

# Chapter 3:

## From community crisis to community control in the Fitzroy Valley

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### 3.1 Community-led alcohol restrictions in the Fitzroy Valley

It is a story of colonisation; the threat of losing our cultural authority to manage our societies; and the despair that has come from that disempowerment. It is a story of grief and trauma and the continued pain of living with grog, drug and violence.

It is a story that academics and journalists write about us as though we are victims of history that we can do nothing about. And within their stories about us is an acceptance that the paternal hand of government will determine the nature of our welfare and even the nature of our rights.

... I want to tell a different story. It is about how Aboriginal people can be the authors of our stories and not passive and powerless subjects in stories told and written by others.

... I want to talk about how the leaders of the Fitzroy Valley in the Kimberley are working together to create a pathway of hope and community vitality and resilience... if our journey of social reconstruction could be measured as a one kilometre track, we have only travelled the first metre.

The start of the journey has depended on the leadership of the Aboriginal community but the journey from this point on will largely be shaped by a partnership that we can create and build with governments.<sup>1</sup>

This Chapter is about the courageous steps that the communities of Fitzroy Valley took to address the problem of alcohol abuse and its impacts on the most vulnerable members of the community. Over the course of three years, the residents of the Fitzroy Valley have led transformative change in their region and lifted their communities out of chaos and despair. This Chapter outlines the process of moving from community crisis to community control.

In 2007, a number of Fitzroy Valley community leaders decided it was time to address increasing violence and dysfunction in their communities. Alcohol abuse was rife across the Valley – and rather than healing the pain of colonisation and disempowerment, it was causing violence, depression and anguish amongst residents. By 2007, there had been 13 suicides in the Valley over a 12 month period.

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1 J Oscar, community member and CEO of Marninwarntikura, *Speech to the Western Australian Equal Opportunity Commission Forum* (Speech delivered at the Western Australian Equal Opportunity Commission Forum, Perth, 10 August 2009), pp 1-2. At [http://www.eoc.wa.gov.au/Libraries/Documents/JuneOscarAugust2010WAHumanRights\\_EqualOpportunityCommissionForum.sflb.ashx](http://www.eoc.wa.gov.au/Libraries/Documents/JuneOscarAugust2010WAHumanRights_EqualOpportunityCommissionForum.sflb.ashx) (viewed 15 September 2010).

The actions of these leaders were careful and modest; aimed at bringing the Fitzroy Valley residents with them on a journey to understand two things, that the alcohol situation was dire, and that the problems of the Valley could be reversed. I first examine the processes in which key community leaders took steps to restrict alcohol in the Valley. I then outline the development of a local governance structure that facilitates effective engagement between the communities and government. This structure is a platform for local voices to influence the future of the Fitzroy Valley.

This Chapter also looks at a community-driven research project addressing Fetal Alcohol Spectrum Disorders (FASD) in the Valley. The community-led nature of this project, which has consent processes embedded into its fabric, and the strategic use of external partners have allowed the communities to address an incredibly sensitive and difficult issue in FASD.

The recent history of the Fitzroy Valley reads as a 'how-to manual' for the development and implementation of a bottom-up project for social change. It is the story of a movement that engages with, rather than further marginalises, the local communities. These events demonstrate approaches to community crisis that encourage and build the positive, willing participation of the affected people.

The principles emerging from the Fitzroy experience can inform the development and delivery of government services across the diversity of Aboriginal and Torres Strait Islander communities throughout Australia. If governments apply these principles they can shift from a service delivery paradigm to become enablers and facilitators of community-based agents of change.

In the Fitzroy Valley, the Australian and Western Australian governments have an opportunity to work with the communities to build on the existing models of governance and communication to capitalise on this social transformation.

### (a) The Fitzroy Valley

For thousands of years there were many different language groups living on this land and we are still here today. The Bunuba and Gooniyandi people are the people of the rivers and the ranges. The Walmajarri and the Wangkatjunga people are the people of the great desert. Today these different language groups all live together in harmony in the Fitzroy Valley. That's what makes this place so special. We have strong culture here and we welcome you to our place and our dreams.<sup>2</sup>

The Fitzroy Valley is in the Kimberley region of Western Australia. The town of Fitzroy Crossing is situated near the centre of the Fitzroy Valley. It is the regional hub of the Valley. Fitzroy Crossing is on the traditional lands of the Bunuba people. There are 44 smaller communities spread around the Valley in a diameter of approximately 200 kms. Of these smaller communities, a number are sub-regional hub communities, while others are smaller satellite communities or outstations.<sup>3</sup>

The area is extremely remote. The nearest major centres are Derby (258 km), Halls Creek (263 km) and Broome (480 km). Of the approximately 4000 people who live in Fitzroy Valley, 1600 live in Fitzroy Crossing. The majority of the population across the Valley is Aboriginal.<sup>4</sup>

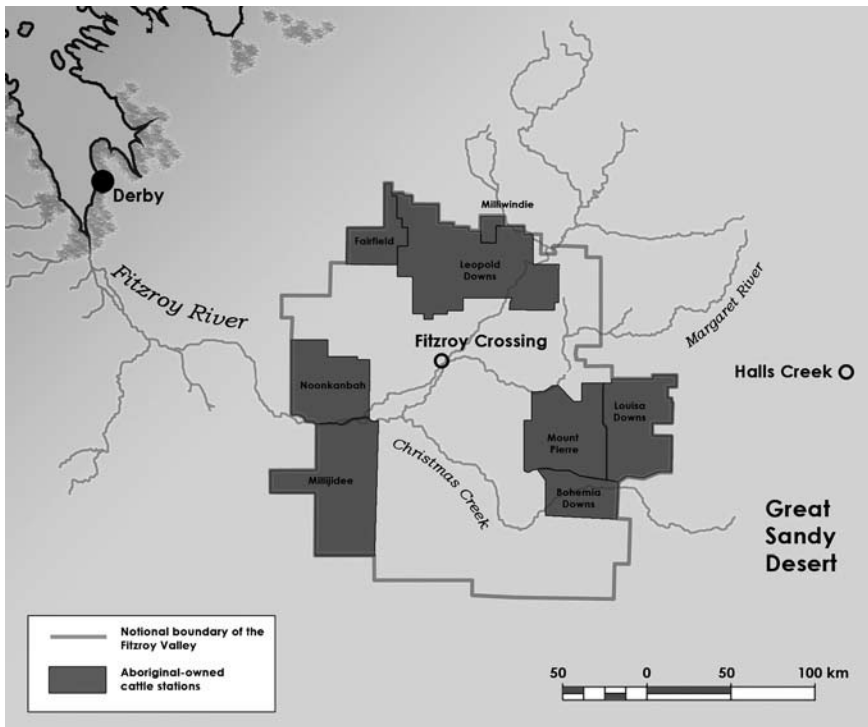
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2 J Oscar, community member and CEO of Marninwarntikura, in *Yajilara* (Directed by M Hogan, Reverb, 2009), 00:30.

3 For more detail see: F Morphy, *Population, People and Place: The Fitzroy Valley Population Project*, CAEPR Working Paper No 70/2010 (2010). At <http://caepr.anu.edu.au/system/files/Publications/WP/CAEPRWP70.pdf> (viewed 12 July 2010).

4 J Latimer, E Elliott, J Fitzpatrick, M Ferreira, M Carter, J Oscar and M Kefford (eds), *Marulu The Lililwan Project Fetal Alcohol Spectrum Disorders (FASD) Prevalence Study in the Fitzroy Valley: A Community Consultation*, The George Institute for Global Health (2010), p 4.

Map 3.1: The Fitzroy Valley<sup>5</sup>



The Fitzroy Valley is serviced by a range of different providers; government departments and agencies, as well as non-governmental organisations. Government services include education, police, health and child protection. Local non-governmental organisations provide a range of cultural and social welfare services. For example, the Marninwarntikura Women’s Resource Centre (Marninwarntikura) provides domestic violence services, and the Kimberley Aboriginal Law and Culture Centre (KALACC) is the peak body for developing, promoting and maintaining law and culture across the Valley.

**(b) Community crisis**

We worry all the time for this land and our people. Especially when we see and live in the shadows of the painful effects of dispossession, oppression, racism and neglect. And when we see how alcohol is being used to mask this pain in our community and how it creates more pain.<sup>6</sup>

In 2007, the communities of the Fitzroy Valley were in crisis. The Fitzroy Crossing Hospital staff described the abuse of alcohol in the communities as ‘chronic, chaotic

5 F Morphy, *Population, People and Place: The Fitzroy Valley Population Project*, CAEPR Working Paper No 70/2010 (2010), p 10. At <http://caepr.anu.edu.au/system/files/Publications/WP/CAEPRWP70.pdf> (viewed 12 July 2010). Based on The Kimberley Pastoral and General Land Use Map, Kimberley Development Commission.

6 J Oscar, community member and CEO of Marninwarntikura, in *Yajilara* (Directed by M Hogan, Reverb, 2009), 02:18.

and violent' – it was common for them to treat between 30 and 40 people a night for alcohol related injuries.<sup>7</sup>

Too many people were dying. Community member, Joe Ross, suggested that 'the community had become immune to attending funerals'.<sup>8</sup> The Fitzroy Valley had 55 funerals in one year, of which 13 were suicides. If this rate of suicide was applied to a population the size of Perth it would equate to 500 suicides per month.<sup>9</sup> These astounding figures prompted local community leaders to call for an inquest by the State Coroner of Western Australia, Alistair Hope. In 2008, the Coroner handed down his findings on 22 self-harm deaths in the Kimberley region. The Coroner found that the Kimberley region saw a 100% increase in self-harm deaths from 2005 to 2006, and the numbers of self-harm deaths in the Fitzroy Valley were exceptionally high.<sup>10</sup> A 'striking feature' of the Coroner's findings was the 'very high correlation between death by self-harm and alcohol and cannabis use'.<sup>11</sup>

We had a community that was just being decimated by alcohol abuse. Children weren't feeling safe about going home. Old people running to a safe place. Old people crying, wanting to move out of their homes because, you know, they were just being harassed by family members who was coming home drunk.<sup>12</sup>

The Coronial Inquest into 22 deaths in the Kimberley, also found that the Aboriginal people in the Kimberley region had a real desire for change and that they wanted to play an active role in designing and developing programs to improve their living conditions.<sup>13</sup>

The abuse of alcohol in the Valley has historical roots that can be linked to the processes of colonisation and the accompanying social policies that alienated and marginalised the Aboriginal people of the region.

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7 S Kinnane, F Farrington, L Henderson-Yates and H Parker, *Fitzroy Valley Alcohol Restriction Report: An evaluation of the effects of a restriction on take-away alcohol relating to measurable health and social outcomes, community perceptions and behaviours after a 12 month period*, Report by the University of Notre Dame Australia to the Drug and Alcohol Office, Western Australia (2009), p 24. At <http://www.dao.health.wa.gov.au/IntheMedia/tabid/105/DMXModule/443/Default.aspx?EntryId=1125&Command=Core.Download> (viewed 28 April 2010).

8 J Ross, community member, meeting with the Aboriginal and Torres Strait Islander Social Justice Commissioner, Fitzroy Crossing, 31 July 2010.

9 M White, *Community-Owned Approaches to Social Recovery – Overcoming Despair in the Fitzroy Valley: Service Analysis of the determinants necessary for a good life well lived*, Marninwarntikura Fitzroy Women's Resource & Legal Centre, Marra Warra Warra Aboriginal Corporation, Nindilingarri Cultural Health, Kimberley Aboriginal Law and Cultural Centre (2009), p 12. At [http://www.aph.gov.au/senate/committee/clac\\_ctte/suicide/submissions/sub120.pdf](http://www.aph.gov.au/senate/committee/clac_ctte/suicide/submissions/sub120.pdf) (viewed 25 August 2010).

10 A Hope, State Coroner of Western Australian, *Coronial inquest into 22 deaths in the Kimberley*, Ref No: 37/07, Coroner's Court of Western Australia (2008), executive summary.

11 A Hope, State Coroner of Western Australian, *Coronial inquest into 22 deaths in the Kimberley*, Ref No: 37/07, Coroner's Court of Western Australia (2008), p 5.

12 E Carter, community member and Chair of Marninwarntikura, in *Yajilara* (Directed by M Hogan, Reverb, 2009), 02:53.

13 A Hope, State Coroner of Western Australian, *Coronial inquest into 22 deaths in the Kimberley*, Ref No: 37/07, Coroner's Court of Western Australia (2008), p 57.

**Text Box 3.1: History, trauma and alcohol abuse<sup>14</sup>**

After the period of frontier violence in the late nineteenth and early twentieth century Aboriginal people worked on stations for little or no wages. For decades Aboriginal people were the backbone of the industry. Without the Aboriginal women and men who sheared the sheep, mustered the cattle, built the fences and windmills and cooked the food, the pastoral industry would not have been able to operate.

Then in the late 1960s and early 1970s when the equal wage decision for Aboriginal stock workers was implemented in the Kimberley, our people were discarded. We were treated with contempt and expelled on mass from the stations.

Aboriginal people throughout the valley resettled in congested, squalid conditions. In the early 1970s the population of Fitzroy Crossing rose from 100 to over 2000 people within two years. It became a tent-camp of refugees fleeing a humanitarian disaster....

Like many such people alienated from their lands, alcohol abuse started and it got worse and worse over the years. At first only the older men and middle aged men drank, then some of the young men and then more and more women and then teenagers, some of them quite young.

The grog has affected every single person in the valley at one level or another. Aboriginal people in the valley have identified grog as the most important health priority that must be confronted.

Fitzroy Valley residents had been cognisant of the damage that alcohol was causing for some time and they had taken steps to address the problem. For example, in 2004, 300 residents from the Valley met to discuss the issues of alcohol and drug abuse. The attendees of the meeting agreed that there was a need to focus on counselling and treatment.<sup>15</sup> However very few resources were available, and little was done to address what was an overwhelming problem.

In 2007, in the face of this ongoing and escalating crisis, the senior women in the Fitzroy Valley decided to discuss the alcohol issue and look for solutions at their Annual Women's Bush Meeting. The Women's Bush Meeting is auspiced by Marninwarntikura; it is a forum for the women from the four language groups across the Valley. At the 2007 Bush Meeting, discussions about alcohol were led by June Oscar and Emily Carter from Marninwarntikura. The women in attendance agreed it was time to make a stand and take steps to tackle the problem of alcohol in the Fitzroy Valley.<sup>16</sup> While the women did not represent the whole of the Valley, there was a significant section of the community in attendance. Their agreement to take action on alcohol was a starting point and it gave Marninwarntikura a mandate to launch a campaign to restrict the sale of alcohol from the take-away outlet in the Fitzroy Valley. The community-generated nature of this campaign has been fundamental to its ongoing success. The communities themselves were ready for change.

14 J Oscar, community member and CEO of Marninwarntikura, *Through women's hearts – Indigenous people, history, environment and an inclusive future* (Speech delivered at WA Women's Advisory Council Conference, Perth, 14 June 2010), p 7.

15 E Carter, community member and Chair of Marninwarntikura, meeting with the Aboriginal and Torres Strait Islander Social Justice Commissioner, Fitzroy Crossing, 2 August 2010.

16 J Latimer, E Elliott, J Fitzpatrick, M Ferreira, M Carter, J Oscar and M Kefford (eds), *Marulu The Liliwan Project Fetal Alcohol Spectrum Disorders (FASD) Prevalence Study in the Fitzroy Valley: A Community Consultation*, The George Institute for Global Health (2010), p 4.

**(c) Alcohol restrictions campaign**

The community is at a stage where they're wanting to do something, so, you know, the State and Federal Government, they should really listen and that we're a community that wants to meet them halfway, and isn't that a good thing, where it's not coming from the top down?<sup>17</sup>

[The campaign] started from [the Marninwarntikura] Women's Bush Meeting in Gooniyandi Country. It was the old people who really stood up to put a stop to grog. Old people didn't get sleep and children at night were running around. This is how it started.<sup>18</sup>

Following this bush camp, on 19 July 2007 Marninwarntikura wrote to the Director of Liquor Licensing (Western Australia) seeking an initial 12 month moratorium on the sale of take-away liquor across the Fitzroy Valley.<sup>19</sup> The only take-away outlet in the Valley is located in Fitzroy Crossing. As a consequence, much of the focus of the campaign for alcohol restrictions was on Fitzroy Crossing, although its effects would apply across the Valley region.

Marninwarntikura argued that alcohol restrictions were necessary for the following reasons:

- the high number of alcohol and drug related suicides in the Fitzroy Valley
- the communities were in a constant state of despair and grief
- there was extensive family violence and the women's refuge was unable to cope with the demand from women seeking refuge from violence at home
- childhood drinking was becoming normalised behaviour
- local outpatient presentations from alcohol abuse were unacceptably high
- local hospital statistics suggested 85% of trauma patients were alcohol affected and 56% of all patients admitted were under the influence of alcohol
- criminal justice statistics showed a disproportionately high number of alcohol related incidents
- local employers were finding it difficult to retain staff as a result of alcohol consumption
- a reduction in school attendance
- child protection issues including a significant number of children under the age of five exhibiting symptoms associated with Fetal Alcohol Syndrome.<sup>20</sup>

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17 E Carter, community member and Chair of Marninwarntikura, interviewed on Australian Broadcasting Corporation, *The 7:30 Report, Coroner to investigate deaths in Fitzroy Crossing* (Broadcast 13 October 2007). At <http://www.abc.net.au/7.30/content/2007/s2049936.htm> (viewed 27 April 2010).

18 Unidentified service provider interviewed for the 12 month review of the alcohol restrictions in the Fitzroy Valley: S Kinnane, F Farrington, L Henderson-Yates and H Parker, *Fitzroy Valley Alcohol Restriction Report: An evaluation of the effects of a restriction on take-away alcohol relating to measurable health and social outcomes, community perceptions and behaviours after a 12 month period*, Report by the University of Notre Dame Australia to the Drug and Alcohol Office, Western Australia (2009), p 57. At <http://www.dao.health.wa.gov.au/IntheMedia/tabid/105/DMXModule/443/Default.aspx?EntryId=1125&Command=Core.Download> (viewed 28 April 2010).

19 Director of Liquor Licensing, Western Australia, *Decision of Director of Liquor Licensing, decision number: A 185682* (2007), p 1. At <http://www.rgl.wa.gov.au/ResourceFiles/Decisions/CrossingInnSection64InquiryDecision.pdf> (viewed 25 August 2010).

20 Director of Liquor Licensing, Western Australia, *Decision of Director of Liquor Licensing, decision number: A 185682* (2007), p 3. At <http://www.rgl.wa.gov.au/ResourceFiles/Decisions/CrossingInnSection64InquiryDecision.pdf> (viewed 25 August 2010).

Marninwarntikura called on the Director of Liquor Licensing to restrict access to take-away alcohol purchased in Fitzroy Crossing in order to provide some respite for the communities and to allow time to address the 'deplorable social situation' in the Fitzroy Valley.<sup>21</sup>

During this process, Marninwarntikura liaised with the cultural leadership of the communities through KALACC; one of the three Kimberley-wide Aboriginal organisations which promotes law and culture for the different language groups in the region. KALACC gave its support to the restrictions campaign. The CEO of Marninwarntikura noted the importance of this support from the cultural leadership:

It was really important to let elders know what was happening. We liaised with cultural leaders and elders through KALACC. KALACC helped facilitate approval from elders for the alcohol restrictions.<sup>22</sup>

The role of KALACC was critical, it would have been very interesting had they not supported the campaign. The support of KALACC managed some of the forces in the community.<sup>23</sup>

The cultural leadership gave the campaign their support because they believed in the positive possibilities that alcohol restrictions might offer Fitzroy Valley residents. One cultural leader described the campaign, saying:

I reckon because woman is the mother, you know, and that's why mother feel the pain. Something got to be changed and that's what I was hoping to have that in my mind to support [the restrictions]. I reckon that's a good thing woman did.<sup>24</sup>

The support of the elders and cultural leadership cannot be underestimated. It was a factor that influenced the discretion of the Director of Liquor Licensing to issue the alcohol restrictions.<sup>25</sup> The support from elders gave the campaign the necessary legitimacy to withstand some strongly-held views by sectors of the communities which were against the restrictions.

Support for the restrictions was not isolated to the women and the cultural leadership of the Valley. Many of the men from the Valley were strong advocates for the restrictions campaign. The women indicated that 'we couldn't have done it without the men'.<sup>26</sup> However, this campaign was not about gender difference, it was about these communities striving for a better future.

... and this must be understood – what we have achieved so far [in the Fitzroy Valley] could never have been done by government acting alone. The leadership had to come from the community. We had to OWN our problems and create pathways for recovery.<sup>27</sup>

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21 Director of Liquor Licensing, Western Australia, *Decision of Director of Liquor Licensing, decision number: A 185682* (2007), p 3. At <http://www.rgl.wa.gov.au/ResourceFiles/Decisions/CrossingInnSection64InquiryDecision.pdf> (viewed 25 August 2010).

22 J Oscar, community member and CEO of Marninwarntikura, telephone interview with the Office of the Aboriginal and Torres Strait Islander Social Justice Commissioner, 24 May 2010.

23 J Oscar, community member and CEO of Marninwarntikura, meeting with the Aboriginal and Torres Strait Islander Social Justice Commissioner, Broome, 3 August 2010.

24 J Brown, community elder and cultural leader, in *Yajilara* (Directed by M Hogan, Reverb, 2009), 05:26.

25 Director of Liquor Licensing, Western Australia, *Decision of Director of Liquor Licensing, decision number: A 185682* (2007), p 4. At <http://www.rgl.wa.gov.au/ResourceFiles/Decisions/CrossingInnSection64InquiryDecision.pdf> (viewed 25 August 2010).

