South Australia

ROXBY DOWNS (INDENTURE RATIFICATION) (AMENDMENT OF INDENTURE) AMENDMENT ACT 1996

No. 93 of 1996

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ANNO QUADRAGESIMO QUINTO

ELIZABETHAE II REGINAE

A.D. 1996

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No. 93 of 1996

An Act to amend the Roxby Downs (Indenture Ratification) Act 1982.

[*Assented to 12 December 1996*]

The Parliament of South Australia enacts as follows:

Short title

1. (1) This Act may be cited as the *Roxby Downs (Indenture Ratification) (Amendment of Indenture) Amendment Act 1996.*

(2) The *Roxby Downs (Indenture Ratification) Act 1982* is referred to in this Act as "the principal Act".

Interpretation

2. In this Act—

"**Indenture**" means the Olympic Dam and Stuart Shelf Indenture, a copy of which is set out in the schedule of the principal Act.

Amendment of s. 7—Modification of State law

3. Section 7 of the principal Act is amended—

(a) by striking out paragraphs *(a)* to *(i)* (inclusive) of subsection (2) and substituting the following paragraphs:

(a) the following Acts are to be construed subject to the provisions of the Indenture:

(i) the *Commercial Arbitration Act 1986*; and

(ii) the *Crown Lands Act 1929*; and

(iii) the *Development Act 1993*; and

(iv) the *Electricity Corporations Act 1996*; and

(v) the *Environment Protection Act 1993*; and

(vi) the *Harbors and Navigation Act 1993*; and

(vii) the *Mining Act 1971*; and

(viii) the *Petroleum Act 1940*; and

(ix) the *Real Property Act 1886*; and

(x) the *Residential Tenancies Act 1995*; and

(xi) the *Stamp Duties Act 1923*; and

(xii) the *Water Resources Act 1990*,

and, to the extent of any inconsistency between the provisions of those laws and of the Indenture, the provisions of the Indenture prevail; and

(b) the provisions of the laws of the State under which any royalty, rate, tax or impost may be levied or imposed (whether by a party to the Indenture or not) are to be construed subject to the provisions of the Indenture relating to the levying or imposition of royalties, rates, taxes or imposts and, to the extent of any inconsistency between the provisions of those laws and of the Indenture, the provisions of the Indenture prevail; and

(c) the provisions of the laws of the State relating to the granting or resumption of estates or interests in land are to be construed subject to the provisions of the Indenture and, to the extent of any inconsistency between the provisions of those Acts and of the Indenture, the provisions of the Indenture prevail; and

(d) the *Crown Lands Act 1929* is to be construed as conferring on the Governor sufficient power to make the grants and dedication of land contemplated by clause 24 of the Indenture and to grant the leases, licences, easements and rights of way contemplated by clause 27 of the Indenture; and

(e) it is not necessary for an applicant for a Special Exploration Licence or a Special Mining Lease to peg or mark out any land, nor is the holder of such a Special Tenement to be subject to any requirement in relation to the pegging or marking out of lands subject to the Tenement; and

(f) the Minister has power to grant and renew a pipeline licence under the *Petroleum Act 1940* in accordance with clause 19A of the Indenture; and;

(b) by striking out paragraphs *(m)* and *(n)* of subsection (2).

Amendment of Indenture

4. (1) The Indenture is amended in the manner set out in the schedule of the Amendment Deed contained in the schedule of this Act.

(2) The amendments of the Indenture are ratified and approved.

SCHEDULE

Amendment Deed

AMENDMENT DEED

BETWEEN

THE STATE OF SOUTH AUSTRALIA (the "State")

AND

MINISTER FOR MINES AND ENERGY the Minister administering the Mining Act, 1971 (S.A.) a body corporate pursuant to the provisions of the Administrative Arrangements Act, 1994 (SA) **(the "Minister")**

AND

WMC (OLYMPIC DAM CORPORATION) PTY LTD (A.C.N. 007 835 761) (formerly named Roxby Mining Corporation Pty Ltd) a proprietary company incorporated in South Australia and whose registered office is situated at 16th Floor, 60 City Road, Southbank, Victoria and its principal place of business in South Australia at 1 Richmond Road, Keswick, South Australia ("ODC")

AND

WMC RESOURCES LTD (A.C.N. 004 184 598) (formerly named Western Mining Corporation Limited) a public company incorporated in Victoria and whose registered office is situated at 16th Floor, 60 City Road, Southbank, Victoria ("WMC").

RECITALS

A. On 3 March 1982, the Indenture was entered into between the parties to this Deed, BP Australia Limited (A.C.N. 004 085 616) and BP Exploration Operating Company Limited (A.R.B.N. 007 506 943) (formerly named BP Petroleum Development Limited) providing for, among other things, the establishment and development of certain of the State's mineral resources.

B. The Indenture was ratified and approved and its implementation authorized pursuant to the Roxby Downs (Indenture Ratification) Act, 1982.

C. On 8 May 1987 and in accordance with the provisions of clause 36 of the Indenture, BP Australia Ltd and BP Exploration Operating Company Pty Ltd assigned all of their respective interests under the Indenture to BP Minerals (Roxby Downs) Pty Ltd (A.C.N. 000 009 816).

D. On 31 March 1993 and in accordance with the provisions of clause 36 of the Indenture, the said BP Minerals (Roxby Downs) Pty Ltd assigned all of its interest under the Indenture to ODC.

E. The Joint Venturers (as defined in the Indenture) or any of them intend to undertake a Subsequent Project or Subsequent Projects for the material expansion of the Initial Project and any Subsequent Projects already undertaken (both as defined in the Indenture).

F. The Joint Venturers also intend to undertake, as part of such Subsequent Project or Subsequent Projects and in accordance with the Indenture as amended by this Deed, the production of Non-minesite Product (as defined in the Indenture as amended by this Deed).

G. Further to recital (g) of the Indenture, it is in the interests of the State that the development of the mineralization within the Olympic Dam and Stuart Shelf Areas (both as defined in the Indenture) be continued.

H. The parties have agreed to amend the Indenture, for the purpose, among others, of giving to the Joint Venturers the security and assurances contained in the Indenture as amended by this Deed which will facilitate the provision of finance for the continuation of the development of the said mineralization.

I. The parties have agreed as to the provision of the infrastructure, facilities and services required pursuant to the Indenture as amended by this Deed at the townsite (as defined in the Indenture) and elsewhere appropriate to the scale of the Joint Venturers' operations or of any one of them, from time to time, up to the production of 350,000 tonnes per annum of contained copper in saleable Product, saleable Non-minesite Product and associated by-products.

J. The Joint Venturers or any of them, in conjunction with the State, intend to take adequate measures to safeguard the public, the workforce and the environment in relation to the undertaking and completion of the said Subsequent Project or Subsequent Projects.

K. The parties have agreed to amend the Indenture in the manner set out in the Schedule in relation to, among other matters, the undertaking of the said Subsequent Project or Subsequent Projects and the provision of infrastructure, facilities and services.

THE PARTIES COVENANT AS FOLLOWS

1. **INITIAL GOVERNMENT OBLIGATIONS**

The Mines Minister (as defined in the Indenture) shall cause the Government of the State, as soon as practicable after the execution of this Deed, to introduce into and sponsor in the Parliament of the State a Bill, in the form initialled by or on behalf of the parties, for an Act to be entitled "The Roxby Downs (Indenture Ratification) (Amendment of Indenture) Amendment Act, 1996" to, among other things, approve and ratify the amendments to the Indenture specified in the Schedule in all respects in the form executed by the parties hereto, and the said Government will endeavour to secure the passage of that Bill through the said Parliament and have it commence to operate as an Act prior to 1 January 1997, or such later date as the parties hereto may have mutually agreed (and any failure so to agree shall not be arbitrable).

