

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:

Position	Name
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

B 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 intercourse¹ but the definition was expanded from 1 December 1985.²

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 58³ of the CLC Act and for male victims in section 71 of that Act.⁴ 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'⁵, 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)⁶ with a maximum penalty of seven years
- (iii) 'Procuring defilement of females by threats or fraud'⁷, with a maximum penalty of seven years
- (iv) 'Procuring sexual intercourse'⁸, 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 offences⁹, 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'¹⁰, with a maximum penalty of one year or a fine
- (vii) 'Persistent sexual abuse of a child'.¹¹

¹ 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.

² 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.

³ From 2 Jan. 1936 – 1 Oct. 1975.

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

⁵ From 9 Dec. 1976, s. 59 CLC Act.

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

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

⁸ From 8 June 2000, s. 64.

⁹ From 8 June 2000, Division 12, CLC Act.

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

¹¹ From July 1994, s. 74 CLC Act.

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A legislative history of sexual offences

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 1975¹², referred specifically to the offence of attempted buggery and assault with intent to commit buggery, with a maximum penalty of seven years.

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

E 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.

Name	Title / Organisation
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

Name	Title / Organisation
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

Name	Title / Organisation
Peglar, Detective Brevet 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, Department of Education and Children's Services.
Sanchez, Associate Professor Linnett	Department of Speech Pathology and Audiology, Flinders University, South Australia.
Sawyer, Ms Bobbi	Regional Director, Northern Country Child and Adolescent Mental Health Services, Port Pirie Regional Health Service, Department of Health.
Scales, Mr Ushmar	Anthropologist.
Sells, Ms Erin	Teacher, Ernabella Anangu School, Department of Education and 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, 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 School, Department of Education and Children's Services.
Tregenza, Mr John	Community Development Consultant, APY Lands.
Tsernjawski, Ms Paula	Former Teacher and Principal, Pipalyatjara Anangu School, Department of 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 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:

Name / Organisation

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

Aboriginal Legal Rights Movement (ALRM) Inc.

Anangu Pitjantjatjara Yankunytjatjara (APY) Executive Board

Department for Families and Communities (DFC)

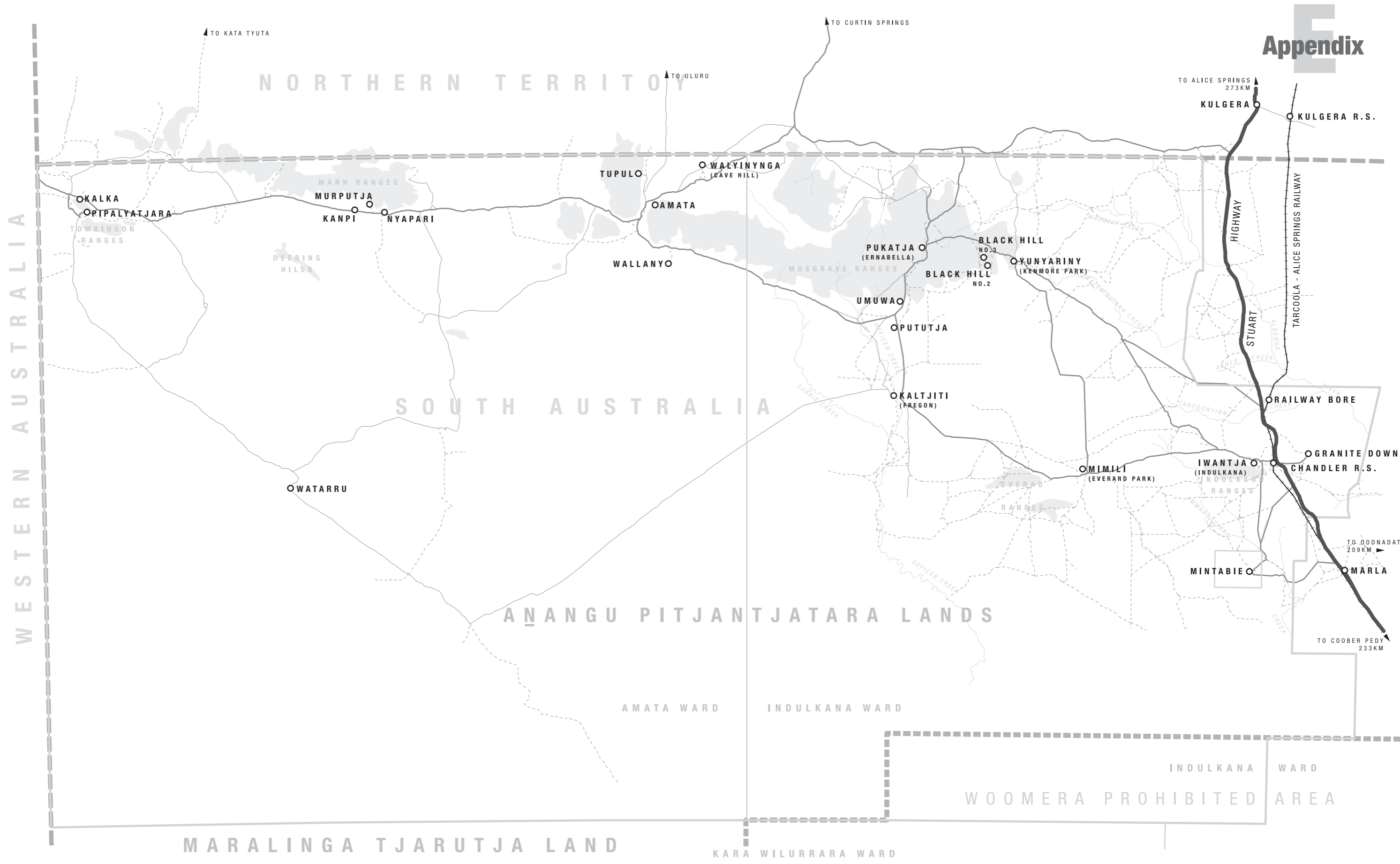
Families SA

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

Department of Health (South Australia)

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

South Australia Police (SAPOL)



WESTERN AUSTRALIA

NORTHERN TERRITORY

SOUTH AUSTRALIA

ANANGU PITJANTJATARA LANDS

MARALINGA TJARUTJA LAND

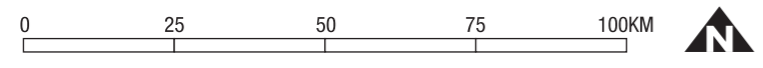
KARA WILURRARA WARD

AMATA WARD

INDULKANA WARD

INDULKANA WARD
WOOMERA PROHIBITED AREA

- SECONDARY ROAD
- MINOR ROAD
- - - TRACK



ANANGU PITJANTJATARA LANDS - SOUTH AUSTRALIA ABORIGINAL COMMUNITIES & HOMELANDS