Committee Secretary
Senate Foreign Affairs, Defence and Trade Committee
Department of the Senate
PO Box 6100
Parliament House
CANBERRA ACT 2600

SUBMISSION TO SENATE FOREIGN AFFAIRS, DEFENCE AND TRADE REFERENCES COMMITTEE ON THE DEFENCE LEGISLATION AMENDMENT (WOOMERA PROHIBITED AREA) BILL 2013 (SENATOR FARRELL'S PRIVATE MEMBERS BILL)

1. The purpose of this submission is:

    (a) to inform the Committee about the background to this legislation insofar as it relates to the Maralinga and Anangu Pitjantjatjara Yankunytjatjara ("APY") people; and

    (b) to request the Committee to support the removal of the Woomera Prohibited Area from Section 400.

2. The removal of the Woomera Prohibited Area is relevant to the *Defence Legislation Amendment (Woomera Prohibited Area) Bill 2013* ("the Bill") as section 72TP provides for the making of *The Woomera Prohibited Area Rules* by the Minister. These Rules have been drafted and made available to the public for comment. Rule 5 of the current draft Rules defines the Woomera Prohibited Area as including the northern half of Section 400 on the Maralinga Lands.

What are the Maralinga Lands?

3. The Maralinga Lands comprise 102,863.6 square kilometres of land in the north-west of South Australia. Approximately 40% of the Woomera Prohibited Area ("WPA") is currently covered by the Maralinga Lands.

4. The Maralinga Lands were handed back to the Maralinga Traditional Owners in December 1984 after the Traditional Owners had been denied access to these lands during the Maralinga nuclear test program from 1956-63 and indeed until 1984. This caused enormous cultural and social dislocation for the Traditional Owners who had been transferred to the Yalata Lutheran Mission in 1955.

5. The *Maralinga Tjarutja Land Rights Act 1984* (SA) ("the Act") redressed this by handing back the traditional lands of the Maralinga Traditional Owners to a corporate body, Maralinga Tjarutja, which was established by the Act to represent the interests of the traditional owners.

6. Section 4 of the Act established Maralinga Tjarutja as a body corporate whereby all Traditional Owners are members of Maralinga Tjarutja.

7. Section 5 of the Act establishes the functions of Maralinga Tjarutja ("MT") as follows:

    (a) to ascertain the wishes and opinions of Traditional Owners in relation to the management, use and control of the lands and to seek, where practicable, to give effect to those wishes and opinions; and

    (b) to protect the interests of Traditional Owners in relation to the management, use and control of the lands; and

    (c) to negotiate with persons desiring to use, occupy or gain access to any part of the land; and

    (d) to administer land vested in Maralinga Tjarutja.

The Woomera Prohibited Area and Section 400

8. The WPA occupies 127,000 square kilometres comprising 13% of South Australia or an area roughly twice the area of Tasmania.

9. Section 400 is the tract of land which was provided by freehold transfer from the State of South Australia to the Commonwealth in 1957 for the purpose of the British Nuclear Tests. It contains the nuclear test and minor trials sites and the Maralinga Village. Section 400 comprises 3,125 square kilometres or 2.5% of the total of the WPA.

10. The WPA still covers about half of Section 400 – being that portion of Section 400 on which the former atomic tests and minor trials sites are located. [See map - Appendix 1].

11. The Maralinga Traditional Owners are the largest landholder in the WPA. MT and APY are the only owners of significant areas of freehold land in the WPA.

The relationship of the Maralinga people to Section 400

12. The Maralinga and APY people were the original occupiers of most of the WPA.

13. The Royal Commission into British Nuclear Tests in Australia heard evidence in 1985 as to the extent of the contamination of the nuclear and minor trial sites at Section 400 and recommended that the sites be cleaned up in consultation with MT.

14. After years of negotiation, the Commonwealth, South Australia and MT agreed on an appropriate cleanup of the nuclear and minor trial sites at Section 400. This occurred between 1993 and 2001.

15. In summary, the result of the rehabilitation program for the nuclear and minor trial sites at Section 400 was that the Commonwealth spent over $100 million rehabilitating the sites and the Maralinga Village to a point where all but 200 square kilometres are now fit for permanent Aboriginal habitation. This extensive rehabilitation was performed in conjunction with South Australia and Maralinga Tjarutja.

