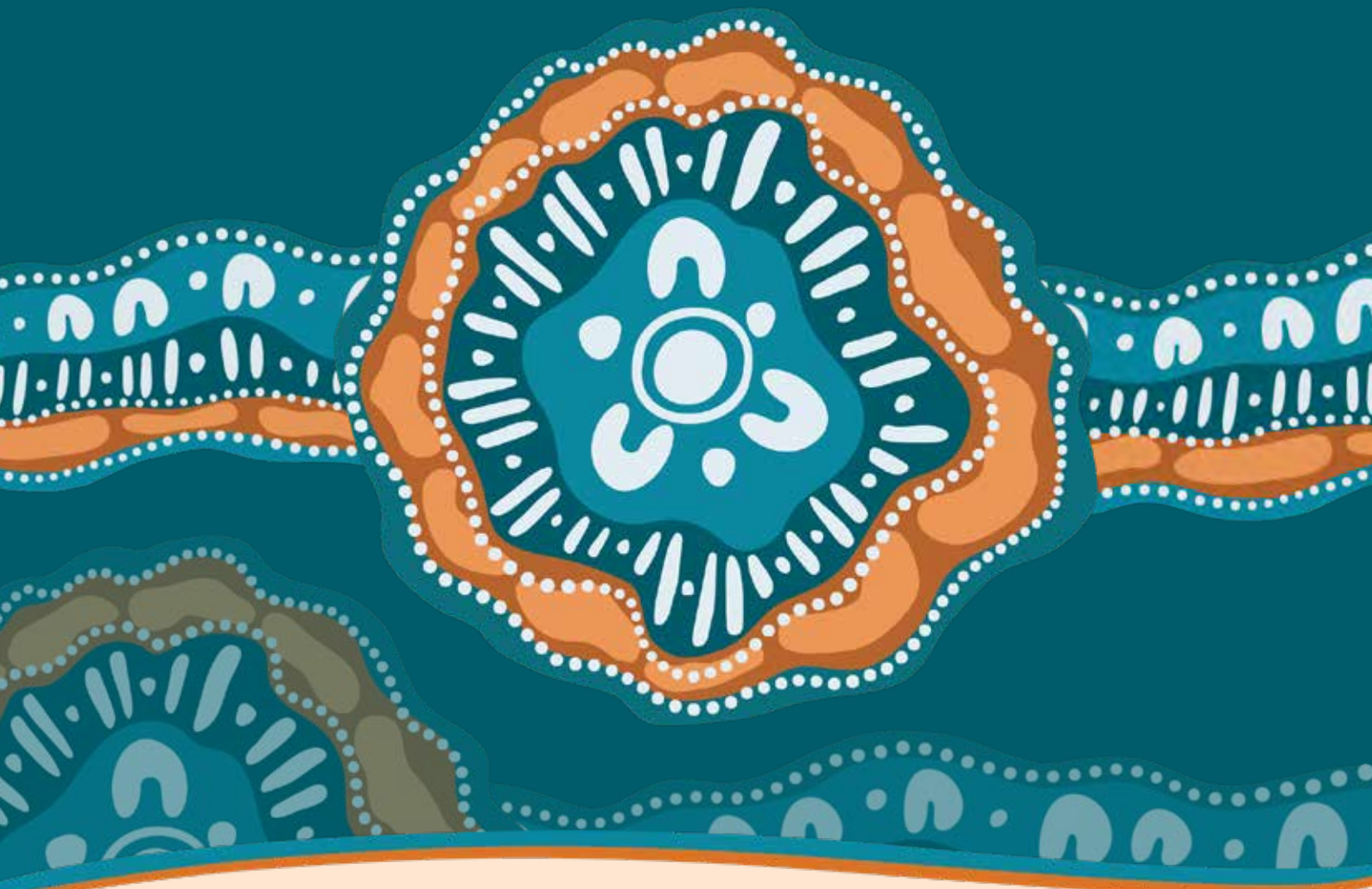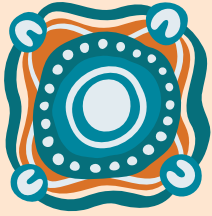NSW CAPO Coalition of Aboriginal Peak Organisations

NSW Independent Aboriginal-led Government Accountability Mechanism

Acknowledgement of Country

The NSW Coalition of Aboriginal Peak Organisations acknowledges and pays respect to the Traditional Owners of the lands upon which we work and meet, and the lands that we travel through on our journeys throughout New South Wales to help in Closing the Gap. We would also like to acknowledge our Elders – Past, Present, and Emerging, and the Stolen Generation People of this state.

About the Artist

Leticia Anne Forbes, is a proud Wiradjuri Torres Strait Islander yinaa 'woman' and the inspiring Artist behind our NSW CAPO brand identity and cultural illustrations reflected throughout this report with their accompanying stories.

Leticia is a passionate, dedicated and talented creative who embraces her cultural knowledge and personal experience of growing up in out-of-home care to be a voice and visual storyteller.

Leticia was the Winner of the AbSec Child and Family Awards Young Person of the Year Award in 2020 and of the 7News Young Achievers Awards TransGrid Indigenous Achievement Award in 2021 for her dedication and efforts as a Youth Worker, Advocate and Young Business Owner.

Leticia brings over 8 years of experience in community work with children and young people before embarking on her new career direction in March 2020, launching her design business, Leticia Anne Designs. Her entrepreneurial spirit led to her creating Yirra Miya, First Nations Creative Agency, in February 2024 to acknowledge her growing team and vision during her time as a new mother.

YiRRa MiYa

About the NSW CAPO Logo

The NSW CAPO logo is not just a symbol but a representation of collaboration, synergy, and strong partnerships. It embodies the spirit of positive change, amplifying First Nations voices and moving forward. The NSW CAPO logo is rich in meaning. The icon showcases people coming together collectively to shape the movement forward. The centre circle represents the community at the core, with people in partnership surrounding it in a U shape and community members side by side represented by dots. The layers of the community circles symbolize cultural knowledge sharing and pay respect to our ancestors and history, shaping our future. The movement and flow of the shapes represent the amplification of First Nations voices and moving forward towards closing the gap, represented by the lines connecting into the centre meeting circle.

NSW CAPO Coalition of Aboriginal Peak Organisations

About NSW CAPO

The NSW Coalition of Aboriginal Peak Organisations (NSW CAPO) advocates for the interests of the Aboriginal peoples of NSW. We provide a strong, independent and co-ordinated voice to address issues affecting Aboriginal people, including the social determinants of health and wellbeing. NSW CAPO member organisations are non-government Aboriginal peak bodies with boards elected by Aboriginal communities and/or organisations that are accountable to their membership. NSW CAPO, the NSW Government and the Local Government NSW (LGNSW) are the NSW parties to the National Agreement on Closing the Gap and signatories to the NSW Closing the Gap Partnership Agreement.

NSW CAPO led the 29 consultations that were held across NSW in 2019 to deliver the report A New Way of Working. This report raised the voices of Aboriginal people in NSW and contributed to the details of the National Agreement on Closing the Gap.

Our member organisations are advocates for Aboriginal peoples throughout NSW. NSW CAPO is currently made up of:

- **NSW Child, Family and Community Peak Aboriginal Corporation (AbSec**
https://absec.org.au/
- **NSW Aboriginal Land Council (NSWALC)**
https://alc.org.au/
- **Link-Up NSW**
https://www.linkupnsw.org.au/
- **Aboriginal Education Consultative Group (AECG)**
https://www.aecg.nsw.edu.au/
- **Aboriginal Health and Medical Research Council (AH&MRC)**
https://www.ahmrc.org.au/
- **First Peoples Disability Network (FPDN)**
https://fpdn.org.au/
- **Aboriginal Legal Service (ALS NSW/ACT)**
https://www.alsnswact.org.au/
- **BlaQ Aboriginal Corporation**
https://www.blaq.org.au/
- **Aboriginal Culture, Heritage & Arts Association**
https://www.achaa.com.au/

We are an open and inclusive group and any Aboriginal organisations that meet NSW CAPO membership criteria are welcome to join. The more voices we have coming together the stronger we will be.

Contents

Executive summary

Aboriginal and Torres Strait Islander people in Australia have long been demanding increased accountability for government[1] performance on Aboriginal outcomes.[2]

Recently, such calls for greater accountability have been raised through the work of Closing the Gap. During engagements to design the National Agreement on Closing the Gap (the National Agreement) and the accompanying NSW Implementation Plan (NSWIP), Aboriginal community members (Community) highlighted particular gaps in government accountability. Community criticised the lack of independent and Aboriginal-led accountability processes overseeing government performance on Closing the Gap and Aboriginal outcomes.

In response, a commitment has been made by all parties to the Closing the Gap agreements to establish Independent Accountability Mechanisms in each jurisdiction (state, territory and Commonwealth). **NSW CAPO, the formal signatory to the National Agreement representing the interests of Aboriginal people in NSW, has designed a recommended model for an Independent, Aboriginal-led Government Accountability Mechanism in NSW. This recommended model is presented in this report.**

Improved accountability is expected to lead to better outcomes for Aboriginal people. Stronger government accountability is one of four key recommendations made by the Commonwealth Productivity Commission in their 2024 progress review of the National Agreement.[3] The right balance of accountability stands to strengthen government performance, leading to better services and outcomes for Aboriginal people in NSW.
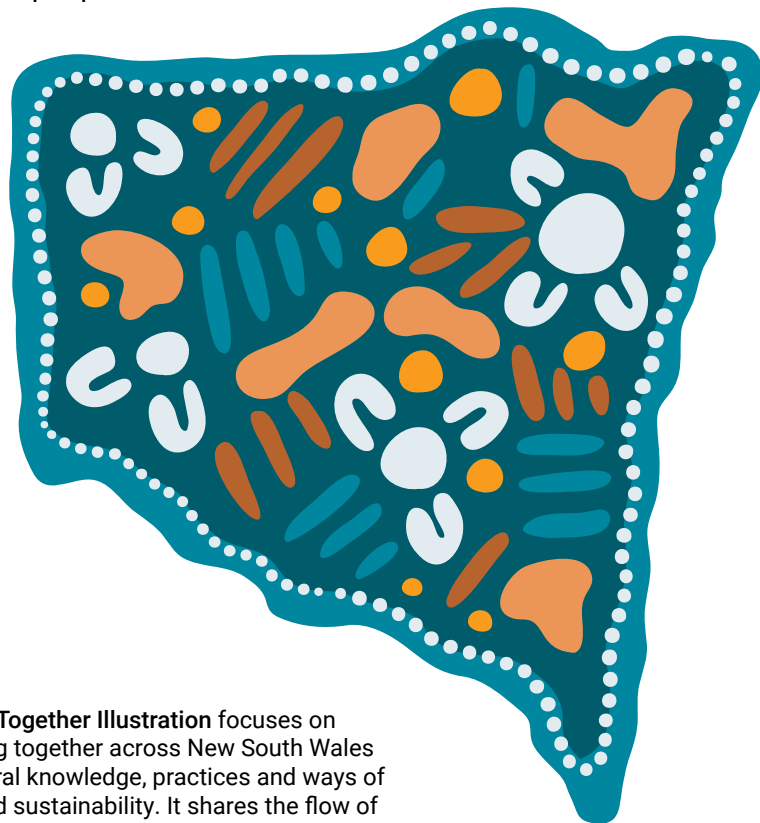
NSW Coming Together Illustration focuses on People coming together across New South Wales to share cultural knowledge, practices and ways of life growth and sustainability. It shares the flow of movement through the organic shapes across the land (crosshatching).

Recommended model: a new Authority working in partnership with a social accountability wing

NSW CAPO recommends that a new legislated administrative accountability body is established (the Authority). This Authority will work in formal partnership with a social accountability wing (NSW CAPO) to embed community engagement and ownership.

Administrative accountability wing	Social accountability wing
This will be a new authority (the Authority), comprised of an office of technical experts (the Office), overseen by a board of directors (the Board). The Office will be an independent entity which is not affiliated with the government. Board directors will require a mix of technical skills, Aboriginal knowledge, lived experience, Community connections and intersectional identities. Appointments to the Board will be undertaken by an independent committee. The Authority will require legislated powers to enforce transparency, drive change and impose consequences. The Authority will be overseen by a joint parliamentary committee, with direct lines of communication to the NSW Joint Council, Cabinet and Secretaries' Board.	This will be established through a formal relationship between the Authority and NSW CAPO, as the formal Aboriginal partner for Closing the Gap. NSW CAPO's role will be to facilitate Community input into accountability processes. NSW CAPO will not be involved in making assessments or decisions regarding the outcomes of accountability processes.
__Administrative accountability__ involves regulatory enforcers of government obligation. These are most often independent statutory bodies.	*__Social accountability__ involves ordinary people in the oversight of government. It facilitates improved accountability of government through responsiveness to the opinions of citizens.*

Diagram 1 Recommended model

The purpose of the Mechanism will be to hold the NSW Government to account to Aboriginal people for achieving transformative change to improve Aboriginal Outcomes.

The Mechanism will have two core functions:

1. Work with existing accountability processes and Aboriginal community members to get the best outcomes for Aboriginal people

   a. Work with existing accountability bodies to ensure they effectively address concerns regarding Aboriginal outcomes

   b. Promote Community inclusion in transparency processes and strengthen Community's capacity to hold government to account

2. Lead Aboriginal-owned accountability processes

   a. Conduct reviews, inquiries and audits on issues where independent, Aboriginal-led scrutiny is needed

   b. Hold regular public hearings in the style of budget/senate estimates
   Ministers and public servants can be called in front of the Mechanism to answer questions regarding government performance on Aboriginal Outcomes

   c. Make recommendations and ensure corresponding action is taken in line with scrutiny processes

   d. Publish information about government funding for Aboriginal Outcomes, broken down by location and other relevant criteria

Community-backed, evidence-based model

This model reflects the wishes and knowledge of Aboriginal people in NSW and is informed by evidence of what makes an effective accountability mechanism. It is the culmination of a dedicated 18-month, Aboriginal-led design process informed by the UK Design Council's Double Diamond framework as a guide where appropriate.

637 Participants

This Aboriginal-led design process included extensive engagement with NSW Aboriginal community members **(reaching 637 participants from across NSW)**, government agencies, administrative accountability bodies and relevant experts.

It is supported by desktop research, including a gap analysis of existing accountability mechanisms in NSW and Australia, and an exploration of key lessons and evidence of what makes strong accountability mechanisms. Research and engagements worked together, with research guiding engagement questions and engagements providing new insights for research.

This recommended model demonstrates the benefits of Aboriginal-led solutions to challenges impacting Aboriginal people. The proposed inclusion of a social accountability wing is unique within NSW and reflects the prioritisation of relationships by Aboriginal people within our conceptualisation of accountability. The design of this model has considered value for money and opportunities to work within the existing NSW accountability system. NSW CAPO recommends this model as a considered, Aboriginal-led initiative that stands to deliver meaningful outcomes for Aboriginal people and the NSW Public.

Investment in cultivating public trust is critical to the success of the Mechanism

A key finding from this process is that the purpose of accountability mechanisms is to build public trust in government, institutions and democratic systems.[4] To achieve this, it is critical that accountability mechanisms themselves cultivate public trust.

Public trust in an accountability mechanism can be influenced by:

- **Community connection**
    - Embedding community connection and/or involvement in an accountability mechanism
    - Limiting expectation gaps between the public's understanding of what an accountability mechanism can and should achieve, and its actual role
- **Independence**
    - Public perception of the independence of an accountability mechanism from government. This is impacted by a mechanism's:
        › Structural separation from government
        › Autonomy in the exercise of powers
        › Appointment processes and job security for leaders
- **Powers and resourcing**
    - Powers and resources available for delivering change
- **Transparency**
    - Public perception of an accountability mechanism itself as accountable for its work

It is crucial to meet the expectations of Community for a new Mechanism.

Involving Community in decision making is a key principle of Closing the Gap. It is also necessary if a new Mechanism is to meet the demands for greater accountability and to successfully build public trust.

During the design process, Community told us that a new Mechanism must:

1. Establish **Aboriginal leadership** and oversight within accountability processes
2. Embed **community connection** in accountability processes
3. Demonstrate **independence** from government
4. Have hard **powers or 'teeth'** to drive change following accountability processes

Without these elements, the Mechanism will only be more of the same – lip service and no change.

Recommendation

NSW CAPO invites the NSW Joint Council for Closing the Gap to endorse the recommended model presented in this report of an Independent Mechanism, in fulfilment of its commitments in the National Agreement and the NSW Implementation Plan.

Support from the NSW Government is sought, as a signatory to the National Agreement, to establish this model of the Mechanism as soon as possible, including facilitating relevant legislative change and providing sustainable funding.

Introduction

This report puts forward a recommended model for a NSW Independent Aboriginal-led Government Accountability Mechanism endorsed by the NSW CAPO Leads. This report is the culmination of an 18-month-long Aboriginal-led design process involving extensive stakeholder engagement and research. This model responds to decades-long demands for stronger accountability of government to Aboriginal people, and more recently to commitments under Closing the Gap.

Our recommended model is informed by deep engagement with Aboriginal people in NSW and research into what makes an effective accountability mechanism. The following report outlines the process taken to achieve this, and the findings to support this case.

Part One - The design of a NSW Independent Aboriginal-led Government Accountability Mechanism

How did we get here? | The work under Closing the Gap that has led to this project
Methodology | The Aboriginal-led design process behind the development of the recommended model

Part Two - The key findings

Conceptualising the Mechanism | Defining 'accountability', 'independent' and 'Aboriginal-led'
Accountability gaps | An analysis of accountability gaps in NSW
Effective accountability mechanisms | Evidence of elements that contribute to the effectiveness of an accountability mechanism
Community expectations | What Community expects to see in the Mechanism

Part Three - The recommended model

The model in detail | NSW CAPO's recommended model for the Mechanism, including its functions, structures and reporting lines
Alignment with criteria and findings | How the recommended model addresses key criteria for the Mechanism and the findings from the design process, including Community expectations and lessons from research
Alternative options | Alternative models that were considered and why they are not recommended
The Mechanism in context | How this recommended model fits with existing accountability and First Nations systems in NSW

The final section of this report outlines the next steps towards establishing the proposed model.

Closing the Gap and the design of the Mechanism

The design of an Independent Aboriginal-led Government Accountability Mechanism contributes towards commitments under both the National Agreement on Closing the Gap (the National Agreement) and the 2022-2024 NSW Implementation Plan for Closing the Gap (NSWIP) under Priority Reform Three - Transforming Government Organisations.

These commitments were made in response to demands that Aboriginal people have long been making – that governments should be held accountable for their commitments to improve the lives of Aboriginal people.

National Agreement on Closing the Gap

In 2020, the national Coalition of Peaks (CoP) and governments at national, State, and local levels signed the National Agreement on Closing the Gap. It was the first time a genuine agreement was made between governments and Aboriginal and Torres Strait Islander community-controlled representatives about Closing the Gap. This agreement commits all parties to work in genuine partnership. Here in NSW, the parties to the National Agreement are NSW CAPO, the NSW Government and Local Government NSW (LGNSW).