26 J Oscar, community member and CEO of Marninwarntikura, meeting with the Aboriginal and Torres Strait Islander Social Justice Commissioner, Broome, 3 August 2010.

27 J Oscar, community member and CEO of Marninwarntikura, *The Fitzroy Valley – To Dream the Gift of a Better Life* (Speech delivered at Parliament House, Canberra, 18 August 2009), p 4.

A Strategic partnership was formed with the Western Australian Police, who also supported the campaign. This strategic alliance bolstered the campaign but did not detract from its community controlled nature.

Despite obtaining significant community-level support for the campaign, there remained strong voices in the communities who opposed the proposed restrictions. However, those supporting the restrictions stood firm knowing that they would buy the Valley some necessary respite from the trauma and chaos of excessive alcohol misuse. The strength of these leaders was decisive, and the campaign came at significant personal cost for some key leaders.

### (i) *Alcohol restrictions in the Valley*

It was September 2007, when the Western Australia Director of Liquor Licensing decided that the sale of take-away liquor was a major contributor to high levels of alcohol-related harm at Fitzroy Crossing. The Director deemed the harm sufficient to justify the imposition of a 6 month trial during which the sale of take-away liquor from the outlet in Fitzroy Crossing would be restricted. The trial commenced on 2 October 2007.

The sale of packaged liquor, exceeding a concentration of ethanol in liquor of 2.7 per cent at 20°C, is prohibited to any person, other than a [person residing, whether casually or permanently, on the premises].<sup>28</sup>

The trial conditions stipulated that only low-strength beer could be purchased from the take-away outlet in Fitzroy Crossing. Full-strength beer, wine and spirits could not be purchased for take-away. These heavier drinks could still be purchased from the two licensed premises in the Valley (both located in Fitzroy Crossing) but they could only be consumed on the premises during opening hours.

Approximately eight months after the restrictions came into force, a review was conducted to assess their impact and to determine their future. The review meeting included the Director of Liquor Licensing and was attended by various members of the Aboriginal communities in the Valley. June Oscar, the CEO of Marninwarntikura, stated that the meeting was the 'most important 30 mins of our lives'.<sup>29</sup> It gave community members the opportunity to present their case to the Director of Liquor Licensing. Their views were summarised as follows:

- the women were more empowered, confident and able to speak up and be involved in community-level discussions
- sly grogging was a real problem
- Fitzroy Valley was much quieter and safer
- other Aboriginal communities were looking to the positive example in the Fitzroy Valley
- the restrictions have seen government agencies and non-government organisations become more involved in the communities
- there was a strong desire not to return to the pre-restriction chaos
- substantial and lasting change is needed

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28 Director of Liquor Licensing, Western Australia, *Decision of Director of Liquor Licensing, decision number: A 185682* (2007), p 9. At <http://www.rgl.wa.gov.au/ResourceFiles/Decisions/CrossingInnSection64InquiryDecision.pdf> (viewed 25 August 2010).

29 Quoted in Director of Liquor Licensing, Western Australia, *Decision of Director of Liquor Licensing, decision number: A 187548* (2008), p 14. At <http://www.rgl.wa.gov.au/ResourceFiles/Decisions/A187548.pdf> (viewed 25 August 2010).



- children need to be the priority and the next generation of children need to grow up without the problems of alcohol
- families are stronger and sober, old people are being cared for, young people are thinking about owning homes and children are learning skills
- communities with people affected by FASD need assistance
- 'if we return to the past, all hope will be stripped away'.<sup>30</sup>

After the review meeting in May 2008, the Director of Liquor Licensing extended the restrictions on take-away alcohol indefinitely.<sup>31</sup> Since the implementation of the restrictions, four of the communities in the Fitzroy Valley, Wangkatjungka, Noonkanbah, Yakanarra and Bayulu, have also adopted alcohol restrictions, that prevent the possession and consumption of alcohol in these communities.<sup>32</sup>

#### (d) Issues of consent

We dealt with dissenting voices by trying to keep all people in the Valley informed. We used media to help keep people informed and to combat misinformation. I agreed to attend all meetings with dissenting voices in the community but only if the meetings were respectful and outcomes could be generated from meetings.<sup>33</sup>

The Fitzroy Futures Forum was a public place for the community to discuss the restrictions. This was space for people to argue for and against the restrictions...<sup>34</sup>

From the beginning of the campaign it was clear that consensus support for the restrictions could not be reached. While there was a critical mass of people in favour of the restrictions, there was also a cohort which was against them. The lack of consensus was a significant challenge for community leaders who wanted to address this crisis. It also raised a significant human rights issue.

International law has evolved to the point where it is necessary to engage in genuine consultation with Indigenous peoples before adopting policies, laws, decisions or programs that are directly targeted toward us.<sup>35</sup> This consultation should be guided by the principle of free, prior and informed consent.

The principle of free, prior, and informed consent requires that consent should be sought without coercion or intimidation in advance of any authorisation or commencement of activities. All relevant information should be provided and be in a format that is understood by the affected Indigenous people. It is necessary to establish productive dialogue between the affected Indigenous peoples and decision-makers, allowing the time to find mutually acceptable solutions. The process for achieving free, prior and informed consent will vary depending on the

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30 Director of Liquor Licensing, Western Australia, *Decision of Director of Liquor Licensing, decision number: A 187548* (2008), p 15. At <http://www.rgl.wa.gov.au/ResourceFiles/Decisions/A187548.pdf> (viewed 25 August 2010).

31 Director of Liquor Licensing, Western Australia, *Decision of Director of Liquor Licensing, decision number: A 187548* (2008), p 60. At <http://www.rgl.wa.gov.au/ResourceFiles/Decisions/A187548.pdf> (viewed 25 August 2010).

32 Department of Racing, Gaming and Liquor (WA), *Restrictions in Remote Regions*, <http://www.rgl.wa.gov.au/Default.aspx?Nodetd=92&DocId=113> (viewed 6 August 2010).

33 J Oscar, community member and CEO of Marninwarntikura, telephone interview with the Office of the Aboriginal and Torres Strait Islander Social Justice Commissioner, 24 May 2010.

34 R Murphy, community member and Fitzroy Futures Forum Community Consultant, meeting with the Office of the Aboriginal and Torres Strait Islander Social Justice Commissioner, Perth, 4 August 2010.

35 J Anaya, *Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, James Anaya*, Report to the Human Rights Council, 12th session, UN Doc A/HRC/12/34 (2009), para 43. At <http://unsr.jamesanaya.org/PDFs/Annual2009.pdf> (viewed 29 July 2010).

circumstances.<sup>36</sup> Appendix 4 provides a more detailed outline of the principle of free, prior and informed consent.

Issues of consent in the Fitzroy Valley were resolved over time. It was a process rather than a single transactional event. The Fitzroy women wanted to create a 'space for reflection' amongst their community members. They knew that excessive alcohol needed to be taken out of the picture in order for reflection to occur. This would give people the time and opportunity to think about the crisis that had befallen the Valley. It was not possible for the residents to make informed decisions while they were in crisis.

Alcohol restrictions are just a small toe hold into the enormous challenges we face. It is not the answer to our problems. It was never intended to be. Its purpose was always to give us breathing space from the trauma and chaos of death, violence and fear; breathing space to think and plan strategically.<sup>37</sup>

Rather than focusing on obtaining majority support for the restrictions in the first instance, the women acted upon the mandate given to them at the Bush Meeting. Following this the women consulted with KALACC elders, health providers and community leaders and others to obtain support from a significant portion of the residents of the Valley.

Talking about the level of support is not simple and clear cut. I am cautious about giving figures and percentages. I think we should get away from looking at it like that. It is more important to give people all the information and then an opportunity to reflect on the alcohol restrictions and then decide if it is a good thing. Give people time to think and feel and see whether it will have a positive impact on their family. I think we should look at consent by reflecting on the way humans live and think.<sup>38</sup>

Creating a 'space for reflection' is sometimes necessary to assist people to develop their capacity and their knowledge in order to make informed decisions. This idea of capacity has been noted as a crucial component of the principle of free, prior and informed consent by the United Nations Permanent Forum on Indigenous Issues:

[I]mplicit in the principle of Indigenous peoples having a right to free, prior and informed consent is the notion of capacity; Indigenous peoples who lack the requisite capacity would be unable to consent in a free and informed manner. This principle of free, prior and informed consent, combined with the notion of good faith, may therefore be construed as incorporating a duty for States to build Indigenous capacity.<sup>39</sup>

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36 Permanent Forum on Indigenous Issues, *Report of the International Workshop on Methodologies regarding Free, Prior and Informed Consent and Indigenous Peoples*, UN Doc E/C.19/2005/3 (2005), paras 46-48. At [http://www.humanrights.gov.au/social\\_justice/conference/engaging\\_communities/report\\_of\\_the\\_international\\_workshop\\_on\\_fpic.pdf](http://www.humanrights.gov.au/social_justice/conference/engaging_communities/report_of_the_international_workshop_on_fpic.pdf) (viewed 9 August 2010). See also J Anaya, *Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people*, James Anaya, Report to the Human Rights Council, 12th session, UN Doc A/HRC/12/34 (2009), para 46. At <http://unsr.jamesanaya.org/PDFs/Annual2009.pdf> (viewed 9 August 2010).

37 J Oscar, community member and CEO of Marninwarntikura, *Speech to the Western Australian Equal Opportunity Commission Forum* (Speech delivered at the Western Australian Equal Opportunity Commission Forum, Perth, 10 August 2009), p 2. At [http://www.eoc.wa.gov.au/Libraries/Documents/JuneOscarAugust2010WAHumanRights\\_EqualOpportunityCommissionForum.sflb.ashx](http://www.eoc.wa.gov.au/Libraries/Documents/JuneOscarAugust2010WAHumanRights_EqualOpportunityCommissionForum.sflb.ashx) (viewed 15 September 2010).

38 J Oscar, community member and CEO of Marninwarntikura, telephone interview with the Office of the Aboriginal and Torres Strait Islander Social Justice Commissioner, 24 May 2010.

39 Permanent Forum on Indigenous Issues, *A draft guide on the relevant principles contained in the United Nations Declaration on the Rights of Indigenous Peoples, International Labour Organisation Convention No. 169 and International Labour Organisation Convention No. 107 that relate to Indigenous land tenure and management arrangements*, UN Doc E/C.19/2009/CRP.7 (2009), pp 20-21. At [http://www.un.org/esa/socdev/unpfi/documents/E\\_C\\_19\\_2009\\_CRP7\\_en.doc](http://www.un.org/esa/socdev/unpfi/documents/E_C_19_2009_CRP7_en.doc) (viewed 28 May 2010).

Twelve months after the alcohol restrictions commenced, an independent review showed increased community-level support for the restrictions.<sup>40</sup> The increased support shows that a 'space for reflection' and a different lived experience can change community attitudes. This could be described as building community capacity.

The process for implementing alcohol restrictions in the Fitzroy Valley demonstrates some stark contrasts to the implementation of alcohol restrictions and other measures under the Northern Territory Emergency Response (NTER).<sup>41</sup> In many ways, the intended outcomes were to be the same – a reduction in social problems as a result of a reduction in access to alcohol. What is strikingly different between the two approaches is the paths that were taken to achieve the same ends. In the Fitzroy Valley, the decisions were made by the communities at a time chosen by the community leaders.

In the Northern Territory a policy developed in Canberra was imposed by the Australian Government. The most stridently voiced criticisms of the NTER were about the lack of opportunity for the affected people to participate in any decision-making about the policies affecting them:

The single most valuable resource that the NTER has lacked from its inception is the positive, willing participation of the people it was intended to help. The most essential element in moving forward is for government to re-engage with the Aboriginal people of the Northern Territory.<sup>42</sup>

#### (e) The restrictions as a circuit breaker

The ones who drink are a small group, but the impact is devastating. We are the ones who live with the violence, the suicides. It is our children who are born with Fetal Alcohol Spectrum Disorders. We women and children want a future. We want to move on. Restricting alcohol is the circuit breaker we need.<sup>43</sup>

The restrictions were a circuit breaker. They are to give our community respite, to allow us as a community to think and plan about what sort of community we want to live in.<sup>44</sup>

The Drug and Alcohol Office of Western Australia commissioned the University of Notre Dame to independently evaluate the impacts of the alcohol restrictions. This review of the impact of the first 12 months of the restrictions was publicly released in July 2009.

The report, *Fitzroy Valley Alcohol Restriction Report: An evaluation of the effects of a restriction on take-away alcohol relating to measurable health and social outcomes, community perceptions and behaviours after a 12 month period*, provided evidence

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40 S Kinnane, F Farrington, L Henderson-Yates and H Parker, *Fitzroy Valley Alcohol Restriction Report: An evaluation of the effects of a restriction on take-away alcohol relating to measurable health and social outcomes, community perceptions and behaviours after a 12 month period*, Report by the University of Notre Dame Australia to the Drug and Alcohol Office, Western Australia (2009), p 6. At <http://www.dao.health.wa.gov.au/IntheMedia/tabid/105/DMXModule/443/Default.aspx?EntryId=1125&Command=Core.Download> (viewed 28 April 2010).

41 For further information see T Calma, Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2007*, Human Rights and Equal Opportunity Commission (2008), ch 3. At [http://www.humanrights.gov.au/social\\_justice/sj\\_report/sjreport07/index.html](http://www.humanrights.gov.au/social_justice/sj_report/sjreport07/index.html) (viewed 15 September 2010).

42 Northern Territory Emergency Response Review Board, *Report of the Northern Territory Review Board*, Attorney-General's Department (2008), pp 10-11. At [http://www.nterreview.gov.au/docs/report\\_nter\\_review/default.htm](http://www.nterreview.gov.au/docs/report_nter_review/default.htm) (viewed 28 April 2010).

43 Statement by the women in attendance at the Marninwarrtikura Annual Women's Bush Camp, 2009 in J Latimer, E Elliott, J Fitzpatrick, M Ferreira, M Carter, J Oscar and M Kefford (eds), *Marulu The Liliwan Project Fetal Alcohol Spectrum Disorders (FASD) Prevalence Study in the Fitzroy Valley: A Community Consultation*, The George Institute for Global Health (2010), pp 6-7.

44 E Carter (community member and Chair of Marninwarrtikura), meeting with the Aboriginal and Torres Strait Islander Social Justice Commissioner, Fitzroy Crossing, 2 August 2010.

that the alcohol restrictions were a circuit breaker and had given the residents of the Fitzroy Valley breathing space. It identified an increase in support for the alcohol restrictions from the Fitzroy Valley residents. The report indicated that almost all survey respondents accepted the need for some type of alcohol restrictions and that no one wanted a return to the social conditions prior to their introduction.<sup>45</sup>

The University of Notre Dame evaluation found that the alcohol restrictions were having health and social benefits including:

- reduced severity of domestic violence
- a 23% increase in reporting domestic violence and a 20% increase in reporting alcohol related domestic violence (police and other service providers attribute this to a range of factors including lower tolerance of domestic violence and increased sobriety)
- reduced severity of wounding from general public violence
- a 36% reduction in alcohol-related emergency department presentations, during the busiest period (October to March) this increased to a 42% reduction
- reduced street drinking
- a quieter and cleaner town
- families were more aware of their health and were being proactive in regard to their children's health
- reduced humbug<sup>46</sup> and anti-social behaviour
- reduced stress for service providers leading to increased effectiveness of these services
- generally better care of children and increased recreational activities
- a 91% reduction in the amount of pure alcohol purchased through the takeaway outlet
- a reduction in the amount of alcohol being consumed by Fitzroy Valley residents.<sup>47</sup>

The evaluation also indicated that domestic violence and other anti-social behaviour had not been totally eradicated. However, since the restrictions had come into force there was a lower tolerance for domestic violence.

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45 S Kinnane, F Farrington, L Henderson-Yates and H Parker, *Fitzroy Valley Alcohol Restriction Report: An evaluation of the effects of a restriction on take-away alcohol relating to measurable health and social outcomes, community perceptions and behaviours after a 12 month period*, Report by the University of Notre Dame Australia to the Drug and Alcohol Office, Western Australia (2009), p 6. At <http://www.dao.health.wa.gov.au/IntheMedia/tabid/105/DMXModule/443/Default.aspx?EntryId=1125&Command=Core>. Download (viewed 28 April 2010).

46 Defined as the act of harassing an individual for money, cigarettes, a lift, food and generally making a nuisance of oneself: S Kinnane, F Farrington, L Henderson-Yates and H Parker, *Fitzroy Valley Alcohol Restriction Report: An evaluation of the effects of a restriction on take-away alcohol relating to measurable health and social outcomes, community perceptions and behaviours after a 12 month period*, Report by the University of Notre Dame Australia to the Drug and Alcohol Office, Western Australia (2009), p 4. At <http://www.dao.health.wa.gov.au/IntheMedia/tabid/105/DMXModule/443/Default.aspx?EntryId=1125&Command=Core>. Download (viewed 28 April 2010).

47 S Kinnane, F Farrington, L Henderson-Yates and H Parker, *Fitzroy Valley Alcohol Restriction Report: An evaluation of the effects of a restriction on take-away alcohol relating to measurable health and social outcomes, community perceptions and behaviours after a 12 month period*, Report by the University of Notre Dame Australia to the Drug and Alcohol Office, Western Australia (2009), pp 6-7, 21, 26, 39. At <http://www.dao.health.wa.gov.au/IntheMedia/tabid/105/DMXModule/443/Default.aspx?EntryId=1125&Command=Core>. Download (viewed 28 April 2010).

**Text Box 3.2: The impacts of the restrictions on the women's shelter<sup>48</sup>**

**Evidence provided to the House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs – *Involvement of Indigenous juveniles and young adults in the criminal justice system.***

**Ms Christine Gray, Manager, Family Support Unit, Marninwarntikura Women's Resource Centre.**

I think we all know that, here in Fitzroy, before the restrictions it was a very different town. I probably do not need to tell you about that again. But since the restrictions we have been looking at the numbers of women who come to our shelter. We saw a decline and then we saw an increase. What we have seen over the last year or so is that there has been an increase in numbers. We attributed that to the fact that women are actually leaving the family situation far sooner. They know when alcohol is coming to town. They see the signs. They know what is going to happen next. They come to the shelter. Initially I thought: 'Oh no! This is not right. The number is going up.' But women have reported to us that they get out very quickly and they bring their children to the shelter. The time that they stay is a lot shorter. In the old days people would stay a lot longer because the alcohol would stay around a lot longer too.

As for the level of injuries, when I first came to Fitzroy the injuries were horrific. I am not saying that they have disappeared, but they have certainly lessened dramatically. That is borne out by evidence from the hospital and the police too. We have seen that happen over the time that the restrictions have been in place. The whole town is a different town, I believe. It looks different; it feels different. It is a much better place for families.

A number of negative impacts have resulted from the restrictions including:

- increased travel to Derby and Broome to obtain alcohol
- increased prevalence of people leaving children in the care of grandparents to drink at the licensed premises in Fitzroy Crossing and to travel to other towns to obtain alcohol
- increased pressure on heavily dependant drinkers and their families who are paying substantially more for alcohol
- reducing but still ongoing divisions within the town about the restrictions
- a general sense that there has not been the expected follow through of targeted government services to deal with the problems of alcohol dependence
- an impact on some local businesses who have seen a downturn in business based on people choosing to shop in other towns (partly) related to obtaining full-strength alcohol.<sup>49</sup>

48 Commonwealth, *Official Committee Hansard: Reference: Involvement of Indigenous juveniles and young adults in the criminal justice system*, House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs (31 March 2010), p 7 (Ms Christine Gray, Marninwarntikura). At <http://www.aph.gov.au/hansard/reps/commtee/R12898.pdf> (viewed 9 August 2010).

49 S Kinnane, F Farringdon, L Henderson-Yates and H Parker, *Fitzroy Valley Alcohol Restriction Report: An evaluation of the effects of a restriction on take-away alcohol relating to measurable health and social outcomes, community perceptions and behaviours after a 12 month period*, Report by the University of Notre Dame Australia to the Drug and Alcohol Office, Western Australia (2009), p 7. At <http://www.dao.health.wa.gov.au/IntheMedia/tabid/105/DMXModule/443/Default.aspx?EntryId=1125&Command=Core.Download> (viewed 28 April 2010).

Overall, the Notre Dame study concluded that the benefits generated by the alcohol restrictions outweighed the detriments. It reported that the communities are beginning to stabilise from their chaotic pre-restriction state. This perception has contributed to the increasing support for the restrictions from Fitzroy Valley residents.<sup>50</sup>

However, the alcohol restrictions are not a silver bullet for addressing the social crises in the Fitzroy Valley. Despite the significant reduction in alcohol consumption and alcohol-related violence, the Fitzroy Valley faces an immense task to rebuild the social fabric of the communities.

