services via SRAs.

Structural biases associated with SRA negotiations are working against indigenous communities getting a fair deal. By boosting their commitment to preparation and planning, getting expert help, creating representative structures and networks of support, and using well known negotiations tactics, representatives should be able to get better deals for their communities.

APPENDIX 2:

KEY QUESTIONS FOR GOVERNMENT AGENCIES

Here are some questions that government agencies could consider when entering into negotiations for a SRA with communities and other government agencies:

Process

- What is the history of government negotiations with this community? Who has initiated this agreement?
- Who has the representative mandate in the community to negotiate and sign up to SRAs? How has their legitimacy and power to exercise influence been determined?
- How has the broader community been consulted about the details of the SRA? How do those affected understand the commitments in the SRA?
- Have the perspectives of women and children been particularly considered?
- Is there any transference of federal responsibility to state/territory governments as a result of the SRA? Is there any cost-shifting involved?
- Is the SRA part of longer term regional or local planning with communities?
- Are there outcomes identified? Are they measurable and realistic?
- Is there a specified timeframe for governments' and the communities' commitments to be delivered? How will that be measured? Who is accountable for ensuring that happens?
- Is there any provision for communities to challenge government decisions or evaluations?

Content

- Who has chosen the focus of the agreement? Is it based on identified need? Is it based on data or research? Is it being overly influenced by government policy priorities?
- Is the SRA focused on infrastructure or services that should or are already being provided by government agencies? How is the line between funding for essential infrastructure and services and extra discretionary funding under SRAs determined?
- Is there a logical connection or proportional commitment between the government and the community's contribution to the agreement?
- Are the objectives measurable? How will change be assessed? Whose responsibility is it to monitor and evaluate the impact of the SRA?
- Is the agreement requiring people to sign away their right to human rights entitlements such as free, prior and informed consent? Could it be construed as racially discriminatory?
- Is it possible that the SRA may have a negative impact? For example, a 'no school, no pool' agreement that may lead to lower rates of school participation due to health reasons rather than higher rates?
- What happens if communities or governments do not fulfil their obligations? Who will assess and monitor this?
- How do these SRAs fit in with broader government planning and longer-term strategies to address Indigenous disadvantage?
- Is there a bilateral agreement between the Federal Government and State/Territory Government? How does it intersect with the negotiation and monitoring of SRAs?

Implementation

- Has an implementation plan been developed?
- Does the implementation plan include clear performance indicators, responsibilities and timelines?
- Are there specific contact people from all parties identified?
- Have regular monitoring procedures been put in place?
- Whose responsibility is it to monitor the agreement? Is this responsibility resourced?
- How are communities being supported and resourced to monitor the impact of the SRA?
- Has an evaluation plan been developed? Has a specific timeframe been developed? Has a specific timeframe been set? Who will conduct the evaluation? Are they independent from all parties?
- How will the outcomes of the monitoring and evaluation be communicated to the community? Will it be made public?
- How will the lessons from the monitoring and evaluation process be distributed more widely? How will they inform future SRAs in this community and other communities?

APPENDIX 3: **WHERE TO GET INFORMATION AND ADVICE**

Government Panel of consultants

The Australian Government has set up a Panel of expert consultants – both individuals and organisations - that communities negotiating SRAs can ask for independent advice or assistance. You can ask your local ICC for information about the list of consultants you can use, to find out who might have the skills and experience you need. Some of these consultants are Indigenous, and they are based around the country – although you can ask to use consultants from anywhere to assist you, as long as they are on the Panel.

Although the Panel consultants are government funded, they are meant to be independent from government and to assist you with whatever it is that you need help with in the SRA negotiation process. It might be useful to think about training and development skills that consultants could bring as a way of building capacity in your community to negotiate for funding in the future.

To find out more about using a consultant on the government Panel to help with your SRA negotiations, contact your **local ICC** first. You can also contact the Program Resources Unit in the SRA Implementation Branch, **OIPC National Office** on 02 6121 4000 for more information.

State/Territory Departments of Aboriginal Affairs

State and Territory Governments who are also signing up to SRAs may have developed their own guidelines or information resources for communities negotiating SRAs. The Department of Aboriginal or Indigenous Affairs in your State/Territory may be able to provide you with advice that is independent of the Australian Government. Contact your **Department of Aboriginal or Indigenous Affairs** for further advice.

Other communities

You may like to find out about other communities who have negotiated SRAs. While it is important that all communities work out their own priorities for SRAs, it can be useful to learn from other communities who have already been through the process. Ask your **local ICC** for information about other communities in your region or elsewhere that have negotiated SRAs. You can also look at the **Australian Government website** at <http://www.indigenous.gov.au/sra> which gives some information about other SRAs.

Other resources

ATSIC Regional Agreement Making Manual – this is a manual that was put together by ATSIC to assist communities negotiating regional agreements. It has good practical information on things to consider when entering into agreements. Contact your local ICC or State/Territory OIPC office for a copy, or go to http://www.atsic.gov.au/about_atsic/regional_agreements/Default.asp

Agreements, Treaties and Negotiated Settlements (ATNS) project, University of Melbourne – this is an online database that includes information about agreements that have been negotiated between Indigenous groups and governments and other parties in Australia and around the world. See <http://www.atns.net.au/>

National Indigenous Times – this weekly Indigenous news publication often reports on the progress of SRAs and provides analysis of government policy. Your local library or community centre may subscribe to the NIT, or you could ask your local ICC or State/Territory OIPC office or go to <http://www.nit.com.au>.