This agreement marked a significant shift in the Closing the Gap story; for the first time, Aboriginal and Torres Strait Islander people were provided the opportunity to share decision making about Closing the Gap with government, through CoP (of which NSW CAPO is a founding member).

> **This Agreement arises from a commitment from all Australian governments and Aboriginal and Torres Strait Islander representatives to a fundamentally new way of developing and implementing policies and programs that impact on the lives of Aboriginal and Torres Strait Islander people.**
>
> **– National Agreement on Closing the Gap**

Priority Reforms: the foundations of the National Agreement

The National Agreement is built around four Priority Reforms (five in NSW) to change how governments work with Aboriginal communities, organisations, and people.

1. Priority Reform 1

Formal partnerships and shared decision-making

2. Priority Reform 2

Building the community controlled sector

3. Priority Reform 3

Transforming government organisations

4. Priority Reform 4

Shared access to data and information at a regional level

In NSW, the fifth Priority Reform focuses on employment, business growth and economic prosperity.

Clause 67 of the National Agreement commits Government Parties to a key 'partnership action' to implement Priority Reform 3 of "identify[ing], develop[ing] or strengthen[ing] an independent mechanism, or mechanisms."

Clause 67 National Agreement on Closing the Gap

67. By 2023, Government Parties agree to each **identify, develop or strengthen an independent mechanism, or mechanisms, that will support, monitor, and report on the transformation of mainstream agencies and institutions.** The mechanism, or mechanisms, will:

a. support mainstream agencies and institutions to embed transformation elements, as outlined in Clause 59, and monitoring their progress

b. be recognisable for Aboriginal and Torres Strait Islander people and be culturally safe

c. engage with Aboriginal and Torres Strait Islander people to listen and to respond to concerns about mainstream institutions and agencies

d. report publicly on the transformation of mainstream agencies and institutions, including progress, barriers and solutions.

NSW Implementation Plan on Closing the Gap 2022-24

Under the National Agreement, each State and Territory commit to developing Implementation Plans that outline actions to achieve the Priority Reforms and Socio-Economic Outcomes of Closing the Gap.

The 2022-24 NSW Implementation Plan (NSWIP) includes the commitment to design and establish an Independent, Aboriginal-led, Government Accountability Mechanism in NSW as outlined below. This commitment responds to messages shared by Community during consultations conducted by NSW CAPO as part of the development of the NSWIP.

NSW Closing the Gap Implementation Plan 2022-24 Priority Reform 3, Key Action Area 1[5]

What you have told us	What we will do
We need a clear and transparent accountability mechanism for government agencies and services:	**Design an independent, Aboriginal-led accountability mechanism to monitor government accountability:**

• Government departments are currently evaluating themselves, whereas they should be evaluated independently by Aboriginal people and organisations. This should include ensuring regional solutions to regional issues.
 	
• "We're not seeing accountability from the mainstream sector when we're seeing deaths in custody and people dying when they're turned away from hospitals because we're not treated properly. There's no accountability for those mainstream organisations."
 	
• "Police have a 5-year action plan – but if they don't meet their outcomes nothing happens."
 	
• "Complaints about police are currently dealt with by moving officers into other local area commands where they continue their inappropriate behaviour."
	• By 2024, we will develop a pilot design for an Aboriginal-led accountability mechanism to monitor the alignment of government policies on Closing the Gap. **This will be based on foundational work and research on the best model and design for this accountability mechanism.**
	
	  - The accountability mechanism will include at least two core aspects:
	
	    › establishment of core criteria to monitor, improve and evaluate the alignment of government policies and programs with the Closing the Gap commitments to transform government organisations and services
	
	    › establishment of an independent Aboriginal accountability authority.
	
	  - Following the design phase, there will be a trial period and then implementation of the mechanism.

KEY

You: NSW Aboriginal Community
We: Signatories to the NSW Implementation Plan (NSW Government, NSW Local Government and NSW CAPO)

Importance of the project

Progress towards improving government accountability for Closing the Gap has been slow. The Commonwealth Productivity Commission found, in its 2024 review of progress on the National Agreement, that action is still needed to improve accountability.[6] This includes establishing the Independent Mechanisms of Clause 67 without further delay, underpinned by legislation and guaranteed funding. The Review also noted that existing Closing the Gap accountability processes are not sufficient to influence the type of change envisaged in the Agreement. This is because they lack independence and the ability to impose timely and appropriate consequences for failure.

> **"Lack of progress on Priority Reform 3 is putting the other Priority Reforms and the Agreement as a whole at risk."**
>
> **– Productivity Commission Review, 2024.**

Too little accountability is likely to reduce outcomes from the National Agreement. It risks deprioritising attention and resources, dissuading whistleblowers, and allowing underperformance and corruption to flourish. This is supported by international research which finds that creating a transparent environment, with shared accountability, leads to improved performance within the administration of government.[7]

> **"Lots of people…don't complain because no one is listening"**
>
> **– participant at 2022 NSW CAPO consultations**

Aboriginal-led accountability processes also have an important role to play in promoting shared decision making and Aboriginal Data Sovereignty. This is aligned with Priority Reforms 1 and 4 and the transformative approach of Closing the Gap. Tracking progress in ways that are meaningful to Community is part of sharing power and building shared narratives.

> **"Government must understand and value qualitative reporting of Aboriginal programs; telling the story is as important as representing outcomes by numbers."**
>
> **– participant at 2019 Coalition of Peaks consultations**

Co-ordinating with the design of other Independent Mechanisms

NSW CAPO is not alone in its efforts to design an Independent Mechanism. Clause 67 of the National Agreement states that all government parties (Commonwealth, and each State and Territory) are expected to identify or establish an Independent Mechanism.

At the time of writing, the following progress has been made in other jurisdictions:

Victoria: Lowitja Institute, in partnership with the Victorian Aboriginal Community Controlled Health Organisation, has published a report on a proposed 'Victorian Aboriginal Authority'.

National: The Australia and New Zealand School of Government (ANZSOG) has produced research, commissioned by the National Indigenous Australians Agency (NIAA) and the Partnership Working Group, to provide advice regarding the development of an Independent Mechanism. A working group, of which NSW CAPO is a member, has been established to take these findings forward.

Findings from these reports have informed NSW CAPO's design of the Mechanism. We will remain in close contact with partners from all jurisdictions working on the establishment of Independent Mechanisms as our work progresses.

Although each Mechanism is expected to be a distinct entity, focusing on the transformation of its jurisdictional government(s), there are clear benefits of the Independent Mechanisms being capable of co-ordinating with one another. NSW CAPO intends to actively facilitate co-ordination of these Mechanisms, while not waiting for other jurisdictions to proceed or being limited by their findings and commitments. As an early mover on the Independent Mechanism, we hope to lead from the front and invite others to come along.

Positive Change Illustration represents bringing inspiring and positive initiatives to communities with First Nations voices (the movement line surrounding the centre community circle) at the core (circle layered in the centre) to make change within communities, organisations and our society. The journey paths represents the journey across all Nations the dots and knowledge sticks represent people and sharing.

The Mechanism and the Priority Reform 3 transformation agenda

The work to establish a Mechanism is part of a broader transformation agenda under Priority Reform 3 (PR3) being driven by parties to the NSWIP. These parties are NSW CAPO, the NSW Government and Local Government NSW (LGNSW).

This project complements several other PR3 initiatives taking place in NSW. These include:

- Work under the NSW Change and Transformation Strategy, which will deliver an outcomes framework[8] for the implementation of the Priority Reforms. This is expected to provide core criteria upon which the Mechanism will base its measurements (see first of two 'core aspects' identified in the NSWIP commitment above)
- Reforms to NSW Government budget processes and evaluation processes under PR3 Key Action Area 1, including the introduction of transparency and accountability measures
- Efforts to improve complaints and feedback processes for Aboriginal people when raising concerns about government, under PR3 Key Action Area 3
- Work underway at the NSW Public Service Commission to reform government workplace culture

It is anticipated that the Mechanism will play a role in supporting and reinforcing these planned developments. NSW CAPO is working through established NSW Closing the Gap governance processes to ensure these projects are co-ordinated, complementary, and do not duplicate other work.
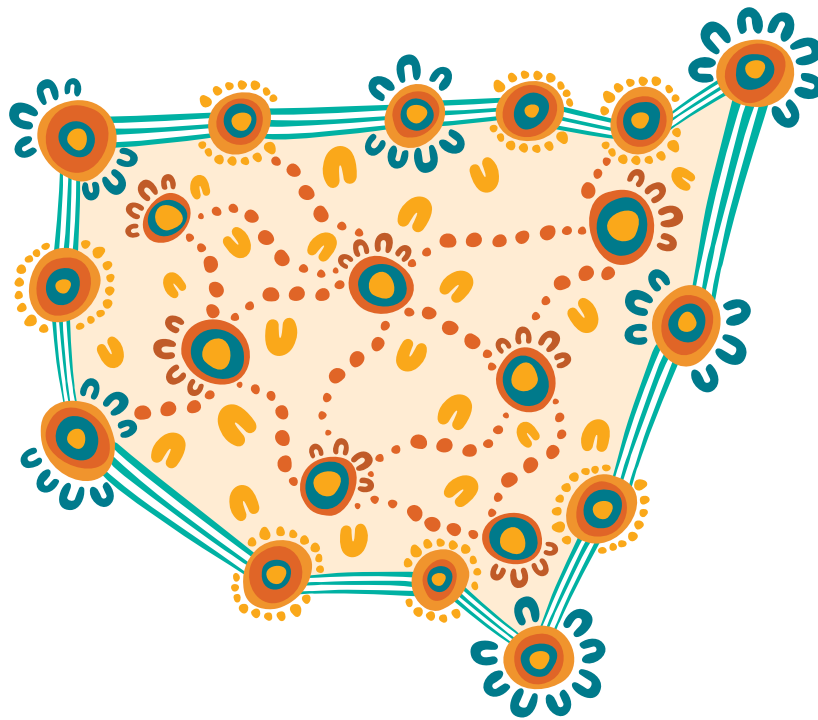
Closing the Gap across our Nations Illustration by Leticia Forbes reflects the goals of closing the gap for First Nations people across our Nation and coming together of people. It acknowledges the movement and diversity of First Nations people coming from different locations and working towards social, cultural and economic growth.

Methodology

The overarching methodology of the project was an Aboriginal-led design process informed by the UK Design Council's Double Diamond framework as a guide where appropriate.[9] The design process also sought to incorporate Indigenous ways of knowing, being and doing, acknowledging the impacts of colonisation.[10]

Diagram 2 UK Design Council Double Diamond with decolonising principles

Refine

Decolonising Principles

Decolonising Principles

Redefine

Discover
Initial ideas or inspiration and establishment of user needs

Define
Interpretation and alignment of findings to project objectives

Develop
Design-led concepts and proposals iterated and assessed

Deliver
Process outcome(s) finalised and implemented
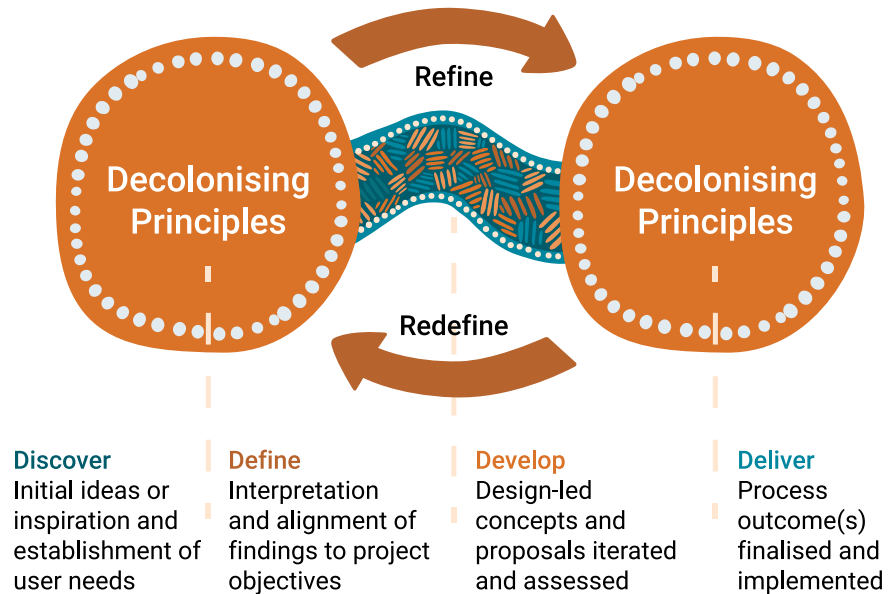
The overarching project methodology was an Aboriginal-led design process informed by the Double Diamond framework.

The Double Diamond framework is a visual representation of design processes, that provides a "flexible sequence of process steps and iteration loops."[11]

Our design process was made up of two key elements:
1. Stakeholder engagements, with community engagements as the centrepiece
2. Desktop research

NSW CAPO Leads were the final Aboriginal decision makers on the design, as the formal signatories to the National Agreement representing the interests of Aboriginal people in NSW.

The overarching design process was supported by accompanying Engagement and Research Strategies and underpinned by the NSW CAPO Engagement Principles (Appendix A) and Research Methodology Principles (Appendix B). As such the recommended model is aligned with the aspirations of Aboriginal people in NSW.

Diagram 3 The Aboriginal-led design process

Deliver

Final Phase: Agreeing the final option
(May 2024 onwards)
- NSW CAPO Leads agree final model(s) for recommendation
- Recommended model presented to Joint Council on Closing the Gap
- Budget bid to NSW Government
- Establishment phase

Refine

Develop

Phase Two - Refining the draft options
(January - April 2024)
- Community engagements (face-to-face and online workshops, and an online survey)
- Feedback from government bodies
- Desktop research and meetings with researchers

Define

Discover

Phase One - Answering the big questions
(June - December 2023)
- Community engagements (face to-face workshops and Deliberative Forum)
- Meetings with government bodies and accountability practitioners
- A gap analysis of existing accountability bodies

Engagements

Engagements were undertaken to support the Mechanism to be:

- **Designed by Aboriginal people**
- **Trusted and recognised as legitimate by Aboriginal people**
- **Representative of Aboriginal people's interests and concerns**
- **Able to achieve effective two-way communication with Community**
- **Informed by knowledgeable parties**

The engagement approach was based on the IAP2 Spectrum of Public Participation and Community Engagement Model.[12] Engagements were designed to be targeted and purposeful, noting high demands on stakeholders' time, consultation fatigue, and available resourcing. To ensure consultations were meaningful, engagements were focused on areas that were able to be influenced by different stakeholders.

Diagram 4 Influence of stakeholder engagement based on the IAP2 Spectrum of Public Participation

Inform	Consult	Involve	Collaborate	Empower
To provide community with information to explain a problem and opportunities for solutions	To gain community feedback on problems, possible solutions and decisions being made	To work directly with community throughout the decision making proces to ensure community concerns and needs are considered	To partner with community in every aspect of their decision making including the development of alternative decisions and preferred solutions	To place the final decision making power in the hands of the community

CAPO Members

Aboriginal Community & ACCOs

Government

Statutory Bodies

Experts

Coalition of Pearks (National & In Other Jurisdictions)

Engagements were conducted in two phases. This was to ensure input was provided ahead of key decision making points. **Phase One** sought input on broader negotiable matters, to ensure expectations and the scope of the project were clearly defined. Information gathered during Phase One informed the development of draft proposed models for the Mechanism, which included potential functions, features, tools and structures. These draft models were then circulated for targeted feedback during the **Phase Two** of engagements. In this way, engagements sought to iteratively build on design ideas and enable their refinement.
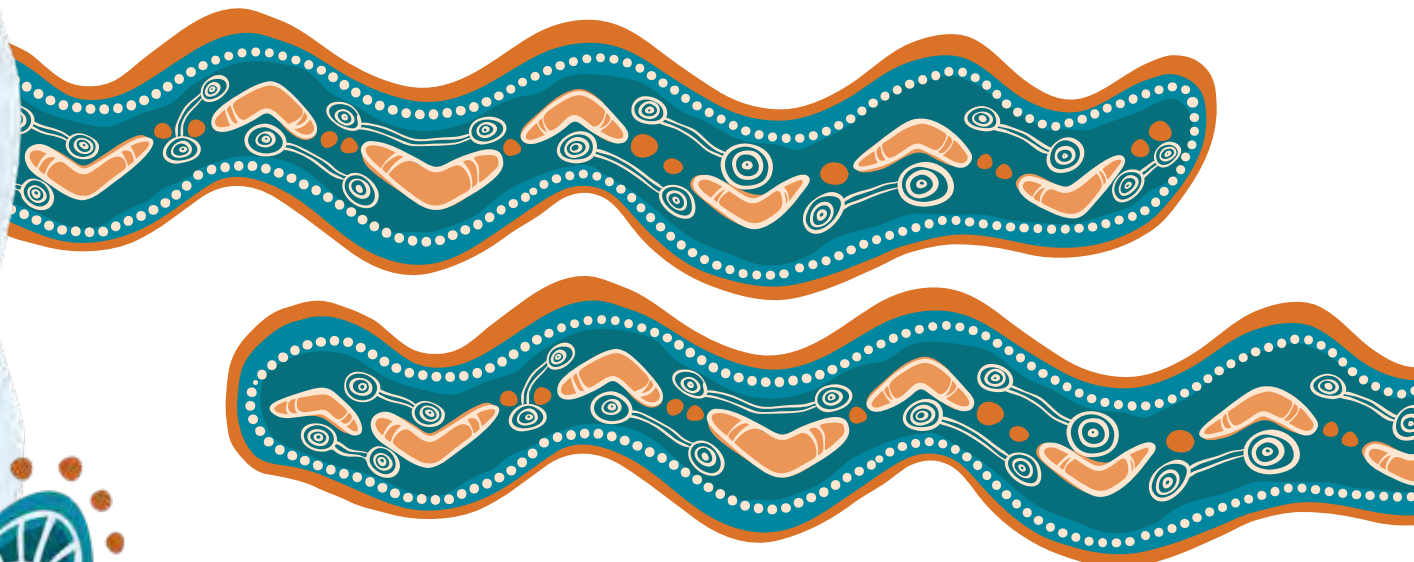
Knowledge sharing Illustration represents resilience and knowledge sharing throughout communities and generations.

Table 1 Engagements completed

Phase One Answering the big questions June – December 2023			
Stakeholders engaged	**Engagement type**	**Number held**	**Process**
Aboriginal Community	Community workshops	14 face-to-face 194 participants	Input sought on broad questions about the project. These included Community's views on what is accountability, what levers might drive government behaviour change, and how Community would like to interact with the Mechanism.
	Deliberative Forum	3 online workshops 1 face-to-face workshop	In-depth consultation bringing together 20 diverse Community voices to consider the Mechanism's design and recommend a model.
Government stakeholders working on Closing the Gap and Priority Reform 3	Online meetings	10	Input sought on broad questions about the project. These included advice on scope, powers, legislative reform, levers, existing processes to learn from, and securing bipartisan support.
Key administrative accountability bodies	Online meetings	13	Practitioner advice sought regarding successes, challenges and opportunities from which the Mechanism could learn.
NSW CAPO Leads	Face-to-face workshop	1	Deep dive into findings ahead of finalising draft structures for use during engagements in Phase Two.