The grog restrictions were never intended to be a panacea for the enormous social disadvantages we face. What we have to imagine is a long term and permanent healing of the gaping wounds that arise from alcohol abuse and violence. This will require collaboration and cooperation.<sup>51</sup>

### **(f) A circuit breaker is not a silver bullet**

The restrictions in the Fitzroy Valley are a circuit breaker; they have provided the communities with the necessary reprieve from the pre-restrictions chaos to allow time to consider their futures. The Notre Dame Study noted that the gains from the restrictions alone would not be sufficient for the communities to address the ingrained issues associated with alcohol abuse, and ongoing support must build upon these gains:

Significant gaps in support services that are needed to enable the social reconstruction of the Fitzroy Valley continue to hinder the community. There continues to be a state of under-investment in the people of the Fitzroy Valley. This gap requires the resourcing of community based organisations operating at the coal face of community development, cultural health, mental health (counselling), education, community safety (Policing) and training, to build on the window of opportunity that the restriction has created.<sup>52</sup>

I visited the Fitzroy Valley as part of my research for this Chapter. Whilst there, I was informed time and time again that the restrictions alone are not enough to tackle the issues of alcohol and drug abuse in the communities. It was a widespread perception that the initial gains that have been made through the alcohol restrictions could be whittled away unless there is urgent investment into drug and alcohol, mental health and rehabilitation services; as well as investment into culture and cultural health programs in the Valley. These views were consistent with the 24 month review of the impact of the restrictions in the Fitzroy Valley which was released at the time of writing this Chapter.<sup>53</sup>

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50 S Kinnane, F Farrington, L Henderson-Yates and H Parker, *Fitzroy Valley Alcohol Restriction Report: An evaluation of the effects of a restriction on take-away alcohol relating to measurable health and social outcomes, community perceptions and behaviours after a 12 month period*, Report by the University of Notre Dame Australia to the Drug and Alcohol Office, Western Australia (2009), pp 6, 10. At <http://www.dao.health.wa.gov.au/IntheMedia/tabid/105/DMXModule/443/Default.aspx?EntryId=1125&Command=Core>. Download (viewed 28 April 2010).

51 J Oscar, community member and CEO of Marninwarntikura, *Through women's hearts – Indigenous people, history, environment and an inclusive future* (Speech delivered at WA Women's Advisory Council Conference, Perth, 14 June 2010), p 8.

52 S Kinnane, F Farrington, L Henderson-Yates and H Parker, *Fitzroy Valley Alcohol Restriction Report: An evaluation of the effects of a restriction on take-away alcohol relating to measurable health and social outcomes, community perceptions and behaviours after a 12 month period*, Report by the University of Notre Dame Australia to the Drug and Alcohol Office, Western Australia (2009), p 10. At <http://www.dao.health.wa.gov.au/IntheMedia/tabid/105/DMXModule/443/Default.aspx?EntryId=1125&Command=Core>. Download (viewed 28 April 2010).

53 S Kinnane, F Farrington, L Henderson-Yates and H Parker, *Fitzroy Valley Alcohol Restriction Report: An evaluation of the effects of a restriction on take-away alcohol relating to measurable health and social outcomes, community perceptions and behaviours after a two year period*, Report by the University of Notre Dame Australia to the Drug and Alcohol Office, Western Australia (2010), pp 11-15.

The 2007 National Drug Research Institute report, *Restrictions on the Sale and Supply of Alcohol*, reported that community control is an essential factor in effectively restricting alcohol supply in Indigenous communities. It noted that support and resources from relevant government agencies are also crucial in the effective implementation of alcohol restrictions.

In general, restrictions that are *imposed* on communities will be less effective – in both the short and long-term – than those which have community backing and community control. With guidance, communities themselves may be best placed to identify their own problems and needs but should also be encouraged to focus their attention on evidence-based and effective initiatives. The diversity of Indigenous populations in Australia means that community control and support is especially crucial among this group. Support *for* community efforts is also needed, especially from police and liquor licensing authorities, as are adequate infrastructure, human and financial resources – and these are often scarce commodities in rural and remote areas.<sup>54</sup>

There is a need for an immediate and coordinated response to address the collective social trauma that is driving alcohol and drug abuse in the Fitzroy Valley. At the time of writing the Western Australian Government had invested in one drug and alcohol counsellor for the Fitzroy Valley. However, the position has not been filled since February 2010. As a consequence the Valley is only serviced twice a month by two regional mental health workers based in Derby.<sup>55</sup> Without immediate action the advances made in the Fitzroy Valley could be lost.

Despite the absence of a coordinated response to drug and alcohol issues, the communities are supporting themselves through the creation of partnerships and alliances with service deliverers. There have been improvements in relationships with police and created strategic alliances with government agencies such as the Drug and Alcohol Office.<sup>56</sup>

An improved relationship between the police and the communities has been essential for creating safer communities for all residents.

I think what the restrictions have created is an ability for the police to assist the community rather than being driven by law enforcement. We are now supporting the community rather than the other way around. We do it in partnership. We can't do it ourselves. The relationship between the police and the community has gone from strength to strength. I would like to think that the relationship is as strong as it has ever been. There seems to be a trust...<sup>57</sup>

### 3.2 Fitzroy Futures Forum: Local governance and local voices

The Fitzroy Futures Forum is a very interesting phenomenon, it is like nothing else that I have seen in any Aboriginal community. It provides a mechanism for community to hold all three levels of government accountable (local, state and federal). It is unique

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54 National Drug Research Institute, *Restrictions on the Sale and Supply of Alcohol: Evidence and Outcomes*, National Drug Research Institute, Curtin University (2007), p xvii. At <http://ndri.curtin.edu.au/local/docs/pdf/publications/R207.pdf> (viewed 3 May 2010).

55 S Kinnane, F Farrington, L Henderson-Yates and H Parker, *Fitzroy Valley Alcohol Restriction Report: An evaluation of the effects of a restriction on take-away alcohol relating to measurable health and social outcomes, community perceptions and behaviours after a 24 month period*, Report by the University of Notre Dame Australia to the Drug and Alcohol Office, Western Australia (2010), p 12.

56 J Oscar, community member and CEO of Marninwarntikura, *The Fitzroy Valley – To Dream the Gift of a Better Life* (Speech delivered at Parliament House, Canberra, 18 August 2009), p 4.

57 I Gibson, Senior Sergeant, Officer in Charge Fitzroy Crossing Police Station, telephone interview with Office of the Aboriginal and Torres Strait Islander Social Justice Commissioner, 16 August 2010.

also because it has members from each language group, the community more widely and all three levels of government.<sup>58</sup>

The Fitzroy Futures Forum was beginning to take shape at the time of the alcohol restrictions campaign, the Governing Committee had not been fully established at that time. The restrictions and Fitzroy Futures Forum were two separate processes.<sup>59</sup>

### (a) Formation and background

In a parallel process to the alcohol restrictions campaign, an innovative governance structure was being established in the Fitzroy Valley. Its role was to facilitate local communication and engagement with governments. It is the Fitzroy Futures Forum. The Fitzroy Futures Forum is an open community forum providing a platform for all residents, including Aboriginal and non-Aboriginal residents, as well as businesses and enterprises of the Fitzroy Valley. Its purpose is to give all Fitzroy Valley stakeholders an opportunity to have a say in the future of the Valley.

The Fitzroy Futures Forum emerged out of a need for town planning in Fitzroy Crossing. In September 2000, the Shire of Derby/West Kimberley held a three day community conference to discuss the future of Fitzroy Crossing and the Valley more broadly. The outcome of this conference, the *Fitzroy Futures 2000 Conference*, was to establish a working group to address three key issues identified by the communities:

1. the need for a town plan to identify future growth of Fitzroy Crossing, the surrounding Aboriginal communities and resolve land tenure issues for the purposes of town planning
2. undertake a process of community consultation regarding the relocation of the power station
3. the development of strategic planning in Fitzroy Crossing on a range of social and economic issues including training, education and health.<sup>60</sup>

A process was commenced to develop a town plan and this became the Fitzroy Futures Plan. The local traditional owners of the Fitzroy Crossing region participated in the development of the plan through their representative body, Bunuba Inc. Negotiations occurred between the Department of Planning and Infrastructure (WA), the Shire of Derby/West Kimberley, and Bunuba Inc.

The town planning process included discussion about major government capital works for the Fitzroy Valley including:

- a new health campus
- upgrading the power station
- a district high school
- housing projects
- a new police station.<sup>61</sup>

As a result of the need for these significant capital works and town planning, local community leaders recognised that it was important for the communities to have a mechanism for ongoing input into the future direction of the Fitzroy Valley. An informal and open community forum, now known as the Fitzroy Futures Forum, was

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58 F Morphy, Centre for Aboriginal Policy Research, meeting with the Office of the Aboriginal and Torres Strait Islander Social Justice Commissioner, Canberra, 27 May 2010.

59 J Oscar, community member and CEO of Marninwarntikura, telephone interview with the Office of the Aboriginal and Torres Strait Islander Social Justice Commissioner, 24 May 2010.

60 Fitzroy Futures Forum Governing Committee, *Guiding Principles* (2010).

61 Fitzroy Futures Forum Governing Committee, *Fitzroy Futures Forum & Fund Background* (2010).



seen as an ideal vehicle for this community engagement. It began in 2000 and has gradually evolved into a partnership between the communities and government. It is best described as a hybrid governance mechanism for participation and engagement between local Aboriginal communities, government and other community people and organisations. Over time members of the Fitzroy Futures Forum have developed trust and effective forms of communication.<sup>62</sup>

A formal partnership agreement with the Western Australian Government was signed in 2007.<sup>63</sup>

The Fitzroy Futures Forum consists of four parts.

- Fitzroy Futures Town Plan
- The Forum
- The Fitzroy Futures Fund
- The Fitzroy Futures Forum Governing Committee.

I will consider each of these in turn.

#### (i) *Fitzroy Futures Town Plan*

The town plan sets out Fitzroy Crossing's land tenure, land release and infrastructure needs. This town planning process was the device that brought people together from across the communities and government agencies. To ensure the Fitzroy Futures Town Plan meets local needs, it is guided by the following principles:

- support lifestyle, cultural and social needs of the communities
- focus future growth on land not subject to flood impacts
- promote environmental protection and sustainable settlements
- provide opportunities for economic growth within the communities
- acknowledge infrastructure limitations and deficiencies.<sup>64</sup>

#### (ii) *The Forum*

Anyone that calls Fitzroy Valley home can be involved in the Forum. Black, white, Aboriginal, non-Aboriginal, community organisations, government, business, whoever has an interest in the Valley.<sup>65</sup>

The Forum is a public space where all people with an interest in the Valley can come to raise and discuss community identified priority issues. The Forum has developed an engagement structure that outlines the relationships between each of the stakeholder groups and how they engage with each other. This is represented below.

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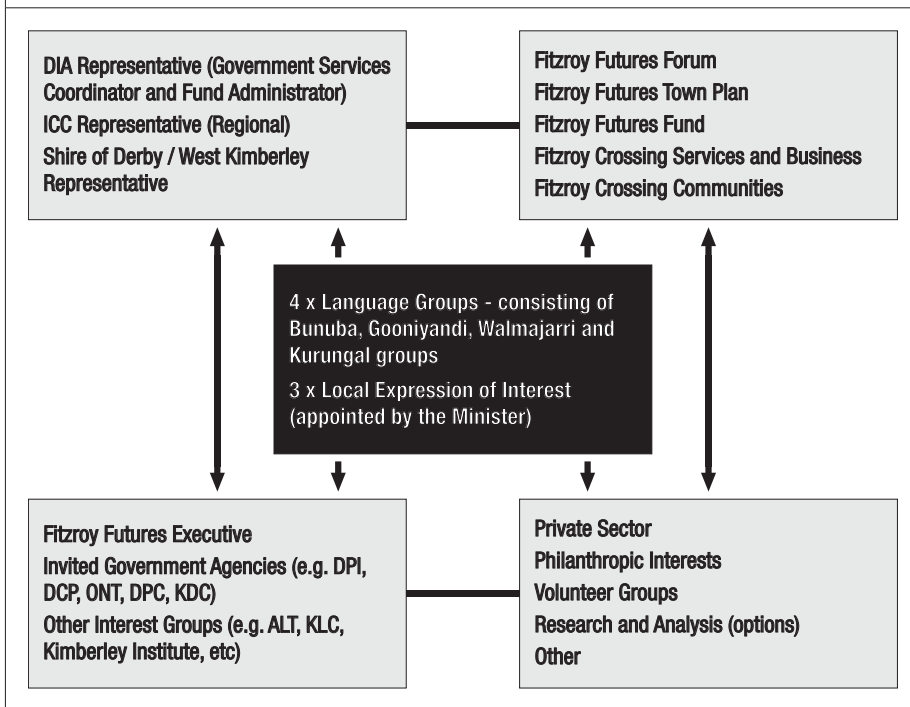
62 M White, *Community-Owned Approaches to Social Recovery – Overcoming Despair in the Fitzroy Valley: Service Analysis of the determinants necessary for a good life well lived*, Marninwarntikura Fitzroy Women's Resource & Legal Centre, Marra Warra Warra Aboriginal Corporation, Nindilingarri Cultural Health, Kimberley Aboriginal Law and Cultural Centre (2009), pp 7-8. At [http://www.aph.gov.au/senate/committee/clac\\_ctte/suicide/submissions/sub120.pdf](http://www.aph.gov.au/senate/committee/clac_ctte/suicide/submissions/sub120.pdf) (viewed 25 August 2010).

63 Fitzroy Futures Forum Governing Committee, *Guiding Principles* (2010).

64 Fitzroy Futures Forum Governing Committee, *Guiding Principles* (2010).

65 J Oscar, community member and CEO of Marninwarntikura, telephone interview with the Office of the Aboriginal and Torres Strait Islander Social Justice Commissioner, 24 May 2010.

**Figure 3.1: The Fitzroy Futures Forum Engagement Structure<sup>66</sup>**



The Forum has a ‘soap-box session’ where residents can have their say about the future of the Valley. Acting Western Australian State Manager, Department of Families, Housing, Community Services and Indigenous Affairs, Richard Aspinall described the impact of this platform for local voices:

How do you develop capacity for leadership? You develop it by having the structures to allow leadership to flourish and grow. The Fitzroy Futures Forum allows people to explore their own leadership; you have a soap box for people to say where they want the Valley to go. That brings self-confidence.<sup>67</sup>

Forum meetings are held quarterly and extraordinary meetings can be called if the need arises.

Whilst I was there we had the best part of 10 or 12 meetings, they were good robust meetings. What we wanted to focus on was the \$2.5m Fund. But also the Fitzroy Futures Town Plan was a key priority to get endorsed by the community and the state. This was so people can process things like land tenure. They were the first two things. As the meetings rolled on other things came up like the swimming pool for the area, there was also landscaping or streetscaping. There was work on the bridge, roads, airstrips for remote communities, employment opportunities, additional funding for local services, renal dialysis facilities. All sorts of things were spilling out of the meetings.<sup>68</sup>

<sup>66</sup> Fitzroy Futures Forum Governing Committee, *Guiding Principles* (2010), p 12.

<sup>67</sup> R Aspinall, Acting Western Australian State Manager, Department of Families, Housing, Community Services and Indigenous Affairs, telephone interview with the Office of the Aboriginal and Torres Strait Islander Social Justice Commissioner, 5 August 2010.

<sup>68</sup> T Walley, former Fitzroy Futures Forum Executive Officer, meeting with the Office of the Aboriginal and Torres Strait Islander Social Justice Commissioner, Perth, 4 August 2010.

These public meetings are increasingly well attended. All three tiers of government (local, state and federal) are represented at Forum meetings. They have become the accepted vehicle to transmit information across the Valley communities.

The Forum is the interface for services coming into the Valley:

The Forum is the entry point. It is about getting governments and other service providers to realise that they need community perspectives to influence their delivery. A few agencies have presented and said we are going to give this to you, and people say hang on did we ask for that? This has to stop, the government just coming in and imposing programs. Work with us.<sup>69</sup>

Through the Forum, the communities have been engaged in the process of designing a range of infrastructure projects such as the school, the swimming pool and the police station.<sup>70</sup>

#### (iii) *The Fitzroy Futures Fund*

Early in its operation 'cocktail funding' (funding from a variety of sources) was identified by the Forum as restricting the effectiveness of many projects in the Valley. The small amounts of money on short funding cycles made it difficult to plan and to develop any longer term projects. Ultimately, 'cocktail funding' impeded socio-economic outcomes for local people.

In 2007, the Western Australian Government acted to address some of this funding complexity. They established the Fitzroy Futures Fund. This Fund is \$2.5 million over 5 years to support social and economic development projects in the Fitzroy Valley. The Fund was created with additional funding allocated through budgetary processes, and was administered by the Western Australian Department of Housing and Works. From 1 January 2010, the administration of the Fitzroy Futures Fund was transferred to the Western Australian Department of Indigenous Affairs.<sup>71</sup>

The Fund is earmarked to support local individuals and community organisations and enterprises. In accordance with the Funding Agreement, monies from this Fund are not allocated to projects that should be funded by government; for example the provision of sewerage infrastructure remains the responsibility of government, as it is in any other town or community.

The communities are invited to apply for grants from the Fitzroy Futures Fund. The Fitzroy Futures Forum Governing Committee (discussed in further detail below) makes recommendations on what projects should be funded. These recommendations are sent to the Minister for Indigenous Affairs (WA) for sign off.

The Governing Committee is comprised of Aboriginal leadership representing the four language groups of the Fitzroy Valley, government officials from all three tiers of government and community representatives to accommodate non-Aboriginal interests in the Valley.

The result is that decision-making processes for the approval of projects and expenditure of the Fund are devolved to the Fitzroy Futures Forum Governing Committee which represents the Fitzroy Valley communities.

Grants are made available to Fitzroy Valley community organisations and individuals, and are allocated under one or more of the following strategic program areas:

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69 T Walley, former Fitzroy Futures Forum Executive Officer, meeting with the Office of the Aboriginal and Torres Strait Islander Social Justice Commissioner, Perth, 4 August 2010.

70 T Walley, former Fitzroy Futures Forum Executive Officer, meeting with the Office of the Aboriginal and Torres Strait Islander Social Justice Commissioner, Perth, 4 August 2010.

71 Fitzroy Futures Forum Governing Committee, *Guiding Principles* (2010).

1. infrastructure
2. economic development
3. education, skills and training
4. community development
5. natural resources
6. governance.<sup>72</sup>

These strategic program areas were developed by the Fitzroy Valley communities. Application processes were also developed with local input. Individuals and organisations are eligible for assistance in the application process from the Executive Officer and Community Consultant.<sup>73</sup> In this way, the Fund operates for the communities and reflects local needs.

A range of grants have been awarded to organisations, communities and individuals. For example:

- Kurnangki (an Aboriginal community within the town borders of Fitzroy Crossing) was awarded a grant to conduct a feasibility study for the design of a multipurpose facility, which might function as a youth centre, meeting place, cooking facility, study area and childcare centre.
- an individual grant was awarded to a community member for the purchase of an existing wood stove pizza business. The Fitzroy Futures Fund provided a percentage of the funds, and the remaining shortfall was met by Indigenous Business Australia. This venture now employs a number of youths from the Valley.<sup>74</sup>

The Fitzroy Futures Fund also provides grants for the benefit of the Fitzroy Valley region. The *Fitzroy Population Project* is one of example of this type of grant.

### **Text Box 3.3: The Fitzroy Futures Fund in action: the *Fitzroy Population Project***

There is an increasing need for accurate demographic information and baseline data to describe remote Indigenous communities across Australia. Planning for economic development, services and infrastructure is reliant on this information.

Acting through the Fitzroy Futures Forum, the people of the Fitzroy Valley identified a requirement for an accurate demographic profile of the region. This was a priority for three reasons:

1. It was widely accepted that the 2006 national census undercounted the population in the Kimberley region and other population counts were similarly inadequate. Accurate baseline data were needed to inform policy development.<sup>75</sup>

72 Fitzroy Futures Forum Governing Committee, *Guiding Principles* (2010).

73 T Walley, former Fitzroy Futures Forum Executive Officer, meeting with the Office of the Aboriginal and Torres Strait Islander Social Justice Commissioner, Perth, 4 August 2010.

74 K May, Fitzroy Futures Forum Executive Officer, Correspondence to the Office of the Aboriginal and Torres Strait Islander Social Justice Commissioner, 31 August 2010.

75 F Morphy, *Population, People and Place: The Fitzroy Valley Population Project*, CAEPR Working Paper No 70/2010 (2010), pp 1-2. At <http://caepr.anu.edu.au/system/files/Publications/WP/CAEPRWP70.pdf> (viewed 12 July 2010).

2. It was necessary to have a baseline population count to reflect the ways in which the Fitzroy Valley defines itself. Local government boundaries do not reflect the self-defined boundaries of the communities in the Fitzroy Valley.
3. The statistics captured in the census data do not reflect the dynamic lived realities of the population in the Fitzroy Valley including the population movements.<sup>76</sup>

Using money from the Fitzroy Futures Fund, the Fitzroy Futures Forum commissioned the *Fitzroy Population Project*. The project did not count the non-Aboriginal population in the Valley because the census data were believed to be more accurate. The project aimed to capture the cultural reality of the Aboriginal population.<sup>77</sup>

Funds were granted to Marninwarntikura and the Centre for Aboriginal Economic Policy Research at the Australian National University to undertake the project.<sup>78</sup>

Work on the project began in March 2009, and the completed report was presented to the Forum during 2010. This project provides the Fitzroy Futures Forum with an evidence-based tool for influencing policy development.

The survey collected two different kinds of data.

1. Demographic information about the Aboriginal communities including community members age and sex.
2. Population data that captures information about the cultural, relational and environmental factors that impact on patterns of settlement and mobility.

The data aims to encapsulate the social fabric of the communities in the Fitzroy Valley.<sup>79</sup> The data collection is framed by an Aboriginal perspective. In other words, the data reflects the priorities and world views of the residents rather than statistical indicators developed in Canberra.

Now the project is completed, the data are owned by the Fitzroy Futures Forum. The data will remain in the Valley for the benefit of the residents of the Valley.

