

CHILDREN ON THE APY LANDS COMMISSION OF INQUIRY

## **Appendices**

During the Inquiry, in addition to the Commissioner and Assistant Commissioners, 19 staff were employed although not all at the same time and none worked on a part-time basis. They were engaged by way of temporary contracts with the South Australian Government, temporary employment through recruitment agencies, or as individual consultants:

| <b>Position</b>                | <b>Name</b>         |
|--------------------------------|---------------------|
| Project manager                | Ms Angel Williams   |
| Senior Investigator            | Mr David Crocker    |
| Senior Investigator            | Ms Imogen Selley    |
| Senior Investigator            | Mr Linc Gore        |
| Media liaison                  | Ms Jenny Turner     |
| Researcher                     | Ms Sue Tilley       |
| Researcher                     | Ms Kellie Toole     |
| Researcher                     | Ms Rachel Hoffmann  |
| Legal Support Manager          | Ms Pauline Gill     |
| Legal Support                  | Ms Heather Barr     |
| Legal Support                  | Ms Jelena Jovanovic |
| Legal Support                  | Ms Briony Schulz    |
| Records Manager                | Ms Aleks Wragg      |
| Records Officer                | Ms Alex Papas       |
| Administrative Project Officer | Ms Teresa Sheridan  |
| Administrative Assistant       | Ms Belinda Berry    |
| Editor                         | Ms Cecile Storrie   |
| Field Trip Co-ordinator        | Mr John Wiley       |
| Field Trip Co-ordinator        | Mr Dave Eason       |

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## **A legislative history of sexual offences**

A sexual offence for the purpose of the Inquiry is defined in the *Commission of Inquiry (Children in State Care and Children on the APY Lands) Act 2004* to mean a sexual offence within the meaning of section 4 of the *Evidence Act 1936*. A sexual offence is defined in section 4 of the *Evidence Act 1936* to mean:

- a) rape, or
- b) indecent assault, or
- c) any offence involving unlawful sexual intercourse or an act of gross indecency, or
- d) incest, or
- e) any offence involving sexual exploitation or abuse of a child, or exploitation of a child as an object of prurient interest, or
- f) any attempt to commit, or assault with intent to commit, any of the foregoing offences.

There have been some changes to these sexual offences and penalties over the period covered by the allegations investigated within the Inquiry's terms of reference, namely up to 26 June 2007. The following is an analysis of those changes.

### **Rape**

At 26 June 2007, the offence of rape was defined in section 48 of the *Criminal Law Consolidation Act 1935 (CLC Act)*. It involves the proof of three matters: an act of sexual intercourse; that the child did not consent; that the alleged offender knew the child did not consent or was recklessly indifferent to whether the child was consenting. This offence of rape has been in section 48 of the CLC Act since 1936. The penalty has always been life imprisonment.

In the offence of rape and other offences involving sexual intercourse, any activity (whether of a heterosexual or homosexual nature) consisting of,

or involving penetration of, the labia majora or anus of a person, by any part of the body of another person, or by any object, or fellatio, or cunnilingus, constitutes sexual intercourse.

### **Indecent assault**

At 26 June 2007, the offence of indecent assault was defined in section 56 of the CLC Act. An indecent assault involves the proof of an assault in circumstances of indecency. In proving an offence of indecent assault, the question of whether the child consented is irrelevant. In 1975, section 56 was amended to refer to a person who indecently assaulted any person, not just a female. A person who indecently assaulted any female could be imprisoned for up to 5 years for a first offence and up to 7 years for any subsequent offence. A person who indecently assaulted a male could be imprisoned for up to 7 years. In 1982, the penalty was increased to eight years generally but up to 10 years where the victim was under 12 years of age. Since 15 May 2006, the higher penalty applied if the victim was under 14 years of age, or if the offence was 'an aggravated offence'. An example of aggravating circumstances would be if the offender deliberately and systematically inflicted severe pain on the victim; or if the offender used, or threatened to use, an offensive weapon when committing the offence.