2. CONDITION PRECEDENT

2.1 The provisions of this Deed, other than clause 1, shall not come into operation unless and until the Bill, referred to in clause 1 in the form initialled by or on behalf of the parties hereto or in such other terms as the parties to this Deed may agree in writing (and any failure so to agree shall not be arbitrable), has been passed by the Parliament of the State, has received the Governor's assent and has commenced to operate as an Act (either on the day the Governor's assent was given or on some other day proclaimed to be the date upon which the Act shall come into operation) prior to 1 January 1997 or such later date mutually agreed by the parties pursuant to clause 1.

2.2 If the Bill referred to in clause 1 is not passed by the Parliament of the State in the form initialled by or on behalf of the parties hereto or in such other terms as the parties to this Deed may agree in writing (and any failure so to agree shall not be arbitrable) on or before 1 January 1997, or such later date as mutually agreed by the parties pursuant to clause 1 so as to commence to operate as an Act prior to 1 January 1997 or that later date, this Deed will then cease and determine and none of the parties hereto will have any claim against any other of them with respect to any matter or thing arising out of, done, performed or omitted to be done or performed pursuant to this Deed.

3. AMENDMENTS TO THE INDENTURE

The parties agree to amend the Indenture in the manner specified in the Schedule.

4. ENTIRE AGREEMENT

4.1 The Schedule contains the entire agreement between the parties in relation to the amendments to the Indenture contained in the Schedule and supersedes and extinguishes all prior agreements or understandings, if any, between the parties as to those amendments as set out in the Schedule.

4.2 No other agreement as to any of the amendments to the Indenture contained in the Schedule, whether collateral or otherwise, has been formed or shall be construed to have been formed between the parties by reason of any promise, representation, inducement or undertaking given or made by one party to another prior to the date of this Deed.

4.3 No estoppel, representation or undertaking in relation to any of the amendments to the Indenture contained in the Schedule, on which a party may rely as against another party, has been made or given or shall be construed to have been made or given prior to the date of this Deed.

5. **COSTS**

Each party shall bear his or its own costs of or incidental to the negotiation, preparation or execution of this Deed and of any other documents to be prepared and executed pursuant to this Deed.

EXECUTED UNCONDITIONALLY AS A DEED on the day of 1996.

SIGNED, SEALED and **DELIVERED**)
)
by the Honourable the Premier Dean Craig Brown)
)
....
for and on behalf of the State of South)
)
Australia in the presence of:)

....
Witness

....
Name

THE COMMON SEAL of the **MINISTER FOR**)
)
MINES AND ENERGY was hereunto affixed in)
)
the presence of:)

....
Witness

....
Name

SIGNED, SEALED AND DELIVERED for	)
and on behalf of	)
WMC (OLYMPIC DAM CORPORATION) PTY	)
LTD (A.C.N. 007 835 761) by its duly	)
constituted Attorney pursuant to a	)
....	
Power of Attorney dated ....,	)
....	
who has not received any notice of the revocation	) Full Name of Attorney
	) (Block Letters)
of that Power of Attorney, in the presence of:	)
....	
	) Position Held

....

Witness

....

Name

SIGNED, SEALED AND DELIVERED for	)
and on behalf of	)
WMC RESOURCES LTD (A.C.N. 004 184 598)	)
by its duly constituted Attorney pursuant to a	)
....	)
Power of Attorney dated ....,	)
....	
who has not received any notice of the revocation	) Full Name of Attorney
	) (Block Letters)
of that Power of Attorney, in the presence of:	)
....	
	) Position Held

....

Witness

....

Name

THE SCHEDULE

1. Table of Contents

   (a) Insert "19A. Pipeline Licence" after item 19.

   (b) Insert "30A. Safety Net" after item 30.

   (c) Inset "32A. Production of Non-minesite Product" and "32B. Royalties in respect of Non-minesite Product" after item 32.

2. Recital (d)

   (a) Replace "150,000" with "350,000" in the sixth line.

   (a) Insert a comma after "Product" in the seventh line and then also insert the words "saleable Non-minesite Product".

3. Subclause 1(1)

   (a) Insert the following phrase at end of the definition of "ore"

   "but excludes Non-minesite Materials".

   (b) Insert the following definitions after the definition of "municipality":

   "'Non-minesite Materials' means any of copper, gold or silver, or other mineral approved by the Minister in any of the following forms:

   (a) in the form of concentrate, fluxing agent, slime or slag, or any other form approved by the Minister which has been obtained from ore not extracted from lands comprised in a Special Mining Lease; or

   (b) in the form of ore not extracted from lands comprised in a Special Mining Lease but extracted from lands within South Australia.

   "'Non-minesite Product' means all saleable mineral production from a treatment plant and produced from Non-minesite Materials for the benefit of the Joint Venturers or any of them".

   (c) Insert the following definition after the definition of "person":

   "'petroleum' means 'petroleum' as defined in the Petroleum Act, 1940".

(d) Insert the following definition after the definition of "Pilot Plant":

"'Pipeline Licence' means the pipeline licence granted, in accordance with Clause 19A, pursuant to the Petroleum Act, 1940 and the ratifying Act and includes any new pipeline licence granted pursuant either to any agreement entered into pursuant to Clause 30A or to subclause 30A(4)".

(e) Insert the following phrase at the end of the definition of "Product":

"but excludes Non-minesite Product".

(f) Insert the following words at the end of the definition of "Special Buffer Zone Lease":

"and includes any new Special Buffer Zone Lease granted pursuant either to any agreement entered into pursuant to Clause 30A or to subclause 30A(4)".

(g) Insert the following words at the end of the definition of "Special Exploration Licence":

"and includes any new exploration licence granted pursuant either to any agreement entered into pursuant to Clause 30A or to subclause 30A(4)".

(h) Insert the following words at the end of the definition of "Special Mining Lease":

"and includes any new mining lease granted pursuant either to any agreement entered into pursuant to Clause 30A or to subclause 30A(4)".

(i) Insert the following words at the end of the definition of "Special Water Licence":

"and includes any new water licence granted pursuant either to an agreement entered into pursuant to Clause 30A or to subclause 30A(4)".

(j) Insert the following words at the end of the definition of "Subsequent Project":

"and also includes the production of Non-minesite Product and ancillary and related activities including infrastructure, always both in conjunction with the Initial Project or any Subsequent Project for the production of Product and in accordance with Clause 32A of the Indenture".

(k) Insert the following definition after the definition of "treatment plant":

"'Water Resources Act' means the Water Resources Act, 1990 including the amendments to that Act for the time being in force and also any Act passed in substitute therefor or in lieu thereof and the regulations and by-laws for the time being in force thereunder".

4. Paragraph 6(2)(a): insert after the word "Product" in the second line of paragraph 6(2)(a) the following words:

"and in respect of the treatment, transport and shipment of Non-minesite Materials and Non-minesite Product"

5. Paragraph 6(3)(a)

(a) Insert the words "or all stages of treatment of Non-minesite Materials" after the word "ore" in the first line.

(b) Insert the words "or the tonnages of Non-minesite Materials to be treated" after "treated" in the second line.

6. Subclause 9(1)

(a) Replace "150,000" with "350,000" in the fifth and fourteenth lines.

(b) Insert a comma after "Product" in the sixth and fifteenth lines and then insert the words "saleable Non-minesite Product" in each case.