#### (i) *The Fitzroy Futures Governing Committee*

The Fitzroy Futures Forum Governing Committee was established to ensure that the decision-making processes for grants under the Fitzroy Futures Fund were accountable, transparent and community owned. The Governing Committee consists of:

- a representative from each of the four main language groups from the Fitzroy Valley area
- a Representative of the Shire of Derby/West Kimberley
- a State government official from the Department of Indigenous Affairs (who is also the Executive Officer)

76 J Oscar, community member and CEO of Marninwarntikura, *Through women's hearts – Indigenous people, history, environment and an inclusive future* (Speech delivered at the WA Women's Advisory Council Conference, Perth, 14 June 2010).

77 F Morphy, *Population, People and Place: The Fitzroy Valley Population Project*, CAEPR Working Paper No 70/2010 (2010). At <http://caepr.anu.edu.au/system/files/Publications/WP/CAEPRWP70.pdf> (viewed 12 July 2010).

78 Centre for Aboriginal Economic Policy Research, *Annual Report 2009*, Canberra (2010), p 25. At <http://caepr.anu.edu.au/system/files/Reports/AnnualReport2009.pdf> (viewed 24 September 2010).

79 F Morphy, *Population, People and Place: The Fitzroy Valley Population Project*, CAEPR Working Paper No 70/2010 (2010), p 2. At <http://caepr.anu.edu.au/system/files/Publications/WP/CAEPRWP70.pdf> (viewed 12 July 2010).

- an Australian Government official represented from the West Kimberley Indigenous Coordination Centre
- three self-nominated community representatives who live in Fitzroy. These members are appointed by the Minister.<sup>80</sup>

A defining feature of the Fitzroy Futures Forum Governing Committee is that community representatives participate on equal footing with representatives from each of the three tiers of government. The structure of the Governing Committee is designed to facilitate communication and partnership between the communities and government. This model of membership ensures representation from the different Aboriginal language groups in the Valley and non-Aboriginal interests. It also reflects the Aboriginal leadership's aspiration that the Fitzroy Futures Forum represents both the Aboriginal interests and the interests of all Valley residents.

The Governing Committee is responsible for responding to and actioning issues, concerns and priorities that emerge from the Forum 'floor':

After the Forum meetings the Governing Committee would stay back and look at what were things needed to be elevated out of the communities. What things needed to be raised to government, and what things could be sorted out in town through local services. The issues that were sorted out in town were often cost neutral and didn't need government involvement. Maybe it was just a communication thing. But other things needed to go out for greater discussion.<sup>81</sup>

The Governing Committee acts as an advocacy and coordination body for the Fitzroy Valley. The Governing Committee recommends funding allocations, progresses local projects and reports to the communities at Forum meetings.

In addition to the Governing Committee, a small executive provides secretariat support for the Fitzroy Futures Forum. This executive is comprised of an Executive Officer, who is employed by the Department of Indigenous Affairs, and a Community Consultant who is funded by the Department. The Executive Officer assists in the coordination and delivery of government services and provides secretariat support. The Community Consultant is an Aboriginal person from the Valley, with a role to consult with residents about the provision and coordination of government services and the functions of the Fitzroy Futures Forum.<sup>82</sup>

### **(b) The strengths of the Fitzroy Futures Forum**

The reason it has worked is the community started it, they drove it, they pushed it. They endorsed the guiding principles. The community owns it, they just want some administrative support to help it go along its journey.<sup>83</sup>

The Fitzroy Futures Forum is an effective conduit between community-level interests and requirements, and government and non-government service delivery. The foundation of this mechanism is a relationship built on trust and mutual respect. This requires an honest and open conversation about what is achievable and what is deliverable. It is underpinned by good faith from both parties.

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80 Fitzroy Futures Forum Governing Committee, *Guiding Principles* (2010).

81 T Walley, former Fitzroy Futures Forum Executive Officer, meeting with the Office of the Aboriginal and Torres Strait Islander Social Justice Commissioner, Perth, 4 August 2010.

82 K May, Fitzroy Futures Forum Executive Officer, telephone interview with the Office of the Aboriginal and Torres Strait Islander Social Justice Commissioner, 15 June 2010.

83 T Walley, former Fitzroy Futures Forum Executive Officer, meeting with the Office of the Aboriginal and Torres Strait Islander Social Justice Commissioner, Perth, 4 August 2010.

The Aboriginal membership operates as ‘the interface’ between government and the Aboriginal communities in the Valley.<sup>84</sup> From a policy and service delivery perspective the Fitzroy Futures Forum is recognised by government and service providers as a key entry point into the Fitzroy Valley.

The active role of residents in setting the agenda for the future of the Fitzroy Valley is community development in practice. It is the process of active participation that builds community capacity.

The Fitzroy Futures Forum is space at a local level for dialogue between Aboriginal people and non-Aboriginal people. There is a need to find a ‘space’ to engage with people. There hasn’t been that space in the Fitzroy Valley. We need space to engage and discuss in respectful and supportive ways. In Fitzroy we have moved from standing in the trenches throwing grenades, now we can sit and talk respectfully and deal with the issues our community faces.<sup>85</sup>

**Text Box 3.4: Community organisations dealing with community problems<sup>86</sup>**

**Transcript from the House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs – *Involvement of Indigenous juveniles and young adults in the criminal justice system.***

**CHAIR (Hon Bob Debus)** – It is very interesting to us that you have a number of organisations that seem to be created within the community and designed for the community. You designed them; someone did not design them for you. Is that fair to say?

**Ms (June) Oscar** – That is right.

**CHAIR** – Do you think that is why they work?

**Ms Oscar** – Very much so. It takes in local ownership and local control, which is far more successful than something that is introduced and we are expected to make it work. Regional bodies or national bodies and structures being developed and designed, and then being expected to work at a local level, I think needs rethinking and review.

**CHAIR** – Yes.

...

**Hon Danna Vale** – It is clear to us that there is not sufficient Indigenous input into a lot of the programs at local level. One of the reasons that we wanted to come to speak to all of you [in Fitzroy] is that it was the Indigenous ownership, control and implementation that obviously has made Fitzroy Crossing the wonderful town that we are seeing out there today.

The Fitzroy Futures Forum is unique because of the high-level engagement between government and a community-generated forum. Government officials hear first hand the aspirations of the communities, and the communities hear first hand from government officials what can be delivered.

84 B Gleeson, Coordinator General for Remote Indigenous Services, *Six Monthly Report July-November 2009*, Office of the Coordinator General for Remote Indigenous Services (2009), p 54. At <http://www.cgris.gov.au/site/letter.asp> (27 April 2010).

85 J Oscar, community member and CEO of Marninwarntikura, telephone interview with the Office of the Aboriginal and Torres Strait Islander Social Justice Commissioner, 24 May 2010.

86 Commonwealth, *Official Committee Hansard: Reference: Involvement of Indigenous juveniles and young adults in the criminal justice system*, House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs, (31 March 2010), pp 4, 11. At <http://www.aph.gov.au/hansard/reps/commtee/R12898.pdf> (viewed 9 August 2010).

It is a collaborative process for determining the nature and type of government services and resources in the Fitzroy Valley. This is a fundamental strength of the Fitzroy Futures Forum:

The central theme of [the Fitzroy Futures Forum's] message and approach to the community has been: work together as a community and government can't ignore you; and to government: if you are not listening to community-identified and supported priorities you are not providing good governance.<sup>87</sup>

These unique strengths of the Fitzroy Futures Forum were noted by the Coordinator General for Remote Indigenous Services.<sup>88</sup>

### (c) The Fitzroy Futures Forum and the future

Some people ask me whether I think it is a good thing that people from the Valley are questioning the Governing Committee and the representativeness of the Forum. I think it is a good thing. It means people are actively participating in the future of the Valley.<sup>89</sup>

The Fitzroy Futures Forum has the potential to permanently restructure the relationship between the Aboriginal people of the Fitzroy Valley, the broader non-Aboriginal residents and the three tiers of government. If its current strengths are built upon, the Fitzroy Futures Forum could develop into a governing authority for the Valley region.<sup>90</sup>

The Fitzroy Futures Forum is currently undergoing a review process that will guide its future direction. This review is being conducted by the Executive Officer and the Community Consultant over a two week period. The review will include meetings with government agencies, community organisations and community residents.<sup>91</sup>

The community can shape the Fitzroy Futures Forum, it can be open and honest and challenging some things that aren't working as well as they could. We have this review process so we can look at strategies to make it work better.<sup>92</sup>

One of the challenges that the Fitzroy Futures Forum is facing is how it will evolve in light of its own successes. Forum meetings are increasingly well attended. This has made it difficult for certain sectors of the communities to feel that they are able to actively participate.

The vast geographic distances of the Fitzroy Valley also present a challenge for communication and engagement. It is difficult to engage all residents in such a vast

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87 K Thorburn, 'Fitzroy Futures Forum: A new approach to partnerships' in J Hunt and S Garling (eds), *Community Governance An occasional newsletter from the Indigenous Community Governance Project: Vol 3 No 2* (2007), p 5. At [http://caepr.anu.edu.au/system/files/cck\\_misc\\_documents/2010/06/CG\\_Newsletter\\_Vol.3\\_No.2.pdf](http://caepr.anu.edu.au/system/files/cck_misc_documents/2010/06/CG_Newsletter_Vol.3_No.2.pdf) (viewed 6 September 2010).

88 B Gleeson, Coordinator General for Remote Indigenous Services, *Six Monthly Report July-November 2009*, Office of the Coordinator General for Remote Indigenous Services (2009), pp 54, 95. At <http://www.cgris.gov.au/site/letter.asp> (viewed 27 April 2010).

89 J Ross, community member, meeting with the Aboriginal and Torres Strait Islander Social Commissioner, Fitzroy Crossing), 31 July 2010.

90 J Oscar, community member and CEO of Marninwarntikura, *Through women's hearts – Indigenous people, history, environment and an inclusive future* (Speech delivered at WA Women's Advisory Council Conference, Perth, 14 June 2010), p 10.

91 K May, Fitzroy Futures Forum Executive Officer, meeting with the Office of the Aboriginal and Torres Strait Islander Social Justice Commissioner, Broome, 3 August 2010.

92 R Murphy, community member and Fitzroy Futures Forum Community Consultant, meeting with the Office of the Aboriginal and Torres Strait Islander Social Justice Commissioner, Perth, 4 August 2010.



area. For example, communities near the eastern border of the Valley are closer in distance to Halls Creek than Fitzroy Crossing.<sup>93</sup>

At the outset it was agreed that the representatives from each of the language groups on the Governing Committee were to act as the conduit for communities that could not attend the Forum meetings. There is a feeling that this is not working as effectively as it could, and other communication methods should be examined. The review process will provide the residents of the Valley with an opportunity to make suggestions about all aspects of the Fitzroy Futures Forum.<sup>94</sup>

Local Aboriginal organisations have indicated a desire to expand the process and role of the Fitzroy Futures Forum. They are hoping for support and resources that will enable local leadership to work with the local communities to take full ownership, and control of the design, delivery and implementation of government services and programs addressing social issues in their region.<sup>95</sup>

Despite the strength and success of the Fitzroy Futures Forum, some local leaders have expressed concern about its future role and function in light of the roll out of the Remote Service Delivery Partnership in Fitzroy Crossing.<sup>96</sup>

In my visit to the Fitzroy Valley it was stressed to me on a number of occasions that there was a real fear that this Council of Australian Government (COAG) process could undermine the potential success of the Fitzroy Futures Forum. This concern is magnified because formal support and funding for the Fitzroy Futures Forum from the Western Australian Government ends in June 2011.

### 3.3 A community response to Fetal Alcohol Spectrum Disorders

When Aboriginal people are given or take responsibility to address the issues in their community and can come up with their own solutions you will end up with a better way of addressing these issues. This is what we did with issues of Fetal Alcohol Spectrum Disorders and early life trauma in the Fitzroy Valley.<sup>97</sup>

You all know the destructive impact of alcohol. For many families and communities in the Kimberley it has been an unmanaged epidemic... The most insidious element of this evil is that it diminishes the lives of so many of the unborn. The horrors of Fetal Alcohol Spectrum Disorders are now just beginning to be understood by Australian governments.<sup>98</sup>

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93 F Morphy, *Population, People and Place: The Fitzroy Valley Population Project*, CAEPR Working Paper No 70/2010 (2010). At <http://caepr.anu.edu.au/system/files/Publications/WP/CAEPRWP70.pdf> (viewed 12 July 2010).

94 R Murphy, community member and Fitzroy Futures Forum Community Consultant, meeting with the Office of the Aboriginal and Torres Strait Islander Social Justice Commissioner, Perth, 4 August 2010.

95 M White, *Community-Owned Approaches to Social Recovery – Overcoming Despair in the Fitzroy Valley: Service Analysis of the determinants necessary for a good life well lived*, Marninwarntikura Fitzroy Women's Resource & Legal Centre, Marra Warra Warra Aboriginal Corporation, Nindilingarri Cultural Health, Kimberley Aboriginal Law and Cultural Centre (2009), pp 7-8. At [http://www.aph.gov.au/senate/committee/clac\\_ctte/suicide/submissions/sub120.pdf](http://www.aph.gov.au/senate/committee/clac_ctte/suicide/submissions/sub120.pdf) (viewed 25 August 2010).

96 B Gleeson, Coordinator General for Remote Indigenous Services, *Six Monthly Report July-November 2009*, Office of the Coordinator General for Remote Indigenous Services (2009), p 54. At <http://www.cgris.gov.au/site/letter.asp> (27 April 2010).

97 M Carter, community member and CEO of Nindilingarri, meeting with the Aboriginal and Torres Strait Islander Social Justice Commissioner, 2 August 2010.

98 J Oscar, community member and CEO of Marninwarntikura, *East Kimberley achievements award speech* (Speech delivered 19 September 2009), p 2.

Excessive alcohol consumption is an increasing health concern across Australia. A report released in 2010, titled *The Range and Magnitude of Alcohol's Harm to Others*, stated that alcohol abuse is costing Australia in excess of \$20 billion each year.<sup>99</sup>

The numbers of Australians reported to drink at risky and high risk levels has risen from 8% in 1995, to 13% in 2004–05.<sup>100</sup> This increase has been more pronounced in women, where the numbers have doubled from 6% to 12% in that timeframe.<sup>101</sup> The highest rates of alcohol consumption are in adolescents and young adults.<sup>102</sup> Experts argue that these high rates of alcohol consumption by women of a childbearing age are a cause for concern, particularly given the evidence that approximately half of all pregnancies are unplanned.<sup>103</sup> Furthermore, surveys suggest that between 50–59% of women consume alcohol at some stage whilst pregnant. In one study, 20% of women indicated that they had participated in binge drinking at least once when pregnant.<sup>104</sup>

Considering these statistics, it is possible that the issues associated with alcohol exposure during pregnancy, resulting in FASD, will become an increasingly prominent health and wellbeing concern for the Australian community to respond to.

The people of the Fitzroy Valley have identified FASD as an issue of particular concern that they want to exert control over addressing. Paediatricians working in the Kimberley estimate that up to 30% of children in the Fitzroy Valley are affected by FASD.<sup>105</sup>

FASD are a set of disorders that may occur when a mother consumes harmful quantities of alcohol at crucial points during pregnancy and are potentially 100% preventable. The disorders create barriers to normal child development; including learning and behaviour.

FASD represent a group of permanent disorders caused by exposure of the unborn child to alcohol consumed by the mother during pregnancy. These disorders include fetal alcohol syndrome (FAS) and partial FAS, alcohol-related neurodevelopmental disorder (ARND) and alcohol-related birth defects (ARBD). Babies exposed to alcohol *in utero* may be born with deformities of the brain, nervous system, kidneys, heart, lungs, eyes, ears; may have growth problems; and may display a series of specific facial characteristics. Developmental, behavioural and learning problems are common. What is most devastating about this condition is that it is 100% preventable.

Long term outcomes for children with FASD are poor. Overseas research suggests that 90% will have mental health problems, 80% will remain unemployed, 60% will come into aggravated contact with the law and less than 10% will be able to work independently by the age of 21.<sup>106</sup>

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99 AM Laslett, P Catalano, T Chikritzhs, C Dale, C Doran, J Ferris, T Jainullabudeen, M Livingston, S Matthews, J Mugavin, R Room, M Schlotterlein and C Wilkinson, *The Range and Magnitude of Alcohol's Harm to Others*, Alcohol Education and Rehabilitation Foundation (2010), p 177. At [http://www.aerf.com.au/Harm\\_to\\_Others\\_Full\\_Report\\_with-errata.pdf](http://www.aerf.com.au/Harm_to_Others_Full_Report_with-errata.pdf) (viewed 10 September 2010).

100 L Burns, E Black and E Elliott (eds), *Fetal Alcohol Spectrum Disorders in Australia: An Update*, Intergovernmental Committee on Drugs: Working Party on Fetal Alcohol Spectrum Disorders (2009), p 18.

101 L Burns, E Black and E Elliott (eds), *Fetal Alcohol Spectrum Disorders in Australia: An Update*, Intergovernmental Committee on Drugs: Working Party on Fetal Alcohol Spectrum Disorders (2009), p 18.

102 L Burns, E Black and E Elliott (eds), *Fetal Alcohol Spectrum Disorders in Australia: An Update*, Intergovernmental Committee on Drugs: Working Party on Fetal Alcohol Spectrum Disorders (2009), p 19.

103 L Burns, E Black and E Elliott (eds), *Fetal Alcohol Spectrum Disorders in Australia: An Update*, Intergovernmental Committee on Drugs: Working Party on Fetal Alcohol Spectrum Disorders (2009), p 19.

104 See L Burns, E Black and E Elliott (eds), *Fetal Alcohol Spectrum Disorders in Australia: An Update*, Intergovernmental Committee on Drugs: Working Party on Fetal Alcohol Spectrum Disorders (2009), p 20.

105 J Latimer, E Elliott, J Fitzpatrick, M Ferreira, M Carter, J Oscar and M Kefford (eds), *Marulu The Liliwan Project Fetal Alcohol Spectrum Disorders (FASD) Prevalence Study in the Fitzroy Valley: A Community Consultation*, The George Institute for Global Health (2010), p 6.

106 J Latimer, E Elliott, J Fitzpatrick, M Ferreira, M Carter, J Oscar and M Kefford (eds), *Marulu The Liliwan Project Fetal Alcohol Spectrum Disorders (FASD) Prevalence Study in the Fitzroy Valley: A Community Consultation*, The George Institute for Global Health (2010), p 5.

Every child, including a child with FASD, has the right to health, happiness and educational attainment.<sup>107</sup> Children with FASD have complex health, social and educational needs that require targeted service and policy responses. Exposure to alcohol in the womb can cause many problems including birth defects, learning difficulties, abnormal hearing or vision, and behavioural and psychological disorders. The key to ensuring that affected children are able to reach their full potential, and to lead happy and healthy lives, is to enable early diagnosis and intervention using multi-disciplinary assessment. The provision of ongoing family support is also necessary.<sup>108</sup> It is therefore imperative that children with FASD – wherever they live in Australia – have equitable access to the services they need to optimise their health, development and educational outcomes.

In evidence provided to the Coronial inquest in the Kimberley, Professor Fiona Stanley referred to the problem of FASD as being ‘another Stolen Generation’.<sup>109</sup>

Paediatricians in the Kimberley are talking about 1 in 4 children affected by alcohol in our current cohort of young children. If you are talking about an Indigenous culture that relies on the maintenance of an oral history and oral tradition and the ability to pass on that tradition and of knowledge then the underpinning foundation of that is your memory. And if you can’t remember things then how our Indigenous people going to pass on their culture?<sup>110</sup>

I highlight the actions of Fitzroy Valley leaders in addressing FASD because of their community-ownership over an identified issue of concern. The FASD project is led by the Fitzroy Valley communities, and where needed, the skills and expertise of trusted external partners are utilised. Consent processes are embedded into the fabric of this project to create a community-wide climate of consent. These key features provide an example of processes that address sensitive and seemingly intractable issues in an appropriate and targeted manner. The consequent result borne out of these processes is a high level of community buy-in and engagement.

#### **(a) Designing the Fetal Alcohol Spectrum Disorders strategy**

FASD has been an issue of concern for Fitzroy Valley residents for some time. It was discussed at a community meeting on alcohol and other drugs in 2004.<sup>111</sup> However, it took the advent of the alcohol restrictions to unite the communities into taking action.

FASD had been an issue but with the chronic supply of alcohol you couldn’t get traction. People did want to know about it. A lot of people knew something was wrong with our children because of the alcohol. It was after the restrictions that people were ready. And it started to get traction when it was explained to the elders that passing on culture to the next generation would be broken. The elders were concerned about the loss of culture.<sup>112</sup>

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107 *Convention on the Rights of the Child*, 1989, preambular para 6, arts 23, 24, 25, 28, 29. At <http://www2.ohchr.org/english/law/crc.htm> (viewed 15 September 2010).

108 E Elliott, J Payne, A Morris, E Haan and C Bower, ‘Fetal alcohol syndrome: a prospective national surveillance study’ (2008) 93 *Archives of Disease in Childhood* 732.

109 A Hope, State Coroner of Western Australian, *Coronial inquest into 22 deaths in the Kimberley*, Ref No: 37/07, Coroner’s Court of Western Australia (2008), p 14.

110 J Ross, community member, in *Yajilara* (Directed by M Hogan, Reverb, 2009), 16:34.

111 E Carter, community member and Chair of Marninwarntikura, meeting with the Aboriginal and Torres Strait Islander Social Justice Commissioner, Fitzroy Crossing, 2 August 2010.

112 E Carter, community member and Chair of Marninwarntikura, meeting with the Aboriginal and Torres Strait Islander Social Justice Commissioner, Fitzroy Crossing, 2 August 2010.

