On 19 July 2007, the Marninwarntikura Fitzroy Women’s Resource & Legal Centre (“the Centre”) wrote to me seeking consideration of the imposition of a condition on the Crossing Inn Licence, pursuant to the provisions of section 64 of the Liquor Control Act 1988 (“the Act”), to introduce a 12 month moratorium on the sale of packaged liquor. This request arose from concerns about the extent of alcohol related harm occurring in the Fitzroy Valley region.

As a consequence of that request, on 23 July 2007 I met with representatives from the Centre, the licensee and various other stakeholders in Fitzroy Crossing. The purpose of that meeting was to gain an understanding of the issues and seek input from the various parties.

The agreed outcome of that meeting was that the various community stakeholders would seek to work together over the following six weeks (that is, until 31 August 2007) in an effort to find some agreed solutions themselves at a local level.

In the case that consensus could not be reached, the parties were advised that the Licensing Authority would commence formal proceedings under the Liquor Control Act.

In late August, the Centre, the Chairman of the Fitzroy Crossing Liquor Accord, and the licensee, all separately sought an extension of time in which to reach consensus on voluntary restrictions. However, on the basis of the information available to me, I determined that it appeared unlikely that any consensus on liquor restrictions would be achieved and that an extension of time would be of little benefit in reaching resolution. Therefore, I decided not to grant any extension and instead, as foreshadowed at the meeting on 23 July 2007, I advised that I would formally commence action under section 64 of the Liquor Control Act.
LEGISLATIVE PROVISIONS

Section 64 of the Act provides that the licensing authority may, at its discretion and of its own motion, impose conditions on a licence that it considers to be in the public interest (subsections (1) and (1a) refer). Subsection (3) specifically identifies that, amongst other reasons, conditions may be imposed in order to –

- ensure that the safety, health or welfare of persons who may resort to the licensed premises is not at risk;
- minimize harm or ill-health caused to people, or any group of people, due to the use of liquor;
- limit the kinds of liquor that may be sold;
- limit the manner in which or the containers, or number or types of containers, in which liquor may be sold; or
- limit the days on which, and the times at which, liquor may be sold.

In considering matters before it, the licensing authority is bound to have regard to the objects of the Act, and in particular, the primary objects which are -

(a) to regulate the sale, supply and consumption of liquor; and
(b) to minimize harm or ill-health caused to people, or any group of people, due to the use of liquor; and
(c) to cater for the requirements of consumers for liquor and related services, with regard to the proper development of the liquor industry, the tourism industry and other hospitality industries in the State.

These primary objects take precedence over any other object set out in section 5 of the Act.

MARNINWARNTIKURA FITRZROY WOMEN’S RESOURCE & LEGAL CENTRE SUBMISSIONS

The Centre represents the Gooniyandi, Bunuba, Walmajarri and Wangkajunga language groups of the Kimberley region.

The Centre has sought the moratorium on the basis of what it argues is the severe level of alcohol-related harm occurring in Fitzroy Crossing and the greater Fitzroy Valley region.
The issues raised by the Centre in support of its position are as follows:

- there have been 13 alcohol and drug related suicides in Fitzroy Crossing within last 12 months (and according to the Ministerial Council for Suicide Prevention, this is the highest recorded rate ever in Australia and elsewhere);

- the community is in a constant state of despair and grief;

- there is extensive family violence being experienced in the region, with the women’s refuge being unable to cope with demand from women seeking refuge from violence at home;

- children are also now drinking and this is becoming normalised behaviour;

- local outpatient presentations from alcohol abuse is unacceptably high;

- local hospital statistics suggest that 85% of trauma patients are alcohol affected and 56% of all patients admitted are under the influence of alcohol;

- Police and justice statistics show a disproportionately high number of alcohol related incidents;

- local employers indicate finding and keeping people at work is difficult because of the consumption of liquor;

- school attendances are dropping; and

- there are gross child protection issues (i.e. a significant number of children under the age of five having Foetal Alcohol Syndrome).