### **Any offence involving unlawful sexual intercourse or gross indecency**

The offence of unlawful sexual intercourse has been set out in section 49 of the CLC Act since 9 December 1978. It is an offence to have sexual intercourse with any person under 17 years of age. The maximum penalty for the offence is life imprisonment if the child is under 12 years of age and 7 years if the child was 12 years of age or

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## A legislative history of sexual offences

older. Since 14 July 2005, the relevant age of the child was raised to 14 years of age. The penalty of life imprisonment remains and the other penalty was raised from 7 years to 10 years. The question of whether the child consented to the act of sexual intercourse is irrelevant. In 1976, the definition of sexual intercourse was extended to include anal intercourse and oral intercourse<sup>1</sup> but the definition was expanded from 1 December 1985.<sup>2</sup>

The offence of gross indecency has existed since 1936. Again, consent of the victim is no defence. For female victims the offence was set out in section 58<sup>3</sup> of the CLC Act and for male victims in section 71 of that Act.<sup>4</sup> From 2 October 1975, both female and male victims were covered by section 58. The penalty is imprisonment for a maximum of three years for a first offence and five years for any subsequent offence.

### Incest

The offence of incest has been set out in section 72 of the CLC Act since 1936. The section states: 'Any persons who, being related, either as parent and child or as brother and sister, have sexual intercourse with each other shall be guilty of incest and liable to be imprisoned for a term not exceeding seven years'.

### Any offence involving sexual exploitation or abuse of a child, or exploitation of a child as an object of prurient interest

Offences involving sexual exploitation or abuse of a child would include:

- (i) 'Abduction of male or female person'<sup>5</sup>, relating to the abduction of a person with intent to marry or have sexual intercourse. Since 15 May 2006 the maximum penalty has been 14 years
- (ii) 'Procuring females to be prostitutes' (amended in 1975 to include males)<sup>6</sup> with a maximum penalty of seven years
- (iii) 'Procuring defilement of females by threats or fraud'<sup>7</sup>, with a maximum penalty of seven years
- (iv) 'Procuring sexual intercourse'<sup>8</sup>, relating to procuring a person to have sexual intercourse by threats, intimidation, false pretences, false representations or other fraudulent means, with a maximum penalty of seven years
- (v) Commercial sexual services and related offences<sup>9</sup>, which include the use of children in commercial sexual services, with penalties up to life imprisonment, depending on the age of the child
- (vi) 'Indecent interference with children and females'<sup>10</sup>, with a maximum penalty of one year or a fine
- (vii) 'Persistent sexual abuse of a child'.<sup>11</sup>

<sup>1</sup> s. 5: 'Sexual intercourse' includes (a) the introduction of the penis of one person into the anus of another and (b) the introduction of the penis of one person into the mouth of another.

<sup>2</sup> s. 5: 'Sexual intercourse' includes any activity (whether of a heterosexual or homosexual nature) consisting of or involving (a) penetration of the vagina or anus of a person by any part of the body of another person or by any object; (b) fellatio; or (c) cunnilingus. The word 'vagina' was replaced with 'labia majora' from 26 May 1994.

<sup>3</sup> From 2 Jan. 1936 – 1 Oct. 1975.

<sup>4</sup> From 2 Jan. 1936 – 8 Nov. 1982. From 9 Nov. 1972 – 1 Oct. 1975, the relevant section was s. 69(1)(c).

<sup>5</sup> From 9 Dec. 1976, s. 59 CLC Act.

<sup>6</sup> From 2 Jan. 1936, s. 63. From 2 Oct. 1975, this was amended to include males.

<sup>7</sup> From 1 Jan. 1936 – 7 June 2000, s. 64. From 2 Oct. 1975, this was amended to include males.

<sup>8</sup> From 8 June 2000, s. 64.

<sup>9</sup> From 8 June 2000, Division 12, CLC Act.

<sup>10</sup> From 27 Nov. 1952 – 6 Dec. 1978, s. 57b. The terms 'child' and 'female' were deleted and changed to 'person' from 2 Oct. 1975.

<sup>11</sup> From July 1994, s. 74 CLC Act.

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Also, since 1 December 1983, section 58A of the CLC Act has made it an offence to incite or procure the commission by a child of an indecent act; or cause or induce a child to expose any part of his or her body with a view to gratifying prurient interest. The maximum penalty is two to three years.

### **Any attempt to commit, or assault with intent to commit, any of those offences**

This would also include sections 69 or 70 of the CLC Act, which from 2 January 1936 to 1 October 1975<sup>12</sup>, referred specifically to the offence of attempted buggery and assault with intent to commit buggery, with a maximum penalty of seven years.

<sup>12</sup> From 9 Nov. 1972 - 1 Oct. 1975, it became s. 69(1)(b)(i) and (ii).