There has been significant recent international focus on the importance of culture and identity in the development processes of Indigenous communities.<sup>113</sup> This work builds on the central importance placed on culture and identity in the *United Nations Declaration on the Rights of Indigenous Peoples*. International human rights standards have developed to the point where states have obligations to work with Indigenous peoples to implement measures for the maintenance, protection, development and transmission of culture and cultural knowledge.<sup>114</sup>

FASD is a genuine threat to the preservation of the Aboriginal cultures of the Valley. Impaired memory and an inability to learn and retain information are major components of FASD. Behavioural and learning problems also limit educational gains. Given our oral traditions of passing down cultural knowledge through stories and ceremony, there is a very real possibility that cultural knowledge will be lost as a result of FASD. The majority of cultural knowledge is not part of a written history. Therefore, its continuation is reliant upon the ability of elders to pass this knowledge on to future generations.

In October 2008, just over a year after the alcohol restrictions were brought into the Fitzroy Valley, members of the communities gathered to discuss FASD and other alcohol-related problems. The meeting was led by Aboriginal organisations Marninwarntikura and Nindilingarri Cultural Health Services (Nindilingarri). Community members voiced their concerns that many children and families were suffering from the affects of FASD and Early Life Trauma (ELT). ELT is a term used to describe the environmental factors that can negatively impact on a child's development. Poor nutrition, neglect, and exposure to violence and stress can all lead to ELT. Meeting participants agreed to a multi-pronged strategy of action to address these challenging issues.<sup>115</sup>

In November 2008, a coalition of government agencies, business and community organisations formed a 'Circle of Friends'. All parties pledged in-principle support to a FASD/ELT Strategy and action plan. Below is a diagrammatical representation of the 'Circle of Friends':

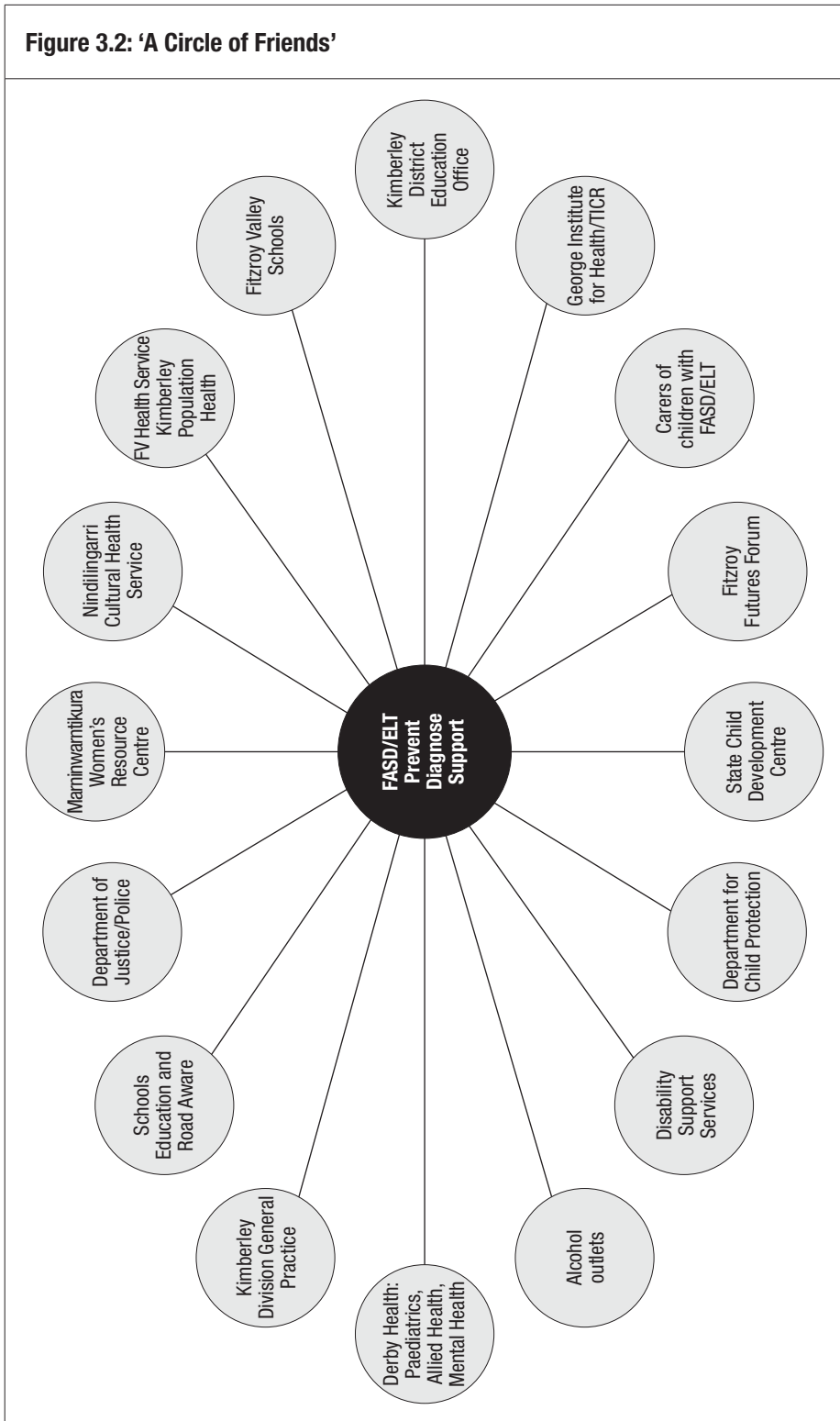
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113 See Permanent Forum on Indigenous Issues, *Report of the ninth session*, UN Doc E/C.19/2010/15 (2010), paras 4-35. At [http://www.un.org/esa/socdev/unpfii/documents/E\\_2010\\_43\\_EN.pdf](http://www.un.org/esa/socdev/unpfii/documents/E_2010_43_EN.pdf) (viewed 31 August 2010).

114 *United Nations Declaration on the Rights of Indigenous Peoples*, GA Resolution 61/295 (Annex), UN Doc A/RES/61/295 (2007), arts 11, 12, 13, 31. At <http://www.un.org/esa/socdev/unpfii/en/drip.html> (viewed 31 August 2009).

115 J Latimer, E Elliott, J Fitzpatrick, M Ferreira, M Carter, J Oscar and M Kefford (eds), *Marulu The Lililwan Project Fetal Alcohol Spectrum Disorders (FASD) Prevalence Study in the Fitzroy Valley: A Community Consultation*, The George Institute for Global Health (2010).

Figure 3.2: 'A Circle of Friends'



The 'Circle of Friends' is a similar model to the Fitzroy Futures Forum in that it engages all relevant stakeholders from a local, regional and national level including the Aboriginal organisations of the Valley and government agencies. All participants are actively involved in the development and implementation of the FASD/ELT Strategy that was endorsed by the FASD leadership team.

(i) *The Marulu Project*

In November 2008, a draft strategy was developed by the CEO of Marninwarntikura, June Oscar and Dr James Fitzpatrick, a paediatric trainee serving the communities. The strategy was called *Overcoming Fetal Alcohol Spectrum Disorders (FASD) and Early Life Trauma (ELT) in the Fitzroy Valley: a community initiative*. This strategy is now described locally as the *Marulu Project*. Marulu is a Bunuba word meaning 'precious, worth nurturing'.<sup>116</sup>

Nindilingarri is the head of a leadership team guiding the project. The *Marulu Project* has a number of areas of focus:

- Prevention – including consulting with the communities to raise awareness of the *Marulu Project*, education across the communities and working with women who are pregnant to prevent alcohol use.
- Diagnosis – including the development of screening and diagnostic processes.
- Support – including mapping the support services in the Valley and developing a network of carers.
- High level dialogue – including strategic use of media, contributing to scientific discussions on FASD, and raising the profile of FASD through strategic partnerships.
- Build local capacity – including participation in relevant workshops and conferences and capturing the process of the project.
- Focus resources – identify and leverage existing resources, approach government and other funders to secure targeted funding for the strategy, and engage local community resources in FASD prevention, support and diagnosis.<sup>117</sup>

Below is a schematic overview outlining the journey in developing the *Marulu Project*.

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116 J Latimer, E Elliott, J Fitzpatrick, M Ferreira, M Carter, J Oscar and M Kefford (eds), *Marulu The Liliwan Project Fetal Alcohol Spectrum Disorders (FASD) Prevalence Study in the Fitzroy Valley: A Community Consultation*, The George Institute for Global Health (2010), p vi.

117 J Latimer, E Elliott, J Fitzpatrick, M Ferreira, M Carter, J Oscar and M Kefford (eds), *Marulu The Liliwan Project Fetal Alcohol Spectrum Disorders (FASD) Prevalence Study in the Fitzroy Valley: A Community Consultation*, The George Institute for Global Health (2010), pp 23-24.

Figure 3.3: Schematic of the Marulu Project<sup>118</sup>



Nindilingarri uses the Fitzroy Futures Forum meetings to report to the communities, government and businesses on the progress of the *Marulu Project*.

FASD was earmarked for a full day discussion at the 2009 Marninwarntikura Annual Women's Bush Meeting. This included a presentation by Carolyn Hartness, an Eastern Band Cherokee and FASD consultant from Canada, who has extensive experience working on FASD with Indigenous communities in the United States and Canada. Carolyn Hartness' attendance was made possible through a grant from the Fitzroy Futures Fund.

**Text Box 3.5: Support for action on FASD from the Women's Bush Camp**

The women at the Bush Meeting gave their support to community led approaches to addressing FASD:

We the women at the annual Marninwarntikura Women's Bush Meeting (6–10 July at Wamali Springs on Leopold Downs Station) acknowledged that rebuilding our families and our communities will move forward on the basis of unity and collaboration.

We have agreed that our priorities over the next 2–3 years are:

...

118 The Marulu project team: M Carter, J Oscar, E Elliott, J Latimer, J Fitzpatrick, M Ferreira, M Kefford.

- To raise awareness of FASD and recognize its impact on all aspects of our community including loss of cultural knowledge, lack of employment opportunities, unaddressed educational needs, impact on the justice system and child protection etc. This will require us to create culturally appropriate strategies to address these issues. These strategies will be community driven and maintained.<sup>119</sup>

The Bush Meeting and the Fitzroy Futures Forum were pivotal platforms for keeping the people in the Valley, outside of the leadership team, informed and involved in the development and implementation of the project.

In 2009, the *Marulu Project* leadership group began discussions with researchers from the George Institute for Global Health (The George Institute) about the possibility of conducting a prevalence study of FASD in the Fitzroy Valley. The rationale for conducting a prevalence study was to understand how many children were affected by FASD and to attract funding and resources to manage these children, and prevent FASD. Funding would only be forthcoming once there was a strong evidence base.<sup>120</sup>

#### **(b) Working with trusted partners**

In Fitzroy we bring people in when we identify a problem and a need, rather than people coming in and telling us our problems and our needs. It is about forming strategic partnerships with government and the corporate sector. It is about asking for help but that is strategic and targeted help.<sup>121</sup>

The *Marulu Project* leadership team, headed by Nindilingarri, identified The George Institute as the most appropriate organisation to provide technical and other expertise to the project. The George Institute had previously developed relationships with the communities in producing a documentary, *Yajilarra*. The documentary told the story of alcohol restrictions in Fitzroy Valley.

#### **Text Box 3.6: *Yajilarra*: using media as a lever for social change**

The alcohol restrictions campaign in the Fitzroy Valley is a powerful story that has been told through a documentary film entitled *Yajilarra*. The women of Marninwarntikura wanted to use the documentary film as a lever for social change. They knew that telling this story would raise the profile of the Fitzroy Valley and alert key players to their continuing needs. The documentary could also act to inspire other Indigenous communities to take control of the issues confronting them. It was felt that film was the ideal medium to communicate the story to the widest audience.

In 2007, June Oscar and Emily Carter from Marninwarntikura invited Elizabeth Broderick, Sex Discrimination Commissioner (Australian Human Rights Commission), to visit Fitzroy Crossing. Commissioner Broderick wanted to assist in making the documentary. Commissioner Broderick introduced the Fitzroy leaders to The George Institute who assisted in sourcing funding to produce the film.

119 J Latimer, E Elliott, J Fitzpatrick, M Ferreira, M Carter, J Oscar and M Kefford (eds), *Marulu The Lililwan Project Fetal Alcohol Spectrum Disorders (FASD) Prevalence Study in the Fitzroy Valley: A Community Consultation*, The George Institute for Global Health (2010) pp 28-29.

120 J Latimer, The George Institute, meeting with the Office of the Aboriginal and Torres Strait Islander Social Justice Commissioner, Sydney, 22 July 2010.

121 J Oscar, community member and CEO of Marninwarntikura, meeting with the Aboriginal and Torres Strait Islander Social Justice Commissioner, Broome, 3 August 2010.



The documentary has been instrumental in raising the profile of the Fitzroy Valley and issues of FASD and securing funding for the *Marulu Project*. The documentary has been screened in many places in Australia and internationally, including Parliament House and at the United Nations.

*Yajilarra* was a solid foundation for further partnership with the George Institute:

[O]ut of the liquor restrictions the women formed a relationship with The George. They assisted the women to produce *Yajilarra*. There was already that relationship that existed. As a result of the relationship it was easy for us to contact them to help with the strategy. Because of the relationship The George knew about the people they were working with. That is the big difference, it is always the academics that had seen a problem and tell the people 'we are doing it my way'. This is totally different, here the Aboriginal people said FASD was a problem and we worked with The George Institute on the project.<sup>122</sup>

The George Institute was a natural partner in the FASD work with Nindilingarri. The George Institute has expertise in conducting research and in advocacy and has strong relationships with Fitzroy Valley community members. The George Institute engaged an expert paediatrician, Professor Elizabeth Elliott from The University of Sydney, to provide clinical expertise on FASD and sought approval from the leadership team for her involvement in the project.<sup>123</sup>

The current research team includes Nindilingarri, The George Institute, and the Sydney University Medical School at The University of Sydney. Maureen Carter (community member and CEO of Nindilingarri) leads the team that includes June Oscar (community member and CEO of Marninwarntikura), Professors Jane Latimer (The George Institute) and Elizabeth Elliott (Sydney Medical School, The University of Sydney), Dr Manuela Ferreira (Faculty of Health Sciences, The University of Sydney) and paediatric senior registrar Dr James Fitzpatrick, who has been working in the Kimberley for the last two years, and is currently a PhD student at the Sydney Medical school.

The FASD project is community led research working through partnerships with trusted external organisations. Indigenous knowledge is acknowledged and respected in the research process consistent with international human rights standards.<sup>124</sup> External players are brought in to provide strategic support.

#### **(c) Community consent for a prevalence study of Fetal Alcohol Spectrum Disorders**

The whole issue with wanting to address FASD had come from the community. We, as a community, have driven this whole project from the start and will drive it to the finish. Each step we had engagement with the people.<sup>125</sup>

122 M Carter, community member and CEO of Nindilingarri, meeting with the Aboriginal and Torres Strait Islander Social Justice Commissioner, Fitzroy Crossing, 2 August 2010.

123 J Latimer, The George Institute, meeting with the Office of the Aboriginal and Torres Strait Islander Social Justice Commissioner, Sydney, 22 July 2010.

124 See T Calma, Aboriginal and Torres Strait Islander Social Justice Commissioner, *Native Title Report 2008*, Australian Human Rights Commission (2009), ch 7. At [http://www.humanrights.gov.au/social\\_justice/nt\\_report/ntreport08/chapter7.html](http://www.humanrights.gov.au/social_justice/nt_report/ntreport08/chapter7.html) (viewed 12 August 2010).

125 M Carter, community member and CEO of Nindilingarri, meeting with the Aboriginal and Torres Strait Islander Social Justice Commissioner, Fitzroy Crossing, 2 August 2010.

The prevalence study is known as the *Lililwan Project*. Lililwan is a Kriol word meaning 'all the little ones'.<sup>126</sup> The prevalence study focuses on children in the Valley aged seven and eight years. The entire study, from the decision to proceed with it through to actual participation, employs an informed consent process.

The leadership team were committed to the study but they were even more committed to ensuring a prevalence study was what the community wanted. And that the community wanted to go ahead with it. We all knew this was really sensitive stuff and if the time was not right then we were going to stop it.<sup>127</sup>

The research team was invited to consult with the communities and service providers in the Fitzroy Valley between 19–23 October 2009. Members of the consultation team who were not from the Valley undertook cultural awareness training. The consultations were conducted in a range of formats including community forums, planned meetings with key stakeholders and informal meetings. All relevant information about the prevalence study, its aims, methods and possible outcomes was transmitted to the communities. Importantly, a full explanation of the possible risks associated with undertaking this research project was clearly explained. Follow up consultations were had with the Fitzroy Futures Forum and regional government agencies. This consultation process has been documented in *Marulu: The Lililwan Project Fetal Alcohol Spectrum Disorder (FASD) Prevalence Study in the Fitzroy Valley: A Community Consultation*, which includes summaries and recommendations from each of the consultation sessions.<sup>128</sup>

The consultations showed overwhelming support to proceed with a prevalence study from all stakeholders, including the Aboriginal communities and service providers. The widespread feeling was that this study would be an integral component to addressing FASD in the Valley. The community-led nature of this project and the continuing engagement through public forums like the Fitzroy Futures Forum ensured that the residents were kept up to date and were fully informed about the proposed prevalence study. This was fundamental to obtaining consent to proceed with the FASD prevalence study.<sup>129</sup>

The Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people (Special Rapporteur), Professor James Anaya, has noted that the absence of this type of intensive engagement process can derail programs and projects intended to benefit Indigenous peoples:

The Special Rapporteur has observed that, without the buy-in of indigenous peoples, through consultation, at the earliest stages of the development of Government initiatives, the effectiveness of Government programmes, even those that are intended to specifically benefit indigenous peoples, can be crippled at the outset. Invariably, it appears that a lack of adequate consultation leads to conflictive situations, with indigenous expressions of anger and mistrust, which, in some cases, have spiralled into violence.<sup>130</sup>

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126 J Latimer, E Elliott, J Fitzpatrick, M Ferreira, M Carter, J Oscar and M Kefford (eds), *Marulu The Lililwan Project Fetal Alcohol Spectrum Disorders (FASD) Prevalence Study in the Fitzroy Valley: A Community Consultation*, The George Institute for Global Health (2010), p vi.

127 J Latimer, The George Institute, meeting with the Office of the Aboriginal and Torres Strait Islander Social Justice Commissioner, Sydney, 22 July 2010.

128 J Latimer, E Elliott, J Fitzpatrick, M Ferreira, M Carter, J Oscar and M Kefford (eds), *Marulu The Lililwan Project Fetal Alcohol Spectrum Disorders (FASD) Prevalence Study in the Fitzroy Valley: A Community Consultation*, The George Institute for Global Health (2010).

129 J Latimer, The George Institute, meeting with the Office of the Aboriginal and Torres Strait Islander Social Justice Commissioner, Sydney, 22 July 2010.

130 J Anaya, *Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people*, James Anaya, Report to the Human Rights Council, 12th session, UN Doc A/HRC/12/34 (2009), para 36. At <http://unsr.jamesanaya.org/PDFs/Annual2009.pdf> (viewed 9 August 2010).

The consultation process for the FASD prevalence study is consistent with a number of the key standards for consulting with Indigenous peoples under international law as outlined by the Expert Mechanism on the Rights of Indigenous Peoples<sup>131</sup> and the Special Rapporteur:<sup>132</sup>

1. **Consultations are carried out through Indigenous peoples representatives, that are chosen by Indigenous peoples themselves** – The consultations were led by the Indigenous members of the research team. The Fitzroy Futures Forum which has representatives from each of the four language groups in the Fitzroy Valley was also used as a vehicle for consultation.
2. **Consultations should be carried out through ‘appropriate procedures’. General public hearings are generally not considered to be ‘appropriate procedures’** – The consultations involved community forums, as well as planned and informal meetings. Follow up consultations were also held.
3. **Consultations should be undertaken in good faith and in the appropriate form. This means that consultations are to be conducted with mutual trust and transparency** – Prior to the consultations, cultural awareness training was provided to the non-Indigenous participants. The consultation process was undertaken over an extended period of time to allow participants the time to absorb information about the project. All relevant information was provided including potential risks of the research project. The report of the consultations process was provided to participants.
4. **Consultations should be in good faith and with the objective to achieve agreement or consent** – At the beginning of the process it was agreed that the study would only proceed on the basis of the informed consent of the people of the Fitzroy Valley. All parties acted in good faith.
5. **There should be periodic evaluation of effectiveness** – The project ensures that evaluations will occur at each stage of the research.

This research project is setting an example to the rest of Australia of how best to approach Indigenous affairs. A process guided by a relationship underpinned by meaningful, respectful engagement and collaboration will always be more effective and successful than one that is not. Harnessing this way of thinking and operating opens a myriad of opportunities to address difficult and sensitive issues in Aboriginal and Torres Strait Islander communities.

Having received informed consent to proceed with the project, the research team set out designing the study. Associate Professor Jane Latimer of The George Institute, described this process:

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131 Human Rights Council, *Progress report on the study on indigenous peoples and the right to participate in decision-making: Report of the Expert Mechanism on the Rights of Indigenous Peoples*, Report to the Human Rights Council, 15th session, UN Doc A/HRC/15/35 (2010), paras 21-25. At [http://www2.ohchr.org/english/bodies/hrcouncil/docs/15session/A.HRC.15.35\\_en.pdf](http://www2.ohchr.org/english/bodies/hrcouncil/docs/15session/A.HRC.15.35_en.pdf) (viewed 23 September 2010).