16. The 200 square kilometres which are not fit for permanent Aboriginal habitation are lightly contaminated with plutonium and thus pose a risk to Aborigines living a traditional lifestyle, where the level of exposure to dust (which may include plutonium) and the risk of ingesting plutonium in dust or animals is greater than for the rest of the population.

17. In addition, there are many burial trenches containing debris from the British tests – the entire contents of which are not fully known.

18. Upon completion of the rehabilitation, the Commonwealth negotiated for over five years with South Australia and Maralinga Tjarutja and resolved all issues relating to the hand-back of Section 400 to the Maralinga Traditional Owners. The negotiations included:

    - a compensation package to MT to meet the cost of ongoing maintenance of Section 400 and the Maralinga Village;

    - comprehensive indemnities provided by the Commonwealth to the State and MT in relation to personal injury claims arising from the nuclear test program; and

    - a Maralinga Land Management Plan in which MT, the Commonwealth and the State share responsibility for the further management of the former atomic test sites.

19. The hand-back of Section 400 to MT took place on 18 December 2009.

20. As part of the negotiations and the consequent legislative amendments, the South Australian Government agreed that the *Mining Act 1971* (SA) would not apply to the rehabilitated nuclear test sites, as all parties agreed that it was inappropriate for mining exploration to be allowed to take place over an area which contains plutonium buried in engineered burial trenches and fine particulate plutonium from the minor trials still deposited over nearly 200 square kilometres (in circumstances where the half-life of plutonium is 24,500 years) and also includes burial trenches from the atomic test era.

21. Under the Maralinga Land Management Plan, MT is responsible for controlling access to the Maralinga Village and the former atomic and minor trials sites. MT has successfully controlled access by a combination of a permit system, locked gates at the only public road entrance to Section 400, and a permanent security officer/caretaker based at Maralinga Village.

22. Since the hand-back, and with the support of the Commonwealth, Maralinga Tjarutja has developed a tourism enterprise conducting guided tours of the atomic test sites and the Village. These are highly regarded, operate for most of the year, and are a very important source of income for Maralinga Tjarutja.

MT's and APY'S attitude to and track record in relation to mining on their lands

23. Pursuant to Division 4 of the *Maralinga Tjarutja Land Rights Act 1984* (SA) any holder of an exploration tenement who wishes to explore on the Maralinga Lands must obtain permission from MT to do so. The Act provides for compensation to be negotiated with MT in relation to

disturbance to the lands and the ways of life of the traditional owners occasioned by exploration or mining. The *Anangu Pitjantjatjara Yankunytjatjara Land Rights Act 1981* (SA) contains almost identical provisions.

24. In the almost 30 years that this mining access regime has been in place under the *Anangu Pitjantjatjara Yankunytjatjara Land Rights Act 1981* (SA) and the *Maralinga Tjarutja Land Rights Act 1984* (SA) both land holding bodies have negotiated constructively and successfully with potential mining and petroleum explorers. APY and MT both welcome mining and petroleum exploration and consider the opening up of the WPA to mining and petroleum exploration as an important initiative for the State and for Traditional Owners. MT and APY support this initiative.

25. Apart from the fact that MT and APY say that the WPA should no longer cover their lands, their other major concern is the very poor initial efforts at consultation by the Department of Defence and the Hawke Review in relation to this whole issue.

History of the consultations between MT and APY and Department of Defence over these amendments

26. In May 2011 MT first heard about the Hawke Review of the WPA which was completed on 4 February and released on 3 May 2011. There had been no consultation with Maralinga Tjarutja before the publication of the final report. A copy was obtained and researched by Maralinga Tjarutja. It differed markedly from the Interim Report in that it no longer included "indigenous freehold land" in the Terms and Definitions, and almost all of the many references to indigenous people, usually regarding the cultural and spiritual significance of the land, had been excluded from the final report.

27. MT wrote to the Minister of Defence in July 2011 drawing attention to the obligations to consult under the *Maralinga Tjarutja Land Rights Act 1984* (SA) and noting that the Review did not take cognisance of the hand-back of Section 400 to Maralinga Tjarutja on 18 December 2009 following the enactment of the *Maralinga Tjarutja Lands Rights (Miscellaneous) Amendment Act 2009* (SA). Maralinga Tjarutja asked for urgent consultation. However, no consultation ensued. This only changed after the Bill was released for discussion and Maralinga Tjarutja demanded again that the Department of Defence consult with the largest land owner in the WPA. Consultations have taken place, but only in the last few months. Those consultations have not reached a satisfactory outcome in relation to the request by Maralinga Tjarutja and APY that the WPA be removed from Section 400.