Table 1 Engagements completed continued

Phase Two Refining draft proposed models January – April 2024			
Stakeholders engaged	**Engagement type**	**Number held**	**Process**
Aboriginal Community	Community workshops 3 online workshops	19 face-to-face (236 participants) 3 online (26 participants)	Feedback sought regarding draft proposed models for the Mechanism, including additional suggestions and details, and ranking/prioritisation of models.
	Online survey	161 respondents	
NSW Government agencies	Invitation to provide written feedback	3 written responses received	Specific feedback sought on draft proposed models for the Mechanism.
Researchers	Online meetings	8	Testing research findings and seeking recommendations of other relevant evidence to consider.
CAPO Members	Online workshops	3	Finalise recommended design of Mechanism, informed by findings from engagements and research.
	Face-to-face workshop	1	

Community engagements

NSW CAPO is committed to basing the implementation of Closing the Gap on the views and expertise of Aboriginal people and communities. It was therefore critical for engagement with Aboriginal people, including Elders, leaders, Community members and service providers to be at the core of the Mechanism design process.

Our engagements offered multiple ways for Community to be involved, within the time and resources available. Face-to-face engagements were prioritised, to facilitate safe and meaningful Community participation. Community was also able to engage online or over the phone, in support of those who could not - or preferred not to - attend face-to-face engagements.

Overall, the community engagement process included 33 face-to-face workshops, 3 online workshops, 1 online survey (open for 2 months), and a Deliberative Forum. In total, this attracted 637 participants.

33 face-to-face workshops **3** online workshops

1 online survey **1** Deliberative Forum

Deliberative Forum brings together diverse Community voices

To provide a more in-depth and informed community engagement opportunity, a Deliberative Forum was held in October 2023.

A Deliberative Forum is a unique consultation process that brings together diverse community voices to consider a complex problem in detail and to develop solutions. Participants in the **Government Accountability Deliberative Forum** were asked to consider: "What should an Independent, Aboriginal-led Government Accountability Mechanism look like in NSW?"

Participants were selected using a first-come-first-served Expression of Interest process, bringing together 20 participants from a diversity of demographic backgrounds, including age, community, mob, gender identity, sexuality, disability and work status.

Participants attended 3 online briefings to learn about the Closing the Gap agreements, the project, and NSW CAPO's findings from Phase One research and engagements. Participants then met face-to-face for a day-long forum, where they agreed upon their recommended model for the Mechanism. **This was one of four draft models that was then shared for feedback during Phase Two of engagements.**

The number of community engagements held was based on achieving a robust sample size within the time and resourcing available.

For community workshops, this meant achieving data saturation. Data saturation, a concept developed by Glaser and Straus, refers to the point at which no new content emerges from qualitative data collection.[13] Although the number of consultations required to reach data saturation varies by project, Hennink, Kaiser and Weber estimate that new topics will tend to be exhausted after four focus groups (code saturation), and new meaningful ideas will be saturated after six focus groups (meaning saturation).[14] As such, face-to-face engagements were held at a minimum of four communities across each geographic 'remoteness' category (four in remote and outer regional, four in inner regional, and four in major cities) across each phase, to achieve both code saturation (by remoteness category) and meaning saturation (for the state as a whole).

For the online survey, this meant receiving sufficient responses to achieve a high confidence level. A confidence level is a measure of how accurately the responses received are likely to reflect the attitudes across the population.[15] With a robust total of 161 responses, our survey achieved a confidence level of 99% and a confidence interval[16] of 0.1 for the NSW Aboriginal population.

Diagram 5 - Map of community consults

Despite strong sample sizes, the community engagement data has some limitations. This is due to the demographic backgrounds of participants at engagements, which were skewed towards women, older individuals, and those working in the Aboriginal sector. This trend is in keeping with the profile of those who are likely to be interested in social policy (a feminised industry) and Aboriginal affairs; however, these limits on diversity should be noted when considering the findings.

For a more detailed discussion on participation and findings from community engagements, refer to NSW CAPO's Community Engagement Reports – Phase 1 and 2

Research

To support informed and evidence-based decision making, desktop research was undertaken by the Project Team. Research and engagements worked together, with research guiding engagement questions and engagements providing new insights for research.

Desktop research focused on:

- Determining the need for a new accountability mechanism through a gap analysis of existing accountability bodies and approaches in NSW and Australia
- Understanding First Nations' perspectives of accountability
- Identifying lessons and opportunities for the design of a new Mechanism through:
    - a review of current and former accountability mechanisms and approaches (domestic and international)
    - a review of evidence of what makes successful accountability processes and mechanisms

To search and appraise material from aggregated databases, the Critically Appraised Topic (CAT) method was used.[17] This method is often used in evidence-based management to provide an assessment of what is known (and not known) about topics. Literature scans were undertaken using aggregated databases. A process of data screening and extraction was utilised to identify relevant and related articles, key insight and latest thinking.[18] Research also included scanning known commissioned government accountability studies in Australia and New Zealand.

Table 2 Research to support the design process

Research papers produced to inform NSW CAPO Leads' decision making	Approach
Australian Accountability Bodies Scan	Review of administrative accountability bodies within Australia (in particular NSW) to identify gaps, opportunities for future collaboration and lessons for the design of the Mechanism.
Australian Accountability Approaches Scan	Review of accountability approaches within Australia (in particular NSW) to identify opportunities for future collaboration and lessons for the design of the Mechanism.
International First Nations Bodies and Approaches	Review of a selection of international First Nations bodies and approaches to build evidence of global accountability practices.
Government Accountability Conceptual Considerations	Summary of recent academic research and debate regarding government accountability.
Accountability Models and Their Effectiveness in Influencing Reform and Behaviour	Preliminary literature review of what evidence exists regarding effective accountability levers to drive behaviour change in government.
Social Accountability Models Scan	Scan of examples of social accountability in the international development sphere to identify best practices.
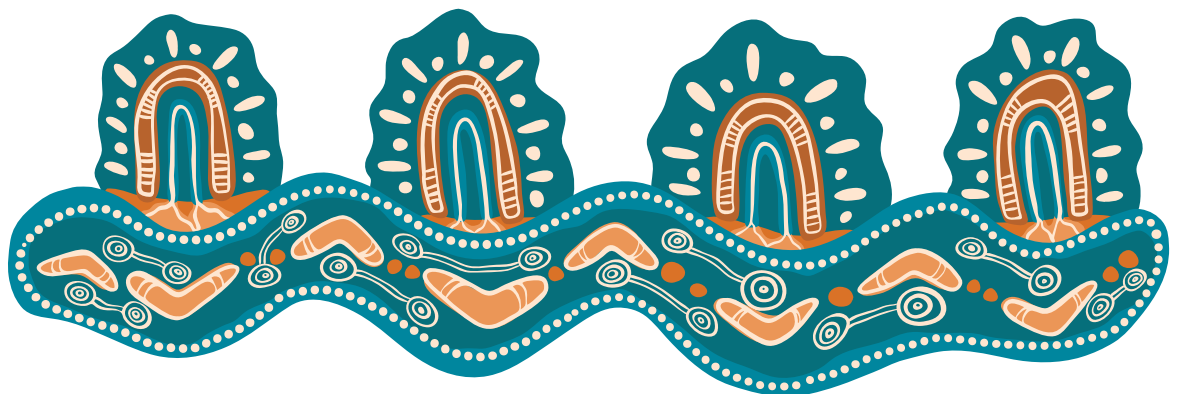
Mountains of knowledge Illustration by Leticia Anne Forbes represents the guidance and cultural practices past down to us from our Elders. It reflects moving forward with respect, connection, pride and strength. The boomerangs represent resilience and knowledge sharing throughout communities and generations.

Part Two -
The key findings

Part Two provides an overview of the findings of the design process, including:

- Accountability definitions and accountability goals
- An analysis of accountability gaps in NSW
- Factors that contribute to the effectiveness of accountability mechanisms
- Key expectations of Community for the Mechanism

These findings informed NSW CAPO Lead's final decisions for the recommended Mechanism model.

What is accountability?

It is important to consider definitions of accountability in the context of the latest academic thinking. According to leading expert Bovens, accountability is where an "actor has an obligation to explain and to justify his or her conduct…[answer] questions and [receive] judgement, and the actor may face consequences.[19]

To better understand accountability, it can be helpful to consider 'Who should be held accountable? To whom should they be accountable? For what should they be accountable? How should they be held accountable?'[20]
In this case, we are talking about:

The obligation of the **NSW Government** (who)
to **Aboriginal people in NSW** (to whom)
for their actions to improve Aboriginal outcomes (for what) by explaining or justifying government actions and performance, answering questions, being judged, and facing consequences via **the Mechanism** (how).

Government accountability is a key feature of liberal democracies, where accountability processes support citizens to hold elected representatives and publicly funded officials to account. Accountability plays a key role in building public trust in government, which consequently promotes government effectiveness.[21]

Accountability, as a concept, can refer to a range of different objectives. Rock identifies six common goals that individuals might be motivated by when demanding greater accountability.

Table 3 Accountability goals[22]

Goals	Description
Transparency	Uncovering information from government and making the public aware of relevant information and issues
Control	Assessing whether government is complying with its obligations and (if not) compelling government to do so
Restoration	Ensuring that government recognises the harm it has caused and takes steps to fix it
Punishment	Punishing serious wrongdoing (e.g. malicious conduct) to satisfy the public that such wrongs are taken seriously
Deterrence	Influencing government behaviour by incentivising desired conduct and disincentivising undesired conduct
Reform	Recommending and achieving forward-looking change in government systems and policies

This list is non-exhaustive and not every goal listed will be relevant to every situation.

Accountability mechanisms may choose to target one or more of these goals. Where more than one goal is relevant, one goal might be accorded higher priority than another. The goals can work together in harmony, but they may also counteract if not well balanced, as outlined later in this report in the section on 'Balance between goals'. It is therefore important to be clear which goals are a priority for an accountability process or mechanism.

Accountability according to the NSW Aboriginal Community

According to the Jumbunna Institute, there are some important distinctions between First Nations people's understanding and interpretation of the concept of 'accountability' compared with Western liberal democratic practices.[23] One key distinction is in **the weighting of relationships and the collective.** Although accountability is a relational concept in both contexts, according to the Jumbunna Institute "Aboriginal understandings of accountability may focus on relationships and relationality, rather than institutions and information which is the focus on Western liberal democratic accountability".[24] Noting that there is an inherent risk in translating concepts across and outside of context, it is nevertheless crucial to hold such a distinction in mind when designing a mechanism that sits at the intersection of different value and cultural systems.

When Community participants shared insights during engagements about what accountability means to Aboriginal people, their insights frequently mirrored the findings of the Jumbunna Institute.

Community participants told us that accountability is based on **relationships and reputation.** To be accountable, government needs to **invest in relationships at the community level** and explain in person when things don't go well. This is much more important than in the 'western' definition of accountability and is rooted in Aboriginal concepts of kinship and shame.

According to Community participants, a key step in building trust in accountability relationships is **openness and transparency**. Aboriginal people in NSW would like government to proactively provide access to meaningful and comprehensible information to empower the Community to understand progress or setbacks. Accountability requires measuring what matters to Community, so data and measurements should be relevant and tailored to place, with qualitative data valued as well as quantitative.

Community also wants an opportunity to scrutinise and verify government information to build trust in what is being reported. In this way, Aboriginal Data Sovereignty must work hand in hand with government accountability. Finally, accountability means **taking responsibility and accepting consequences**. This requires both public acknowledgement of failings, and meaningful consequences for individuals and organisations where outcomes are consistently not met.

In this sense, the call for 'greater accountability' from Community, can be further expanded to mean:

> The obligation of the **NSW Government** (who)
> to build trust with **Aboriginal people in NSW** and
> demonstrate the importance of this relationship (to whom)
> by sharing information, being scrutinised, taking responsibility
> and accepting consequences in a way that's
> meaningful to Community (how) regarding their
> **actions to improve Aboriginal outcomes** (for what)

Accountability according to Community:
Is based on relationships and reputation
Requires government to invest in relationships at the community level
Demands openness and transparency
Requires measuring what matters to Community
Means taking responsibility and accepting consequences

How accountability is achieved in democratic systems

Government accountability in democratic systems is broadly achieved using **political, legal, and administrative mechanisms**.[25] In the field of international development, the concept of **social accountability** has been recognised and developed. This concept is important when designing the Mechanism because, as we have seen, Aboriginal people are more likely to value relationships and interconnectedness, which are central to the idea of social accountability.[26]
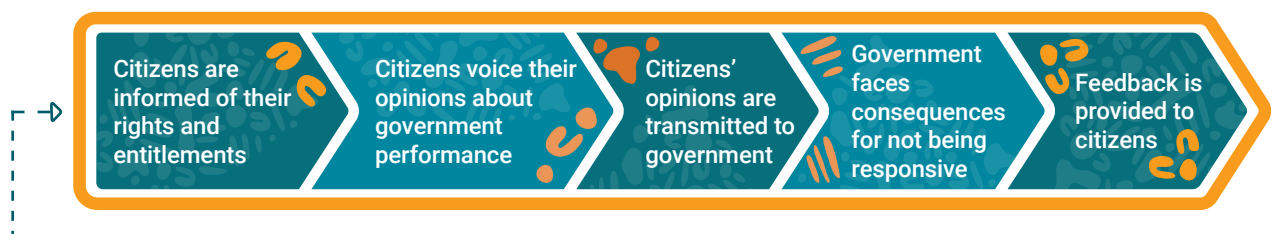
The primary **political accountability mechanisms** in democracies are regular elections and fixed terms for office. These provide regular intervals for decision makers to be held accountable by citizens for their performance.

Legal accountability mechanisms refer to judicial processes that enforce the rule of law. Judicial government accountability processes see courts determining the legality of government action and overturning decisions and conduct that exceed the scope of legal power. Courts also have enforcement powers in more serious cases.

Administrative accountability mechanisms are regulatory enforcers of government obligations. These are typically independent statutory bodies, such as Ombudsmen (responsible for hearing and addressing citizen complaints), independent auditors (who scrutinise the use of public funds for signs of misuse) and anti-corruption commissions (who investigate and make findings regarding public corruption).

Social accountability is fundamentally about involving ordinary people in the oversight of government. It involves various mechanisms to make government more accountable by listening and responding to what people think.[27]

Diagram 6 Processes involved in social accountability

| Citizens are informed of their rights and entitlements | Citizens voice their opinions about government performance | Citizens' opinions are transmitted to government | Government faces consequences for not being responsive | Feedback is provided to citizens |

Social accountability begins with informed citizens who are aware of their rights and have the knowledge and opportunity to voice their opinions regarding government decision making and service delivery. Social accountability requires that community voices are transmitted to government either directly or indirectly and that government is answerable to community members.[28] Where government is not responsive, there is some form of consequence. Information is then fed back to community members about the result of their participation in the social accountability process.

Social accountability began in the field of international development, with the rationale that "the failure of state-led development can be ameliorated through the actions of an informed and engaged citizenry that knows its rights and requires governments to uphold them."[29] Social accountability includes a broad range of actions and mechanisms that citizens can engage with to hold government accountable. These include community scorecards and social audits.

What is Independent and Aboriginal-led?

When designing an accountability mechanism that is 'Independent' and 'Aboriginal-led' it is important to clearly define the meaning of these terms.

What makes a Mechanism more, or less independent?

Independence from government is fundamental for mechanisms that are intended to provide an external check on the executive branch of government.[30] Public perception of accountability mechanisms' independence is also a key factor in building and maintaining trust, which, as discussed in Part Two of this report ('The importance of public trust in an accountability mechanism'), is critical to their success.[31]

Several factors contribute to an accountability mechanism's actual and perceived independence from government. Drawing on relevant scholarly research, Rock offers the following summary of factors that contribute to an accountability mechanism's independence from government.[32]

Table 4 Factors that contribute to an accountability mechanism's independence from government[33]

	Weaker	Stronger
Structural separation and mandate	• Embedded within government • Answerable to government (reporting lines) • Limited expectations of autonomy (e.g. bound to implement government policy)	• Sits outside of government • Answerable to an independent body (reporting lines) • Independence is prescribed in legislation • Leaders take oath/affirmation to exercise powers faithfully and impartially
Autonomy in exercise of powers	• Accountability processes opened only upon government request • Restricted powers of investigation • Government control over budget and staffing	• Accountability processes opened upon own direction • Discretion to determine when and how to investigate • Ongoing and sufficient funding that is immune from political interference • Autonomy in day-to-day operations

	Weaker	Stronger
Appointments of leaders	• No formal criteria for appointment • Decision made behind closed doors • No obligation to consult externally • Government power over selection	• Public, merit-based appointment criteria • Transparent process • Selection made by an independent appointment body
Job security and protection against reprisal for leaders	• Insecure tenure or pay (e.g. reliance on government to reappoint) • Risk of removal by government at any time • Risk of personal liability	• Secure tenure and pay • Limited ability to be removed from office during term (e.g. restricted to misbehaviour, incapacity) • Protection against personal liability

Rock points out that this list is not exhaustive or prescriptive.[34] It is also important to note that setting up independence 'on paper' is not a guarantee that a mechanism will operate independently. Strong formal arrangements are a good start, but do not guarantee outcomes without ongoing commitment from government and from the accountability mechanism itself.[35]

Aboriginal-led

As the key experts and stakeholders for an Aboriginal-led Mechanism, Community participants were asked what they expect of a body that is **Aboriginal-led**.

These were common themes raised during discussions:

• **Aboriginal identified roles** should be instituted, particularly at senior levels and ideally throughout the Mechanism as much as possible. This will involve an investment in a pipeline of suitably qualified Aboriginal people
• **Diverse and intersectional identities should be included at the leadership level** to reflect the diversity of Aboriginal people in NSW. This should include diversity of ages, gender identities, abilities/disabilities, sexualities, urban/remote/regional, clans, countries and families
• **Leaders must demonstrate genuine grassroots connections to Community** as well as the right technical skills
• The Mechanism should invest in building **face-to-face relationships with Community and communicating clearly**
• The Mechanism should be **well branded** as Aboriginal-owned (recognisable logo and language)
• **Trauma-informed practices** should be embedded in the Mechanism

The Need for the Mechanism

Increased government accountability is long overdue

Aboriginal and Torres Strait Islander people in Australia have long been calling for increased government accountability. NSW Aboriginal leaders in particular have an important legacy of advocating for increased government accountability for Aboriginal outcomes. The creation of the unique position of a NSW Deputy Ombudsman (Aboriginal Programs) came as a result of requests from Aboriginal Community leaders for accountability processes to accompany the OCHRE (Opportunity Choice, Healing, Responsibility, Empowerment) Plan, which outlines the NSW Government's aims for Aboriginal affairs.

> **"Aboriginal people make up a small proportion of the state's population, which translates into a low level of influence in formal electoral politics. This means Aboriginal people on average are more impacted by what government does, but less able to influence it – there is an accountability gap."**
>
> **– Lowitja Institute.**

Most recently, this call has been amplified through the lens of Closing the Gap. Between 2019 and 2022, NSW CAPO and the Coalition of Peaks held extensive community engagements across NSW and Australia to inform the development of the National Agreement on Closing the Gap and NSW Implementation Plan. During these consultations, participants expressed frustration at the lack of accountability of government for Aboriginal outcomes.