The Centre submits that radical action is required in order to provide some respite for the community so that a proper alcohol-management plan; treatment and prevention program; aboriginal justice agreement; and other strategies to address the “...deplorable social situation...” can be implemented. These programs and initiatives are consistent with the National Drug Strategy for Aboriginal and Torres Strait Islander People.
Whilst acknowledging the additional voluntary restrictions proposed by the licensee, the Centre is of the view that those proposals did not go far enough. The Centre is requesting a 12 month moratorium (not a permanent ban) and only in respect of the Crossing Inn. If imposed, people seeking liquor will still be able to consume liquor on premises and tourists staying at the Fitzroy River Lodge will still be able to purchase packaged liquor at that venue. The Centre further contends that residents of the Fitzroy River Valley and other tourists will still be able to purchase packaged liquor throughout other means and in other towns (eg: Halls Creek, Derby, Broome) if required.

Furthermore, while the Centre recognizes that sly grogging is an issue, it is of the view that with the support of the police, community by-laws and any possible restricted area declaration, the various Aboriginal communities will be able to manage sly grogging in their dry communities.

Aboriginal elders also have a positive outlook on the possibilities that a moratorium offers, rather then a negative one in respect of the possible consequences.

The request by the Centre is supported by the Kimberley Aboriginal Law and Culture Council (“KALACC”). KALACC is one of three Kimberley-wide indigenous organisations which exists to promote indigenous law and culture for the various language groups in the region.

In addition, the Ministerial Council for Suicide Prevention supports the position of the Centre and submits in its letter of 28 August 2007 that there is an “…urgency of the need for a moratorium on take-away alcohol sales and other restrictions to reduce the social, emotional and physical harm associated with severe binge drinking in the Fitzroy valley region…”.

LICENSEE SUBMISSIONS

On 4 September 2007, Mr Wayne Bowen, on behalf of the joint venture licensee companies, lodged detailed submissions in support of its position. Instead of a 12 month moratorium, Mr Bowen provided a list of proposed restrictions which the joint venture partners believe will help address the level of harm in the community. That proposal is detailed in the submissions lodged on 4 September 2007. In summary, the Mr Bowen advises as follows:

- the owners are a part of a unique ownership model for aboriginal investment and self-sustainability;
- as a consequence of the establishment of the joint venture, Leedal Pty Ltd has:
  - spent more than $5 million on the acquisition of assets in Fitzroy, including the supermarket; Toll Transport Agency; and Post Office and resulted in employment opportunities for 81 local Aboriginal people;
  - established the Bugayani Binarri-Yu Education Project; and the Fitzroy Valley Youth Training Trust; and
  - the licensee has enacted voluntary restrictions on the sale and supply of liquor over the last 18 years, including an 18% reduction in weekly trading hours and a 27% reduction in trading hours during football season.

Mr Bowen also made submissions on what the joint venture partners believe may be the consequences of any restrictions.

Furthermore, in a letter dated 18 August 2007, the licensee advised of a public meeting it organised on 17 August 2007 at Billabong Park, where approximately 177 local people were present who purportedly supported the licensee’s position.

After considering the licensees submissions, the licensee was subsequently afforded the opportunity, on 10 September 2007, pursuant to section 64(2a) of the Act, to show cause why the following restrictive condition should not be imposed on the licence for a six month period:

\[ \text{The sale of packaged liquor, exceeding a concentration of ethanol in liquor of } 2.7 \text{ per cent at } 20^\circ\text{C, is prohibited for a six-month period commencing 1 October 2007.} \]

**WESTERN AUSTRALIAN POLICE SUBMISSIONS**

The Commissioner of Police acknowledges that excessive consumption of liquor within the Kimberley region is a significant causal factor in the high rates of violence, anti-social behaviour and violent crime. The abuse of alcohol contributes to the deteriorating well being and health of the community members and increased suicide rate of young males within the Kimberley region.
The Commissioner submits that reducing the level of liquor consumed in the Fitzroy Valley would have a positive impact on the community.

Additional police are to be based in Fitzroy Crossing.