7. Subclause 10(1): delete the existing paragraphs (a), (b), and (c) and replace them with the following provisions:

"(a) "Code of Practice on Radiation Protection in the Mining and Milling of Radioactive Ores, 1987", published for the Commonwealth Department of the Arts, Sport, the Environment, Tourism and Territories in 1987 by the Australian Government Publishing Service (International Standard Book Number I.S.B.N. 0644 07101 X).

"(b) "Code of Practice for the Safe Transport of Radioactive Substances, 1990," published for the Department for the Arts, Sport, the Environment, Tourism and Territories by the Australian Government Publishing Service (International Standard Book Number I.S.B.N. 0 644 1186 1).

"(c) "Code of Practice on the Management of Radioactive Wastes from the Mining and Milling of Radioactive Ores, 1982", published for the Department of Home Affairs and Environment, by the Australian Government Publishing Service (International Standard Book Number I.S.B.N. 0 644 02066 0)."

8. Subclause 13(3)

(a) Replace "150,000" with "350,000" in the seventh line.

(b) Insert a comma after "Product" in the eighth line and then insert the words "saleable Non-minesite Product".

9. Subclause 13(4A): insert the following new subclause 13(4A) after the existing subclause 13(4).

"13(4A)(a) (i) Paragraph (c) of this subclause (4A) shall operate subject to and only impose or create obligations on the State or the South Australian Water Corporation in the following manner:

(1) to the extent that paragraph (c) is not unlawful, invalid, unenforceable, illegal or void, is voidable and avoided or is otherwise contrary to the Competition Policy Reform (South Australia) Act, 1996, the Competition Code or any other law or regulation, howsoever applying or in force pursuant thereto or otherwise, in relation to the establishment, implementation, operation or enforcement of national competition policy as envisaged by that legislation or the Conduct Code Agreement referred to in the Competition Policy Reform (South Australia) Act, 1996, irrespective of when any such law or regulation is enacted; and

(2) the obligations in paragraph (c) shall not exist or have any force or effect if the State's or the South Australian Water Corporation's agreement to this subclause prevents, reduces, delays or adversely affects or derogates from the Commonwealth's obligations to make any payment to the State or the State's rights to receive any such payments in relation to the establishment, implementation or operation of national competition policy pursuant to the Agreement to Implement the National Competition Policy and Related Reforms dated 11 April 1995 made between the Commonwealth and each of the States and Territories, to any other agreement amending or replacing that Agreement or to any law or regulation applicable to any such payment enacted or promulgated respectively after the date of that Agreement.

(b) If any of the provisions of paragraph (c) of this subclause (4A) is unlawful, invalid, unenforceable, illegal or void, is voidable and avoided or is otherwise contrary to the provisions of any law or regulation referred to in subparagraph (a)(i)(1) above, then the obligations paragraph (c) shall not exist or create or impose obligations on the State or the South Australia Water Corporation to the extent that the existence or performance of such provisions would have any such relevant effect or consequence.

(c) Subject to subparagraphs (a) and (b), if and only if the following events occur:

(i) the Joint Venturers or any of them construct the Pipeline;

(ii) the Joint Venturers or any of them is granted, obtains or otherwise acquires licences for the taking of water from the River Murray;

(iii) the relevant Joint Venturers have given the State, at any time before, during or after construction of the Pipeline, not less than four (4) years' written notice either that they require the State to make potable water available to them at Port Augusta or that they require the State to reserve pipeline capacity in the Morgan-Whyalla pipeline system for that purpose; and

(iv) the relevant Joint Venturers' said written notice specifies the date on which they require the State actually to make available to them potable water at Port Augusta,

then the following provisions shall apply.

(v) Subject to subparagraphs (vi) and (ix), the South Australian Water Corporation shall make available to the relevant Joint Venturers at Port Augusta the lesser of either 9,000 kilolitres of potable water per day or of the volume of water per day equivalent to the volume of water from the River Murray made available at Morgan to the South Australian Water Corporation by the relevant Joint Venturers from time to time pursuant to the licences referred to in subparagraph (ii) above by the date agreed between the parties, or in the absence of any such agreement, then the last to occur of the following dates:

(1) the date specified in the relevant Joint Venturers' said notice;

(2) the fourth anniversary of the date of the relevant Joint Venturers' said notice; or

(3) the second anniversary of the date of any agreement entered into pursuant to subparagraph (vi).

(vi) The South Australian Water Corporation's obligation to make available to the relevant Joint Venturers potable water at Port Augusta pursuant to this subclause (4A) shall be subject to and conditional upon the South Australian Water Corporation entering into a detailed agreement on the basis specified in subparagraph (vii) and on terms and conditions not materially less favourable than similar agreements entered into by the South Australian Water Corporation on an arm's length basis for the delivery of water taken from or through the Morgan-Whyalla pipeline system, including, without limitation, in relation to the following matters:

(1) the treatment, pumping, storage, distribution and continuity of supply of any such water;

(2) the plant, equipment, facilities, services or other infrastructure required for any such delivery;

(3) the obligations to construct, and to pay for the construction, of any such plant, equipment, facilities or other infrastructure; and

(4) the costs or charges payable by the relevant Joint Venturers to the South Australian Water Corporation for any such delivery including, without limitation, in relation to any of the foregoing specified matters.

(vii) The agreement referred to in subparagraph (vi) shall be entered into on the following basis:

(1) there be no subsidy provided (either directly or indirectly) by either the State, the South Australian Water Corporation or other consumers with respect to the delivery of the said potable water to the Joint Venturers;

(2) the Joint Venturers shall pay the actual cost incurred by the South Australian Water Corporation in delivering the said potable water to them, and shall not be required to subsidize the said delivery by the South Australian Water Corporation;

(3) the actual cost incurred by the South Australian Water Corporation delivering the said potable water will be calculated on a total system basis for the Morgan-Whyalla Pipeline System with appropriate allocation of costs (or on such other basis as the parties may agree) having regard to (but not limited to):

- the degree to which relevant costs (if any) are borne by the Joint Venturers;
- statutory contributions, rates, taxes, levies and other charges payable by the South Australian Water Corporation to the State or any local government or statutory authority on a non-discriminatory basis; and
- the need for the South Australian Water Corporation to service borrowings, to make reasonable provision for depreciation and replacement of plant and any return on capital invested.

(viii) The terms of the said agreement shall permit the South Australian Water Corporation, at any time during the term of the said agreement, to increase the charges to the Joint Venturers in accordance with the following principles:

(1) the charges shall be increased only as part of and at the same time as the South Australian Water Corporation reviews and increases the charges to other customers to whom the South Australian Water Corporation supplies or delivers potable water originating from or through the Morgan-Whyalla pipeline system;

(2) the rate of increase of the charges shall not exceed the overall rate of increase of all other such charges of the South Australian Water Corporation on other consumers of water supplied or delivered by the Morgan-Whyalla Pipeline System; and

(3) the terms of the agreement shall provide that if the Joint Venturers do not accept the charges as increased by the South Australian Water Corporation, then the reviewed charges shall be determined by an independent expert appointed pursuant to this Indenture. The independent expert shall have regard to the principles in subparagraph (vii) in making a determination. Until any determination is made by the independent expert, the charges so determined by the South Australian Water Corporation shall continue to apply, and following such determination, the charges determined by the independent expert shall apply from the beginning of the period when the South Australian Water Corporation increased the charges.

(ix) The South Australian Water Corporation's obligation to make available to the relevant Joint Venturers potable water at Port Augusta pursuant to this subclause (4A) shall be subject to and conditional upon the Pipeline being constructed and operational.