Gaps in the existing accountability system

Based on both Community input and desktop research, we have identified *a lack of social accountability mechanisms in NSW that are independent, Aboriginal-led and targeting accountability goals of transparency, reform, deterrence, and punishment.*

Gaps identified by Community

Analysing Community's calls for greater accountability with consideration of the different types and goals of accountability mechanisms, we determined the following gaps.[36]

<u>There is a need for greater Community oversight</u> (identified gaps: social accountability, Aboriginal-led, transparency)

- Community wants to be involved in assessing the performance of government
- Community needs support to engage with relevant accountability processes
- Accountability measurements aren't meaningful to Community. Government is selecting its own measures of progress for Aboriginal outcomes. Community wants government to be assessed using locally tailored targets, measures and data to ensure diverse needs are understood and measured. Qualitative reporting should be treated as a valuable source of data to enable meaningful measurement by Community

There is a need for greater scrutiny and transparency **(identified gaps: social accountability, independence, transparency)**

- Government is holding itself to account on Aboriginal Outcomes; instead, Community would like independent oversight of accountability processes
- Aboriginal controlled services are subject to a greater level of scrutiny than government and mainstream services
- Community wants access to relevant information and data to measure government performance
- Aboriginal people want to know what services are funded, who is delivering them, and what outcomes are being achieved

More action is needed in response to accountability process **(identified gaps: reform, deterrence punishment)**

- There are insufficient accountability drivers to support and drive change, which has led to many reviews and recommendations being ignored
- There is a lack of consequences for racism and negative interactions between government and Aboriginal people

"

"You won't change government until people are held accountable for bad decisions or bad faith actions. Community is always held accountable, but government decision makers don't ever seem to be."
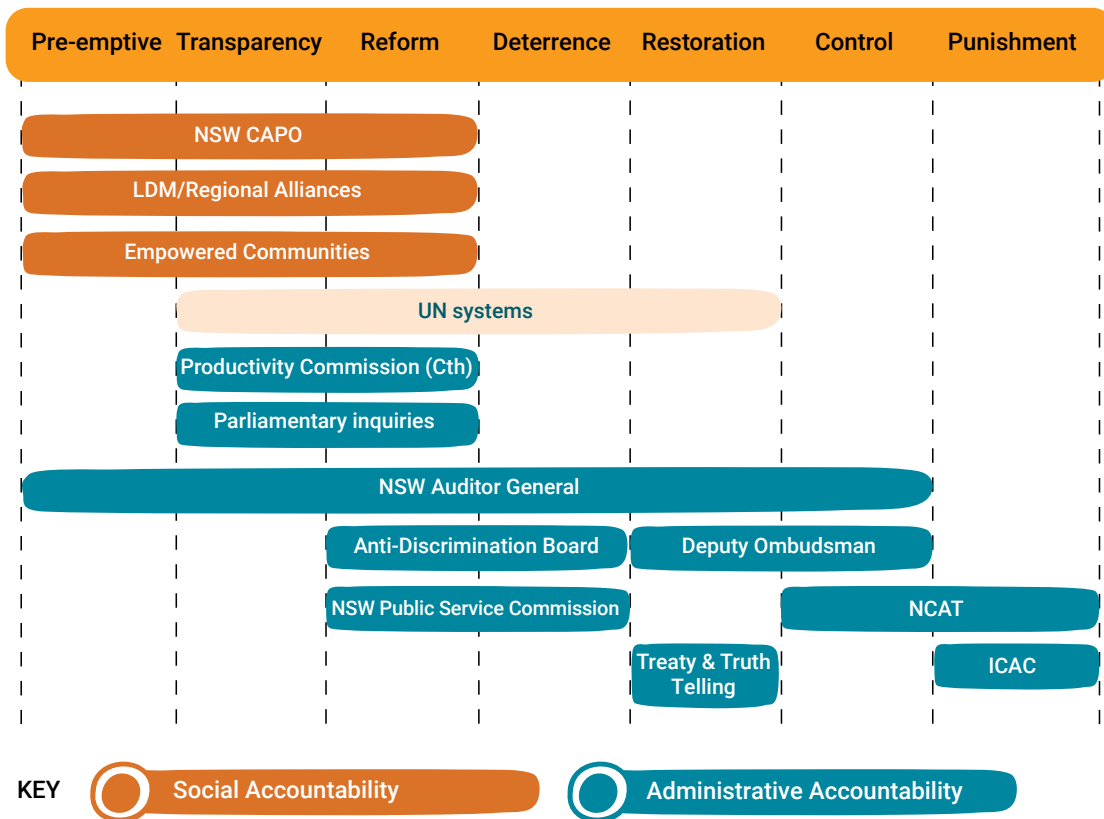
- participant at 2022 NSW CAPO consultations

Gaps according to desktop research

NSW CAPO has mapped existing social and administrative accountability processes in NSW against Rock's six accountability goals to identify gaps in the current system. This mapping reflects NSW CAPO's preliminary analysis and should not be seen as a static or definitive assessment.

Diagram 7 Accountability goal mapping (by NSW CAPO Project Team)

Pre-emptive	Transparency	Reform	Deterrence	Restoration	Control	Punishment
NSW CAPO						
LDM/Regional Alliances						
Empowered Communities						
	UN systems					
	Productivity Commission (Cth)					
	Parliamentary inquiries					
NSW Auditor General						
		Anti-Discrimination Board		Deputy Ombudsman		
		NSW Public Service Commission			NCAT	
				Treaty & Truth Telling		ICAC

KEY — Social Accountability (Social) — Administrative Accountability

This desktop mapping confirms a lack of Aboriginal-led and social accountability approaches focused on the accountability goals of deterrence, control and punishment.

> **NSW CAPO looked closely at social and administrative accountability processes that already exist in NSW and compared them against Rock's six accountability goals to identify gaps in the current system. This identified a lack of Aboriginal-led and social accountability processes focused on deterrence, control and punishment.**

Social accountability mechanisms referred to in Diagram 7 above lack access to the types of powers necessary to deliver on these three accountability goals. The mechanisms that do have the necessary accountability powers focus only on niche areas and on enforcing 'bare-minimum' legislation, rather than on measuring transformative action as described under Closing the Gap.

What makes an effective government accountability mechanism?

This section outlines key lessons regarding what makes an effective government accountability mechanism. These findings are based on desktop research and engagements with researchers and accountability practitioners conducted by NSW CAPO as part of this design process.

Accountability: getting the balance right

Balance is a key ingredient that impacts the effectiveness of accountability mechanisms. It is important to ensure a good balance in the 'amount' and 'type' of accountability being employed, and to pay attention to ways in which accountability processes can counteract one another.

While this report has so far concentrated on the impact of too little government accountability for Aboriginal outcomes in NSW, it is important to consider the risks of tipping the scales the other way.

Too *much* accountability brings its own risks, which include:[37]

- Enlarged workloads for agencies
- Stifling innovation
- Excessive reliance on compliance tools (guidebooks, manuals, checklists etc.)
- Focus on short term KPIs at the expense of long-term policy objectives
- Focus on measurable aspects of performance at the expense of important but unquantifiable aspects of performance
- Avoiding dealing with issues that could raise red flags during an accountability process

Anticipating the point at which a system will tip into having 'too much' accountability is challenging. It is not necessarily a problem for there to be some overlap between the work of accountability mechanisms; cumulative accountability can provide 'failsafe' benefits and different accountability processes may build on each other to reach a tipping point of change.[38] However, there is a point at which having too many duplicative accountability processes is likely to lead to diminishing returns.

For this reason, when designing the Mechanism, it is important to consider what accountability mechanisms already exist, the roles they play and the ways in which they interrelate and connect.[39]

Furthermore, the existence of accountability gaps does not necessarily mean that a new mechanism is the right body to fill them. Rather, accountability is a joint effort, and it may be more appropriate to address some gaps by making changes to existing accountability arrangements, and creating a new mechanism to target areas where accountability is both lacking and where a new entity would be most appropriate to meet this need. Any new mechanism must also look to leverage off and strengthen the work of other mechanisms through referrals and collaboration.
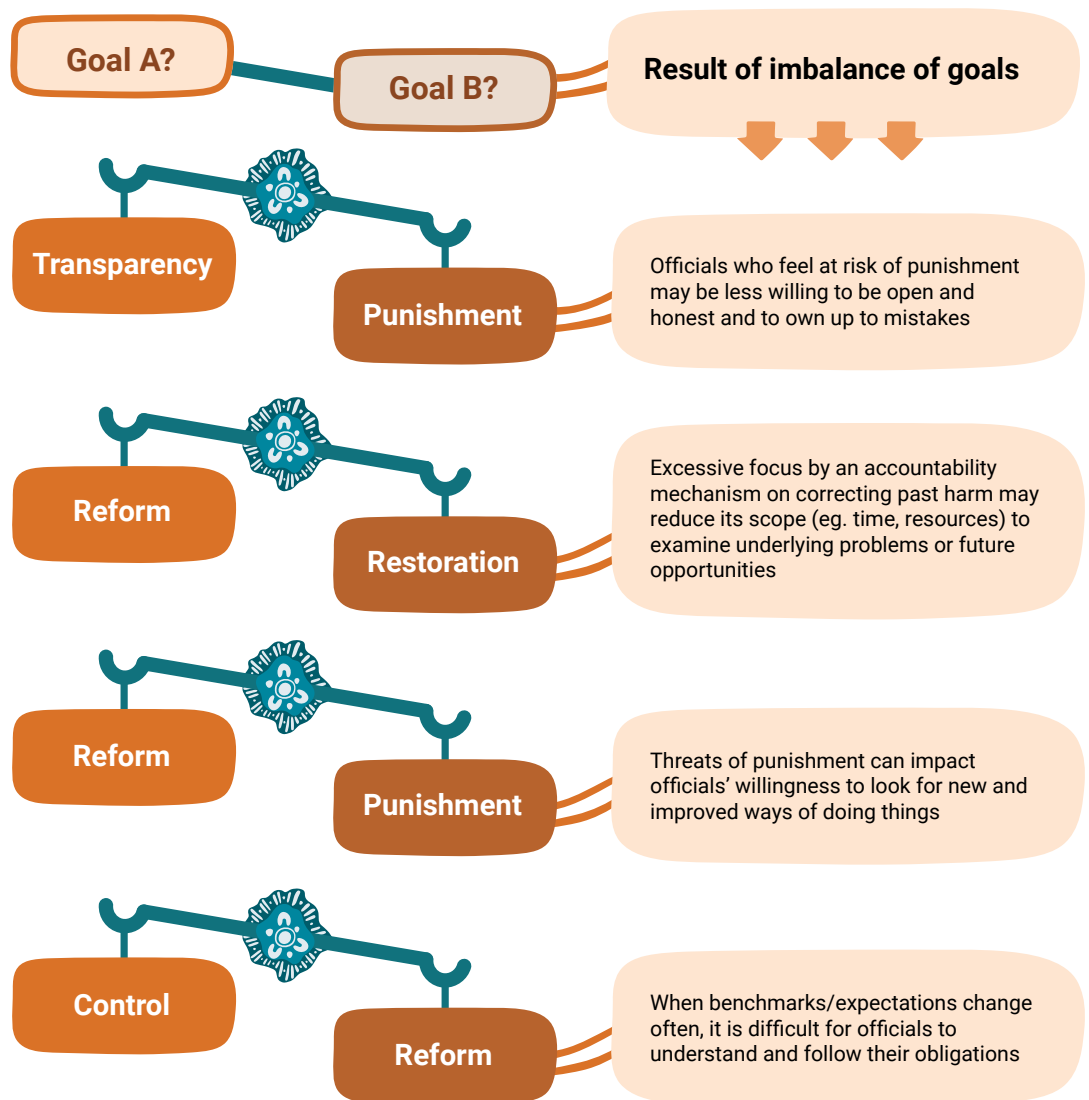
Striking the right balance in accountability with the Mechanism should involve:

- Changing existing accountability systems to address accountability gaps that are most appropriately dealt with by them
- Setting up the Mechanism with appropriate powers to leverage off and collaborate with existing accountability bodies
- Building connections between existing accountability systems and the Mechanism

Balance between goals

When selecting accountability goals (as identified by Rock), care needs to be taken in considering how they may interact. Too much of one type of accountability can potentially impact the effectiveness or performance of another. This does not mean that these goals cannot all be pursued at once, but instead that care needs to be taken to find the right balance so that accountability processes do not inadvertently work against each other.[40]

Diagram 8 Selecting accountability goals, according to Rock [41]

Goal A?	Goal B?	Result of imbalance of goals
Transparency	Punishment	Officials who feel at risk of punishment may be less willing to be open and honest and to own up to mistakes
Reform	Restoration	Excessive focus by an accountability mechanism on correcting past harm may reduce its scope (eg. time, resources) to examine underlying problems or future opportunities
Reform	Punishment	Threats of punishment can impact officials' willingness to look for new and improved ways of doing things
Control	Reform	When benchmarks/expectations change often, it is difficult for officials to understand and follow their obligations

When an accountability mechanism is designed, its primary goals should be clearly understood and agreed upon. The design should also feature a level of flexibility that allows for adjustments to be made, if the mechanism is not achieving its intended balance of accountability goals.

Finding a balance of powers

Accountability is not only about looking backwards to scrutinise and hold government responsible for its past performance. It is also about looking forwards to create change within government. The powers that an accountability mechanism could use to drive change must therefore be considered in the design. Powers come in many different shapes and forms, with the clearest distinction being between hard and soft powers.

Hard power refers to the ability to bring about change through force. For accountability bodies, this means being able to enforce reforms or consequences, often with the backing of legislation. Hard powers do not always entail punishments. Incentives may also be useful tools for effectively reinforcing desired behaviour. Such incentives may include rewards, small bonuses, funding additional education and supporting career progression. As the Mechanism will not be dealing with unlawful matters, any hard powers will be focused on motivating change.

Soft power refers to the ability to bring about change through influence and persuasion. This entails cultivating respect to encourage stakeholders to follow advice voluntarily from a desire to benefit from knowledge and prestige.

It is difficult to know what accountability tools or powers will be effective in driving systems change and individual behaviour change in a specific real-world context. Accountability design is still largely driven by theoretical assumptions of what *appears* to work, rather than empirical evidence that proves what *does* work.[42] It is also difficult to pinpoint an accountability mechanism's role in achieving positive change because reform is often the product of many different factors. At the end of the day, what works best to encourage individuals to change their behaviour will come down to their own motivations and priorities. Nevertheless, there are some broad lessons that the Mechanism can draw upon.

The case for hard power

Community expressed clear expectations at engagements that the Mechanism should have access to hard powers. Community told us that powers to impose consequences and enforce recommendations are a key gap in existing accountability processes. Without hard powers, the Mechanism would only offer more of the same – lip service and no change. As this report highlights in Part Two ('The importance of public trust in an accountability mechanism'), meeting Community's expectations is critical to the success of an accountability mechanism. This message from Community must therefore be carefully considered in the design of the Mechanism.

Accountability practitioners similarly noted that a lack of hard powers was a key weakness in existing accountability processes. Even where officials within an agency are open to recommendations, political decisions at a higher level may dictate whether they are acted upon. A key warning from accountability practitioners was to make sure the Mechanism does not end up with all the responsibility and expectations, without the hard power required to influence change.

The case for soft power (and the limitations of hard power)

Despite common assumptions, there is limited empirical evidence that imposing sanctions is effective at deterring undesired behaviour.[43] Some literature suggests that the threat of sanctions can even encourage worse behaviour in some situations, such as defiance or malicious compliance.[44] Some studies suggest that the perceived likelihood of detection is more influential than the size of potential sanction. If an official knows ahead of time that they will be held accountable they may be more likely to try and meet the expectations of the accountability process (if known), or to adopt a cautious and considered approach (if expectations are unknown).

Accountability bodies may be more effective in encouraging agencies and officials to take up recommendations if they cultivate a positive reputation in terms of their credibility, expertise, procedural fairness and trustworthiness.[45] Government agencies may be more likely to embed meaningful changes if they are brought on a learning journey through processes that encourage reflection, and where they respect the quality of the advice provided.[46] In contrast, agencies may be less likely to take up recommendations that come as a shock result rather than through a process of ongoing dialogue,[47] and officials may be less likely to respect the outcome of an accountability process if it is viewed as combative or unfair.[48]

The case for an escalation model 2023-24

Most people working in administrative accountability bodies (accountability practitioners) told us that finding a good balance between driving change through influence versus enforcement was crucial. Practitioners believed it is possible for accountability mechanisms to have good relationships with government officials at the same time as being able to impose consequences, provided expectations and roles were transparent and clearly communicated.

A model recommended by both practitioners and Community was an escalation approach. With an escalation approach, the severity of responses or consequences increases depending on the gravity of findings. This model would enable the Mechanism to provide assistance and rewards, as well as impose consequences. An escalation model could help reassure conscientious officials that they are not at risk of disproportionate punishments, while increasing the risk of meaningful consequences for those acting consistently in bad faith.

In general, Community participants understood that government accountability for Closing the Gap will require a significant cultural and behavioural shift. To achieve this, Community participants believed the Mechanism will need to strike a balance between building support within government and working together to drive change, while ensuring there are 'teeth' to motivate this change where required. Community has recommended a series of 'tools' (i.e. levers) that might drive change, which are outlined in Part Three of this report ('Findings from community engagements').

> **"** Where possible, change should be driven through assistance, education and positive reinforcement, but a 'stick' or 'bite' must be available when needed, to ensure the Mechanism is not another toothless tiger.
>
> – Community Engagements, NSW CAPO Government Accountability Project, 2023-24

Scope considerations

Building trust and authority in any context takes time. Researchers and accountability practitioners therefore recommend that the Mechanism begin with a clear and targeted focus at first.

It is advisable to select a few key achievable roles for the Mechanism, and work to build its reputation, while embedding flexibility to pivot if needed as it becomes more established. Holding multiple functions could potentially hamper its overall effectiveness, as resources would be spread too thin.

To prevent actual or perceived conflicts of interest, it is important that the Mechanism does not deliver services, so it cannot be accused of passing judgment on its own work or on that of its funders/potential funders.