**SHIRE OF DERBY / WEST KIMBERLEY SUBMISSIONS**

The Shire of Derby/West Kimberley passed a resolution (Minute No. 236/2007) stating –

“That Council supports in principle the concepts as proposed by the Marninwarntikura Women’s Resource Centre with regards to…12 month moratorium on take away alcohol sales in the Fitzroy Valley…”

While I have noted that the Shire has received a request from the Fitzroy Crossing Taxi company and supporters of the licensee for a referendum on the issue to be held in October, I have also noted the Shire’s position that “…any restrictions placed on alcohol in the Fitzroy Valley are the responsibility of the State.”

**HEALTH DATA AND INFORMATION**

The Drug & Alcohol Office (“DAO”) provided information relating to the health indicators in respect of Fitzroy Crossing. Between July 2004 and August 2007 there were a total of 16,921 presentations to the Fitzroy Crossing District Hospital emergency department, consisting of:

- 3,164 presentations in 2004/05;
- 7,611 presentations in 2005/06;
- 5,724 presentations in 2006/07; and
- 422 presentations in July and August of 2007.

When considering the three main categories under which alcohol-related presentations are categorised in the emergency department data system, an increase in presentation can be seen from 2004-05 to 2006/07:

- more than a three-fold increase in alcohol/drug use presentations in 2006/07 compared to the previous year (135 vs 40);
- more than a three-fold increase in factors influencing health status presentations in 2005/06 compared with 2004/05 (1431 vs 403); and
- nearly twice the number of presentations for injury/toxic drug effect in 2005/06 when compared to 2004/05 (627 vs 381).
However, these numbers do not give a full reflection of the community’s health burden, because not all presentations are emergencies and appointments to the hospital-run outpatient system are not reflected in the abovementioned numbers. However, according to the evidence submitted by DAO, the types of problems seen in relation to alcohol in remote clinic and hospital outpatients are similar to those presenting in the emergency department, with the addition of less-acute problems of social disadvantage, such as emotional abuse in the domestic environment, physical abuse, sexual abuse, infections (related to trauma, unhygienic environments, malnutrition, socio-economic issues, such as overcrowding, nutritional problems through the lack of food, healthy food options or choices, and emotional and physical problems, such as trauma, grief, fear, hopelessness and depression).

According to the submission of DAO, the alcohol problems experienced by the Fitzroy Valley community are complex and significant. Similarly, the problems leading to alcohol abuse are complex and multi-factorial, as are its consequences. In a written statement, Dr Joy Rowland, a Senior Medical Officer with the Fitzroy District Hospital, notes that:

“In my experience, and in discussion with community members, colleagues and patients, alcohol misuse is a significant problem in our community that results in damage to the individuals who drink, but also to their friends, families and neighbours who suffer physical, emotional and financial distress as a result. The abuse of alcohol has direct or indirect effects on many of our patients.”

Dr Rowland further notes that it is “…not uncommon for families or friends accompanying patients to the hospital to all be intoxicated themselves. Finding a sober relative or friend can be a challenge when organising discharge from the emergency department. This applies to children presenting as well – it is not unusual for a child to be accompanied by intoxicated relatives. Pregnant women attend intoxicated.”

Furthermore, while Dr Rowland would like to see a “…broad and holistic approach to the problems… with a view to long term sustainable and equitable solutions…” In the interim, I believe the vulnerable people in this town – the young, the old, the physically unwell, the mentally unwell, the traumatised – will benefit from at least temporary relief from the ongoing and incessant trauma and abuse which is currently caused by the excessive consumption of alcohol.”

Further, it is noted that DAO is seeking to engage Notre Dame University in a study of the level of alcohol and drug related harm in the Fitzroy Valley region. This study will assist in terms of a review and evaluation of any restrictions.
In terms of support services, DAO advise as follows:

- Nindilingarri Cultural Health Services has been granted funding to establish a prevention and treatment service and the Prevention Service commenced preliminary operations in September 2007;

- the Kimberley Population Health Unit operate a ‘Health for life’ program based in Fitzroy Crossing. This program aims to assist community members address alcohol and drug issues and implement strategies for building healthy families and community;

- the Kimberley Population Health Unit also run an in-hospital intervention program;

- Country Health Services, in conjunction with DAO, currently provide treatment and counselling services;

- the Fitzroy Hospital has a detox program; and

- research is being undertaken by ANU, Child Health Research, Notre Dame, and ARC into alcohol and drug use in the Kimberley region.