Why the WPA should be removed from section 400

28. MT says that the argument for removing the WPA from the remainder of Section 400 is overwhelming – for, at least, the following reasons:

    - the Commonwealth has spent over $100 million since 1995 rehabilitating these sites and the Maralinga Village to a point where all but 200 square kilometres are now fit for

permanent human habitation. This extensive rehabilitation was performed in conjunction with South Australia and MT;

- upon completion of the rehabilitation, the Commonwealth negotiated for over five years with South Australia and MT and resolved all issues relating to the hand-back of Section 400 to the State and then to MT. As part of the negotiations and the consequent legislative amendments, the South Australian *Mining Act 1971* does not apply to Section 400, in essence, because all parties agreed that it was inappropriate for mining exploration to be allowed to take place over an area which contains plutonium buried in engineered burial trenches;

- as a result, MT now owns Section 400 and strictly controls access to the whole of Section 400 in accordance with a Land Management Agreement negotiated with the Commonwealth and South Australia;

- consequent upon the hand-back, and with the support of the Commonwealth, MT has developed a tourism enterprise conducting guided tours of the atomic test sites and the Village. These are highly regarded and are a very important source of income for MT;

- just as the State of South Australia has exempted Section 400 from the ambit of the *Mining Act 1971* (SA), MT says that it is highly inappropriate for Defence to conduct weapons tests over an area of land which has been successfully rehabilitated but where there are still 200 square kilometres of plutonium-contaminated land; and

- MT and APY say that the APY and Maralinga people have suffered enough as a result of weapons testing on their lands - from the dislocation of the Maralinga people from their traditional lands for 30 years, to the deposition of fallout and radioactive materials over the APY and Maralinga Lands, to the need to rehabilitate and manage the MT Lands as a result. This is the appropriate time to recognise the injustices already suffered by them.

APY position

29. APY supports fully the position of MT in relation to the removal of the WPA from Section 400.

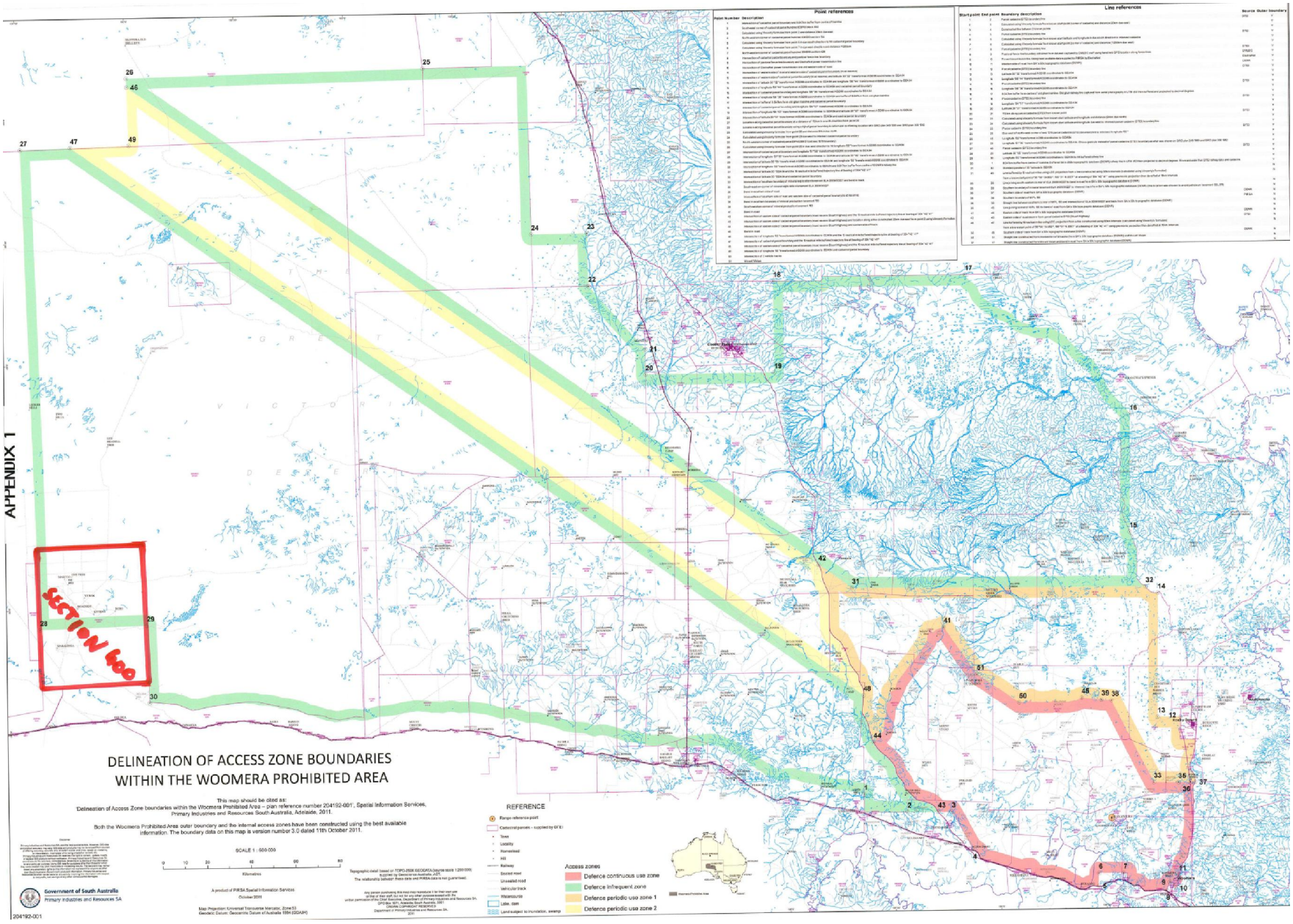
30. There is a strong connection between the APY and MT Traditional Owners as they traditionally live on the lands of each other and thus their interests are interconnected.