The importance of public trust in an accountability mechanism

A key purpose of accountability mechanisms is to build public trust in government, institutions and democratic systems.[49] To achieve this, it is critical that accountability mechanisms themselves cultivate public trust. Building trust with Aboriginal people is a particularly challenging ask, given the traumatic and ongoing legacy of dispossession by Australian governments and institutions of Aboriginal and Torres Strait Islander people.[50]

> **It is therefore vital that the Mechanism invest significantly in the process of establishing connection and trust with Community.**

Although trust is a complex concept, a common explanation is that trust requires a person to be willing to accept vulnerability in the expectation that another party will choose to do the 'right thing'.[51] It is possible to reduce the perceived vulnerability of trust by putting effective accountability measures in place.[52] The public assumes government is more likely to 'do the right thing' when it knows it is being watched and could be subject to sanctions.[53]

Achieving trust is a delicate balancing act, and it can be affected by a complex range of variables that are difficult to predict and account for.[54]

For accountability mechanisms, public trust can be influenced by their:[55]

Connection to Community

- Public involvement should be embedded in mechanisms' day-to-day work, including opportunities to both initiate and participate in accountability processes

Alignment with public expectations

- There should be alignment between public expectations of what an accountability mechanism can and should be doing, and what the body is set up for and able to achieve. This can be achieved by:
    - designing mechanisms to match public expectations, or
    - working with the public to adjust any expectations that mechanisms cannot meet[56]

Independence from government

- Mechanisms must demonstrate an appropriate degree of separation from government to reassure the public that they will not be prevented from doing their job directly or indirectly by government

See Part Two of this report ('What makes a Mechanism more, or less independent?') for more detail on design elements that influence perceived and actual independence of accountability mechanisms.

Powers and resourcing

- Mechanisms need to be assigned adequate powers and resources to perform their role, so they can be strong and effective. Mechanisms that do not have the powers and resources to deliver on their intended role tend to lose public trust quickly

Transparency

- Mechanisms should, where possible, operate transparently so that the public can observe processes and outcomes
- Mechanisms should themselves be accountable, with appropriate reporting and oversight functions in place to reassure the public that they are performing their role properly and effectively

Connecting Community Illustration by Leticia Anne Forbes is about Sharing the significant journey and path to helping connect, build and empower our communities with opportunities that allow a sense of belonging from one community to another. The element and panel share the different communities connecting across the Country, represented through the landlines (cross-hatching). The meeting circles hold different layers representing coming together with respect and openness to learn from one another. The people and knowledge sticks around the community circles represent the diversity of people.

What Community wants to see in the Mechanism

Understanding and meeting Community's expectations is important for the Mechanism to build public trust. As discussed earlier, public trust is fundamental to the success of accountability mechanisms.

This section outlines four key requirements for the Mechanism outlined by Community during engagements held as part of this design process.

For further detail of messages shared by Community, see Part Three of this report ('Findings from community engagements'), and NSW CAPO Community Engagement Reports (Phase 1 and Phase 2).

Community has told us that a new Mechanism must:

1. Bring independent Aboriginal leadership and oversight to accountability processes (see 'What is independent and Aboriginal-led' for more detail)
2. Embed Community connection in accountability processes (see below)
3. Be able to use hard powers or 'teeth' to drive change following accountability processes (see below)
4. Be a permanent and ongoing fixture

Embed Community connection in the Mechanism

Community has provided suggestions for how to include Community in the Mechanism's work. This provides a roadmap for building trust in the Mechanism.

Community would like:

- The Mechanism to be accountable to Community above all
- To be able to input, guide, verify, provide advice, raise concerns, and receive feedback about government accountability processes
- The Mechanism's work with Community to be localised and place-based

Community believes this could be achieved by:

- **(Ideal)** Embedding a connection to Community in the Mechanism's structure through physical offices, representatives in-place, or through local/regional bodies that feed into a state body. This could be achieved through: Elders groups, Community representation on a central group, local community boards or advisory panels, regional oversight committees, an elected group, and on-the-ground advocates.
- **(Bare minimum)** The Mechanism investing in two-way communication with Community, including regular community engagements (both face-to-face and online).

Embedding Community connection is important because it stands to build trust in the Mechanism and improve government performance, and because it is what is owed by government to Aboriginal Community.

The Mechanism needs powers and teeth, to be able to drive change

Powers to impose consequences and enforce recommendations are the key piece of the puzzle missing in existing accountability processes. Community told us that it is critical for the Mechanism to have 'teeth' to ensure it can enforce change, rather than just making recommendations that can be ignored. To achieve this, Community believe the Mechanism should be able to apply a sliding scale of consequences (escalation model) for both individual and organisations.

This sliding scale or escalation model can be summarised into three key areas:

- **Good performance** should attract incentives, such as recognition, promotion and awards
- **Minor infractions** provide an opportunity to offer tailored support, with the Mechanism working with relevant parties to find solutions together. This could include developing and/or signing off key policies and reports together
- **More serious and ongoing infractions** should attract serious consequences, including monetary and career penalties for individuals (including high-ranking people), and monetary and legal penalties for organisations
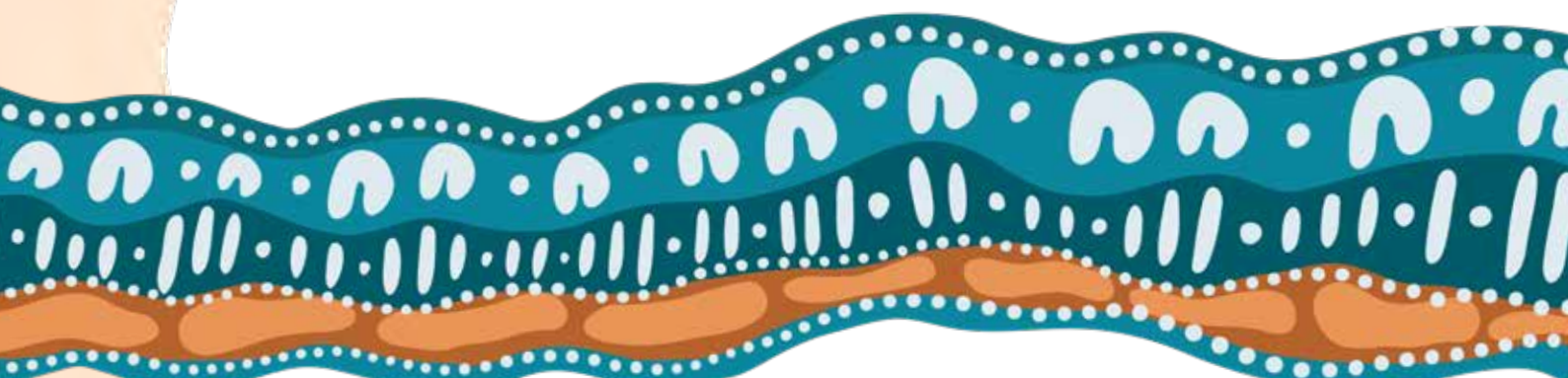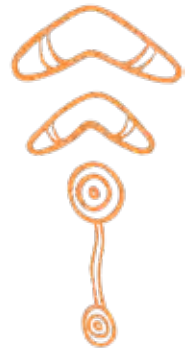
Part Three -
The recommended model

Part Three provides an overview of:

- NSW CAPO's recommended model for the Mechanism, including its functions, structures and reporting lines
- How this model addresses the criteria of the Mechanism and findings from the Aboriginal-led design process
- Alternative models that were considered and why they are not recommended
- How the recommended model fits with existing accountability and First Nations systems in NSW

The recommended model for the Mechanism

Purpose

The recommended purpose of the Mechanism is to hold the NSW Government* accountable to Aboriginal people for achieving transformative change* to improve Aboriginal outcomes.

*Government means parliamentarians, ministers, public servants, senior executives, and public sector workers who are employed through different processes, such as police, health workers and teachers.

* The Mechanism will have a remit to consider **transformative change to improve Aboriginal outcomes beyond Closing the Gap.** The Mechanism will initially use the implementation of Closing the Gap as a lens through which to define its priorities. However, to ensure that the Mechanism operates beyond the National Agreement and remains flexible in connecting with emerging priorities, it will not be limited to monitoring the National Agreement and the NSWIP on Closing the Gap.

Core functions of the Mechanism

The Mechanism will have two core functions:

1. **Work with existing accountability processes and Community to get the best outcomes for Aboriginal people.**

   a. Work with existing accountability bodies to ensure they effectively address concerns regarding Aboriginal outcomes
      › This will include supporting processes to invest sufficient resources and to provide cultural safety and relevant expertise
      › Nurturing key relationships and facilitating referrals will help to achieve this

   b. Promote Community inclusion in transparency processes and strengthen Community's capacity to hold government to account
      › Support Community to raise concerns through existing relevant channels
      › Facilitate Community input into existing review processes, potentially through community scorecards or other social accountability processes
      › Ensure Community receives meaningful feedback regarding transparency processes
      › Invest in Community knowledge of existing accountability processes and skills to engage in them

The Mechanism will remain flexible in adjusting its approach to complement efforts of future Aboriginal-led work, in particular the Commissioner for Aboriginal Children and Young People, and the NSW Treaty process.

2. **Lead Aboriginal-owned accountability processes.**

   a. Conduct own reviews, inquiries and audits on issues where independent, Aboriginal-led scrutiny is needed
      › Focus on areas where government lacks independent oversight currently (e.g. police investigating police)
      › The NSW Public Service will be an early focus, in line with the NSW Closing the Gap Change and Transformation Strategy

   b. Hold regular public hearings in the style of budget/senate estimates
      › Ministers and public servants can be called in front of the Mechanism to answer questions regarding government performance on Aboriginal outcomes. Hearings would be televised

   c. Make recommendations and ensure corresponding action is taken in line with accountability processes
      › Use a sliding scale of positive (incentives) and negative (consequences) levers to drive change
      › Communicate regularly with Secretaries, Ministers and other government leaders

   d. Publish information about government funding for Aboriginal Outcomes, broken down by place and other relevant criteria (to be considered during the establishment phase)

Details for further design:

- Mapping opportunities to interact with existing accountability organisations and processes
- Designing initiation procedures for Aboriginal-owned accountability processes, including referral pathways and prioritisation criteria
- Determining the sliding scale of levers to drive change
- Outlining parameters of public hearings, including who could be called, how often, and where
- Establishing recommended intervals for regular communications with government leaders
- Seeking the agreement of the NSW Government for a Mechanism to access relevant funding data for publication

Access to relevant powers

To ensure it has access to sufficient powers, the Mechanism must be legislated. Legislating the Mechanism would demonstrate the NSW Government's commitment to accountability to Aboriginal people in NSW.

The exact powers the Mechanism requires will be determined in the next design stage, informed by its core functions, goals and levers to drive change as outlined in this report.

Details for further design:

- Mapping powers that other accountability bodies already have, which the Mechanism can use, build on or replicate
- Settling on exact powers that will be required, and how to best include them in legislation

Structure of the Mechanism

It is proposed that a new administrative accountability body is established (the Authority). This new body will work in formal partnership with a social accountability wing to embed community engagement and ownership of the Mechanism.

Administrative accountability wing:

This will be a new authority (the Authority), made up of an office of technical experts (the Office) that is overseen by a board of directors (the Board).

The Authority will be an independent entity, which is not affiliated with government. Board directors will require a mix of technical skills, Aboriginal knowledge, lived experience, Community connections, and intersectional identities (including where people are from, gender identities, age, abilities/disabilities, sexualities etc.). Appointments to the Board will be undertaken by an independent committee.

The Authority will prioritise communications and visibility for Community. Where possible, Authority staff will be located across NSW through co-location with existing organisations. These organisations could include NSW CAPO members and NSW Accountability Bodies. Where this is not possible, regular and well publicised public 'drop-in' sessions will be held in communities and online.

Social accountability wing:

This will be established through a formal relationship between the Authority and NSW CAPO, as the formal Aboriginal partner for Closing the Gap.

NSW CAPO's role will be to facilitate Community input into accountability processes. This role will initially be achieved through an expanded NSW CAPO engagement team. In the medium to long term, the intention is that this role will transition to Place-based Partnerships as they are established, where local partnership groups are interested.

The Place-based Partnerships referred to here are an initiative under the National Agreement and the NSWIP where local partnership groups will come together to address the priorities of Community and work with government to more effectively deliver services, programs and policies.

NSW CAPO's role will be limited to ensuring Community are properly engaged through a social accountability process by the Authority. It will not be involved in making assessments or decisions regarding the outcomes of accountability processes.

Diagram 9 Recommended model

Administrative Accountability - **Accountability Authority Board**

Social Accountability - **Formal partnership with NSW CAPO**

Administrative Accountability - **Office of Accountability Authority**

Details for further design:

- Devising a naming process for the Mechanism (beyond the inclusion of the term 'Authority')
- Detailing how the Authority and social wing will work together
- Articulating a clear mandate to ensure that NSW CAPO's role will not give rise to conflicts of interest
- Outlining the required mix of skills and roles for the Authority Board and Office
- Detailing an appointment process for the Board to build public trust in its independence and competence, including the make-up of an independent committee
- Determining the resourcing requirements of the Mechanism

Reporting lines

The Authority will be overseen by a Parliamentary Joint Committee, with direct lines of communication to the NSW Joint Council, Cabinet and Secretaries' Board. The Parliamentary Joint Committee will be responsible for overseeing and reviewing the performance of the Authority, as well as government actions in response to findings and recommendations of the Authority.

Details for further design:

- Confirming if there is an existing Parliamentary Joint Committee that the Authority could report to or if a new Parliamentary Joint Committee will need to be established
- Embedding Aboriginal community connection to the Parliamentary Joint Committee, to provide Community oversight
- Establishing reporting timelines for the Parliamentary Joint Committee
- Agree communication lines with NSW Joint Council, Cabinet and Secretaries' Board
- Design appropriate reporting obligations, oversight and accountability processes for the Authority, including timelines for an early review of its functions and powers

How the model addresses key criteria and findings from Community engagements and research

Criteria for Mechanism

Under the NSW Implementation Plan on Closing the Gap there are three key criteria that the Mechanism needs to meet:

- Independent
- Aboriginal-led
- Able to hold the NSW Government to account for their commitments under Closing the Gap

Independent

This Mechanism will be independent of government. The Authority Board and Office will be statutory bodies with independent staff and leadership. To achieve independence (actual and perceived), particular consideration has been given to its reporting lines, the appointment processes for senior staff and its operational autonomy.

Reporting lines The Authority will be overseen by a Parliamentary Joint Committee. Such committees provide strong independence for administrative accountability bodies. These committees include membership from both houses of parliament and ruling and opposition parties. They are respected structures that will provide the Mechanism with the opportunity to place inquiries and concerns on the public record. This oversight will be focused on reviewing the performance of the Authority to ensure its processes are fair and transparent. The Authority will not require approvals from the Parliamentary Joint Committee to undertake or publish work.

Appointments The Board will be appointed by an independent committee using a clearly defined process. There will be no government interference in these appointment processes.

Powers The proposed powers of the Authority will afford it autonomy in its operations. It will not be subject to government direction regarding the exercise of its powers or in its day-to-day operations. Processes for initiating investigations will be further defined in the next stage of design, with particular consideration provided to independence.

Resourcing The question of resourcing will be critical to ensuring the Mechanism's independence. Ideally, funding should be ongoing and immune from political oversight. This is to ensure that the Mechanism cannot be pressured or influenced when holding government to account. Options will be further discussed with the NSW Government in the next phase of design.

Aboriginal-led

In line with Community's stated expectations regarding Aboriginal leadership for the Mechanism, Authority board positions will be identified (Aboriginal and/or Torres Strait Islander). Board position applicants will be required to demonstrate their ability to bridge the gap between government and Community, including through personal connections to Community and lived experience.

Able to hold the NSW Government accountable for Closing the Gap

As discussed in Part Two of this report ('What is accountability?'), the concept of accountability and demands for accountability can mean different things in different contexts.

Based on Community input and desktop research, in this case the accountability goals that the Mechanism should be seeking to achieve are transparency; reform; deterrence; control; and punishment.

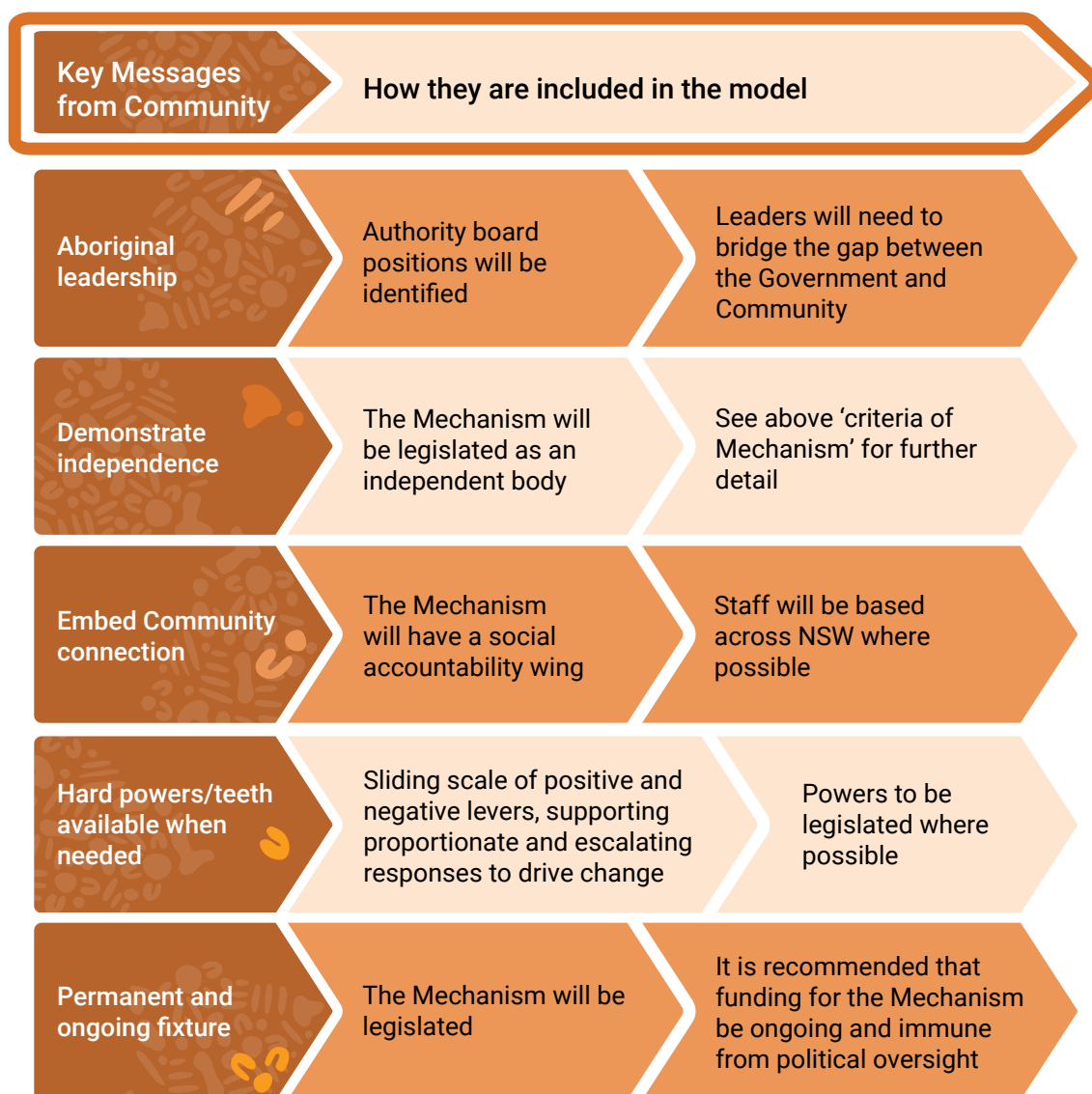*Table 5 Core function alignment with accountability goals*

Core function of the Mechanism	Accountability goal
Conduct own reviews, inquiries and audits on issues where Aboriginal-led independence is needed	Transparency and reform
Hold regular budget/senate estimates style hearings	Transparency and deterrence
Make recommendations and ensure corresponding action is taken following accountability processes using a sliding scale of levers	Reform, deterrence, control and punishment
Publish information about government funding for Aboriginal outcomes, broken down by place and other relevant criteria	Transparency

The Mechanism's ability to achieve these accountability goals will largely depend on the powers and resources it is afforded. This recommended model seeks to provide it with the required foundations to hold the NSW Government to account, including legislation and a sliding scale of levers to drive change.