## General and expert witnesses

The Inquiry heard evidence from 70 general or expert witnesses. The Inquiry also conducted a group hearing from 24 Teachers, Aboriginal Education Workers and students from schools on the Lands who are not named individually. The following list does not include people who gave evidence in confidence.

| <b>Name</b>              | <b>Title / Organisation</b>  |
|--------------------------|--|
| Abbott, Ms Maureen       | Indigenous Family Liaison Officer, Family Court of Australia, Northern Territory.  |
| Arthur, Ms Cheryl        | Youth Worker, Wiltja Residential Program, Woodville High School, Department of Education and Children's Services.                                    |
| Atkinson, Professor Judy | Professor of Indigenous Australian Studies, Gribi the College of Indigenous Australian Peoples, Southern Cross University, Lismore, New South Wales. |
| Baker, Mr Luke           | Male Health Program Co-ordinator, Nganampa Health Council Inc.   |
| Bakhtiarian, Dr Peyman   | Consultant Psychiatrist, Women's and Children's Hospital.  |
| Barrett, Mr Don          | Senior Sergeant and Community Constable Co-ordinator, South Australia Police.  |
| Barton, Mr Graeme        | Assistant Commissioner, Northern Operations, South Australia Police.   |
| Bawden, Ms Cheryl        | Acting Principal, Mimili Anangu School, Department of Education and Children's Services.   |
| Bell, Ms Christine       | Co-ordinator, Literacy, Numeracy & Health, Physical Education Teacher, Mimili Anangu School, Department of Education and Children's Services.        |
| Bennett, Mr Anthony      | Manager, Wiltja Residential Program, Woodville High School, Department of Education and Children's Services.   |
| Brown, Mr Colin          | Groundsman, Ernabella Anangu School, Department of Education and Children's Services.  |
| Burne, Mr Martyn         | Co-ordinating Principal, Anangu Pitjantjatjara Schools, AES, Department of Education and Children's Services.  |
| Casey, Ms Viviann        | Registered Nurse, Fregon Clinic, Nganampa Health Council Inc.  |
| Cross, Ms Judith         | Chief Executive Officer, Relationships Australia (SA).   |
| Donald, Dr Terence       | Director, Child Protection Services, Women's and Children's Hospital.  |
| Dunning, Mr Timothy      | Project Officer, APY Lands, Department of Education and Children's Services.   |
| Gell, Dr Kerrie          | Consultant Medical Practitioner, Nganampa Health Council Inc.  |
| Gillam, Ms Adrienne      | State Manager, Office of Indigenous Policy Co-ordination, Department for Families, Community Services and Indigenous Affairs.                        |
| Jacobson, Ms Margaret    | Municipal Service Officer, Indulkana.  |



## General and expert witnesses

| <b>Name</b>            | <b>Title / Organisation</b>   |
|------------------------|---|
| Kelly, Dr Martin       | Medical Practitioner, Nganampa Health Council Inc.  |
| Lally, Mr Noel         | Registered Nurse, Child Health Co-ordinator, Nganampa Health Council Inc.   |
| Larkin, Mr Christopher | Director, Aboriginal and Torres Strait Islander Services Division, Department for Families and Communities.         |
| Lawson, Ms Jacqui      | Senior Co-ordinator, APY Lands, Aboriginal Services Division, Department for Families and Communities.              |
| Lloyd, Ms Jane         | Principal Specialist, National Indigenous Intelligence Task Force, Australian Crime Commission, Northern Territory. |
| Loades, Ms Claire      | School Principal, Amata Anangu School.  |
| Mazel, Ms Joslene      | Executive Director, Aboriginal Affairs & Reconciliation Division, Department of the Premier and Cabinet.            |
| McDonald, Mrs Sandi    | Prosecutor, Office of the Director of Public Prosecutions, Attorney-General's Department.                           |
| McGavisk, Mr Colin     | District Director, APY Lands, Department of Education and Children's Services.                                      |
| McGuire, Ms Paula      | Teacher, Wiltja Residential Program, Woodville High School, Department of Education and Children's Services.        |
| McRae, Mr Brenton      | Former General Manager, APY Lands Council.  |
| Montgomery, Ms Kylie   | Youth Worker, Wiltja Residential Program, Woodville High School, Department of Education and Children's Services.   |
| Murphy, Ms Alana       | Primary Teacher, Mimili Anangu School, Department of Education and Children's Services.                             |
| Neill, Ms Kenise       | Supervisor, Coober Pedy District Centre, Families SA.   |
| Neller, Mrs Cassandra  | Middle Primary Teacher, Mimili Anangu School, Department of Education and Children's Services.                      |
| Osborne, Mr Samuel     | Principal, Ernabella Anangu School, Department of Education and Children's Services.                                |
| Packer, Mr Barry       | Essential Service Officer, Amata.   |
| Packer, Mrs Susanne    | Municipal Service Officer, Amata.   |
| Pearce, Mr Graeme      | Manager, Cross Border Justice Project, Department of Justice, Northern Territory.                                   |