(x) If the South Australian Water Corporation and the relevant Joint Venturers are unable to agree on the charges payable by the relevant Joint Venturers pursuant to the said agreement within 180 days, then the matter shall be referred to an independent expert for determination pursuant to this Indenture. The independent expert shall have regard to the principles specified in subparagraph (vii) in making a determination of the charges payable by the relevant Joint Venturers pursuant to the said agreement.

(xi) The parties shall act reasonably and in good faith in negotiating any agreement referred to in subparagraph (vi).

(xii) The State guarantees compliance by the South Australian Water Corporation with the provisions of this subclause 13(4A) as apply to the South Australian Water Corporation and with such of the provisions of any detailed agreement entered into pursuant to subparagraph (vi) relating or incidental to the supply of potable water by the South Australian Water Corporation including any amendments to or substitutions for any such detailed agreement which have the prior approval of the Minister.

(d) If one of the following provisions apply:

(i) the relevant Joint Venturers have requested the South Australian Water Corporation to reserve pipeline capacity pursuant to paragraph (c); or

(ii) the relevant Joint Venturers have requested the South Australian Water Corporation to make available to them potable water pursuant to paragraph (c) and the relevant Joint Venturers do not accept or take delivery of that potable water by the date specified in paragraph (c),

then the Joint Venturers shall pay to the South Australian Water Corporation an annual reservation charge for the reservation of pipeline capacity, the amount of which is to be determined on the following basis:

(iii) the costs incurred by the South Australian Water Corporation to construct or install additional capital works, plant, equipment or other infrastructure as a consequence either of its reservation of that pipeline capacity for so long as any such reservation occurs or of it being in a position to make available the relevant volume of water to the relevant Joint Venturers in accordance with any such agreement for so long as any such failure to accept or take such water continues; and

(iv) the period either for which any such reservation has been requested or for which any such failure to accept or take such water is likely to continue (as the case may be).

(e) The annual reservation charge shall be payable on and from either the date on which any such reservation commences or the date on which any such failure commences (as the case may be). The Joint Venturers shall pay the said annual reservation charge to the South Australian Water Corporation within thirty (30) days of the South Australian Water Corporation serving on the Joint Venturers a notice requesting the payment of the said reservation charge together with an accompanying statement setting out the manner in which the amount of the said reservation charge the subject of the notice has been determined.

(f) If the relevant Joint Venturers do not accept the annual reservation charge as determined by the South Australian Water Corporation within 30 days, then the amount of the annual reservation charge shall be referred to an independent expert for determination pursuant to this Indenture. The independent expert shall have regard to the costs incurred by the South Australian Water Corporation referred to in subparagraph (d)(iii) and the period specified in subparagraph (d)(iv) in making a determination. Until any determination is made by the independent expert, the annual reservation charge as determined by the South Australian Water Corporation shall continue to apply, and following such determination, the annual reservation charges determined by the independent expert shall apply on and from the date on which the annual reservation charge is payable pursuant to paragraph (d)."

10. Amend subclause 13(22) in the following manner:

(a) delete "20%" in the seventh line and replace it with "30%";

(b) delete the words from "shall" in the tenth line to "loss" in the eleventh line and insert the following words:

"may operate at a profit and shall not operate, as far as is reasonably practicable, at a loss,"; and

(c) insert the following sentences at the end of the current subclause:

"Any profit earned or derived by the Distribution Authority from the charges (including stepped charges) levied on consumers for the supply of potable water and the provision of sewerage services shall be paid to the municipality within thirty days of the profit for the relevant financial year of the Distribution Authority being determined in accordance with consistently applied accounting standards and principles generally accepted in Australia. Any moneys paid to the municipality as profit pursuant to this subclause shall be revenue of the municipality for the financial year in which any such moneys are paid and shall only be used for proper purposes of the municipality in accordance with this Indenture."

11. Insert the following subclause after the amended subclause 13(22):

"13(22A) The Distribution Authority shall, as far as is reasonably practicable, encourage its consumers to observe and implement sound water conservation principles and practices and generally to use water resources efficiently."

12. Subclause 13(23)

(a) Replace "150,000" with "350,000" in the seventh line.

(b) Insert a comma after "Product" in the eight line and then insert the words "saleable Non-minesite Product".

13. Subclause 13(26): delete the existing subclause and replace it with the following provision:

"The State shall recommend to the Governor of the State that every well in a designated area, not already proclaimed under the Water Resources Act, 1976 or the Water Resources Act, be declared a proclaimed well pursuant to the Water Resources Act."

14. Paragraphs 13(27)(a) and (b): delete the existing paragraphs and insert the following paragraph:

"(a) recommend to the Governor of the State that any watercourse, lake, well or part of the State, not already proclaimed under the Water Resources Act, 1976 or the Water Resources Act, be declared to be a proclaimed watercourse, lake, well or surface water proclaimed area (as the case may be) pursuant to the Water Resources Act; and"

15. Subclause 13(29): insert the following new subclause after the existing subclause 13(28):

"13(29) The Joint Venturers may take water, pursuant to a Special Water Licence, contrary to the provisions of any water plan that applies in relation to the water taken pursuant to that Special Water Licence".

16. Subclause 18(3A): insert the following new subclause 18(3A) after the existing subclause 18(3).

"18(3A)(a) (i) Paragraph (c) of this subclause (3A) shall operate subject to and only impose or create obligations on the State or the Trust in the following manner:

(1) to the extent that paragraph (c) is not unlawful, invalid, unenforceable, illegal or void, is voidable and avoided or is otherwise contrary to the Competition Policy Reform (South Australia) Act, 1996, the Competition Code or any other law or regulation, howsoever applying or in force pursuant thereto or otherwise, in relation to the establishment, implementation, operation or enforcement of national competition policy as envisaged by that legislation or the Conduct Code Agreement referred to in the Competition Policy Reform (South Australia) Act, 1996, irrespective of when any such law or regulation is enacted;

(2) for so long as, and to the extent that, a Minister of the State may control and direct the Trust but not so as to affect the existence, performance or validity of any agreement actually entered into pursuant to paragraph (c) when the Minister could control and direct the Trust;

(3) the obligations in paragraph (c) shall not exist or have any force or effect if any of the following events occur or states of affairs subsist:

(A) the State's or the Trust's agreement to this subclause prevents, reduces, delays, adversely affects or derogates from the Commonwealth's obligations to make any payment to the State or the State's rights to receive any such payments in relation to the establishment, implementation or operation either of the national electricity market or of national competition policy pursuant to the Agreement to Implement the National Competition Policy and Related Reforms dated 11 April 1995 made between the Commonwealth and each of the States and Territories, to any other agreement amending or replacing that Agreement or to any law or regulation applicable to any such payment enacted or promulgated respectively after the date of that Agreement;

(B) a national electricity market is operating in South Australia such that the following conditions are satisfied:

(I) the provisions contained in Parts 2, 3 and 4 of the National Electricity (South Australia) Act, 1996 come into operation in South Australia and substantially similar legislation to those Parts of that Act come into operation in each of New South Wales and Victoria;

(II) the National Electricity (South Australia) Law set out in the Schedule to the National Electricity (South Australia) Act, 1996 comes into operation in South Australia and substantially similar legislation comes into operation in each of New South Wales and Victoria;

(III) the National Electricity Code (defined as the "Code" in the National Electricity (South Australia) Law) comes into operation in each of South Australia, New South Wales and Victoria;

(IV) there are at least four (4) persons who are registered, pursuant to the said National Electricity Code, to sell and supply electricity to contestable customers of electricity and who are legally permitted and able to supply to the Joint Venturers at Olympic Dam the quantity of electricity required by the Joint Venturers pursuant to subclauses (3) and (3A);