Findings from community engagements

Ensuring the Mechanism is in line with Community's expectations is fundamental to its success as outlined in Part Two of this report, ('The importance of public trust in an accountability mechanism'), as well as central to NSW CAPO's approach for implementing Closing the Gap. The following section outlines how findings from community engagements have been incorporated into the recommended model. This includes key messages as outlined in Part Two of this report ('What Community wants to see in a Mechanism'), as well as advice provided by Community regarding the functions, features, tools and structures of the Mechanism.

Diagram 10 Key messages from Community and their alignment with the recommended model

Key Messages from Community	How they are included in the model	
Aboriginal leadership	Authority board positions will be identified	Leaders will need to bridge the gap between the Government and Community
Demonstrate independence	The Mechanism will be legislated as an independent body	See above 'criteria of Mechanism' for further detail
Embed Community connection	The Mechanism will have a social accountability wing	Staff will be based across NSW where possible
Hard powers/teeth available when needed	Sliding scale of positive and negative levers, supporting proportionate and escalating responses to drive change	Powers to be legislated where possible
Permanent and ongoing fixture	The Mechanism will be legislated	It is recommended that funding for the Mechanism be ongoing and immune from political oversight

Functions

During engagements, Community recommended five key functions for the Mechanism, and ranked them in the following order in terms of 'importance':

Table 6 Functions recommended by Community and their alignment with accountability goals

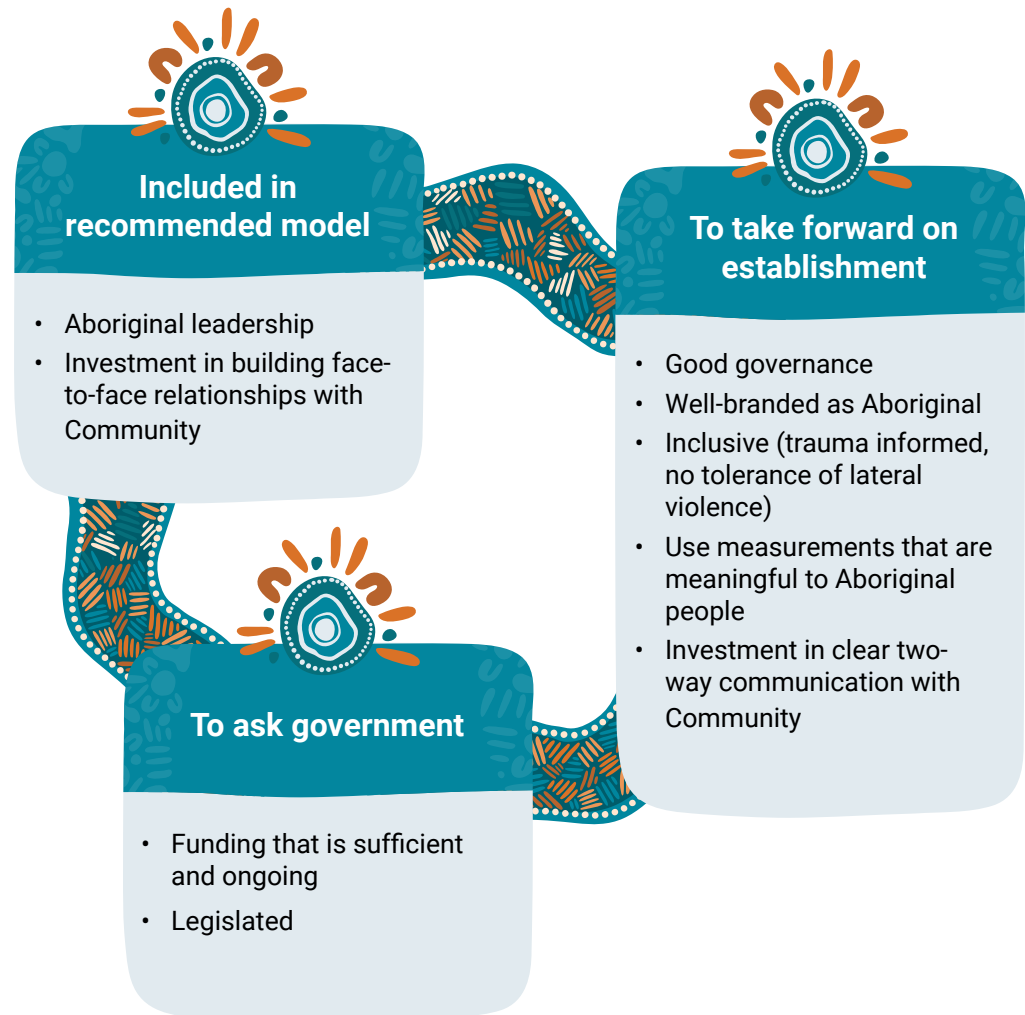| Functions	Weighted average (out of 5)	Accountability goal/approach	Core function of the recommended model where this is reflected
Strengthen Community's ability to hold government to account	3.61	Social accountability	1b
Increase scrutiny of government performance	3.08	Transparency, Control	2a and b
Boost transparency of government funding	3.06	Transparency	2d
Make recommendations and enforce them	2.95	Reform, Deterrence	2c
Tailored support for government to improve their performance	2.35	Reform	An option for the sliding scale

These suggested functions have all been directly incorporated into the recommended 'core functions' of the proposed Authority (see page 35), except for 'tailored support for government'. This will instead be an option of lever for the Authority to use under the 'sliding scale' following accountability processes (see pages 8, 36, 40).

Where tension arises between delivering on multiple accountability goals, those of transparency and reform have been selected as top priorities, as they are most heavily emphasised in the functions recommended by Community.

Features

Non-negotiable features were recommended by Community for the Mechanism. NSW CAPO agrees with these recommendations, and has outlined when they will be most appropriately incorporated into the Mechanism:

Diagram 11 Non-negotiable features recommended by Community

Included in recommended model

- Aboriginal leadership
- Investment in building face-to-face relationships with Community

To take forward on establishment

- Good governance
- Well-branded as Aboriginal
- Inclusive (trauma informed, no tolerance of lateral violence)
- Use measurements that are meaningful to Aboriginal people
- Investment in clear two-way communication with Community

To ask government

- Funding that is sufficient and ongoing
- Legislated

Tools

In Phase One of consultations, Community participants were asked about potential 'tools' that the Mechanism could use to drive change in government. In Phase Two, Community participants were asked to rank these tools in terms of their likely effectiveness.

Table 7 Tools recommended by Community to drive change within government

Tools recommended by Community	Ranking of Survey (WAverage/5)	Ranking of Workshops (% who selected in top 3)
Communicating regularly with Ministers, Secretaries and other government leaders	4.09	59%
Certification system for cultural safety and/or CtG competency for departments and service providers	N/A	56%
Recognition for people doing a good job	4.08	N/A
Reviews, inquiries or audits	4.00	32%
Budget Estimates style hearings	N/A	43%
Funding dashboard	3.92	43%
Community scorecard	3.89	31%
Cultural awareness training	3.84	N/A
Promotions	3.71	N/A
Legal advocacy	3.70	40%
Funding penalties for organisations that are underperforming on Closing the Gap	3.62	N/A
Include Closing the Gap in public servant KPIs and promotion requirements	N/A	36%
Activism	N/Q	36%
Fines	3.33	N/A
Demotions	3.28	N/A
Name and shame	2.80	N/A

KEY

Blue: included in recommended model

Orange: to be considered when designing the 'sliding scale' of levers to drive change

Brown: not included, because of duplication or are better undertaken by a different organisation.

Community participants recommended the Mechanism use a sliding scale of incentives and disincentives, which has been included in the recommended design of the Mechanism. In addition, 5 out of the 7 most popular tools have been included in the current high-level recommended design. Others remain as options that could be included in the sliding scale of responses.

Structures

Four options of structures for the Mechanism were presented to Community participants in the Phase Two engagements to generate feedback:

- Reformed/expanded shared decision making body
- Commissioner(s) on Closing the Gap
- First Nations or Closing the Gap Auditor-General
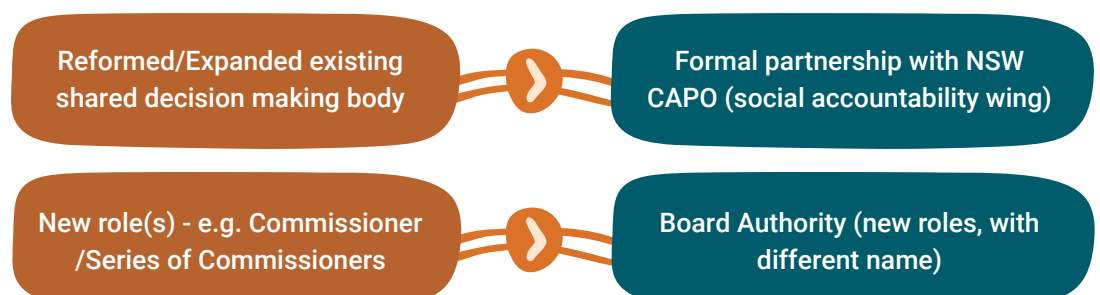- Elected accountability body

Community participants were asked to rate these potential structures out of 5, based on which they believed would be the most effective as the Mechanism, with 1 being least effective and 5 being the most effective.

Table 8 Structure weightings

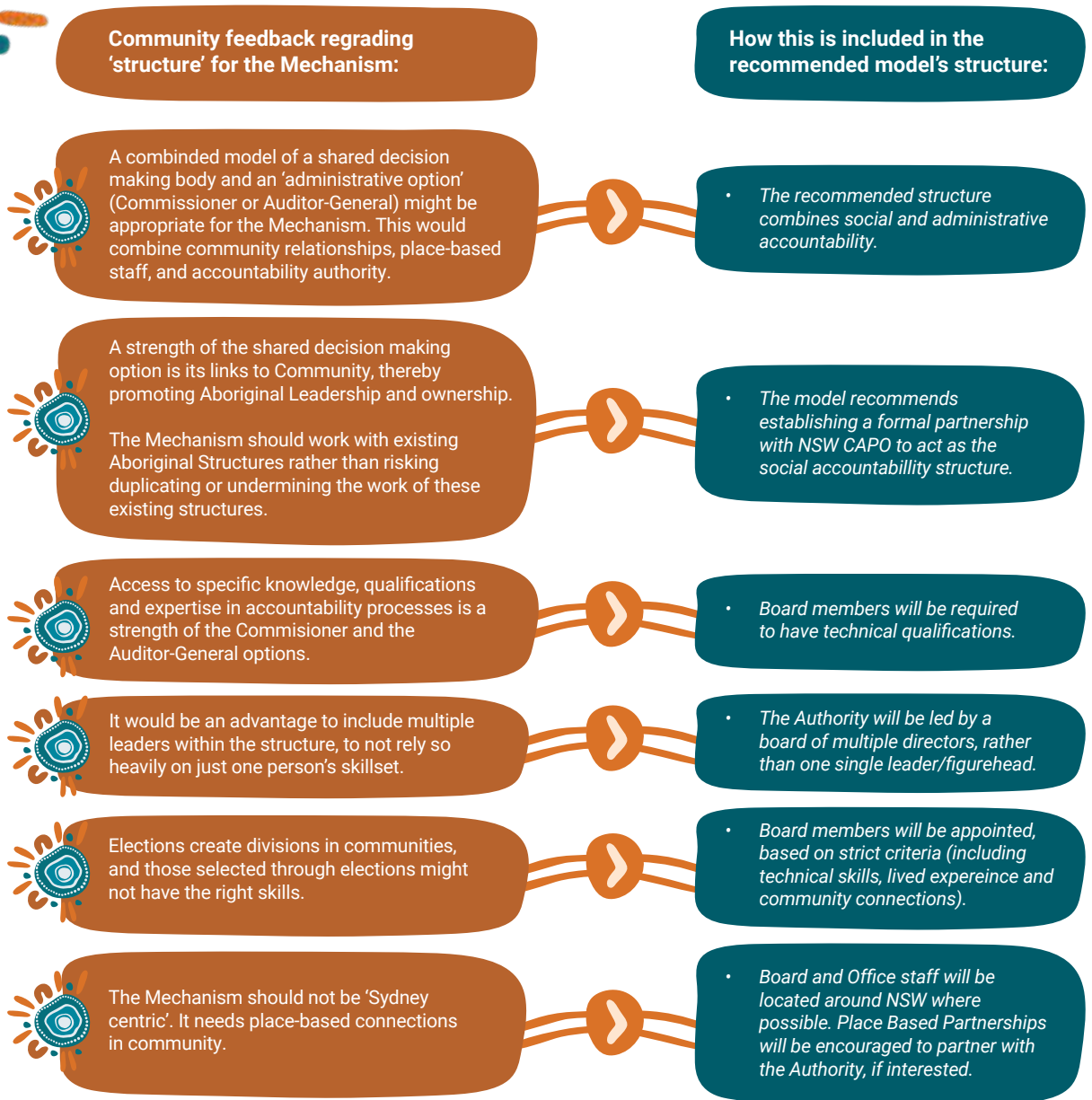| Structure	Weighted average (out of 5)
Reformed/expanded existing shared decision making body	3.8
New role(s) - e.g. Commissioner/Series of Commissioners	3.47
Dedicated position within an existing body. e.g. Closing the Gap/First Nations Auditor-General	3.44
New body, e.g. elected accountability body	3.39

There was interest expressed by Community participants in a combined structure that would bring together Community relationships and accountability expertise (such as a shared decision making body + Commissioner or Auditor-General).

The structure of the recommended model has combined the top two choices:

Reformed/Expanded existing shared decision making body	>	Formal partnership with NSW CAPO (social accountability wing)
New role(s) - e.g. Commissioner /Series of Commissioners	>	Board Authority (new roles, with different name)

Qualitative feedback regarding these structures strongly influenced the model's design, as Diagram 12 demonstrates.

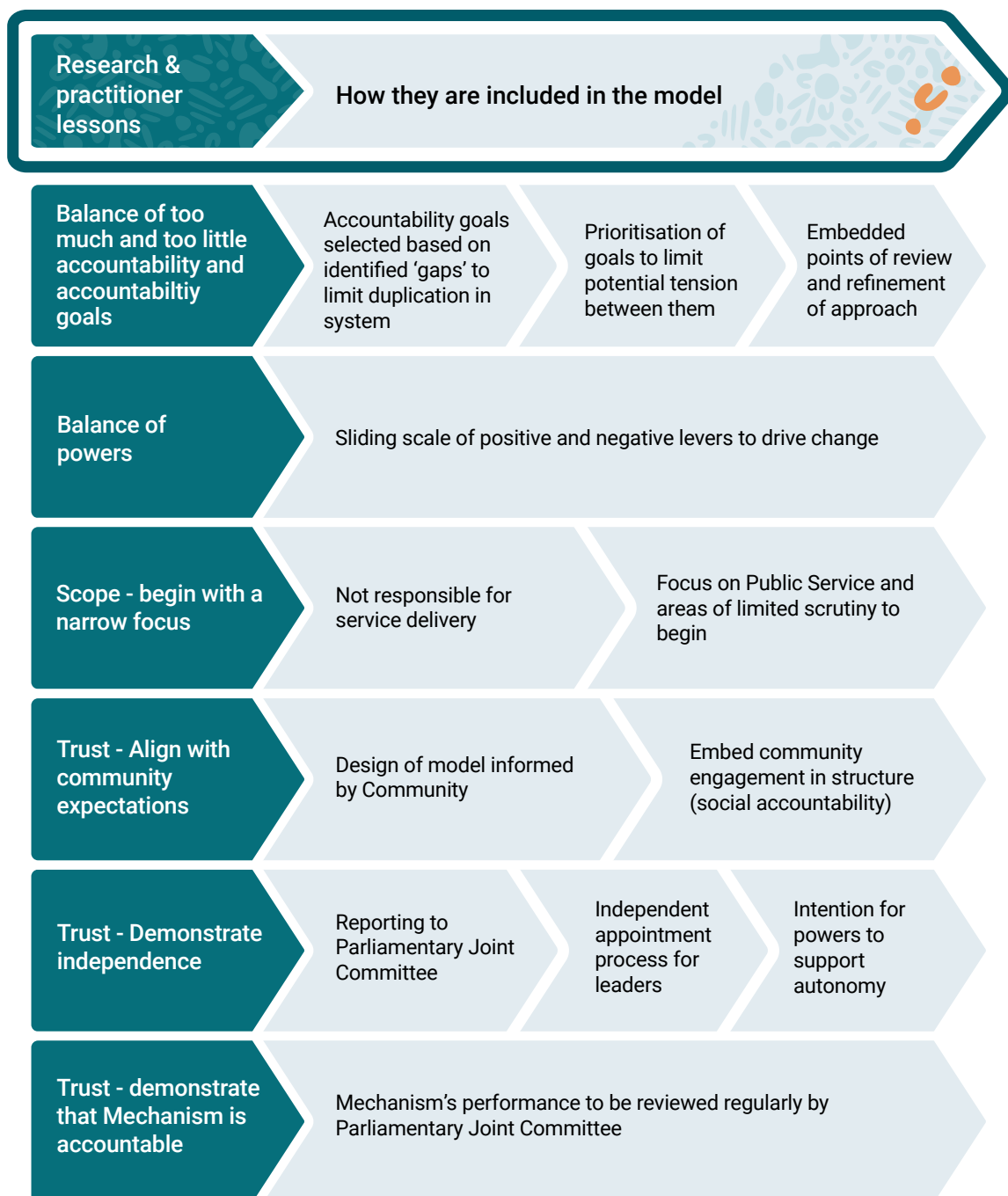*Diagram 12 How Community input shaped the design of the recommended structure*

Community feedback regrading 'structure' for the Mechanism:	How this is included in the recommended model's structure:
A combinded model of a shared decision making body and an 'administrative option' (Commissioner or Auditor-General) might be appropriate for the Mechanism. This would combine community relationships, place-based staff, and accountability authority.	• *The recommended structure combines social and administrative accountability.*
A strength of the shared decision making option is its links to Community, thereby promoting Aboriginal Leadership and ownership. The Mechanism should work with existing Aboriginal Structures rather than risking duplicating or undermining the work of these existing structures.	• *The model recommends establishing a formal partnership with NSW CAPO to act as the social accountabillity structure.*
Access to specific knowledge, qualifications and expertise in accountability processes is a strength of the Commisioner and the Auditor-General options.	• *Board members will be required to have technical qualifications.*
It would be an advantage to include multiple leaders within the structure, to not rely so heavily on just one person's skillset.	• *The Authority will be led by a board of multiple directors, rather than one single leader/figurehead.*
Elections create divisions in communities, and those selected through elections might not have the right skills.	• *Board members will be appointed, based on strict criteria (including technical skills, lived expereince and community connections).*
The Mechanism should not be 'Sydney centric'. It needs place-based connections in community.	• *Board and Office staff will be located around NSW where possible. Place Based Partnerships will be encouraged to partner with the Authority, if interested.*

Mandate

Community engagements also raised the question of whether the mandate of the Mechanism could incorporate holding non-government services to account such as Civil Society Organisations (CSOs) and Aboriginal Community Controlled Organisations (ACCOs). NSW CAPO has chosen not to take this feedback forward through the design of the Mechanism, as it is out of scope for this project for two key reasons.