132 J Anaya, *Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, James Anaya*, Report to the Human Rights Council, 12th session UN Doc A/HRC/12/34 (2009), paras 36-57. At <http://unsr.jamesanaya.org/PDFs/Annual2009.pdf> (viewed 9 August 2010).

So then we started to design the study with the community. We would teleconference each week and we would design it a bit more. From our end we had ethics committees to go through.<sup>133</sup>

Maureen Carter, CEO of Nindilingarri and community member, outlined her perspective of the project's development:

We would look at information given to us by The George Institute but we could sit with them to change the words to make it culturally appropriate. We put the research into our context but it still had to fit within the ethical guidelines of The George.<sup>134</sup>

The project is designed to incorporate necessary elements of Indigenous culture and knowledge as well as meeting the requirements of Western research ethics standards. For example, the parent/carer questionnaire developed by Professor Elliott and Dr Fitzpatrick was modified extensively following consultations with Fitzroy Valley residents and the Kimberley Interpreting Service to ensure its content and language were culturally appropriate.<sup>135</sup>

The *Lililwan Project* is guided by a set of principles and preconditions that are relevant to each phase of the project. These are:

### Principles

1. First, do no harm.
2. Commit to a process of two-way learning.
3. All activity must deliver short and longer term benefits for the communities.
4. Informed participation and consent must be ensured through the sharing of information and knowledge.
5. All activities must preserve the dignity of participating individuals and communities.

### Preconditions

1. Clear and broad informed consent from:
  - the communities broadly
  - local service providers.
2. Local Control – The Project Leadership Team must be, and perceived to be by the communities as being, in control of the study.
3. An appropriate and adequate workforce.<sup>136</sup>

The project was divided into two discrete stages to ensure that the communities are comfortable with the sensitive process:

**Stage 1** Collection of demographic, prenatal, and early childhood data from parents/carers using a diagnostic checklist and review of medical records. This involves interviews with parents/carers including questions on the drinking patterns of mothers during pregnancy and the development patterns of children.

**Stage 2** Health and developmental screening, opportunistic treatment and referral. This includes medical and allied health examinations of

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133 J Latimer, The George Institute, meeting with the Office of the Aboriginal and Torres Strait Islander Social Justice Commissioner, Sydney, 22 July 2010.

134 M Carter, community member and CEO of Nindilingarri, meeting with the Aboriginal and Torres Strait Islander Social Justice Commissioner, Fitzroy Crossing, 2 August 2010.

135 E Elliott, Sydney Medical School, The University of Sydney, meeting with the Office of the Aboriginal and Torres Strait Islander Social Justice Commissioner, Sydney, 25 October 2010.

136 J Latimer, E Elliott, J Fitzpatrick, M Ferreira, M Carter, J Oscar and M Kefford (eds), *Marulu The Lililwan Project Fetal Alcohol Spectrum Disorders (FASD) Prevalence Study in the Fitzroy Valley: A Community Consultation*, The George Institute for Global Health (2010), pp 17-18.

all children born in 2002 and 2003 to estimate the prevalence of FASD.<sup>137</sup>

This study will provide an individual assessment of children and estimate the prevalence of FASD in the Valley. The data from the project will stay with the Kimberley Population Health Unit. The study was designed so that it did not simply diagnose children and leave them in limbo. A care plan will be developed for every child with identifiable problems and ensure they are referred for appropriate and ongoing care. The study will also use the principal findings to advocate for better health and education services. The evidence-base generated can be used by governments to develop a targeted service response to FASD in the Fitzroy Valley.<sup>138</sup>

#### (i) *Continuing consent in action*

Ongoing consent is a precondition of the *Lililwan Project*. Therefore, all participants in the study are to give their informed consent throughout the life of the project and before any new developments are undertaken.

In April 2010, the research team began Stage 1 of the *Lililwan Project*. This involved interviews with mothers and carers of seven and eight year old children in the Valley. The cohort for the study was located using the data from the *Fitzroy Population Project*. The research team was led by two 'community navigators':

We had Aboriginal navigators to help locate the people. These navigators were chosen because of their standing in the community. We had a male and a female navigator, so it was culturally appropriate. Going in with people who know the community meant we gave the researchers information about the families that might be relevant. You know if there had been a loss. The project was done at the pace of the community and that is key. We met with the right significant people in each community first. The researchers were led by the community navigators.<sup>139</sup>

The use of the navigators was an essential component of the continuing consent process. Most of the interviews were conducted by the navigators in conjunction with Dr James Fitzpatrick and Ms Meredith Kefford, a volunteer with Indigenous Community Volunteers, who were both well known in the Fitzroy Valley.

Even though Nindilingarri had been given a strong mandate to proceed with the *Lililwan Project* from the community consultations, obtaining the informed consent from individual families was a fundamental component of Stage 1.

Women are giving you the most sensitive data in the information they provide as part of this research. This information is so incredibly sensitive in relation to terminations of pregnancies, in relation to drug and alcohol use. It is the most sensitive data in their lives. We wanted to make sure no one was coerced in any way.<sup>140</sup>

The consent processes were embedded into the fabric of the project. Consent was sought at every step of the project to ensure participants were not being coerced or did not understand what their involvement entailed.

We wanted to make absolutely sure we were not coercing people in any way, shape or form. So we organised for a senior partner from Blake Dawson to travel with us to be an independent expert in consent and made sure he thought the way we were storing the

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137 Nindilingarri Cultural Health Services, *Marulu Update Report 1/2010* (2010).

138 E Elliott, Sydney Medical School, The University of Sydney, meeting with the Office of the Aboriginal and Torres Strait Islander Social Justice Commissioner, Sydney, 25 October 2010.

139 M Carter, community member and CEO of Nindilingarri, meeting with the Aboriginal and Torres Strait Islander Social Justice Commissioner, Fitzroy Crossing, 2 August 2010.

140 J Latimer, The George Institute, meeting with the Office of the Aboriginal and Torres Strait Islander Social Justice Commissioner, Sydney, 22 July 2010.

data and gaining consent from people was the best practice we could have and there was nothing more we could do. It meant there was no risk of coercing people.<sup>141</sup>

When the researchers went out into the communities they would go in and have a barbeque and get introduced to the community by the navigators. With this issue [FASD and drinking alcohol during pregnancy] our people will not talk straight away, they have to get to know you. They have to have time to think about these things before they said yes or no to be involved in the research. We gave them time to think.<sup>142</sup>

As with any research project, the Research Team had to apply for permission from an identified human research ethics committee to conduct the study and to have the study design, parent information sheet, consent form, questionnaire and clinical assessment process approved.

In the case of the *Lililwan Project* this involved not only the University ethics committee (University of Sydney Human Research Ethics Committee) but also the relevant committee in Western Australia (Western Australia Country Health Service Board Research Ethics Committee) and the Western Australian Aboriginal Health Information & Ethics Committee. In addition, all research conducted in the Kimberley must be approved by the Kimberley Research Subcommittee of the Kimberley Aboriginal Health Planning Forum.<sup>143</sup> This committee was established in 2006 to ensure that research conducted in the region that might include Indigenous peoples was coordinated, that the people of the Kimberley would derive the maximum possible benefit from any research conducted there, and that any adverse impact of the research on either the community or its health services would be kept to a minimum.<sup>144</sup> Each part of the *Lililwan Project* will go through this arduous – but absolutely essential and extremely helpful – process.<sup>145</sup>

Data collection for Stage 1 was completed by the end of August 2010.

The success of the *Lililwan Project* so far is testimony to the careful investment in partnership, consultation, negotiation and consent.

So now we have completed Stage 1 and we know that the entire population of children born in 2002 or 2003 across the Valley is approximately 138 children. Of these, we were able to access and contact 132 and 95% of them gave their permission to be interviewed. So we know that the data we will have is representative of the entire population.<sup>146</sup>

In addition to high participation rates, the Research Team reports that Stage 1 of the project has produced high quality data.<sup>147</sup>

Although we haven't measured it specifically we know that when we travel around people have a level of knowledge about FASD. You don't need to start explaining from

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141 J Latimer, The George Institute, meeting with the Office of the Aboriginal and Torres Strait Islander Social Justice Commissioner, Sydney, 22 July 2010.

142 M Carter, community member and CEO of Nindilingarri, meeting with the Aboriginal and Torres Strait Islander Social Justice Commissioner, Fitzroy Crossing, 2 August 2010.

143 See Kimberley Aboriginal Medical Services Council, Kimberley Aboriginal Health Planning Forum, <http://www.kamsc.org.au/research/kahpf.html> (viewed 28 October 2010).

144 Kimberley Aboriginal Medical Services Council, Kimberley Aboriginal Health Planning Forum, <http://www.kamsc.org.au/research/kahpf.html> (viewed 28 October 2010).

145 E Elliott, Sydney Medical School, The University of Sydney, meeting with the Office of the Aboriginal and Torres Strait Islander Social Justice Commissioner, Sydney, 25 October 2010.

146 J Latimer, The George Institute, interview with the Office of the Aboriginal and Torres Strait Islander Social Justice Commissioner, Sydney, 22 July 2010.

147 J Latimer, The George Institute, interview with the Office of the Aboriginal and Torres Strait Islander Social Justice Commissioner, Sydney, 22 July 2010.

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the start. The community has a level of knowledge that if we had been there three years ago they would not have had.<sup>148</sup>

The community driven nature of the *Lililwan Project*, with consent processes embedded into its fabric, provides strong evidence that, when empowered to do so, Indigenous communities can address their most sensitive and difficult issues.

#### (ii) *Assessing the prevalence of FASD and developing appropriate response*

Data collection for Stage 2 of the project will commence in May 2011 led by clinicians from the Discipline of Paediatrics and Child Health Care at Sydney Medical School, Sydney University. It will see a comprehensive multidisciplinary health and developmental assessment of all children. This will include physical and cognitive assessments of the children. It will identify the functionality of each child and to indicate what health and educational support structures will be needed for each FASD affected child. In other words it will create individually targeted management plans. This Stage will be complete by the end of 2011.

The George Institute obtained philanthropic funding for the initial consultations and Stage 1. Nindilingarri, The George Institute and The University of Sydney actively sought government funding for Stage 2. In July 2010, the Minister for Families, Housing, Community Services and Indigenous Affairs (Minister for Indigenous Affairs) and the Minister for Indigenous Health jointly announced that the Australian Government would support Stage 2 of the *Lililwan Project* with a \$1million grant to the research collaboration.<sup>149</sup> This will support approximately half the cost of the project.

This project is considered to be one of the many positive developments emerging out of the Fitzroy Valley since the alcohol restrictions.

## 3.4 The challenges ahead in governance

The last thing we want on the back of the positive profile that the Fitzroy Crossing has achieved is additional investment by government in the things they have always done... That would be disastrous because it would simply create confusion and undermine the authority of the Aboriginal community leaders who have achieved so much [since 2007].<sup>150</sup>

Since the beginning of my term as the Aboriginal and Torres Strait Islander Social Justice Commissioner, I have spent time visiting Aboriginal and Torres Strait Islander communities across Australia. A common theme that continues to be brought to my attention is the uncoordinated delivery of government services and programs and the detrimental impact this is having on communities.

Like many remote communities, this bureaucratic confusion has had negative impacts in the Fitzroy Valley and the Kimberley region. Janet Hunt and Diane Smith from the Centre for Aboriginal Economic Policy Research outline the inherent difficulties communities face when government does not effectively coordinate services:

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148 J Latimer, The George Institute, interview with the Office of the Aboriginal and Torres Strait Islander Social Justice Commissioner, Sydney, 22 July 2010.

149 The Hon J Macklin MP, Minister for Families, Housing, Community Services and Indigenous Affairs and The Hon W Snowden MP, Minister for Indigenous Health, 'Foetal Alcohol Spectrum Disorder study', (Media Release, 17 July 2010). At [http://www.jennymacklin.fahcsia.gov.au/mediareleases/2010/Pages/foetal\\_alcohol\\_study\\_17july10.aspx](http://www.jennymacklin.fahcsia.gov.au/mediareleases/2010/Pages/foetal_alcohol_study_17july10.aspx) (viewed 10 August 2010).

150 J Oscar, community member and CEO of Marninwarntikura, *Speech to the Western Australian Equal Opportunity Commission Forum* (Speech delivered at the Western Australian Equal Opportunity Commission Forum, Perth, 10 August 2009), p3-4. At [http://www.eoc.wa.gov.au/Libraries/Documents/JuneOscarAugust2010WAHumanRights\\_EqualOpportunityCommissionForum.sflb.ashx](http://www.eoc.wa.gov.au/Libraries/Documents/JuneOscarAugust2010WAHumanRights_EqualOpportunityCommissionForum.sflb.ashx) (viewed 15 September 2010).

Multiple levels of government and agencies all want their patch and all have their own advisory committees or reference groups. All are advisory and create their own bureaucratic dysfunctions within communities. It creates divisions, inefficiencies with no clear line of power or decision-making process. The fragmented coordination of government services fragments the community.<sup>151</sup>

The consequence is that these programs fail, the community is left to untangle a bureaucratic mess, and disadvantage is further entrenched. Noel Pearson has argued that this bureaucratic entanglement dis-empowers the community and fosters Indigenous 'passivity'.<sup>152</sup> The role of government needs to transform to that of an enabler; to do this governments must reform their ways of working.

### **(a) National Partnership Agreement on Remote Service Delivery**

The Remote Service Delivery is an opportunity where government has been heard loud and clearly that this is a new arrangement, let's take that on and work creatively.<sup>153</sup>

Governments of Australia have agreed to reform the way they do business in remote communities in Australia. The COAG National Partnership Agreement on Remote Service Delivery (Remote Service Delivery Partnership) is the framework for this new way of providing services. This National Partnership Agreement is a whole-of-government approach to the delivery of services in remote priority locations. Appendix 5 provides a detailed outline of the Remote Service Delivery Partnership.

Fitzroy Crossing is one of the 29 priority communities designated for the roll out of COAG's Remote Service Delivery Partnership. The Remote Service Delivery Partnership marks renewed political will and unprecedented levels of funding for services to these priority locations.

In effect, the Remote Service Delivery Partnership is a national commitment to stop the blame game and begin reforming the way remote services are delivered. This commitment opens an opportunity to rectify the years of under-investment in remote Australia and to address the systemic and underlying causes of entrenched economic and service disadvantage.

At a high policy level the Remote Service Delivery Partnership promises a new whole-of-government, coordinated approach to delivering services working in partnership with local Indigenous communities. It could offer new ways of working that address the problems of coordination through a paradigm shift away from the silo mentality of government service delivery.

A single government office in each priority community provides a direct government interface for the delivery of services. This is the office of the Local Area Coordinator (or Government Business Manager) and the Indigenous Engagement Officer. Regional Operations Centres provide additional support. Fitzroy Crossing is supported by the Broome Regional Operations Centre, which also services the other priority locations in Western Australia; Beagle Bay, Ardyaloon and Halls Creek. The roll out of these reforms is monitored by the Coordinator General for Remote Indigenous Services (Coordinator General).<sup>154</sup>

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151 J Hunt and D Smith (Centre for Aboriginal Economic Policy Research), meeting with the Office of the Aboriginal and Torres Strait Islander Social Justice Commissioner, Sydney, 27 May 2010.

152 N Pearson, 'Fattest hand is first in the till', *The Australian*, 23 January 2010. At <http://www.theaustralian.com.au/news/opinion/fattest-hand-is-first-in-the-till/story-e6frg6zo-1225822681572> (9 June 2010).

153 J Oscar, community member and CEO of Marninwarntikura, telephone interview with the Office of the Aboriginal and Torres Strait Islander Social Justice Commissioner, 24 May 2010.

154 See Office of the Coordinator General for Remote Indigenous Services, *Role of the Coordinator General*, <http://cgris.gov.au/site/role.asp> (viewed 10 September 2010).



The challenge for the Remote Service Delivery Partnership is to ensure that high level policy translates into action and outcomes on the ground that leads to effective and appropriate delivery of services.

**(b) Combating a business as usual approach**

In 2004, former Secretary of the Department of Prime Minister and Cabinet, Dr Peter Shergold referred to whole-of-government approaches to delivering services in Indigenous communities as a 'bold experiment' and as 'the biggest test of whether the rhetoric of connectivity can be marshalled into effective action'.<sup>155</sup> In a speech made in 2008, Tom Calma, as Social Justice Commissioner, argued that:

The capacity of government to deliver on its commitments is the proverbial 'elephant in the room'....

There are two key issues at stake here. The first is the ability of the federal government to work on a whole of government basis, where the life circumstances of Indigenous people are not divided into smaller bureaucratic responsibilities that inevitably do not fit together or cover the whole.

And the second is the capacity of this system to respond to the circumstances of Indigenous people wherever they live.<sup>156</sup>

In that speech, Tom Calma quoted politicians from both sides of the political spectrum, as well as senior bureaucrats, all of whom were strong in the belief that a business as usual approach to Indigenous affairs was not working.<sup>157</sup>

The Remote Service Delivery Partnership offers an alternative. However, high level agreements outlining new ways of working mean nothing unless they translate into better services and resources in communities.

The first report of the Coordinator General of November 2009 noted that in spite of the new arrangements, there is a real challenge translating policies into a format that can fit into a whole-of-government approach to service delivery.<sup>158</sup> This challenge is particularly onerous where agencies or departments have not contributed staff to the single government interface. The Coordinator General has noted that despite commitment to reform ways of working through the Remote Service Delivery Partnership, pre-existing institutional arrangements can inhibit a coordinated whole-of-government approach.<sup>159</sup> The NTER Review Board similarly outlined the difficulty in moving beyond the rhetoric of whole-of-government into real and tangible differences in doing government business.<sup>160</sup>

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155 P Shergold, *Launch of Connecting Government: Whole of Government Responses to Australia's Priority Challenges, Management Advisory Committee Report No 4* (Speech delivered 20 April 2004) quoted in B Gray, *Council of Australian Governments Trial Evaluation: Wadeye Northern Territory*, WJG & Associates Pty Ltd (2006), p 9. At [http://www.fahcsia.gov.au/sa/indigenous/pubs/evaluation/coag\\_trial\\_site\\_reports/nt\\_coag\\_trial/Pages/default.aspx](http://www.fahcsia.gov.au/sa/indigenous/pubs/evaluation/coag_trial_site_reports/nt_coag_trial/Pages/default.aspx) (viewed 9 June 2010).

156 T Calma, Aboriginal and Torres Strait Islander Social Justice Commissioner, *Essentials for Social Justice: Reform* (Speech delivered at Brisbane, 20 February 2008). At [http://www.humanrights.gov.au/about/media/speeches/social\\_justice/2008/essentials\\_reform20080220.html](http://www.humanrights.gov.au/about/media/speeches/social_justice/2008/essentials_reform20080220.html) (viewed 8 July 2010).

157 See T Calma, Aboriginal and Torres Strait Islander Social Justice Commissioner, *Essentials for Social Justice: Reform* (Speech delivered at Brisbane, 20 February 2008). At [http://www.humanrights.gov.au/about/media/speeches/social\\_justice/2008/essentials\\_reform20080220.html](http://www.humanrights.gov.au/about/media/speeches/social_justice/2008/essentials_reform20080220.html) (viewed 8 July 2010).

158 B Gleeson, Coordinator General for Remote Indigenous Services, *Six Monthly Report July-November 2009*, Office of the Coordinator General for Remote Indigenous Services (2009), p 101. At <http://www.cgris.gov.au/site/letter.asp> (viewed 27 April 2010).

159 B Gleeson, Coordinator General for Remote Indigenous Services, *Six Monthly Report July-November 2009*, Office of the Coordinator General for Remote Indigenous Services (2009), p 97. At <http://www.cgris.gov.au/site/letter.asp> (viewed 27 April 2010).

160 Northern Territory Emergency Response Review Board, *Report of the Northern Territory Review Board*, Attorney-General's Department (2008), pp 43-45. At [http://www.nterreview.gov.au/docs/report\\_nter\\_review/default.htm](http://www.nterreview.gov.au/docs/report_nter_review/default.htm) (viewed 28 April 2010).

At its core, effective coordination of services requires good working relationships underpinned by effective communication. This includes communication that transmits information from government to community and vice-versa, as well as communication within the various levels of government and across their respective agencies.

Effective coordination requires genuine partnerships between local communities and governments. This in turn requires us, as Aboriginal and Torres Strait Islander communities, to be able to actively participate in decisions made about us.<sup>161</sup> In the context of policy development and implementation it means that governments and social services must be positioned so that Aboriginal and Torres Strait Islander peoples take control of their lives. For this positioning to be successful, governments must move beyond a service delivery paradigm to a fully integrated model of engagement.

The critical step required to achieve a significant improvement in the lives of Aboriginal and Torres Strait Islander peoples is that governments and service providers recognise, endorse, and treat us as substantive players and major stakeholders in the development, design, implementation, monitoring and evaluation of all policies, programs and legislation that impacts on us. Embedding this critical step into the reality of policy development and implementation will require a framework or mechanism for Indigenous engagement at the national, regional and local levels.