(V) at least three (3) of those persons are not individually:

(i) ultimately controlled or owned by the State or the Trust;
(ii) able to be directed by the State or the Trust; or
(iii) statutory corporations established in South Australia; and

(VI) customers or consumers of electricity who have a projected electricity capacity requirement or actual electricity capacity of at least five (5) megawatts are contestable; or

(C) a competitive state electricity market is operating such that the following conditions are satisfied:

(I) legislation comes into operation in South Australia permitting persons to be licensed to sell and supply electricity to contestable customers;

(II) there are at least four (4) persons who are licensed, pursuant to that legislation, to sell and supply electricity to contestable customers of electricity and who are legally permitted and able to supply to the Joint Venturers at Olympic Dam the quantity of electricity required by the Joint Venturers pursuant to subclauses (3) and (3A);

(III) at least three of those persons are not individually:

(i) ultimately controlled or owned by the State or the Trust;
(ii) able to be directed by the State or the Trust; or
(iii) statutory corporations established in South Australia; and

(IV) customers or consumers of electricity who have a projected electricity capacity requirement or actual electricity capacity of at least five (5) megawatts are contestable.

(b) If any of the provisions of paragraph (c) of this subclause (3A) is unlawful, invalid, unenforceable, illegal or void, is voidable and avoided or is otherwise contrary to the provisions of any law or regulation referred to in subparagraph (a)(i)(1) above, then the obligations in paragraph (c) shall not exist or create or impose obligations on the State or the Trust to the extent that the existence or performance of any such provision has any such relevant effect or consequence.

(c) Subject to paragraphs (a) and (b), if and only if the relevant Joint Venturers have requested and the Trust either is supplying to the relevant Joint Venturers a total quantity of electricity of at least 120 megawatts or is in breach of an unconditional obligation to supply a total quantity of electricity of at least 120 megawatts, then the following provisions shall apply. Otherwise they shall not have any force or effect.

(i) The relevant Joint Venturers may, not more frequently than at three yearly intervals (or such shorter period agreed to by the Minister, any failure to agree shall not be arbitrable), give notice to the Minister and the Trust of their electricity requirements.

(ii) The Trust shall supply such electricity requirements within three years of the giving of such notice.

(iii) The first such notice may be for a quantity of electricity of up to 80 megawatts and may be given at any time after this subclause has effect.

(iv) Any and each subsequent notice may be for an additional quantity of electricity of up to 80 megawatts provided that the Trust shall not be required to supply to the relevant Joint Venturers a total quantity of electricity, pursuant to the combined operation of subclauses (3) and (3A), in excess of 250 megawatts.

(v) The Joint Venturers shall enter into a detailed agreement with the Trust relating to the conditions of the supply of electricity by the Trust to the Joint Venturers pursuant to this subclause, and the tariffs to be payable by the Joint Venturers to the Trust therefor. The terms and conditions of any such detailed agreement shall be such as may be agreed between the Trust and the Joint Venturers, or, in the absence of agreement in relation to any relevant matter or thing, then consistent with the provisions of the most recent electricity supply agreement entered into between the Trust and the Joint Venturers, as at the relevant date, for the supply of electricity by the Trust to the Joint Venturers.

(vi) The said agreement shall operate for such initial period and may contain such rights of renewal or extension as the Trust and the relevant Joint Venturers may agree.

(vii) The Joint Venturers shall, in accordance with the provisions of the said agreement, pay to the Trust the tariffs set out in the agreement for all power supplied by the Trust pursuant to the said agreement. The tariffs shall be determined by the Trust on the following basis:

(1) there be no subsidy provided (either directly or indirectly) by either the State, the Trust or other consumers with respect to the supply of electricity to the Joint Venturers;

(2) the Joint Venturers shall pay the actual cost incurred by the Trust in supplying electricity to them, and shall not be required to subsidize the supply of electricity, by the Trust, to other consumers; and

(3) the actual cost incurred by the Trust in supplying electricity will be calculated with appropriate allocation of costs (or on such other basis as the parties may agree) having regard to (but not limited to):

- the degree to which transmission (including transformation) costs (if any) are borne by the Joint Venturers;
- the degree to which the electricity load supplied to the Joint Venturers is expected to be interruptable;
- the peak and base loads of the Joint Venturers requirements;
- statutory contributions, rates, taxes and other charges payable by the Trust to the State or any local government or statutory authority on a non-discriminatory basis; and
- the need for the Trust to service borrowings, to make reasonable provision for depreciation and replacement of plant and any return on capital invested.

(viii) If the relevant Joint Venturers do not accept the tariffs as determined by the Trust pursuant to subparagraph (vii), then the amount of the tariffs shall be referred to an independent expert for determination pursuant to this Indenture. The independent expert shall have regard to the principles specified in subparagraph (vii).

(ix) The State guarantees compliance by the Trust with such of the provisions of this subclause 18(3A) as apply to the Trust and with the provisions of any detailed agreement entered into pursuant to subparagraph 18(3A)(c)(v) relating or incidental to the supply of electricity by the Trust including any amendments to or any substitutions for any such detailed agreement which have the prior approval of the Minister."

(d) A reference to the "Trust" in this subclause means and shall be construed as a reference to one of the following corporations:

(i) whichever is appropriate of ETSA Corporation or ETSA Power; or

(ii) such other electricity corporation, for the purpose of the Electricity Corporations Act, 1994, to whom the ETSA Corporation's or ETSA Power's (as the case may be) obligations contained in paragraph (c) may be transferred pursuant to clause 4, Part B of Schedule 3 to that Act,

and includes the successors or assignees of any such corporation."

17. Subclause 18(8)

(a) Replace "150,000" with "350,000" in the eighth line.

(b) Insert a comma after "Product" in the ninth line and then insert the words "saleable Non-minesite Product".

18. Subclause 18(18)

(a) Replace "150,000" with "350,000" in the seventh line.

(b) Insert a comma after "Product" in the eight line and then insert the words "saleable Non-minesite Product".

19. Subclause 18(21A): insert the following new subclause 18(21A) after the existing subclause 18(21).

"18(21A)(a) (i) Paragraph (c) of this subclause (21A) shall operate subject to and only impose or create obligations on the State or the Trust in the following manner:

(1) to the extent that paragraph (c) is not unlawful, invalid, unenforceable, illegal or void, is voidable and avoided or is otherwise contrary to the Competition Policy Reform (South Australia) Act, 1996, the Competition Code or any other law or regulation, howsoever applying or in force pursuant thereto or otherwise, in relation to the establishment, implementation, operation or enforcement of national competition policy as envisaged by that legislation or the Conduct Code Agreement referred to in the Competition Policy Reform (South Australia) Act, 1996, irrespective of when any such law or regulation is enacted;

(2) for so long as, and to the extent that, a Minister of the State may control and direct the Trust but not so as to affect the existence, performance or validity of any agreement actually entered into pursuant to paragraph (c) when the Minister could control the Trust; or

(3) the obligations in paragraph (c) shall not exist or have any force or effect if any of the following events occur or states of affairs subsist:

(A) the State's or the Trust's agreement to this subclause prevents, reduces, delays or adversely affects or derogates from the Commonwealth's obligations to make any payment to the State or the State's rights to receive any such payments in relation to the establishment, implementation or operation either of the national electricity market or of national competition policy pursuant to the Agreement to Implement the National Competition Policy and Related Reforms dated 11 April 1995 made between the Commonwealth and each of the States and Territories, to any agreement amending or replacing that Agreement or to any law or regulation applicable to any such payment enacted or promulgated respectively after that date of that Agreement;