Firstly, the idea of the Mechanism was borne out of feedback from Community that ACCOs are subject to a disproportionate number of accountability processes when compared to government. Secondly, experts recommend that accountability mechanisms begin with narrow scopes to improve effectiveness. NSW CAPO will nevertheless take this feedback on board and will consider how it can support Community members to better understand and engage with accountability processes that already exist for ACCOs and NGOs. It will be important for the Mechanism to ensure it communicates its mandate (and the reasoning behind this) early to Community members, to assist it to manage expectations.

Lessons from research and experts

The diagram below outlines how key lessons from research and engagements with practitioners have been included in the design of the Mechanism.

Diagram 13 Key lessons from research and practitioners, and their alignment with the recommended model

Research & practitioner lessons	How they are included in the model		
Balance of too much and too little accountability and accountabiltiy goals	Accountability goals selected based on identified 'gaps' to limit duplication in system	Prioritisation of goals to limit potential tension between them	Embedded points of review and refinement of approach
Balance of powers	Sliding scale of positive and negative levers to drive change		
Scope - begin with a narrow focus	Not responsible for service delivery	Focus on Public Service and areas of limited scrutiny to begin	
Trust - Align with community expectations	Design of model informed by Community	Embed community engagement in structure (social accountability)	
Trust - Demonstrate independence	Reporting to Parliamentary Joint Committee	Independent appointment process for leaders	Intention for powers to support autonomy
Trust - demonstrate that Mechanism is accountable	Mechanism's performance to be reviewed regularly by Parliamentary Joint Committee		

Balance of accountability

The recommended core functions of the Mechanism seek to address identified gaps where there is currently 'too little' accountability, while avoiding adding 'too much' accountability into the system.

Where existing accountability processes are best placed to address these gaps, the first core function *(work with existing accountability processes and Community to get the best outcomes for Aboriginal people)* will see the Mechanism collaborate with existing accountability processes to strengthen their work. This will include encouraging accountability bodies to allocate greater resources to First Nations matters and to bring in 'social accountability' approaches.

The second core function *(lead Aboriginal-owned accountability processes)* is focused on adding accountability into the system where needed through a new body. This will see new Aboriginal-led social accountability approaches introduced, aimed at achieving goals of transparency, reform, deterrence, control and punishment.

If tension arises between these goals, the Authority's work will primarily focus on delivering transparency and reform. Deterrence, control and punishment are nevertheless important secondary goals, and will be actively pursued while seeking to maintain this careful balance. See Part Three of this report ('Functions') to understand how this prioritisation matches Community's focus.

Collaboration and Partnership Illustration by Leticia Anne Forbes is about creating partnerships and working collaboratively to create opportunities for shared decision-making to support, impact and work towards collective goals for the lives of First Nations people. This element and panel shows the collaborative efforts, diverse perspectives and contributions of people, reflected through the interconnectedness and layers. The centre represents people coming together in partnership, with different voices, perspectives and opportunities shown in the next layer. This is followed by knowledge sharing across our Country. The circular motion seen through the dotted lines represents journey and connection.

Alternative models

This section explores possibilities for the recommended model to be scaled up or down, or to adopt an alternative structure, and why these are not recommended. This section is limited to a consideration of realistic options examined during this design process.

Table 9 Alternative models

Critieria for selection	Possible Models					
	Recommended Model	Scaled Up Recommended Model	Scaled Down Recommended Model	Expanded Deputy Ombudsman	Expanded Auditor-General	Elected Accountability Body
Aboriginal-led	3	4	2	2	1	4
Independent	4	4	4	3	4	4
Sufficient hard powers	3	4	1	1	3	3
Community trust	3	4	1	1	2	3
Likely establishment time	2	1	2	3	4	1
Likely establishment cost	2	1	3	4	4	1

KEY

Aboriginal Led, Independent, Sufficient Hard Powers & Community Trust
- **1** – very low demonstration of criteria (does not meet needs of Mechanism)
- **2** – limited demonstration of criteria (partially meets needs of Mechanism)
- **3** – strong demonstration of criteria (meets needs of Mechanism)
- **4** – very strong demonstration of criteria (exceeds needs of Mechanism)

Likely establishment time
- **1** – long established time (estimated 3 + years)
- **2** – Long: Mediun – long established time (estimated 2 – 3 years)
- **3** – Medium: Short–Medium established time (estimated 1 – 2 years)
- **4** – Shortest established time (estimated less than 1 year)

Likely establishment cost
- **1** – likely to require significant resourcing to establish
- **2** – likely to require medium resourcing to establish
- **3** – likely to require modest resourcing to establish
- **4** – likely to require low resourcing to establish

Scale up

A scaled-up version of the proposed Mechanism model would look like:

- Increased Community reach through an expanded social accountability wing. This would involve a physical presence in every community or region, by establishing community advisory groups and placing offices around NSW

- All accountability functions for Aboriginal outcomes brought into the Mechanism, including functions currently performed by other accountability mechanisms, such as individual complaints management, financial audits, and providing support to public service agencies to improve workforce culture and inclusion.

These expansions have not been recommended due to the likely high cost to benefit ratio of such measures. Such expansions would require significant resourcing, without guaranteed equivalent gains in accountability. These expansions both duplicate existing processes and go against expert advice that the Mechanism should have a targeted focus and fit into the current accountability system.

Scale down

A scaled down version of the proposed Mechanism model would look like:

- Committing to running regular community consultations instead of embedding social accountability into the structure of the Mechanism

- A single leader or figurehead for the Authority, instead of a board of multiple leaders/directors

- Solely focusing on running its own independent Aboriginal-led processes, without investing in strengthening existing accountability processes

- Driving behaviour change solely through learning processes and incentivising positive actions, without access to consequences/'teeth'

These reductions to the model have not been recommended because they do not meet expectations outlined by Community during engagements of what an Independent, Aboriginal-led, Government Accountability Mechanism should be. As we have seen, public trust in accountability mechanisms is critical to their success. These reductions would also create a Mechanism that duplicates processes that are currently in place that are not meeting the needs of the National Agreement.

Alternative structures

This section outlines alternative structures that were considered for the Mechanism, including the expansion of existing bodies and alternative new bodies.

Expansion of an existing body

A scan of existing administrative accountability mechanisms in NSW determined that there are currently no bodies that meet the Mechanism's intended mandate of being: Aboriginal-led; Independent; focused on holding the NSW Government to account for its commitments under Closing the Gap; and meeting the accountability gaps identified. There is a need therefore to establish a new mechanism or to significantly reform an existing mechanism.

Following a review of these alternative structures, two opportunities stood out for expanding existing structures to meet the requirements of the Mechanism:

1. The Deputy Ombudsman (Aboriginal Programs), which sits within the NSW Ombudsman Office
2. The Auditor-General for NSW

Table 10 Summary of existing administrative accountability mechanisms in NSW

Body	Aboriginal-led	Independent	Targets Closing the Gap Outcomes	Accountability goals[1]			
				Transparency	Control	Reform	Deterrence / Punishment
The Anti-Discrimination Board	○	◐	◐	○	○	◉	○
Auditor-General for NSW	○	◉	◉	◉	◉	◉	○
Deputy Ombudsman (Aboriginal Programs)	◐	◐	◐	◉	○	◉	○
The Independent Commission Against Corruption	○	◉	○	◉	○	◉	◉
Information and Privacy Commission NSW	○	◐	○	◉	○	◉	○
NSW Civil and Administrative Tribunal	○	◐	○	◉	◉	○	◉
NSW Productivity Commission	○	○	○	○	○	◉	○
NSW Public Service Commissioner	○	◐	◐	○	◉	◉	○

KEY

○ - very low demonstration of criteria (does not meet needs of Mechanism)
◐ - limited demonstration of criteria (partially meets needs of Mechanism)
◉ - strong demonstration of criteria (meets needs of Mechanism)

[1] These labels are drawn from Rock's study of accountability goals: E Rock (2020) Measuring Accountability in Public Governance Regimes, Cambridge University Press, ch 3. The selection of this subset of goals draws on analysis of Community feedback and desktop mapping (see 'Gaps in the existing accountability system' in Part Two of this report).

The viability of these options was dependent on their reputation with Aboriginal people in NSW, given the importance of public trust to accountability mechanisms. While resourcing, scope and appointment processes can be altered, public perception is not so easily changed. NSW CAPO found that these options were not recommended, as participants in community engagements expressed a lack of trust in the bodies and their independence. Participants also noted that they didn't meet expectations regarding Community involvement, Aboriginal leadership, and the ability to drive change ('teeth').

Deputy Ombudsman

The Deputy Ombudsman (Aboriginal Programs) sits within the NSW Ombudsman's Office and is responsible for independent monitoring and assessment of Aboriginal Programs and progress against the NSW OCHRE Plan (Opportunity Choice, Healing, Responsibility, Empowerment), which outlines the NSW Government's aims for Aboriginal affairs.

Currently, the Deputy Ombudsman's scope does not focus directly on Closing the Gap commitments and programs, and its reporting does not offer significant powers or recourse to compel actions in response to its recommendations. The independence of the Deputy Ombudsman is limited. The position is appointed by the Ombudsman, who is appointed by the Governor on the recommendation of the Minister. The Ombudsman's Office is a NSW Government entity, and its staff are public servants. The Deputy Ombudsman's remit could potentially be adjusted to include a focus on Closing the Gap and to increase its powers and independence.

Community participants were specifically asked about their knowledge and experience with the Deputy Ombudsman (Aboriginal Programs). Many participants were not familiar with the office, but those who were felt it did not currently have sufficient powers to hold government to account, nor did it communicate frequently enough with Community. While some participants said they might trust the Deputy Ombudsman if it was reformed to hold more power, many felt it had already lost too much trust and considered it to be part of government.

Auditor-General

The Auditor-General for NSW holds the NSW Government accountable for its use of public resources. Most relevantly, the Audit Office undertakes performance audits to determine the effectiveness, efficiency, and economy of government programs, including audits focused on Aboriginal outcomes.

A new First Nations Auditor-General, focused on Closing the Gap, could potentially be established. If it were selected as the Mechanism, the Audit Office would need to build cultural expertise and Community connections, including producing more tailored reporting. Community participants, however, questioned whether this would fulfil the needs of the Mechanism, noting that the Auditor-General is quite a narrow and rigid role. Some participants suggested it might be useful to pursue a First Nations Auditor-General separately and in addition to the Mechanism, while others recommended that the Mechanism be supported in its work by the Auditor-General's resources and powers.

New body with a different structure

The key alternative new structure that was considered was an **elected accountability body**. This was the recommendation that came from Community participants at the Deliberative Forum.

Deliberative Forum participants were inspired by the ACT Aboriginal and Torres Strait Islander Elected Body (ATSIEB) and the Canadian Assembly of First Nations. Incorporating elements of these structures, Deliberative Forum participants recommended a three-tier system. The local and regional levels would work to maintain grass roots connections and authenticity, as well as to share information at appropriate levels. The state level would work to hold different government portfolios accountable. Direct elections were recommended as an appointment method to ensure the Mechanism's leaders would be recognised as independent of government.

In Phase Two engagements, however, many Community participants noted that elections created divisions in Aboriginal communities. Discussions of an elected accountability body revealed sensitive debates around Aboriginality (who would be allowed to stand and who would be allowed to vote), that could increase lateral violence. Many were also concerned that leaders selected through elections might not have the right skills for an accountability body. It was also noted that this option would be a particularly expensive ask, as it would require operating costs for three new levels of elected body and regular state-wide elections.
On balance, this option was eliminated due to its high level of risk and cost.

Same structure, alternative execution

Shared decision making alternatives

NSW CAPO considered alternative shared decision making bodies that could become formal partners with the Authority to embed social accountability into its structure. Options were limited to existing bodies, in response to Community's recommendation that the Mechanism strengthen existing structures, rather than add to the already complex network of Aboriginal processes and bodies. Possible options were identified as NSW CAPO, Empowered Communities and Regional Alliances (NSW Local Decision Making).

From community engagements, it was observed that regardless of which process was selected, the response was likely to be mixed. Community participants made strong, unnuanced cases defending the work of their preferred option and criticising others; all three shared decision making alternatives received both positive and negative responses.

It is therefore recommended that the social accountability wing should be the 'facilitator' of Community involvement in the Mechanism, supporting the inclusion of all Community members and members of shared decision making bodies.

NSW CAPO is recommended to play this facilitator role for three key reasons:

- It is the formal signatory to the National Agreement representing the interests of Aboriginal people in NSW for Closing the Gap, so it makes sense for it to continue leading on Community involvement in this process
- It has coverage across NSW through its membership, while Empowered Communities and Regional Alliances operate in a limited number of communities
- The place-based partnerships that NSW CAPO is establishing will be part of a national Closing the Gap network. This would enable other Independent Mechanisms to consider replicating a similar design

Commissioners

In designing the structure for the administrative accountability wing of the Mechanism, the potential of establishing a Commissioner or a series of Commissioners was considered. The term 'Commissioner' itself does not imply fixed requirements; it can be imbued with different powers and roles.

Ultimately, NSW CAPO decided to choose the name 'authority' rather than 'commissioner' to:

- avoid confusion with different processes underway in NSW, including the establishment of Treaty Commissioners
- communicate the notion of 'teeth'
- align with recommendations for the Victorian Independent Mechanism

Design features of the Authority have taken lessons from Community participants' responses to a commissioner structure, such as the need to include:

- leaders with specific knowledge and qualifications
- multiple leaders, to not rely on just one person's skillset
- teeth/power to drive action
- connections to Community, ideally through a link to local/regional staff

Where the Mechanism fits in the existing landscape

The Mechanism has been designed with consideration of the significant accountability network that exists already in NSW and Australia. NSW CAPO acknowledges the important work that is already underway within these networks and does not intend for a new Mechanism to duplicate existing functions. This Mechanism model is instead designed to support existing mechanisms to deliver at their full potential for Aboriginal people if and where they are best placed to do so. It is also proposed that the Mechanism remain adaptable to both work with and support future processes as they emerge.

Existing accountability processes

A key design feature of the proposed model is that the Mechanism should become part of the existing accountability network. It will look to strengthen existing accountability processes by nurturing key relationships, facilitating referrals, making recommendations and offering support to build the capacity of existing processes to deliver for Aboriginal outcomes.

In terms of Closing the Gap-specific accountability processes, it is envisaged that this Mechanism will strengthen the work of the NSW Joint Council by setting up direct communication lines to socialise findings. The Mechanism could verify and strengthen existing reporting on Closing the Gap where needed. For example, it would likely contribute to reports developed at the national level by the Commonwealth Productivity Commission and Aboriginal and Torres Strait Islander-led reviews from an 'independent perspective'.

Existing processes for Aboriginal outcomes

Voice

There remains scope for NSW to pursue a state-level Voice, despite the failure of the proposed constitutional change on the Voice at the federal level. The proposed Accountability Mechanism would not interfere with such a process, as it does not seek to be a representational body for Aboriginal issues but is instead focused solely on accountability.

Treaty

The question of Treaty has been raised frequently during discussions about the Mechanism, particularly as the NSW Government is expected to imminently commence Treaty consultations. The ideas of 'responsibility and consequences' are foundational concepts to both; however, Treaty and accountability are two underline separate, but mutually reinforcing, processes.

A Treaty is a post-conflict agreement, which looks to re-establish peace and outlines steps towards reconciliation. The Uluru Statement from the Heart, upon which the most recent call for Treaty is based, talks of "coming together after a struggle" and "a process of agreement-making between governments and First Nations".[58] Accountability mechanisms are instead focused on measuring performance against existing agreements and taking action to remedy non-performance.
It is possible (but not necessary) that the two could work together in the future.

NSW Treaty (or Treaties) will need an independent accountability process to ensure the NSW Government fulfils its commitments under such an agreement. The Mechanism could potentially fill that role, if Aboriginal people in NSW thought it suitable. By establishing the Mechanism now, we can ensure it is strong by the time Treaty may require it. This further illustrates why it is important that the Mechanism's scope is not limited to Closing the Gap, so it can remain flexible to focussing wherever government needs to be held to account for delivering outcomes for Aboriginal people in NSW.

Truth

An overarching Truth process is yet to be outlined in NSW. The Mechanism could, however, support open and transparent relationships between government and Aboriginal people, setting precedents for Truth in practice.

The Mechanism will be focused on current government performance on Aboriginal outcomes. It could therefore form part of a broader Truth process, if and when it is established, that incorporates historical truths as well as ongoing practices.

Aboriginal leadership bodies

The Mechanism will work alongside existing Aboriginal leadership bodies, exchanging crucial information to strengthen each other's work. The Mechanism will seek input from Aboriginal leadership bodies and their members through community processes facilitated by the social accountability wing. In return, findings and recommendations by the Mechanism may support Aboriginal leadership bodies' work, by providing greater transparency into government services.

While NSW CAPO is the proposed facilitator of social accountability, engagements will be inclusive of all Aboriginal and Torres Strait Islander community members and Aboriginal organisations.

The Mechanism will not be a representational body, nor will it be involved in policy making. It may provide recommendations about required reforms, which Aboriginal leadership groups may like to take forward.

Human rights

Human rights law can act as a catalyst for social change and progress. It provides a common framework that transcends borders and sets a standard for the treatment and fundamental rights of all individuals. There is strength in the Mechanism aligning with rights-based approaches for First Nations peoples. However, existing human rights frameworks lack enforceability in Australia.[59] Implementation mechanisms can be weak and ineffective, which can undermine the credibility and efficacy of human rights law.

As such, it is recommended that the Mechanism ensure its work is in keeping with human rights frameworks and movements; however, it is not recommended that it uses its likely limited resources to formally link into these processes.

Aboriginal Data Sovereignty

Implementing an Aboriginal-led accountability mechanism will significantly support Aboriginal Data Sovereignty by holding government accountable for compliance with related commitments. These commitments include ensuring shared access to data and the development of an Aboriginal Data Sovereignty and Governance Model.

Likewise, Aboriginal Data Sovereignty will support the Mechanism. The Mechanism will play a significant role in generating, analysing, and publishing Aboriginal-owned data, and must ensure its work aligns with Aboriginal Data Sovereignty and Governance principles. Community participants consistently called for the Mechanism to use measurements that are meaningful to them, and to value both qualitative and quantitative data in its assessments. A key challenge for accountability mechanisms is verifying the accuracy of information and narratives provided by organisations.