Dated the 10th day of January 2014

Andrew Collett

Counsel for MT and APY

Appendix 1: Map of Section 400



Appendix 2: HISTORY OF AREA OF WPA FROM 1948 TO DATE

- On 12 January 1948 a small area near Woomera was declared prohibited under the *National Security (Munitions) Regulations*. Its boundary was uncertain.

- On 14 April 1949 a larger and more certain area was declared prohibited under Regulation 5 of the *Supply and Development (Long Range Weapons) Regulations*.

- On 20 December 1951 a relatively vast area to the north-west of Woomera was declared prohibited under Regulation 90(1) of the *Supply and Development Regulations*. It extended 94 miles into the Maralinga lands.

- On 12 March 1953 a specified area was declared under Regulation 90(1) of the *Supply and Development Regulations*. It added all of the area to the west from the north-western corner of Mulgathing Station as far as the Western Australian border, across the Great Victorian Desert.

- On 2 July 1953 the whole area included in all previous declarations was declared prohibited under section 8 of the *Defence (Special Undertakings) Act 1952* (Cth).

- On 10 March 1955 under Regulation 90(1) of the *Supply and Development Regulations* land not previously included was added, from the railway line to the south, the Western Australian border in the west, latitude 30 degrees South in the north and around Bon Bon Station in the east.

- On 17 June 1957 the 2 July 1953 declaration was revoked and under section 8 of the *Defence (Special Undertakings) Act 1952* (Cth) two adjoining prohibited areas were declared, the Maralinga Prohibited area to the west as far as the border, and the Woomera Prohibited Area from Arcoona Station to the west.

- On 5 December 1968 the 17 June 1957 Maralinga Prohibited Area declaration was revoked under the *Defence (Special Undertakings) Act 1952* (Cth), leaving Section 400 prohibited as before.

- On 14 September 1972 the Woomera Prohibited Area was revoked under *Defence (Special Undertakings) Act 1952* (Cth) but declared a prohibited Area under Regulation 90(1) of the *Supply and Development Regulations*. It excluded approximately half of Section 400 in the south across the Ooldea Range.

- On 11 April 1978 "All that piece of land situate in the State of South Australia known as the Woomera Prohibited Area and delineated on the plan deposited in the General Registry Office at Adelaide and numbered 982 of 1972" was declared under Defence Force Regulation 35 of the *Defence Act 1903* (Cth).