(B) third party access to and pricing for such access to the Trust's transmission or distribution system is regulated by law; or

(C) a national electricity market is operating in South Australia such that the following conditions are satisfied:

(I) the provisions contained in Parts 2, 3 and 4 of the National Electricity (South Australia) Act, 1996 come into operation in South Australia and substantially similar legislation to those Parts of that Act come into operation in each of New South Wales and Victoria;

(II) the National Electricity (South Australia) Law set out in the Schedule to the National Electricity (South Australia) Act, 1996 comes into operation in South Australia and substantially similar legislation comes into operation in each of New South Wales and Victoria;

(III) the National Electricity Code (defined as the "Code" in the National Electricity (South Australia) Law) comes into operation in each of South Australia, New South Wales and Victoria;

(IV) there are at least four (4) persons who are registered, pursuant to the said National Electricity Code, to sell and supply electricity to contestable customers of electricity and who are legally permitted and able to supply to the Joint Venturers at Olympic Dam the quantity of electricity required by the Joint Venturers pursuant to subclauses (3) and (3A);

(V) at least three (3) of those persons are not individually:

(i) ultimately controlled or owned by the State or the Trust;
(ii) able to be directed by the State or the Trust; or
(iii) statutory corporations in South Australia; and

(VI) customers or consumers of electricity who have a projected electricity capacity requirement or actual electricity capacity of at least five (5) megawatts are contestable; or

(D) a competitive state electricity market is operating such that the following conditions are satisfied:

(I) legislation comes into operation in South Australia permitting persons to be licensed to sell and supply electricity to contestable customers;

(II) there are at least four (4) persons who are licensed, pursuant to that legislation, to sell and supply electricity to contestable customers of electricity and who are legally permitted and able to supply to the Joint Venturers at Olympic Dam the quantity of electricity required by the Joint Venturers pursuant to subclauses (3) and (3A);

(III) at least three of those persons are not individually:

(i) ultimately controlled or owned by the State or the Trust;
(ii) able to be directed by the State or the Trust; or
(iii) statutory corporations in South Australia; and

(IV) customers or consumers of electricity who have a projected electricity capacity requirement or actual electricity capacity of at least five (5) megawatts are contestable.

(b) If any of the provisions of paragraph (c) of this subclause (21A) is unlawful, invalid, unenforceable, illegal or void, is voidable and avoided or is otherwise contrary to the provisions of any law or regulation referred to in subparagraph (a)(i)(1) above, then the obligations in paragraph (c) shall not exist or create or impose obligations on the State or the Trust to the extent that the existence or performance of such provisions would have any such relevant effect or consequence.

(c) Subject to paragraphs (a), (b) and (d), the Trust shall provide access to and the use of the Trust's transmission or distribution system (as defined in Schedule 4 of the Electricity Corporations Act, 1994) to enable the relevant Joint Venturers to contribute to such system electricity generated and owned by the relevant Joint Venturers on such terms and conditions, if any, as may be agreed by the Joint Venturers and the Trust pursuant to paragraph (d).

(d) The Trust's obligation pursuant to paragraph (c) shall be subject to and conditional upon the Trust and the relevant Joint Venturers entering into a detailed agreement on an arm's length and commercial basis for access to and the use of the Trust's transmission and distribution system and which may deal with such matters as a party to that agreement may consider relevant.

(e) The parties shall act reasonably and in good faith in negotiating any agreement referred to in paragraph (d).

(f) The Joint Venturers shall pay a fee to the Trust for making available access to and use of the Trust's transmission and distribution system. The amount of the fee shall be agreed on an arm's length and commercial basis between the Joint Venturers and the Trust.

(g) If the Trust and the relevant Joint Venturers are unable to agree upon the fee payable by the relevant Joint Venturers to the Trust for access to and the use of the Trust's transmission and distribution system within 180 days, then the matter shall be referred to an independent expert for determination pursuant to this Indenture. The independent expert, in making a determination, may have regard to such matters as the Trust or any relevant Joint Venturer may request that the independent expert consider, with the weight and in such manner as the independent expert considers appropriate, or any other matter which the independent expert considers relevant.

(h) A reference to the "Trust" in this subclause means and shall be construed as a reference to one of the following corporations:

(i) whichever is appropriate of ETSA Corporation or ETSA Transmission; or

(ii) such other electricity corporation, for the purpose of the Electricity Corporations Act, 1994, to whom the ETSA Corporation's or ETSA Transmission's (as the case may be) obligations contained in paragraph (c) may be transferred pursuant to clause 4, Part B of Schedule 3 to that Act,

and includes the successors or assignees of any such corporation."

20. Clause 19A: insert the following new clause 19A after the existing clause 19.

"19A **Pipeline Licence**

(1) Subject to subclause (2), both upon written application by or on behalf of the Joint Venturers or any of them and upon the provision to the Minister of the information or documents specified in subclause (2), the Minister shall grant, pursuant to the Petroleum Act, 1940, a pipeline licence (the "Pipeline Licence") to the relevant Joint Venturers or to such of them as they may nominate to the Minister or to an associated company as they may nominate to the Minister (the "Licensee") to construct and operate a petroleum pipeline and tanks, machinery and appurtenances integral to the relevant pipeline which is one of the following:

(a) an extension to the Moomba-Adelaide pipeline (as defined in the Natural Gas Authority Act, 1967) to Olympic Dam;

(b) a pipeline from Moomba to Olympic Dam; or

(c) a pipeline to Olympic Dam, approved by the Minister, along a route which is other than from Moomba to Olympic Dam, which approval may be given or withheld, including conditionally, in the Minister's absolute and unfettered discretion and such that neither a failure to give approval nor the nature or imposition of any conditions shall be arbitrable,

for the purpose of delivering petroleum to Olympic Dam. The conditions of the Pipeline Licence shall be those specified in and otherwise consistent with this Clause together with the rights, obligations and liabilities, to the extent not expressly modified by this Clause, of the Minister and of a licensee of a pipeline licence specified in the Petroleum Act, 1940.

(2) If the relevant Joint Venturers apply for the Pipeline Licence in respect of a pipeline referred to in subparagraph (1)(a) above, then the relevant Joint Venturers shall, together with and when making an application for the grant of the Pipeline Licence, provide to the Minister copies of any executed unconditional (except for conditions relating to the construction of the pipeline, the Pipeline Licence being granted, the Licensee obtaining any necessary estates or interests in land to construct or operate the pipeline, conditions relating to the performance of obligations of the State pursuant to the Indenture or such other conditions which the Minister approves) and legally binding and enforceable written contracts to the effect that the owner or operator of the said Moomba-Adelaide pipeline or any other relevant person (other than the Minister) agrees and consents to the construction and operation of the said extension to that pipeline to Olympic Dam pursuant to and on the terms and conditions specified in this Clause for the term (including any renewals thereof) of the Pipeline Licence specified in this Clause.

(3) Prior to applying for the grant of the Pipeline Licence pursuant to subclause (1), the relevant Joint Venturers shall, by written notice, provide to the Minister the following:

(a) the information or documents specified in or which may be required pursuant to section 80E of the Petroleum Act, 1940;

(b) such information or documents as the Minister may reasonably require in relation to design, manufacture, construction, operation, maintenance or testing of the said pipeline;

(c) such information or documents as the Minister may reasonably require in relation to any environmental or safety matters relevant to the design, construction, operation, maintenance or testing of the said pipeline; and

(d) such information as the Minister may reasonably require in relation to any relevant factor for the purpose of section 80G of the Petroleum Act, 1940, other than any information concerning the financial resources of the relevant Joint Venturers.