To promote public trust, the Mechanism should seek independent and Community verification of data and measurements wherever possible. This approach is crucial for practicing Aboriginal Data Sovereignty and fostering genuine self-determination within Aboriginal communities. By integrating these processes, Aboriginal people shift from being subjects of data, to become active participants who generate, own, and govern data.

Where to from here?

This report outlines NSW CAPO's recommendation of a high-level design for an Independent, Aboriginal-led, Government Accountability Mechanism, based on extensive engagements and desktop research.

This report will now be submitted to NSW Joint Council for endorsement and feedback.

Going forward, NSW CAPO will further flesh out details of the model and seek its establishment.

1. NSW CAPO will identify aspects of the model that require greater detail to enable implementation, and undertake further engagements and research as needed to develop these

2. NSW CAPO will work with the NSW Government to establish the foundations of the Mechanism, including seeking:
   - legislative change
   - funding for the Mechanism's establishment and ongoing operations

3. Following successful completion of steps 1 and 2, the Mechanism will be created. This will likely use a **scaled establishment approach**, beginning with a targeted focus and building in 'key moments' for review, refinement and expansion of the Mechanism

As highlighted earlier in this report, the NSW Change and Transformation Strategy will be a foundational piece of work for the Mechanism. It is expected to produce an outcomes framework for the implementation of the Priority Reforms by the NSW Government. This will provide key measurements for the Mechanism's work. As such, NSW CAPO's work with NSW Government to implement this strategy (with strong guidance of Community), will form another key step in the establishment of the Mechanism.

NSW CAPO will also continue to work with national and jurisdictional partners on their visions for Independent Mechanisms, to ensure our approaches are co-ordinated where possible.

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Appendix A - CAPO Community Consultation Principles

Checklist for Conducting Community Consultation Background

Consultations with Aboriginal people place a significant burden on communities across the state. The high volume of consultations is a key element of the increasing 'consultation fatigue', however improving the way that consultations are conducted is another important aspect of reducing the unnecessary burden imposed on Aboriginal communities.

As committed to the NSW Implementation Plan 2022-24, this document includes a checklist for better practice principles to conducting consultations with Aboriginal communities.

Implementation of these principles and requirements will increase the quality and consistency of consultations with Aboriginal communities. These changes are vital in achieving better outcomes, both directly for these consultations and more broadly for the Aboriginal communities that are being engaged with.

Implementation of these principles will increase the quality of consultations that are held by leading to:

- A greater level of engagement during consultation periods.
- Community members to be more willing to engage openly and comprehensively with consultation processes.
- Increased consistency across and within government departments on how consultation happens, reducing confusion within communities and increasing organisations' abilities to jointly consult.
- Improved relationships with Aboriginal communities.

Guide to Use

This guide is a high-level guide, consisting of principles for conducting consultations with Aboriginal communities. This does not represent a comprehensive guide for planning or organising engagements and is not an exhaustive list of considerations, but rather the fundamental requirements that are necessary to run an effective and respectful consultation.

Preferred methods for conducting consultations will also vary significantly across regions and across communities, and these should direct the planning of consultations. These principles and the below checklist have been designed to be adaptable and supportive of local norms, not undermine them.

Guiding Principles

This document is guided by the following principles:

- That Aboriginal people are experts in what their communities need, and outcomes will be better when work is directed and led by Aboriginal communities.
- That the time and knowledge of Aboriginal people is extremely valuable and should be considered as such.

- That Aboriginal communities have the right to self-determine how, if, and on what they are engaged.
- That the needs and priorities of communities are central, rather than the needs or priority of external organisations.
- That the onus is on organisations running consultations to ensure that these principles are met and that information is freely shared.

Building on Existing Practice

- Across government and community organisations, there are a great variety of different principles and approaches to consultation.
- Given the need for flexibility and adaptability for different local communities, these principles are high level and should not be in direct opposition to any current organisational practices.
- These should be understood as foundational; departments or organisations are encouraged to go beyond the requirements noted in this checklist but that this should not be done at the expense of fulfilling the principles in this document.

Differentiating Consultation and Engagement

- Consultation refers to sessions in which organisations are seeking direction, input, and knowledge from communities, while engagements are a broader group of activities that also include promotions, information-sharing, hosting community activities, and awareness-raising.
  - › This is not an exact dichotomy, as many engagements can contain elements of consultation and consultation is a form of engagement.
- This document focuses on requirements for consultations, but many of the principles also apply to the planning and running of community engagements more broadly.
  - › Where elements of the checklist also apply to engagements, this is noted in the document.
- These principles are also designed to apply to consultations directly with communities on the ground, rather than, for example, consultation with peak bodies. However, similar principles regarding the need for open and meaningful consultation apply also to these consultations.

Checklist

Item to Check Off	Further Information and Guidance
Before Sessions	
Deciding when to consult	
Have you confirmed that the area you are consulting about can be meaningfully directed by what communities say?	Consultations should not be used just as support for existing or planned programs but to meaningfully direct work on policies and programs.
Have you confirmed that communities have not previously provided clear answers on the areas to be discussed?	This can be done by reaching out to both government and community organisations that have an interest in the areas you are discussing to confirm what consultations they have previously held and if they have, what materials they have to share. When consultations are still planned for areas that have had some previous consultation on them, materials and information heard at these consultations should be shared with the communities being consulted. For engagements, you should ensure that communities have not already been engaged on the same topic.
Are the consultations on a matter of sufficient importance?	The consultations need to be aligned with an emerging or current issue, program, or policy that has a significant impact on Aboriginal communities and/or that is valued by Aboriginal communities. Importantly, consultations need not discuss Aboriginal-specific policy changes, programs, or issues as general, non-targeted programs can also have significant impacts on Aboriginal communities that are not always overtly apparent. Organisations should have a broad understanding of how policies, programs, and reforms can impact Aboriginal communities. Wherever possible, communities should be empowered with the necessary information to decide what issues they should be consulted and/or engaged on.
Have you accounted for all necessary ethical considerations?	Where consultations are being undertaken as part of research, organisations must obtain the requisite ethics approvals before approaching community. Moreover, they must ensure that consultation practices are guided by the necessary frameworks (i.e. Human research ethics guidelines). When consultation is not attached to research, it is still critical that organisations review their consultation practices to ensure that they are ethical and account for any sensitive and complex issues that may arise. It is also encouraged that organisations liaise with local community organisations to develop an understanding of nuances and sensitivities within the communities that they are consulting.

Have you ensured effective risk management mechanisms are in place to deal with issues that may arise during consultations?	Recognising that Aboriginal communities face complex and often sensitive issues, organisations must ensure that effective risk management mechanisms are in place to manage challenges that may arise during consultation. This should include ensuring that staff supporting consultations have the necessary knowledge and training to do so (for example, cultural safety, Aboriginal mental health). These mechanisms should also be in place for community engagements.
Gauging Community Interest and Seeking Community Participation	
Have you ensured that you are consulting with the appropriate communities?	This involves ensuring that you are not only consulting with metropolitan areas or regional hubs but are engaging with communities that are often overlooked in consultations. The same standard applies for engagements.
Have you confirmed that communities are interested in discussing the proposed consultation topic?	This can be done through contacting local community organisations (Interagencies, LALCs, local ACCOs, ACLOs, Elders Groups) based on their publicly available contact information or existing relationships with those on the ground. Organisations should be confident enough the community has shown interest in being consulted that they could evidence this later, if needed. The same standard applies for engagements.
Organising Dates	
Have you confirmed if there are any dates where local community events are on that would make it difficult to host a consultation or if there are preferred dates to come out?	Determining if there are preferred dates can be done simultaneously with determining if there is community interest, as above. In general, consultations should not be held over the holiday or shutdown periods. The same process should be used when planning community engagements.
Confirm with other organisations (both government and Aboriginal), insofar as possible, if there are other consultations and being planned at a similar time.	Please use the Closing the Gap consultation coordination tool that is being developed, which includes relevant information from clusters and CAPO organisations about their planned consultations. The same process should be used when planning community engagements.

Bookings	
Have you booked a venue that community members will be comfortable in?	RSLs or venues with gambling machines or that serve alcohol should be avoided where possible. If there is significant community division, it can be preferable to hold sessions at a neutral venue (e.g. Council meeting room), rather than an Aboriginal Community owned venue. The same standard applies for engagements.
Have you ensured that venues are accessible for people living with a disability?	This includes wheelchair accessibility, accessible parking nearby, and accessible audiovisual support. The same standard applies for engagements.
Have you made all other necessary bookings?	This includes Welcomes to Country, catering, transport (if promised to local communities). Ensure that there is appropriate remuneration for Welcomes to Country. The same standard applies for engagements.
Promotions of Consultations	
Have you formally announced consultations and/ or engagements four weeks ahead of the date?	Promotions should include direct emails to community members, posts on social media, and potentially advertising in regional papers. In smaller areas, it is more important to engage with local organisations to put up physical flyers and spread awareness on the ground. The same standard applies for engagements.
Have you engaged with local organisations in the community you are consulting with to spread awareness?	This should include some ongoing reminders in the lead up to the consultation. The same standard applies for engagements.
Have you ensured that consultations and/or engagements are open to all members of the local Aboriginal community?	Where targeted consultations (e.g., with members of a particular organisation) are necessary, the reasoning for this and the plan for wider consultations should be made clear in the promotional material. The same standard applies for engagements.

Conducting Sessions	
Providing Materials Beforehand	
Have you provided materials to community members who have registered for sessions?	Information to accompany the consultations, including the purpose of the consultations, what questions or discussion will be had on the day, will assist community members to consider their contributions ahead of time. Ensure that the language in the materials is accessible, avoiding all jargon and clearly providing any necessary background information. Materials should be made accessibility for people who have low vision, or an alternative version of the materials should be produced. The same standard applies for engagements.
Cultural Safety	
Have you ensured that all local cultural protocols, including Welcomes to Country, are followed?	As these will vary significantly across communities, it is important to check protocols with local organisations or community members. The same standard applies for engagements.
Have you ensured that any staff undertaking consultations are experienced, senior staff who are able to appropriately undertake engagements with Aboriginal communities?	If necessary, external facilitators can be used to run consultations. The same standard applies for engagements.
Meaningful Discussion	
Has the room been set up to encourage open discussion?	It is preferable to structure seating in a yarning circle or round table, rather than a classroom style. If there are too many people coming for a circle, still use a less formal, more open seating arrangement. Try to avoid seating arrangements that puts people sitting with their backs to each other. The same standard applies for engagements.

Have the consultations been designed to allow communities to comment on the design and approach of programs/ policies freely and openly to best suit their needs and priorities?	Consultation should take place prior to design commencing. This should include time for communities to identify what their key priorities are regarding the topic and discuss how they would like to see these priorities implemented/ addressed. Consultation process should also include a component to check that the design "is on the right track".

The priority in these sessions should be hearing from communities, not speaking at them, except where the sessions are designed for reporting back. In these sessions, more focus should be placed on sharing information with communities.

Individual consultations should be recognised as part of an ongoing process to develop and revise policies to reflect community priorities. |
| Is the venue child-friendly and/or have an area for kids? | Many community members will have other commitments, such as child-minding, and this should be a consideration in selecting a venue. By having an area that is child-friendly or where children can play, this allows for community members to provide input without being distracted by children and increases the likelihood that those with child-minding responsibilities will attend. |
| **Recording feedback** | |
| Have you captured an unfiltered and anonymous record of what was said during the consultations (i.e. plain scribe notes)? | This should be maintained in addition to an analysis of the scribe notes to allow for reference back to exactly what communities said.

The same standard applies for engagements. |
| **After Sessions** | |
| **Incorporating What Was Heard** | |
| Have you designed or reformed the relevant policy or program to reflect the community needs and priorities, as identified in the consultations? | This should include a review and analysis of the consultations, independent of any existing policy or program design. What was heard at the consultations should be used as the foundational start for the design of policies and programs, rather than using consultations to support pre-planned work.

The standard is that organisations should be able to explain how the resultant policy/ program was directed and driven by what was said, and clearly explain.

During engagements that discuss policies and programs if communities provide input or direction on the topic, then, insofar as possible, the policy or program should be amended to reflect community input. |

Reporting Back	
Have you reported back to communities that were consulted about what was heard, what impacts the consultation had, how they were used, and what will be happening next?	This should ideally be in person with the communities consulted with, but this can be supplemented by a report from the consultations. However, communities should be asked how/ whether they want to be reported back to. This should, whenever possible, be the same people who initially ran the consultations to support the development of relationships with community members.

A Guiding Timeline for Consultations:

- When designing a future project or area to address, community consultation on the fundamental elements of the work should be factored into the planning
  - › As early as possible, engage with community members on the ground to determine if there is interest in being consulted
  - › At the same time, review the online shared calendar of availabilities for planned consultations
- 6-8 weeks prior to the consultations, engage with community members on the ground, asking:
  - › Confirming if there is interest in having the consultation with community
  - › If there are preferred venues for consultations to be held
  - › If there are local practices or customs that need to be followed
- 4 weeks prior formally and publicly announce the consultation, distributing information through relevant communication channels
  - › Over the lead in, regularly promote the sessions, including through direct engagement of organisations on the ground and make all necessary bookings, including Welcomes to Country
- 2 weeks prior to the session, share any necessary materials for engaged in the session that explain what is being discussed, what the background information required is, and how the information from the session will be used afterwards
  - › These materials should explain that these sessions are flexible and able to adapt to be driven by community priorities
- 1 week out, confirm with attendees that they will be attending and confirm all necessary bookings (including Welcomes to Country)
- On the day, ensure that the session is run in line with any local practices and addresses any issues raised in advance by community members
- As soon as practicable after the session, please ensure that all payments are made promptly as many community organisations that are supplying goods and services do not have high liquidity and ensure that Elders providing Welcomes to Country are paid as a matter of priority
- Through regular communication after the session, keep communities involved with what progress is being made with what was said during the sessions
- At an appropriate time, when some progress has been made, engage again with communities to schedule and determine details for the reporting back session
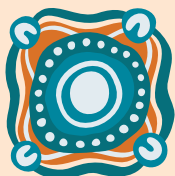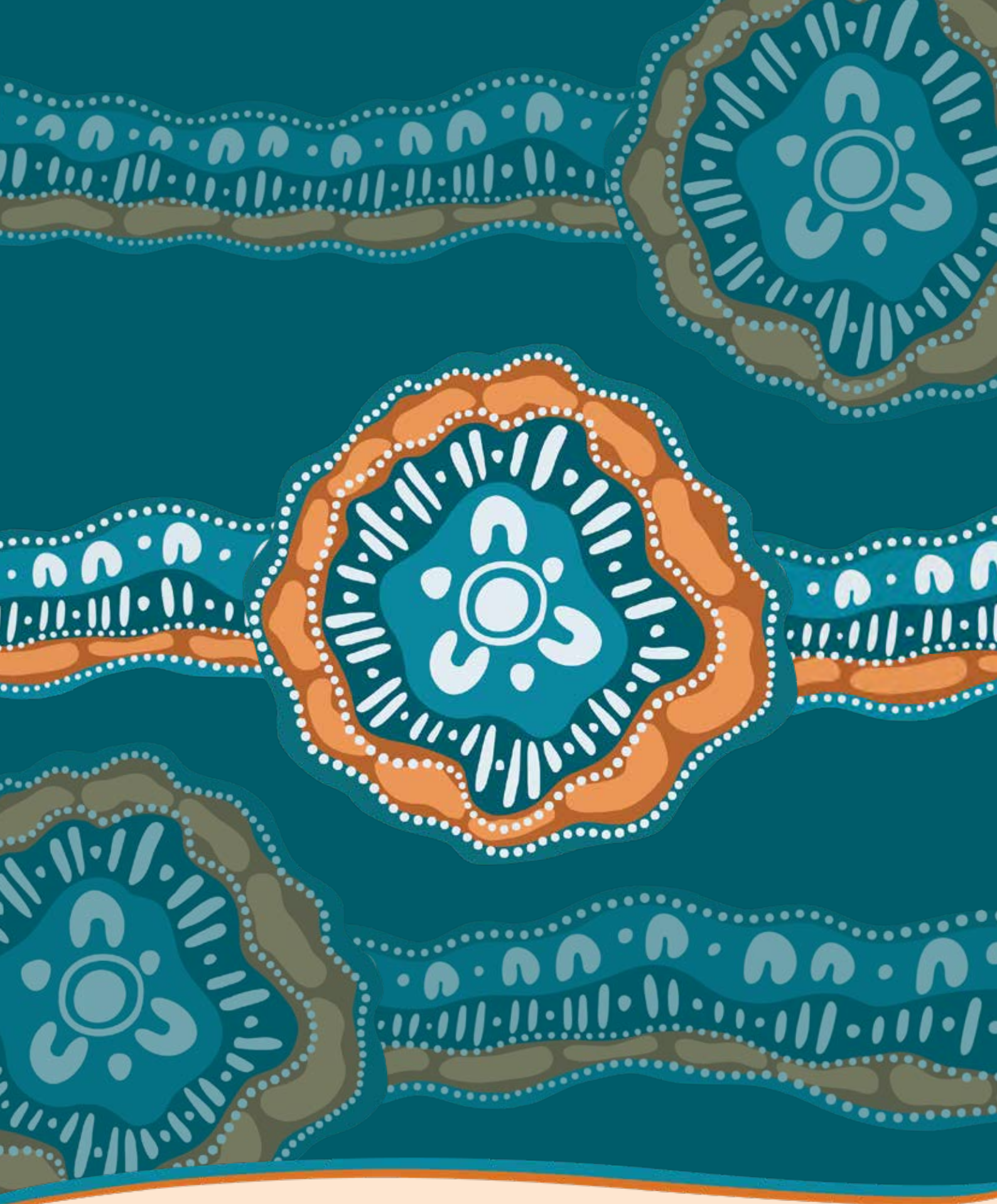
Appendix B - Project Research Principles

Recognise and work in a way that helps to address the historical and ongoing impacts of colonisation and acknowledge 'Indigenous research approaches have arisen due to the objectification of Indigenous peoples in research, and the marginalisation of Indigenous scholars in the past (Rigney, 1999; Smith, 2013)' as cited in Williamson, B. (2022 p.5).

Acknowledge 'research does not take place in a vacuum but is guided consciously or unconsciously by a set of philosophical assumptions about how the world is; how knowledge is produced, acquired, valued, and shared; the moral aspects of the research; and how the latter is to be executed' as cited in Mirjam Held's (2019 p.11) paper Decolonising Research Paradigms in the Context of Settler Colonialism: An Unsettling, Mutal and Collaborative Effort.

As such as a team we will,

1. Take a rights-based approach, to recognise and respect the rights and interests of Aboriginal and Torres Strait Islander people. The information research to support the design process will ensure Aboriginal and Torres Strait Islander knowledge and worldviews are sought out, privileged and upheld.

2. We will work collaboratively, and respectfully throughout the information collection and collation process, and build trust by openly sharing and discussing our findings.

3. We will act ethically, to acknowledge sources and respect copyrights, throughout the process, ensuring the integrity of approach.

4. Be aware of the language being used to ensure it is appropriate, carefully considered, inclusive and strengths based.