CONCLUSIONS

On 21 September 2007 the Marninwarntikura Fitzroy Women’s Resource & Legal Centre re-affirmed its position in relation to its request for a 12 month moratorium on the sale of packaged liquor in Fitzroy Crossing. Similarly, on 25 September 2007, the licensee lodged a submission re-affirming its view that a moratorium is not the solution.

In this respect, it should be noted that the authority provided by a licence to sell and supply liquor is a privilege, not a right, and licences are only granted where the licensing authority is satisfied it is in the public interest.

In that context, the fundamental principle of the Act is to regulate the sale, supply and consumption of liquor to minimise harm or ill-health caused to people or any group of people, due to the use of liquor, which has to be weighed against catering for the requirements of consumers for liquor and related services. Where the evidence before the licensing authority demonstrates that harm is occurring, the authority has an obligation and a responsibility to use its powers to control the disposal of liquor so as to minimise that harm.
In relation to Fitzroy Crossing, the group of people predominantly being affected by severe levels of harm are the local Aboriginal people. This group of people are a key ‘at risk’ group identified by the National Alcohol Plan, the Western Australia Drug and Alcohol Strategy 2005-2009, the Western Australia Alcohol Plan 2005-2009 and the Western Australia Aboriginal Alcohol and Other Drugs Plan 2005-2009. The serious harm to not only the physical health of individual community members, but also to the social health and fabric of communities as a consequence of alcohol use, is well documented. This research in essence reflects the ‘real world’ experience for people in Fitzroy Crossing.

Notwithstanding the fact that each of the stakeholders has presented various information, statistics and submissions to support their respective cases, I am satisfied, on the balance of probabilities, that high levels of alcohol-related harm are occurring in Fitzroy Crossing and that the flow of alcohol from the town’s only packaged liquor outlet is a major contributor.

In my consideration of this matter, I have taken into account the comments of Ipp J in Executive Director of Health v Lily Creek International Pty Ltd & Ors [2000] WASA 258, where, considering issues associated with the Act’s harm minimisation object, he said that “…a possibility of harm or ill-health of a particular serious nature will be sufficient to cause the Licensing Authority to impose stringent conditions on a licence… The decision in each case will depend on the particular circumstances… Section 33 of the Act confers upon the Licensing Authority an absolute discretion to grant or refuse an application on any ground that the Licensing Authority considers in the public interest. The potential of harm or ill-harm to people, irrespective of whether the harm or ill-health is proved on a balance of probabilities, would be a powerful public interest consideration. The section is therefore consistent with the view that the mere possibility of harm or ill-health would always be a relevant matter for the Licensing Authority when discharging its functions.”

In relation to these proceedings, section 64(3) provides for similar public interest considerations.

In my view, after considering all of the information and evidence available to me, and based on my own knowledge and perception of the issues, I am satisfied that the harm or ill-health caused to people in the Fitzroy Crossing community is of a particularly serious nature to warrant the imposition of the following condition on the hotel licence, in the public interest, for a period of six months, commencing 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 lodger (as defined in section 3 of the Act).
In this respect, I remind the licensee of the provisions of section 41(3) of the Act which limits the authority to sell liquor, under a hotel licence, to a lodger to only such quantities as might reasonably be consumed by that lodger on that day.

I also fully expect that the licensee, together with other community stakeholders, will continue to work together in an effort to find agreed solutions to the unacceptable levels of harm and ill-health due to liquor in the Fitzroy Valley region and that the licensee will continue with its voluntary restrictions, some of which have been in place for over 18 years.

Furthermore, it should be noted that I am prepared to review the aforementioned condition, within the six-month period, should it be warranted.

Barry A Sargeant
DIRECTOR OF LIQUOR LICENSING

27 September 2007