(4) The Minister may, pursuant to section 80F of the Petroleum Act, 1940, require the relevant Joint Venturers to give notice of their application for the Pipeline Licence to such persons and in such manner as the Minister may, by notice in writing served personally or by post upon the relevant Joint Venturers, specify.

(5) The Minister shall grant the Pipeline Licence to the Licensee for an initial term of twenty one (21) years.

(6) The Licensee shall pay to the Minister the licence fees payable, from time to time, in respect of such licences pursuant to the Petroleum Act, 1940, subject always to the provisions of clause 34 as to non-discrimination.

(7) The Licensee may, from time to time, apply for a renewal of the term of the Pipeline Licence. The Licensee may apply for such renewals of the term of the Pipeline Licence at any time during which a Special Mining Lease over the Olympic Dam Area or any part thereof is granted and is in force. If the Minister is satisfied both that the Licensee has complied with the conditions of the Pipeline Licence and the relevant provisions of the Petroleum Act, 1940 during the current term of the Pipeline Licence and that all necessary contracts referred to in paragraph (2) are in force for the duration of the renewed term, then the Minister shall renew the Pipeline Licence for a further term of twenty one (21) years or such shorter period for which the Licensee may apply.

(8) The conditions applicable to the Pipeline Licence shall be similar to the conditions, subject to clause 34 as to non-discrimination, on which such pipeline licences are usually granted pursuant to the Petroleum Act, 1940 either at the time the Pipeline Licence is granted pursuant to subclause (1) or at the time the term of the Pipeline Licence is being renewed pursuant to this Clause provided that the Minister may make or impose such reasonable additional conditions or variations on those usual conditions which the Minister reasonably considers appropriate in relation to or as a consequence of any of the following matters:

(a) only as at the time the Pipeline Licence is initially granted pursuant to subclause (1), the nature or route of the pipeline in respect of which the Pipeline Licence is being granted;

(b) the prevention or reduction of adverse effects upon the environment of the lands across which the said pipeline is to be constructed or operated or the implementation or observance of any industry standards, procedures or practices, whether international or otherwise, which the Minister reasonably considers appropriate to minimize or ameliorate any such adverse effects;

(c) industry standards, procedures or practices, whether international or otherwise, in relation to the design, construction, maintenance or operation of the said pipeline or any safety or security standards, procedures or practices;

(d) access by third parties to use any excess capacity in or of the said pipeline; or

(e) such other matters as the Minister may reasonably consider relevant in the light of technical, operational, environmental or safety developments in relation to the design, construction, operation, maintenance or testing of petroleum pipelines or associated tanks, plant, machinery or appurtenances at the time the Pipeline Licence is granted or the term of which is being renewed pursuant to this Clause,

and provided further that any such determination, whether initially or upon a renewal of the term, of the conditions applicable to the Pipeline Licence by the Minister shall not be arbitrable pursuant to this Indenture but otherwise without prejudice to the Joint Venturers other rights or remedies generally available under statute, at law or in equity to contest, dispute or seek the review of any such determination of the Minister.

(9) If the Licensee applies for a renewal of the term of the Pipeline Licence, then the Minister may review, at the commencement of each renewed period, the conditions to apply to the Pipeline Licence in relation to any of the matters specified in subclause (8) during any such renewed period and the Minister may, subject to the provisions of Clause 34 as to non-discrimination, impose such reasonable additional conditions or variations to the existing conditions which will apply during any such renewed period.

(10) The pipeline in respect of which the Pipeline Licence is to be granted shall be of a size and capacity capable of delivering petroleum to Olympic Dam to satisfy current and estimated future mine and town petroleum requirements.

(11) The Licensee shall design, construct, manufacture, operate, maintain, and repair and test the pipeline in respect of which the Pipeline Licence is to be granted in accordance with the Petroleum Act, 1940, any regulations promulgated, from time to time, pursuant to that Act and the Pipeline Licence.

(12) If the Pipeline Licence is granted to more than one person pursuant to this Clause, then the obligations of those persons pursuant to this Clause and the Petroleum Act, 1940 shall be several and not, as specified in section 80IA of the Petroleum Act, 1940, joint and several.

(13) The Licensee shall ensure that any necessary contracts referred to in subclause (2) are in force and effect during the term (including any renewed term) for which the Pipeline Licence has been granted pursuant to this Clause.

(14) The route of the pipeline in respect of which the Pipeline Licence is to be granted shall be subject to generally applicable environmental procedures and approvals.

(15) Any condition imposed by the Minister under this Clause may, at any time, be cancelled by the Minister.

(16) Section 80QC of the Petroleum Act, 1940 shall not apply during the initial term or any renewed term of the Pipeline Licence.

(17) The provisions of the Petroleum Act, 1940 shall apply to both the said pipeline and the Pipeline Licence to the extent not expressly modified by or inconsistent with the provisions of this Clause."

21. Subclause 21(3)

(a) Replace "150,000" in the seventh line with "350,000".

(b) Insert a comma after "Product" in the eighth line and then insert "saleable Non-minesite Product".

22. Subclause 21(5): replace "Building Act" with "Building Rules under the Development Act, 1993" in the second line.

23. Subclause 22(2): delete paragraphs (h) and (i) and replace them with the following provision:

"(h) a ten (10) bed acute facility providing facilities for accident and emergency, minor surgical and obstetric services, community health services and private dental services and such other additional health facilities as the Minister, with the agreement of the Minister for Health, on request from the Joint Venturers from time to time or otherwise, reasonably considers to be required for the township of Roxby Downs after taking into consideration its location and demographic factors and other relevant factors for the provision of health facilities at that time.

24. Clause 28

(a) Number the existing provision as subclause (1), delete the words "The provisions of Parts IV, V and VI of the Planning and Development Act shall not apply" and insert the following words:

"The provisions of the Development Act, 1993 shall not apply except for those contained in Division 2 of Part 4, which shall apply as varied and in the manner specified in subclauses (2), (3), (4) and (5)."

(b) Insert "petroleum", before the word "electricity" in the seventh line of subclause (1).

(c) Insert the following provisions after the existing provision:

"(2) A reference, if any, to the "Minister," the "Major Developments Panel" or the "Development Assessment Commission" in the said Division 2 of Part 4 shall be construed as a reference to the Minister for the purpose of this Indenture.

"(3) If the Minister is of the opinion that an environmental impact statement, a public environmental report or a development report is appropriate or necessary pursuant to the said Division 2 of Part 4 in relation to any proposed development or project and any such statement or report or a statement or report of a substantially similar nature and dealing with substantially similar matters or any other statement or report investigating the environmental impact, if any, of the proposed development or project, however named, is also necessary or appropriate pursuant to any Federal legislation in relation to the same proposed development or project, then the statement or report to be prepared in accordance with the Federal legislation shall, subject to subclause (4), be and be deemed to be an environmental impact statement, public environmental report or development report (as the case may be) prepared in accordance with and for the purposes of the said Division 2 of Part 4.

"(4) If subclause (3) applies in relation to any statement or report, then the Minister may determine that the statement or report must consider such other or additional matters to those required to be considered pursuant to the applicable Federal legislation as provided for in the said Division 2 of Part 4 as the Minister considers appropriate.

"(5) Clause 7 of this Indenture applies to any approval or authorization required pursuant to the said Division 2 of Part 4."