## General and expert witnesses

| <b>Name</b>                                  | <b>Title / Organisation</b>   |
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| Peglar, Detective Brevet<br>Sergeant Kenneth | Sexual Crime Investigation Branch, South Australia Police.  |
| Ralfs, Ms Claire                             | Director of Services, Relationships Australia (SA).   |
| Ryan, Ms Rosemary                            | Assistant Manager, Wiltja Residential Program, Woodville High School,<br>Department of Education and Children's Services.                     |
| Sanchez, Associate<br>Professor Linnett      | Department of Speech Pathology and Audiology, Flinders University,<br>South Australia.  |
| Sawyer, Ms Bobbi                             | Regional Director, Northern Country Child and Adolescent Mental Health<br>Services, Port Pirie Regional Health Service, Department of Health. |
| Scales, Mr Ushmar                            | Anthropologist.   |
| Sells, Ms Erin                               | Teacher, Ernabella Anangu School, Department of Education and<br>Children's Services.   |
| Singer, Mr John                              | Director, Nganampa Health Council Inc.  |
| Smith, Mr Robert                             | APY Lands Service Coordinator, Umuwa.   |
| Stacey, Mr Brian                             | Deputy Commander of Operations, National Indigenous Intelligence Task Force,<br>Australian Crime Commission, Northern Territory.              |
| Stratton, Mr Mark                            | Manager, Coober Pedy District Centre, Families SA.  |
| Stubbs, Ms Brenda                            | Co-ordinator, Amata Family Centre, Department for Families and Communities.   |
| Tjitayi, Ms Katrina                          | Director, Pitjantjatjara Yankunytjatjara Education Committee, Ernabella Anangu<br>School, Department of Education and Children's Services.    |
| Trogenza, Mr John                            | Community Development Consultant, APY Lands.  |
| Tsernjawski, Ms Paula                        | Former Teacher and Principal, Pipalyatjara Anangu School, Department of<br>Education and Children's Services.                                 |
| Waddell, Dr Russell                          | Acting Director, Sexually Transmitted Disease Service, Royal Adelaide Hospital.   |
| Wall, Ms Shona                               | Team Program Officer, Country Regional Office, Families SA.   |
| Ward, Ms Fiona                               | Regional Director, Country Regional Office, Families SA.  |
| Willis, Dr Jon                               | Anthropologist, Lecturer Public Health, Latrobe University, Victoria.   |
| Wilson, Mr John                              | Health Services Manager, Nganampa Health Council Inc.   |
| Wilson, Mr Peter                             | Senior Sergeant, South Australia Police.  |
| Woolcock, Ms Judy                            | Literacy Coordinator, Amata Anangu School, Department of Education and<br>Children's Services.  |





## List of Written Submissions Received by the Inquiry

The Inquiry received 9 written submissions. One person provided a written submission in confidence and is not identified below:

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**Name / Organisation**

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Aboriginal Affairs and Reconciliation Division (AARD) of the Department of the Premier and Cabinet

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Aboriginal Legal Rights Movement (ALRM) Inc.