Australians for Native Title and Reconciliation (ANTaR) – this independent, national network of individuals and organisations co-ordinates community education and awareness campaigns on issues of justice for Aboriginal and Torres Strait Islander people. ANTaR has spoken out about SRAs and their impacts on funding to Indigenous communities. To find out more about the work ANTaR is doing on SRAs, contact the ANTaR office in your State/Territory or go to <http://www.antar.org.au>.

Aboriginal and Torres Strait Islander Social Justice Commissioner - based at the Human Rights and Equal Opportunity Commission, the Social Justice Commissioner has been monitoring the Australian Government's new arrangements in Indigenous policy, including SRAs. The 2005 Social Justice Report will focus on SRAs. For more information, go to <http://www.hreoc.gov.au/social%5Fjustice/>.

APPENDIX 4:

CHECKLIST FOR COMMUNITIES NEGOTIATING SRAS

Getting started on an SRA

- ❑ Has your community, group or clients worked out their priority needs in relation to funding or support from government?
- ❑ Have you worked out what you want to negotiate an SRA about? Has this been worked out through consultation? How does this relate to the priority needs?
- ❑ Have you worked out what your community or group can commit to governments in return? Is it realistic and achievable?
- ❑ Do you have the authority to speak for and sign up to an SRA on behalf of your community, group or clients?
- ❑ Have you worked out how you will communicate and consult with the people you are representing throughout the negotiations?
- ❑ Have you gathered advice and information from other communities or experts?
- ❑ Have you gathered any baseline data or research by academics, governments or other organisations that is relevant to the SRA in your community?
- ❑ Have you consulted with everyone who will be affected by the SRA?
- ❑ Have you considered the perspectives of and the impact on women and children?
- ❑ Have you talked to the ICC? Have you worked out with them which government departments should be involved in the SRA?
- ❑ Have you worked out how much funding you will need?
- ❑ Have you worked out how the negotiation meetings will be organised? Who will chair them? Who will be present? Is an interpreter needed? Who will take notes about what is discussed and agreed? Who will be responsible for communicating them to the rest of the community? Who will draft and distribute the SRA? Who will sign off on the SRA?

Focus of the SRA

- ❑ Is the government commitment in the SRA providing essential infrastructure or services that should already be provided to your community? If so, have you talked this through with your local ICC?
- ❑ Is the SRA requiring people to sign away their citizenship entitlements? Does the SRA seem to be treating Indigenous people differently to other Australians?
- ❑ Have you worked out a bottom line for what you will commit to on behalf of your community, group or clients?
- ❑ Is there a logical connection between the government and the community's contribution to the SRA? Is the government asking the community to do too much in exchange for a small amount of funding?
- ❑ Are all the relevant government departments involved in the SRA? If not, have you talked to your local ICC about this?
- ❑ Is the SRA linked to the Overcoming Indigenous Disadvantage framework?

Detail of the SRA

- ❑ Is the SRA worded clearly? Are the objectives, activities and expected outcomes realistic? Does everyone understand and agree on their commitments?
- ❑ Have you worked out how the funding will be provided to your community or group? Have separate funding agreements been discussed and organised? Do you know who will sign off on and be responsible for the funding?

- ❑ Do you need more information to continue the negotiations? Has enough time been given to consider and consult on the SRA? If not, have you talked to the ICC representative about this?
- ❑ Are there any privacy constraints placed on you in the SRA? Would they stop you talking to other communities or to the media about the SRA, including if the government does not fulfil its commitments?
- ❑ Is it clear what will happen if governments or communities do not fulfill their commitments? If not, have you raised this?
- ❑ Has the final SRA been signed by all parties? Does everyone have a copy? Do you know who the contact people are from all government departments? Have you worked out how you are going to communicate the SRA to the community? Have you got a contact person worked out to answer questions about the SRA?
- ❑ Does the SRA include:
 - All the parties to the SRA, including a clear statement of who the Indigenous representative is signing up on behalf of?
 - Priorities of all parties
 - Objectives that are clear, measurable and realistic?
 - Activities?
 - Inputs, including both financial and in-kind commitments?
 - Performance indicators/benchmarks that are quantitative & qualitative?
 - Outcomes/outputs?
 - Timeframes for all commitments?
 - Monitoring plan? Review and evaluation plan?
 - Dispute resolution process?

Implementation of the SRA

- ❑ Has an implementation plan been developed? Is it clear what everyone's responsibilities are in the implementation plan?
- ❑ Is there a timeframe set out for the governments' and community's commitments to be delivered? Have you worked out how that is going to be measured? Have you worked out who is responsible for ensuring that happens?
- ❑ Have you decided who will be responsible for communicating with the ICC and government representatives? Have you worked out how they will be communicating with the rest of the community?
- ❑ Is it possible that the SRA may have a negative impact? Have you discussed how this could be prevented?
- ❑ Have you worked out how changes are going to be measured?
- ❑ Have you worked out who is responsible for monitoring and evaluating the SRA?
- ❑ Have you talked to the ICC about training and resources for the community to monitor the SRA?
- ❑ Are the Federal and State/Territory Government involved in other longer-term planning and projects with the community? Have you talked to the ICC and government representatives about how these fit in with the SRA?
- ❑ Has a review and evaluation been planned? When will it be? Have you worked out whose responsibility is it to organise this; who will conduct the evaluation and whether they are independent from government?
- ❑ Have you worked out how the outcomes of the monitoring and evaluation will be communicated to the community? Have you decided if they will be made public?
- ❑ Have you worked out how your community and other communities can learn from your experience with this SRA? How would you do things differently next time?