A manifestation of inadequate coordination and poor communication is red tape. The Coordinator General has received information from almost every priority location that red tape is hindering the delivery of services. The most critical of these concerns is the 'myriad of contracts, reporting requirements and funding periods and the inability to tailor national, State and Territory programs to suit local circumstances'.<sup>162</sup> This view is supported by the findings of the Senate Select Committee on Regional and Remote Indigenous Communities. The Committee argued that regional and remote Indigenous communities needed longer term and more flexible funding arrangements with less burdensome reporting requirements.<sup>163</sup>

A chief concern highlighted by the Indigenous Community Governance Project, a joint research project examining contemporary Indigenous governance conducted by the Centre for Aboriginal Economic Policy Research and Reconciliation Australia, was:

'[W]hole-of-government' policy frameworks and goals are not matched by departmental program funding arrangements, or by the implementation of place-based initiatives

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161 See *United Nations Declaration on the Rights of Indigenous Peoples*, GA Resolution 61/295 (Annex), UN Doc A/RES/61/295 (2007), art 18. At <http://www.un.org/esa/socdev/unpfii/en/drip.html> (viewed 3 August 2009). See also *International Covenant on Civil and Political Rights*, 1966, art 1. At <http://www2.ohchr.org/english/law/ccpr.htm> (viewed 1 November 2009); *International Covenant on Economic, Social and Cultural Rights*, 1966, art 1. At <http://www2.ohchr.org/english/law/cescr.htm> (viewed 1 November 2009). For a review of international standards regarding the right of Indigenous peoples to participate in decision-making, see Human Rights Council, *Progress report on the study on indigenous peoples and the right to participate in decision-making: Report of the Expert Mechanism on the Rights of Indigenous Peoples*, Report to the Human Rights Council, 15th session, UN Doc A/HRC/15/35 (2010). At [http://www2.ohchr.org/english/bodies/hrcouncil/docs/15session/A.HRC.15.35\\_en.pdf](http://www2.ohchr.org/english/bodies/hrcouncil/docs/15session/A.HRC.15.35_en.pdf) (viewed 23 September 2010).

162 B Gleeson, Coordinator General for Remote Indigenous Services, *Six Monthly Report July-November 2009*, Office of the Coordinator General for Remote Indigenous Services (2009), p 103. At <http://www.cgris.gov.au/site/letter.asp> (viewed 27 April 2010).

163 Senate Select Committee on Regional and Remote Indigenous Communities, Parliament of Australia, *Third report 2009* (2009), paras 5.27-5.52. At [http://www.aph.gov.au/senate/committee/indig\\_ctte/reports/2009/report3/index.htm](http://www.aph.gov.au/senate/committee/indig_ctte/reports/2009/report3/index.htm) (viewed 22 September 2010); Senate Select Committee on Regional and Remote Indigenous Communities, Parliament of Australia, *Fourth report 2010* (2010), paras 2.204-2.219. At [http://www.aph.gov.au/senate/committee/indig\\_ctte/reports/2010/report4/index.htm](http://www.aph.gov.au/senate/committee/indig_ctte/reports/2010/report4/index.htm) (viewed 22 September 2010).

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in Indigenous contexts. Indeed, there appears to be a significant mismatch between policy purpose and policy implementation on the ground.<sup>164</sup>

#### (i) *The Wadeye experience*

Like Fitzroy Crossing, Wadeye is one of the 29 priority communities identified for the roll out of the Remote Service Delivery Partnership. As a former COAG trial site, for a trial that began in 2003, Wadeye has a history of attempts at whole-of-government approaches to service delivery. The COAG trial in Wadeye offers insight into the difference between the rhetoric of whole-of-government and its on-the-ground impact.

Prior to the independent evaluation conducted in 2006 by Bill Gray AM, a former senior government official, Wadeye had been heralded by the then Minister of Indigenous Affairs, as a shining example:

In the COAG trial we dealt directly with the ‘Thamarrurr’ [the local governance arrangement] so each of the clans has been able to have its say. As a result of us listening to the Thamarrurr and responding, life is now improving for the people of Wadeye.

The Thamarrurr, Territory and Australian governments agreed education was a priority and just last week there was a massive increase in the number of children attending school. So much so that more desks had to be put on the barge from Darwin.<sup>165</sup>

The independent review of the Wadeye trial painted a very different picture. The *Social Justice Report 2006* described the findings of the Gray report as identified below.

#### **Text Box 3.7: The ‘Gray Report’: The Wadeye COAG Trial Evaluation – a failed experiment?<sup>166</sup>**

The Wadeye community is the largest Aboriginal community in the Northern Territory and indeed one of the larger Northern Territory towns. Despite extremely low life expectancy, the population has a very high rate of natural increase. Wadeye has appalling health statistics, serious overcrowding, and significant crime and violence which at times render the community virtually dysfunctional.

Wadeye seemed a good choice for a COAG trial – a large community with a number of pressing needs. Initially, there were strong expectations that the COAG trial, based on a whole of government approach and direct engagement with the community (through the Thamarrurr Regional Council), would lead to more effective service delivery and consequently improvements in social and economic circumstances.

As part of the trial, a Shared Responsibility Agreement (SRA) was signed between the Australian Government, Northern Territory Government, and Thamarrurr Council in March 2003. The SRA identified three priority areas for action: Women and families; Youth and Housing; and construction.

164 J Hunt and D Smith, *Indigenous Community Governance Project: Year two research findings*, Centre for Aboriginal Economic Policy Research Working Paper No. 36/2007 (2007), p xix. At <http://caepr.anu.edu.au/system/files/Publications/WP/CAEPRWP36.pdf> (viewed 31 May 2010).

165 The Hon A Vanstone MP, Minister for Immigration and Multicultural and Indigenous Affairs, *Address to National Press Club* (Speech delivered to the National Press Club, 23 February 2005) quoted in T Calma, Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2006*, Human Rights and Equal Opportunity Commission (2007), pp 52-53. At [http://www.humanrights.gov.au/social\\_justice/sj\\_report/sjreport06/index.html](http://www.humanrights.gov.au/social_justice/sj_report/sjreport06/index.html) (viewed 10 August 2010).

166 T Calma, Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2006*, Human Rights and Equal Opportunity Commission (2007), pp 53-54. At [http://www.humanrights.gov.au/social\\_justice/sj\\_report/sjreport06/index.html](http://www.humanrights.gov.au/social_justice/sj_report/sjreport06/index.html) (viewed 10 August 2010).

The Gray Report shows that in key aspects the trial has been a significant failure. There was no identified leadership of the trial. Contrary to the trial's objective of a reduction in red tape, the burden of administering funds increased markedly. Flexible funding and streamlining did not eventuate. Experience of communications within and between governments was mixed with a reduction in effective communication as the trial progressed.

The government's objective of improving engagement with Indigenous families and communities was not achieved. There was a significant breakdown in relations with Thamarrurr. Other key structures or processes agreed under the SRA, such as Priority Working Groups, either never became operational or faltered.

The community's expectations of improvements in infrastructure and services were not realised. In particular, nothing was done about the priority area of 'Youth'. The community had expected that youth issues, gang violence and safety would be addressed and resolved at an early stage of the trial. Instead this agreed priority area was allowed to 'fall between the cracks.' If anything, things became worse causing considerable disappointment and anger within the community.

Provision of more housing at outstations was seen (and remains so) by the community as the only sustainable solution to overcrowding at Wadeye. At the end of the trial the pressing needs of Wadeye remain. The community needs a major commitment of resources including an urgent investment in housing, especially at outstations. It also needs support for activities and resources to deal with youth and gang-related difficulties.

The Wadeye example shows that cooperation between governments and communities does not simply occur as the result of processes and agreements. A structure must be established to mandate collaborative ways of working and facilitate open dialogue. The Wadeye experience shows that even when there is a local governing body and an intention from government to streamline processes, things can go wrong.

The Thamarrurr Council represented the Wadeye community voices and government departments had their own separate mechanisms for meeting and making agreements.

In contrast to Fitzroy Valley, with the Fitzroy Futures Forum, there was no mechanism of engagement and information exchange that was viewed as legitimate by the local communities and government agencies and departments. This meant there was no authoritative decision-making forum to bring all parties together and progress the agenda. There were no established relationships between government and community members and leaders. At Wadeye, the government responses were characterised by in-fighting between departments and very little was achieved in collaboration with the Thamarrurr Regional Council. Whereas in the Fitzroy Valley, a relationship between the local communities and government has developed that is underpinned by good faith and mutual trust.

The whole-of-government approach in Wadeye actually increased the administrative burden on the Thamarrurr Regional Council. Prior to the COAG trial Thamarrurr Regional Council administered around 60 government funding agreements. Yet at the time of the Gray Review it was administering over 90. The review found that despite the additional resources in the Wadeye community, there was no change in the way services were delivered.<sup>167</sup>

167 B Gray, *Council of Australian Governments Trial Evaluation: Wadeye Northern Territory*, WJG & Associates Pty Ltd (2006), p 9. At [http://www.fahcsia.gov.au/sa/indigenous/pubs/evaluation/coag\\_trial\\_site\\_reports/nt\\_coag\\_trial/Pages/default.aspx](http://www.fahcsia.gov.au/sa/indigenous/pubs/evaluation/coag_trial_site_reports/nt_coag_trial/Pages/default.aspx) (viewed 9 June 2010).

This is a very real challenge confronting the roll out of the Remote Service Delivery Partnership.

#### **(c) Key considerations to guide the delivery of government services**

##### *(i) Engagement with local communities*

It's about waking up in the morning and feeling good about the community we live in, not a community judged by the dominant society as being fraught with social problems that need to be managed by constant government interventions.

This is not just my vision. It is the hope of practically all people in my community. And I know what can be achieved because I know my community. I know its capacity and its' potential. I know its depth of leadership and social capital. I know what our people are capable of achieving when they are entrusted with responsibility and given support through resources and responsibility to act.<sup>168</sup>

The former Chief of the Australian Army and now Chair of the Indigenous Implementation Board in Western Australia, Lieutenant General Sanderson has raised concerns about the ways in which governments engage with and provide services in remote Australia. He argues:

Remote governments' running the country from cities can only be about interventions, it cannot be about partnerships. In my experience the only way through social and community problems is through empowerment. In conflict zones you protect citizens by empowerment. If we are to build communities in Aboriginal Australia we must empower the citizens, and this cannot be done through intervention, it can only be done through partnership, facilitation and engagement.<sup>169</sup>

Aboriginal and Torres Strait Islander people must be active participants in the development and implementation of policies that affect us. My predecessor, Tom Calma described it in these terms:

Much of the failure of service delivery to Indigenous people and communities, and the lack of sustainable outcomes, is a direct result of the failure to engage appropriately with Indigenous people and of the failure to support and build the capacity of Indigenous communities. It is the result of a failure to develop priorities and programs in full participation with Indigenous communities.

Put simply, governments risk failure if they develop and implement policies about Indigenous issues without engaging with the intended recipients of those services. Bureaucrats and governments can have the best intentions in the world, but if their ideas have not been subject to the "reality test" of the life experience of the local Indigenous peoples who are intended to benefit from this, then government efforts will fail.<sup>170</sup>

Genuine engagement equals good policy. Human rights standards require the engagement of Indigenous peoples in processes that lead to the design and implementation of policies, programs and legislation that are relevant to us.<sup>171</sup>

Aboriginal and Torres Strait Islander people will be able to engage in the Remote Service Delivery Partnership through the development of the Local Implementation

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168 J Oscar, community member and CEO of Marninwarntikura, *The Fitzroy Valley – To Dream the Gift of a Better Life* (Speech delivered at Parliament House, Canberra, 18 August 2009), p 2.

169 Lt General J Sanderson, Chair of the Indigenous Implementation Board, WA, meeting with the Aboriginal and Torres Strait Islander Social Justice Commissioner, Canberra, 27 May 2010.

170 T Calma, Aboriginal and Torres Strait Islander Social Justice Commissioner, *Evaluating the external forces which exert an influence on government policy direction* (Speech delivered at the Collaborative Indigenous Policy Development Conference, Brisbane, 27-28 June 2006). At [http://www.humanrights.gov.au/about/media/speeches/social\\_justice/collaborative20060628.html](http://www.humanrights.gov.au/about/media/speeches/social_justice/collaborative20060628.html) (viewed 30 April 2010).

171 J Anaya, *Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, James Anaya*, Report to the Human Rights Council, 12 session, UN Doc A/HRC/12/34 (15 July 2009), paras 43-45. At <http://unsr.jamesanaya.org/PDFs/Annual2009.pdf> (viewed 19 April 2010).

Plans. These are the centrepiece agreements between local communities and governments. In addition, an increased government presence in communities should foster an increased level of engagement.

However, the Coordinator General has indicated that the level of engagement between government and communities varied between different sites. There were some good examples of engagement, but there was no consistent good engagement in all priority communities.<sup>172</sup>

The Coordinator General has cited the Fitzroy Futures Forum as an excellent example of community-government engagement.<sup>173</sup> The Forum is an effective model for engagement because it is a structure that brings together the Fitzroy Valley communities and government voices in an equal dialogue.

Aboriginal and non-Aboriginal people come together in forums such as the Fitzroy Futures Forum, which includes all residents, service providers, private sector businesses and pastoralists. Anyone you can think of who lives in the Fitzroy Valley can come to that forum, be informed and look at matters that impact all that live here. I understand that it is the only forum of its kind in Western Australia, if not nationally. It is something that we have raised with the Coordinator-General and the people who are involved in COAG's Closing the Gap and remote service delivery programs. We have been promoting it as a model for other organisations in this state as well. This is a community that is growing and embracing everyone. It is about building a safe community where everyone can thrive, particularly our children, and where people feel valued, acknowledged and appreciated for what they do and for their contribution to this community.<sup>174</sup>

What is required is a new relationship that structurally connects the Aboriginal culture and social domain with government's responsibility to provide good government. In the Fitzroy Crossing there is already the beginnings of an Indigenous partnership with government:- the Fitzroy Futures Forum made up of the four language groups.<sup>175</sup>

Genuine engagement can only be facilitated at the local level where all parties can participate and interact. Meeting mechanisms like those of the Fitzroy Futures Forum are essential to the success of engagement.

### (ii) *An effective workforce*

Engagement mechanisms, like the Fitzroy Futures Forum, must be supported by a skilled and culturally competent government workforce. Government officials must be able to position themselves to effectively engage with local Aboriginal and Torres Strait Islander communities, be they from remote, regional or urban locations.

The NTER Review Board found that new attitudes must be developed to redefine the relationship between the entire bureaucracy and Aboriginal and Torres Strait Islander peoples:

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172 The Office of the Coordinator General for Remote Indigenous Services, Correspondence to the Office of the Aboriginal and Torres Strait Islander Social Justice Commissioner, 21 July 2010.

173 B Gleeson, Coordinator General for Remote Indigenous Services, *Six Monthly Report July-November 2009*, Office of the Coordinator General for Remote Indigenous Services (2009), p 95. At <http://www.cgris.gov.au/site/letter.asp> (27 April 2010).

174 Commonwealth, *Official Committee Hansard: Reference: Involvement of Indigenous juveniles and young adults in the criminal justice system*, House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs (31 March 2010), p 3 (J Oscar). At <http://www.aph.gov.au/hansard/reps/commtee/R12898.pdf> (viewed 9 August 2010).

175 J Oscar, community member and CEO of Marninwarntikura, *Speech to the Western Australian Equal Opportunity Commission Forum* (Speech delivered at the Western Australian Equal Opportunity Commission Forum, Perth, 10 August 2009), p 4. At [http://www.eoc.wa.gov.au/Libraries/Documents/JuneOscarAugust2010WAHumanRights\\_EqualOpportunityCommissionForum.sflb.aspx](http://www.eoc.wa.gov.au/Libraries/Documents/JuneOscarAugust2010WAHumanRights_EqualOpportunityCommissionForum.sflb.aspx) (viewed 15 September 2010).

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There needs to be much greater understandings of the different world views of Indigenous, cultural and regional richness and the social integrity of Indigenous families and communities.<sup>176</sup>

It also suggested that government officials working with Aboriginal and Torres Strait Islander peoples must be supported with professional development training from nationally accredited training providers.<sup>177</sup> I fully support these findings by the NTER Review Board.

Whilst I was writing this Chapter, the Australian Public Service Commission published Circular 2010/4, *Revision of Special Measures and Identified Positions/Criteria provisions*.<sup>178</sup> This provided Australian Government departments and agencies with updated information on:

- the Special Measures provision for recruiting Aboriginal and Torres Strait Islander people
- the use of Identified Positions/Criteria when recruiting staff with an involvement in issues relating to Aboriginal and Torres Strait Islander peoples.<sup>179</sup>

I support the Special Measures to increase Aboriginal and Torres Strait Islander recruitment in the Australian Public Service (APS). I also welcome the 2009 commitment of COAG, through the *National Partnership Agreement on Indigenous Economic Development* to increase Indigenous employment across all levels of the public sector to at least 2.6% by 2015.<sup>180</sup> I will continue to monitor the progress towards the attainment of these targets.

The Fitzroy Valley experience has shown that Aboriginal and Torres Strait Islander peoples are best placed to address the issues confronting their own communities. Governments would do well to learn from this lesson, and target the maximum possible employment of local Aboriginal and Torres Strait Islander people to manage and work on local programs and services for that community.

In addition to increasing the recruitment of Aboriginal and Torres Strait Islander peoples in the APS, the use of the Identified Position/Criteria helps foster a culturally competent bureaucracy. Identified Positions usually require an additional two criteria to be established by a successful applicant:

- an understanding of the issues affecting Aboriginal and/or Torres Strait Islander people
- an ability to communicate sensitively with Aboriginal and/or Torres Strait Islander people.

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176 Northern Territory Emergency Response Review Board, *Report of the Northern Territory Review Board*, Attorney-General's Department (2008), p 49. At [http://www.nterreview.gov.au/docs/report\\_nter\\_review/default.htm](http://www.nterreview.gov.au/docs/report_nter_review/default.htm) (viewed 28 April 2010).

177 Northern Territory Emergency Response Review Board, *Report of the Northern Territory Review Board*, Attorney-General's Department (2008), p 49. At [http://www.nterreview.gov.au/docs/report\\_nter\\_review/default.htm](http://www.nterreview.gov.au/docs/report_nter_review/default.htm) (viewed 28 April 2010).

178 Australian Public Service Commission, *Circular 2010/4: Revision of Special Measures and Identified Positions/Criteria provisions* (2010). At <http://www.apsc.gov.au/circulars/circular104.htm> (viewed 15 November 2010).

179 It also provided an update on the Special Measures provision for the employment of Aboriginal and Torres Strait Islander peoples in the Australian Public Service: Australian Public Service Commission, *Circular 2010/4: Revision of Special Measures and Identified Positions/Criteria provisions* (2010). At <http://www.apsc.gov.au/circulars/circular104.htm> (viewed 15 November 2010).

180 Council of Australian Governments, *National Partnership Agreement on Indigenous Economic Participation*, [http://www.coag.gov.au/intergov\\_agreements/federal\\_financial\\_relations/docs/national\\_partnership/national\\_partnership\\_on\\_indigenous\\_economic\\_participation.rtf](http://www.coag.gov.au/intergov_agreements/federal_financial_relations/docs/national_partnership/national_partnership_on_indigenous_economic_participation.rtf) (viewed 16 November 2010).

The selection process for Identified Positions should also have at least one Aboriginal or Torres Strait Islander person on the selection panel and the applicant should have at least one Aboriginal or Torres Strait Islander referee.<sup>181</sup>

I believe the use of Identified Positions is a minimum criteria for employing people to work and engage effectively with Aboriginal and Torres Strait Islander peoples. However, the Australian Public Service Commission stated that despite the fact these criteria have been in existence for some time their use and operation is undermined by confusion. Differential application of similar terms at state and territory jurisdictions was earmarked as a compounding factor.<sup>182</sup>

Currently, departments and agencies are only encouraged to use Identified Positions/Criteria. If government departments and agencies are serious about engaging with Aboriginal and Torres Strait Islander peoples, effective usage of these criteria must be achieved by all levels of the APS, as well as the bureaucracy in other jurisdictions.

To ensure the effective use of Identified Positions/Criteria by all departments and agencies these criteria should be mandated in legislation. The Australian Government should also work through COAG to establish them as national uniform standards.

### (iii) *Meeting the aspirations of local communities*

Community aspirations can be stifled by inflexible funding arrangements. For example, *The Overburden Report* showed that inflexible funding arrangements characterised by complexity and fragmentation hinder the delivery of primary health care by Aboriginal Community Controlled Health Services.<sup>183</sup> This report also suggested that this problem negatively impacts Indigenous organisations across other portfolio areas.<sup>184</sup>

A whole of community head contract was recommended by the Royal Commission into Aboriginal Deaths into Custody as a key measure for addressing ineffective delivery of services and inflexible funding arrangements that impedes development in Indigenous communities.

#### **Text Box 3.8: Royal Commission into Aboriginal Deaths in Custody<sup>185</sup>**

##### **Recommendation 190:**

That the Commonwealth Government, in conjunction with the State and Territory Governments, develop proposals for implementing a system of block grant funding of Aboriginal communities and organisations and also implement a system whereby Aboriginal communities and organisations are provided with a minimum level of funding on a triennial basis.

181 Australian Public Service Commission, *Circular 2010/4: Revision of Special Measures and Identified Positions/Criteria provisions* (2010). At <http://www.apsc.gov.au/circulars/circular104.htm> (viewed 15 November 2010).

182 Australian Public Service Commission, *Circular 2010/4: Revision of Special Measures and Identified Positions/Criteria provisions* (2010). At <http://www.apsc.gov.au/circulars/circular104.htm> (viewed 15 November 2010).

183 J Dwyer, K O'Donnell, J Lavoie, U Marlina and P Sullivan, *The Overburden Report: Contracting for Indigenous Health Services*, Cooperative Research Centre for Aboriginal Health (2009). At [http://www.craah.org.au/publications/downloads/overburden%20report\\_FINAL.pdf](http://www.craah.org.au/publications/downloads/overburden%20report_FINAL.pdf) (viewed 14 September 2010).