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Anangu Pitjantjatjara Yankunytjatjara (APY) Executive Board

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Department for Families and Communities (DFC)

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Families SA

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Indigenous Policy Section, Indigenous Law and Justice Branch, Attorney-General's Department  
(Commonwealth)

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Department of Health (South Australia)

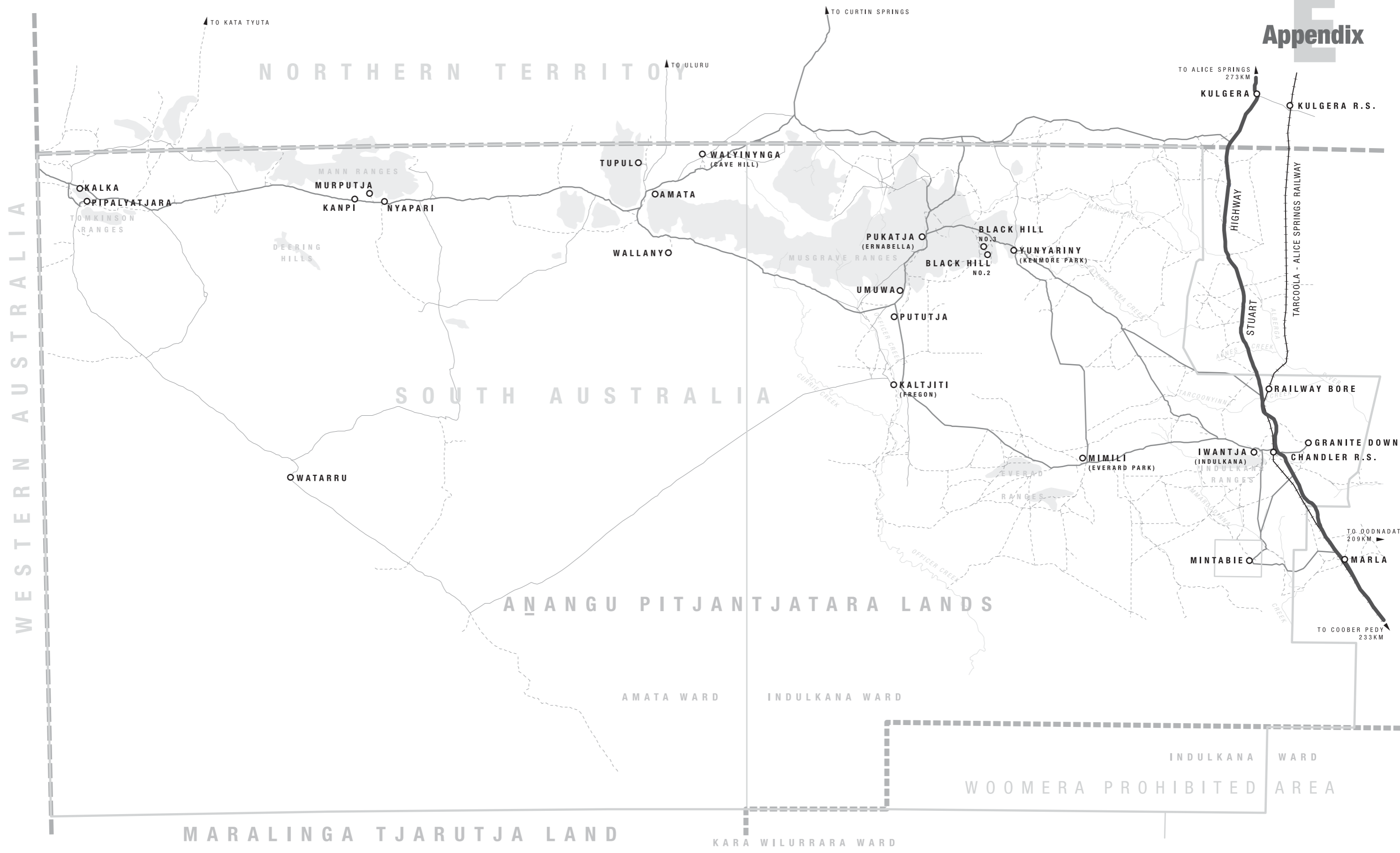
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Lines, Mr Bob - Principal Wiltja Residential Program, Woodville High School, Department of Education and  
Children's Services

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South Australia Police (SAPOL)

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WESTERN AUSTRALIA

NORTHERN TERRITORY

SOUTH AUSTRALIA

ANANGU PITJANTJATARA LANDS

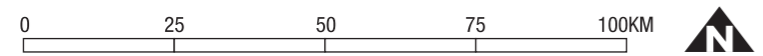
MARALINGA TJARUTJA LAND

KARA WILURRARA WARD

INDULKANA WARD

WOOMERA PROHIBITED AREA

- SECONDARY ROAD
- MINOR ROAD
- - - TRACK



# ANANGU PITJANTJATARA LANDS - SOUTH AUSTRALIA ABORIGINAL COMMUNITIES & HOMELANDS