184 J Dwyer, K O'Donnell, J Lavoie, U Marlina and P Sullivan, *The Overburden Report: Contracting for Indigenous Health Services*, Cooperative Research Centre for Aboriginal Health (2009), p 53. At [http://www.craah.org.au/publications/downloads/overburden%20report\\_FINAL.pdf](http://www.craah.org.au/publications/downloads/overburden%20report_FINAL.pdf) (viewed 14 September 2010).

185 Royal Commission into Aboriginal Deaths in Custody, *National Report Volume 4*, section 27.3. At <http://www.austlii.edu.au/au/other/IndigLRes/rciadic/national/vol4/8.html> (viewed 6 September 2010).



**Recommendation 191:**

That the Commonwealth Government, in conjunction with the State and Territory Governments, develop means by which all sources of funds provided for, or identified as being available to Aboriginal communities or organisations wherever possible be allocated through a single source with one set of audit and financial requirements but with the maximum devolution of power to the communities and organisations to determine the priorities for the allocation of such funds.

The Coordinator General raised concerns about the difficulties caused by inflexible funding arrangements. This has been recognised by the Australian Government in creating a \$46 million Remote Service Delivery Flexible Funding Pool.<sup>186</sup> This flexible funding allows governments to respond quickly to priority projects in the communities.

I welcome the Flexible Fund to allow urgent community priority programs to cut through inflexible funding arrangements that might otherwise thwart them. This is a clear indication of the government's willingness to move beyond traditional ways of funding. However, I am concerned that the culture of government is improved as a result of this new approach. We need to guarantee that unnecessary red tape and the burden of bureaucratic process is minimised, as much as possible, to ensure that the various grant processes are flexible and straightforward enough to guarantee programs are responsive to community needs and aspirations. An example of bureaucratic burdens are the difficulties associated with the supply of adequate housing for staff running newly funded services or programs in remote communities. Without housing, these positions go unfilled and the services cannot be delivered. In order for funding process to be successful, decision-making about service delivery and the allocation of funding must be shared with the local community.

At this stage, the \$46 million Flexible Fund is for discretionary projects that are managed by the Australian Government and much of the project funding still comes from different government departments at the state and federal levels. What is required is a consolidation of funding from all government departments by geographic location.

The Coordinator General supports a pooled funding approach in remote communities, that is 'a whole of community head contract which aggregates funding by location rather than program'.<sup>187</sup> A head or master contract with pooled funding would centralise funding in a way that would support local decision-making control. Rather than funds being distributed by government departments based on the priorities of departments, pooled funds are located in communities to be responsive to local needs. In response to the Coordinator General, COAG has stated that this type of funding is 'an option that can be considered'.<sup>188</sup>

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186 The Hon K Rudd MP, Prime Minister, The Hon J Gillard MP, Deputy Premier, Minister for Education, Minister for Workplace Relations, The Hon J Macklin MP, Minister for Families, Housing, Community Services and Indigenous Affairs, The Hon N Roxon MP, Minister for Health and Ageing, The Hon W Snowden MP, Minister for Indigenous Health, Rural and Regional Health & Regional Services Delivery, 'Flexible funding pool for Remote Service Delivery' (Media Release, 11 February 2010). At [http://www.jennymacklin.fahcsia.gov.au/internet/jennymacklin.nsf/print/jm\\_flexible\\_funding\\_pool\\_11february2010.htm](http://www.jennymacklin.fahcsia.gov.au/internet/jennymacklin.nsf/print/jm_flexible_funding_pool_11february2010.htm) (viewed 12 May 2010).

187 B Gleeson, Coordinator General for Remote Indigenous Services, *Six Monthly Report July-November 2009*, Office of the Coordinator General for Remote Indigenous Services (2009), p 103. At <http://www.cgris.gov.au/site/letter.asp> (27 April 2010).

188 Council of Australian Governments, Working Group on Indigenous Reform, *Progress Status Report: Addressing the Recommendations of the First Six Monthly Report of the Coordinator-General for Remote Indigenous Services* (2010), p 17. At [http://www.coag.gov.au/coag\\_meeting\\_outcomes/2010-04-19/docs/WGIR\\_progress\\_status\\_report.pdf](http://www.coag.gov.au/coag_meeting_outcomes/2010-04-19/docs/WGIR_progress_status_report.pdf) (viewed 22 September 2010).

The Senate Select Committee on Regional and Remote Indigenous Communities support the idea of a head or master contract. In the Committee's *Fourth report 2010* it recommended that COAG 'expedite' implementation of more 'flexible funding approaches which aggregate departmental funding into a master contract' with each Remote Service Delivery Partnership priority location.<sup>189</sup> This reflects the Committees 'long held' view:

... that Indigenous communities are best placed in determining their own priorities for funding community infrastructure. This pool of funding responds to the specific needs of individual communities. The committee considers that it is important to ensure that there are high levels of community consultation prior to delivery of services or infrastructure in regional and remote Indigenous communities.<sup>190</sup>

To a large extent, the Fitzroy Futures Fund was established to address the problem of piecemeal funding, poor service delivery and community engagement. The Fitzroy Futures Fund is committed to a framework that will pool funding and provide more consistency in the funding cycles and more community control over service and program delivery. At this stage the Fund is very small at \$2.5 million. It is hoped that in the future, governments will commit to localised head or master contracts with associated funding. The Fitzroy Futures Fund would then become a significant source of funding for all community infrastructure, service and development requirements.

#### (iv) *Accountability*

Another challenge facing the Remote Service Delivery Partnership is the need to clearly delineate responsibility and accountability between the various levels of government and the community. It is simply not enough to inject greater funding into remote communities and expect improved outcomes.<sup>191</sup> In 2008 Coroner Hope, commented that despite an enormous injection of funding into the Kimberley region<sup>192</sup> 'the living conditions for many Aboriginal people were appallingly bad' which 'constitutes a disaster but no one is in charge of the disaster response'.<sup>193</sup> He specifically questioned where the money had gone.<sup>194</sup>

The monitoring role of the Coordinator General as an independent statutory office holder marks a point of departure from previous approaches to service delivery in remote communities. It provides a necessary additional oversight tool to increase accountability.

Visiting all of the 29 priority communities was one of the first tasks undertaken by the Coordinator General after his appointment. In doing so the Coordinator General engaged with more than 1000 people to discuss and listen to community-level issues

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189 Senate Select Committee on Regional and Remote Indigenous Communities, Parliament of Australia, *Fourth report 2010* (2010), para 2.219. At [http://www.aph.gov.au/senate/committee/indig\\_ctte/reports/2010/report4/index.htm](http://www.aph.gov.au/senate/committee/indig_ctte/reports/2010/report4/index.htm) (viewed 22 September 2010).

190 Senate Select Committee on Regional and Remote Indigenous Communities, Parliament of Australia, *Fourth report 2010* (2010), para 2.215. At [http://www.aph.gov.au/senate/committee/indig\\_ctte/reports/2010/report4/index.htm](http://www.aph.gov.au/senate/committee/indig_ctte/reports/2010/report4/index.htm) (viewed 22 September 2010).

191 T Calma, Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2006*, Human Rights and Equal Opportunity Commission (2007), p 96. At [http://www.humanrights.gov.au/social\\_justice/sj\\_report/sjreport06/index.html](http://www.humanrights.gov.au/social_justice/sj_report/sjreport06/index.html) (viewed 12 May 2010).

192 Coroner Hope received evidence that the Western Australian Government was providing \$1.2 billion a year over and above Commonwealth funding, See A Hope, State Coroner of Western Australian, *Coronial inquest into 22 deaths in the Kimberley*, Ref No: 37/07, Coroner's Court of Western Australia (2008), p 41.

193 A Hope, State Coroner of Western Australian, *Coronial inquest into 22 deaths in the Kimberley*, Ref No: 37/07, Coroner's Court of Western Australia (2008), p 23.

194 A Hope, State Coroner of Western Australian, *Coronial inquest into 22 deaths in the Kimberley*, Ref No: 37/07, Coroner's Court of Western Australia (2008), p 41.

relating to the Remote Service Delivery Partnership.<sup>195</sup> I commend the Coordinator General for his approach. It is necessary for him to be exposed to the first-hand experiences, including both the challenges and opportunities, of each priority location. This provides community members with the chance to directly raise their concerns and aspirations at a high level and to be directly involved in the evaluation of the Remote Service Delivery Partnership arrangement.

Targeted monitoring is essential to move the Remote Service Delivery Partnership from rhetoric into reality. The Coordinator General reports biannually to the Minister for Indigenous Affairs on the progress of the Remote Service Delivery Partnership.<sup>196</sup> It has been a welcome practice for the Minister to release these reports to the public. The Coordinator General also produces an annual report that is tabled in Parliament, and subsequently made publicly available.<sup>197</sup> This regular independent public reporting process is a clear departure from the previous approaches.<sup>198</sup>

The reporting process is influencing the roll out of the Remote Service Delivery Partnership. The creation of the Remote Service Delivery Flexible Funding Pool was a direct response to a recommendation of the Coordinator General. COAG also responded to a recommendation from the Coordinator General's first report. In their April 2010 Communiqué, COAG agreed to amend the National Partnership Agreement to recognise the role that local or municipal government plays in the delivery of services. This role will now be captured in the Local Implementation Plans.<sup>199</sup>

I am concerned that the effectiveness of the Coordinator General's role is constrained by resourcing. The Coordinator General advised that his office can monitor effectively at the jurisdictional level. Senior Advisor networks and regular reports provide a good overview of what is being delivered in the states and the Northern Territory. However, a lack of resources means that the Coordinator General is constrained from 'getting out on the ground' as frequently as is necessary to monitor and evaluate the implementation and effectiveness of these arrangements.<sup>200</sup>

Given the unprecedented investment into the Remote Service Delivery Partnership, it is essential that monitoring and evaluating is comprehensive and targeted. The Coordinator General should be able to regularly visit communities as well as receive reports on their progress.

### 3.5 Concluding observations on the Fitzroy experience

#### Section 3.1 Community-led alcohol restrictions in the Fitzroy Valley

The strategy to address the problem of alcohol in the Fitzroy Valley had some important features:

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195 B Gleeson, Coordinator General for Remote Indigenous Services, *Six Monthly Report July-November 2009*, Office of the Coordinator General for Remote Indigenous Services (2009). At <http://www.cgris.gov.au/site/letter.asp> (27 April 2010).

196 *Coordinator-General for Remote Indigenous Services Act 2009* (Cth), s 15.

197 *Coordinator-General for Remote Indigenous Services Act 2009* (Cth), s 28.

198 T Calma, Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2005*, Human Rights and Equal Opportunity Commission (2005), p 193. At [http://www.humanrights.gov.au/social\\_justice/sj\\_report/sjreport05/index.html](http://www.humanrights.gov.au/social_justice/sj_report/sjreport05/index.html) (viewed 12 May 2010).

199 Council of Australian Governments, *Communiqué – 19-20 April 2010* (2010). At [http://www.coag.gov.au/coag\\_meeting\\_outcomes/2010-04-19/index.cfm?CFID=500159&CFTOKEN=79634472](http://www.coag.gov.au/coag_meeting_outcomes/2010-04-19/index.cfm?CFID=500159&CFTOKEN=79634472) (viewed 22 April 2010).

200 The Office of the Coordinator General for Remote Indigenous Services, Correspondence to the Office of the Aboriginal and Torres Strait Islander Social Justice Commissioner, 21 July 2010.

- A significant portion of the community at the women's bush camp reached agreement that there was a problem that needed addressing.
- The campaigners sought the support and endorsement of the elders and the local community leadership before taking action to restrict alcohol.
- Key government partners were engaged but the process remained community driven.
- The restrictions were initially confined to a six month trial period and extended only after evaluation, consultation and establishing evidence of its positive impacts.
- The approach was reviewed after the trial period and the communities were able to express their responses to the alcohol restrictions.

### **Section 3.2 Fitzroy Futures Forum: Local governance and local voices**

- The Fitzroy Futures Forum was formed when community leaders identified a need for a platform for communication between the local communities and government service providers.
- Trusting relationships were built between the communities and government representatives over time.
- The Fitzroy Futures Forum offers residents an opportunity to share their views on the future of the Valley and acts as a two-way information exchange that gives voice to local concerns and informs the progress of projects and programs.
- The Fitzroy Futures Forum is the entry point for any service coming into the Fitzroy Valley.
- The Fitzroy Futures Forum is building community capacity and decision-making power in awarding grants for community projects.
- Residents are concerned that the Remote Service Delivery Partnership may overwhelm the Fitzroy Futures Forum. They are also concerned about the future of the Forum given that its funding is due to expire in 2011.

### **Section 3.3 A community approach to Fetal Alcohol Spectrum Disorder**

- The Fitzroy Valley communities considered that Fetal Alcohol Spectrum Disorders (FASD) was an area of concern because of its genuine threat to the health and well-being of local children, its threat to the preservation of culture and the damage it would cause to future generations.
- The FASD project is an example of a community-led collaborative process to address a highly sensitive community identified issue of concern.
- A strategy to address FASD was developed by local community leaders. The lead partner is the Nindilingarri Cultural Health Service at Fitzroy Crossing. Other key partners are The George Institute for Global Health, The Sydney Medical School of the University of Sydney and paediatricians working in the region.
- Nindilingarri Cultural Health Service is the lead agency with responsibility to work with partners to develop the FASD strategy design.
- The Fitzroy Futures Forum keeps the communities informed about all work on FASD and provides an opportunity for local people to have input into the project and provide consent and feedback at key points of its progress.

- Comprehensive community consultations demonstrated widespread community support for a FASD prevalence study.
- The FASD prevalence study will form a key component of the evidence base to advocate for funding and resources to implement remedial projects to address and prevent FASD.
- The FASD prevalence study is a community led model for project development, engagement and consent processes.
- Careful investment in communication and consent processes ensured that 95% of families in the Fitzroy Valley with children aged seven and eight years consented to participate in the study.

#### **Section 3.4 The challenges ahead in governance**

- The National Partnership Agreement on Remote Service Delivery is an opportunity for governments to address past problems impeding coordinated service delivery in remote Australia.
- The coordination of services in remote Australia has been a perennial problem for governments. Poor service coordination manifests in red tape, including overly complex reporting processes and short-term funding.
- The challenge for governments is to reform their practices so that they work in collaboration with remote communities.
- The monitoring role of the Coordinator General for Remote Indigenous Services marks a clear point of departure from previous whole-of-government approaches to service delivery in remote Aboriginal and Torres Strait Islander communities.
- Evidence indicates that effective coordination of services does not occur as the result of whole-of-government processes and agreements.
- Addressing workforce issues is a necessary component of any effective engagement framework with Aboriginal and Torres Strait Islander peoples.
- A head contract that centralises funding to a location and devolves decision-making to a local level could address ineffective delivery of services and inflexible funding arrangements.
- Effective engagement at the local level is essential for the development and delivery of policies and services. The establishment of local government offices and the development of Local Implementation Plans are insufficient in themselves. Community involvement is crucial to success.
- A governance structure is required to bring community and government together in dialogue and cooperation.
- The Fitzroy Futures Forum is an example of a governance structure that brings the communities and government together in one forum to identify local needs and to develop local priority action.

## 3.6 Conclusion

Four years ago, I visited the Fitzroy Valley. My perspective as an outsider was that these communities, like many remote Indigenous communities, had a lot of issues and needed a lot of support to address them. In researching and preparing to write this Chapter, I again visited the Fitzroy Valley in July and August 2010. As I drove into Fitzroy Crossing I noticed significant change since my previous visit.

This time, I witnessed communities with strong leadership that were striving for a better future. You could see the difference in the communities. People weren't hanging around the streets, which was the case last time I was in Fitzroy Crossing. It was even more remarkable when I went for a meal at one of the two licensed premises in the town. The locals who were there, both Aboriginal and non-Aboriginal, had a sense of calmness that was not there when I last visited. In my meetings with local people I noticed they were now talking about the future of Fitzroy. People were engaged in the wellbeing of the place.

The Remote Service Delivery Partnership offers an opportunity for governments to consolidate these gains made in the Fitzroy Valley communities. In order to do this, governments must reform the way they do business in remote Australia. Government agencies and service providers will be most effective if they develop service models in collaboration with local communities. When governments take unilateral control, Aboriginal and Torres Strait Islander peoples are inhibited from becoming agents of change.

The recent experiences of the Fitzroy Valley are testimony to the fact that positive change can occur when communities are agents of their own change. Government would do well to take the lessons of the Fitzroy experience in developing national engagement strategies that filter down through processes such as COAG, and are implemented at regional and local levels. The active participation of those who are directly affected by government policies and legislation must be facilitated at all stages of the development of these processes to ensure that they are targeted and appropriate.

In the Fitzroy Valley, the Fitzroy Futures Forum is the entry point for engagement. It funnels everything into a community controlled space where local people are at the table with government decision-makers.

The Forum allows Aboriginal people to identify their priorities for action, and to be actively involved at the earliest possible stage in any policy design process. The benefits of this are evident in the success of the alcohol restrictions and the FASD project to address alcohol related harm.

Earlier in this Chapter, I noted that the Fitzroy Valley experience offers an alternative process to address social crisis that is in contrast with the NTER. That alternative is community empowerment, community control and genuine engagement. The Review of the NTER stated:

Robust frameworks, adequate resources, functional governance and professional capabilities are necessary – *but without the genuine engagement and active participation of the local community, deep seated change will not be achieved*. It must be nurtured within the community. That is the lesson of the Intervention.<sup>201</sup>

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201 Northern Territory Emergency Response Review Board, *Report of the Northern Territory Review Board*, Attorney-General's Department (2008), p 11. At [http://www.nterreview.gov.au/docs/report\\_nter\\_review/default.htm](http://www.nterreview.gov.au/docs/report_nter_review/default.htm) (viewed 28 April 2010) (emphasis added).

This is also the lesson of the Fitzroy Valley. It is the lesson that should inform the roll out of the Remote Service Delivery Partnership and other government approaches to service delivery in Indigenous communities.

The story of the Fitzroy Valley is a story of how strong local leadership can drive communities to deal with the most sensitive and intractable issues on their own terms.

This is a story of hope.

Its exciting being in Fitzroy Crossing right now. I'm working with Indigenous people across the whole Valley, male, female and families as well, young people as well out in the schools. And I know when I look at those little kids... they are going to inherit this change. They are going to grow up in a community and start its healing process, its doing it on its own terms, its facing its own histories, and with this extraordinary effort by all, is going to face a much better future.<sup>202</sup>

#### Recommendations

- 3.1 That the Australian and Western Australian Governments respond to the priorities identified by the Fitzroy Futures Forum. Further, that those responses should be made with and through mechanisms agreed by the Fitzroy Futures Forum.
- 3.2 That the Australian and Western Australian Governments provide immediate funding to drug and alcohol services, mental health services, rehabilitation services and law and culture programs in the Fitzroy Valley.
- 3.3 That the Australian and Western Australian Governments provide ongoing funding and support for the Fitzroy Futures Forum. Further, that the roll out of the Council of Australian Governments Remote Service Delivery Partnership work within this established community governance framework.
- 3.4 That the Australian Government provide adequate resources to the Coordinator General for Remote Indigenous Services to enable him to fulfil his statutory responsibilities in the 29 priority communities.
- 3.5 That the Australian Government work with Aboriginal and Torres Strait Islander peoples to develop a national engagement framework that is consistent with the minimum standards affirmed in the *United Nations Declarations on the Rights of Indigenous Peoples*. Further, that the Australian Government commit to using this framework to guide the development of consultation processes on a case-by-case basis in partnership with the Aboriginal and Torres Strait Islander peoples that may be affected by a proposed legislative or policy measure. This framework will also require the development of regional and local engagement plans.

<sup>202</sup> C Clarke, former Drug and Alcohol Counsellor, Kimberley Mental Health and Drug Service, in *Yajilara* (Directed by M Hogan, Reverb, 2009), 17:51.

- 3.6 That the Australian and state/territory governments implement necessary reforms to both their structures and workforce to ensure they have the capacity to engage effectively with Aboriginal and Torres Strait Islander peoples. These reforms should include:
- (i) The introduction of national uniform legislation to mandate the use of *Identified Positions/Criteria* for all positions in the public service that have any involvement with Aboriginal and Torres Strait Islander peoples, organisations and communities.
  - (ii) That relevant officers have the appropriate skills and cultural competency to work with Aboriginal and Torres Strait Islander peoples and communities.
  - (iii) That targeted education and training programs are developed with accredited training providers to facilitate the development of appropriate skills and cultural competency.
- 3.7 That the Australian Government accelerates efforts to consolidate and streamline programs for Aboriginal and Torres Strait Islander communities with an aim to ensure:
- (i) That funding grant programs are simplified and are pooled where multiple grants come from multiple government entities.
  - (ii) That local communities have certainty of long term core funding.
  - (iii) A greater role in planning and decision-making over funding at the community level.
  - (iv) Greater flexibility to respond to local needs.
- 3.8 That the central role of effective governance structures is acknowledged by governments and respected as a form of community empowerment. Where effective governance structures and processes are in place these should form the basis of government engagement with communities. Where governance structures and processes require further development communities and organisations should be appropriately supported in this process.
- 3.9 That community governance structures and processes should be developed by Aboriginal and Torres Strait Islander communities and appropriately supported by governments, with the aim of empowering them to take control of their own identified issues and aspirations. Communities, in engaging both internally and externally, should be guided by the *United Nations Declaration on the Rights of Indigenous Peoples* in exercising the right to self-determination; the principle of free, prior and informed consent; the right to participate in decision-making; and good faith.