25. Clause 30A: insert the following new clause 30A after the existing clause 30.

"30A **Safety Net**

(1) The Minister may enter into an agreement with the Joint Venturers or any of them:

(a) that, if a Special Mining Lease, a Special Exploration Licence or the Pipeline Licence should, at some future time, be found to be wholly or partially invalid due to circumstances beyond the control of the Joint Venturers, then the Joint Venturers will have a preferential right to the grant of a new Special Mining Lease, Special Exploration Licence or Pipeline Licence (as the case may be); or

(b) that, if a Special Water Licence, a Special Buffer Zone Lease or any fee simple estate, lease, licence, right of way, easement or other estate or tenure granted to the Joint Venturers by the State pursuant to this Indenture for the transport, supply or provision of petroleum, electricity or water for the Initial Project or any Subsequent Project or for the transport of goods, materials, Product or Non-minesite Product in connection therewith should, at some future time, be found to be wholly or partially invalid due to circumstances beyond the control of the Joint Venturers, then the Joint Venturers will have a preferential right to the grant of a new Special Water Licence, Special Buffer Zone Lease, fee simple estate, lease, licence, right of way, easement or other estate or tenure (as the case may be);

and

(c) dealing with the terms and conditions on which the new Special Mining Lease, Special Exploration Licence or the Pipeline Licence or the new Special Water Licence, Special Buffer Zone Lease, fee simple estate, lease, licence, right of way, easement or other estate or tenure (as the case may be) will be provided.

(2) The Minister must consider any proposal by a Joint Venturer for an agreement under this Clause.

(3) Without limiting the obligation of the Minister pursuant to subclause (2) to consider any proposal by a Joint Venturer for an agreement pursuant to subclause (1), the Joint Venturers acknowledge and agree that the Minister may decide to enter into any agreement contemplated by or in relation to the matters specified in paragraph 1(b) in his absolute and unfettered discretion and on such terms and conditions as he, again in his absolute and unfettered discretion, considers appropriate. Neither the Minister's refusal or failure to enter into an agreement contemplated by or in relation to the matters specified in paragraph (1)(b) nor the terms and conditions of any such agreement to which the Minister is or is not prepared to agree to shall be matters which are arbitrable pursuant to this Indenture or otherwise, subject to any judicial review, prerogative writ or any other proceedings to review the exercise of the Minister's discretions or be otherwise justiciable or reviewable but shall remain exclusively within the parties' capacities freely to contract.

(4) Subject to subclause (6), if any event of invalidity specified in paragraphs 1(a) or 1(b) should occur due to circumstances beyond the control of the Joint Venturers, then the State shall, at that time, consider in good faith and take whatever action, if any, within the State's powers and not otherwise prohibited or impermissible, as the State considers, in its discretion, to be appropriate, after taking into account any adverse effects or impacts on the Joint Venturers caused by any such invalidity and any other relevant factors, for the purpose either of granting a new Special Mining Lease, Special Exploration Licence, Pipeline Licence, Special Water Licence, Special Buffer Zone Lease or any fee simple estate, lease, licence, right of way, easement or other estate or tenure (as the case may be) or of ameliorating or, to the extent possible, remedying any adverse effects or impacts of any such invalidity on the Joint Venturers. In particular, the State shall, in its absolute and unfettered discretion, consider proposing legislation or amendments to existing legislation in order to remedy or ameliorate the adverse effects or impacts of any such invalidity. Any decision made by the State to take action or not in relation to any such event of invalidity shall not be arbitrable pursuant to this Indenture or otherwise or be otherwise justiciable or reviewable in any manner whatsoever.

(5) The State and the Joint Venturers shall confer in relation to any such matters.

(6) The State shall obtain the prior agreement of the Joint Venturers to the State doing or not doing any act, matter or thing, pursuant either to any agreement entered into pursuant to subclause (1) or to any action taken by the State pursuant to subclause (4), which is reasonably likely to cause or does cause the State to incur or suffer a Claim or have the consequence of the State incurring or suffering a Claim for the purpose of subclause (9) in respect of which the Joint Venturers have indemnified the State. If the Joint Venturers do not or fail to agree to the State doing or not doing any such act, matter or thing, then the State shall not be obliged to do or not do any such act, matter or thing (as the case may be).

(7) The Joint Venturers shall take whatever action, if any, within the Joint Venturers' powers and not otherwise prohibited or impermissible, as the Joint Venturers consider, in their respective discretions, to be appropriate, after taking into account any adverse effects or impacts on the Joint Venturers caused by any such invalidity and any other relevant factors, for the purpose of themselves ameliorating or, to the extent possible, remedying any adverse effects or impacts of any such invalidity.

(8) The Joint Venturers shall provide such reasonable assistance to the State as may be reasonably necessary in relation to any proposed action of the State pursuant to subclause (4).

(9) Subject both to the State obtaining the prior agreement of the Joint Venturers pursuant to subclause (6) and to any agreement to the contrary between the State and the Joint Venturers in relation to the extent of the indemnity, the Joint Venturers shall indemnify and keep indemnified the Minister and the State from and against any Claim which the State or the Minister may suffer or incur to itself or himself respectively or to any other person caused by or as a consequence of either any such new Special Water Licence, Special Buffer Zone Lease, fee simple estate, lease, licence, right of way, easement or other estate or tenure (as the case may be) being granted by the State to the Joint Venturers pursuant to any agreement entered into pursuant to subclause (1) or any action taken by the State pursuant to subclause (4).

(10) For the purpose of subclauses (6) and (9), "Claim" means any amount, claim, demand, action, cause of action, proceedings, judgment, order, relief, remedy, right, entitlement, damages, liquidated damages, arbitration award, loss, compensation, reimbursement, penalty, cost, expense or liability payable, incurred or suffered of any nature, however arising and whether arising under statute, at law or in equity or whether of a contractual, proprietary or tortious nature or any other civil cause of action or civil liability whatsoever.

(11) Nothing in this Clause 30A limits, derogates or in any affects any obligation of the State pursuant to this Indenture, including, without limitation, pursuant to Clauses 27 or 31."

26. Subclause 30(b)

(a) Insert the words "Non-minesite Product" after "materials" in the fifth line.

(b) Insert the word "petroleum" before "electricity" in the third line.

(c) Insert the words "Pipeline Licence" before the words "Special Water Licence" in the fifteenth line.

27. Clauses 32A and 32B: insert the following new clauses 32A and 32B after the existing clause 32.

"32A **Production of Non-minesite Product**

The Joint Venturers or any of them may produce or cause to be produced, in a calendar year, Non-minesite Product from Non-minesite Materials in the form of ore not extracted from lands comprised in a Special Mining Lease but extracted from lands within South Australia up to a maximum weight in tonnes which is less than or equal to twenty per cent (20%) of the weight in tonnes of Product produced pursuant to the Indenture for the same calendar year. The Joint Venturers shall not produce or permit or cause to be produced, in any calendar year, Non-minesite Product from such ore in excess of that maximum weight for the relevant calendar year."

"32B **Royalties in respect of Non-minesite Product**

(1) Each Joint Venturer shall pay or cause to be paid to the State an amount of royalty in respect of Non-minesite Product produced from ore as referred to in paragraph (b) of the definition of "Non-minesite Materials" and which is Non-minesite Product owned by the relevant Joint Venturer or produced for the relevant Joint Venturer's benefit and which leaves the Special Mining Lease within which the treatment plant is situated.

(2) The said amount of royalty shall be equal to the following amount:

(a) after the fifth anniversary of the Commencement Date and on or prior to the 31st day of December 2005, the amount, if any,

by which the following amount:

(i) 3.5% of the value ex mine lease of any such Non-minesite Product,

exceeds the following amount:

(ii) the actual amount of royalty otherwise payable in respect of the Non-minesite Material from which any such Non-minesite Product is produced; and

(b) after the 31st day of December 2005, the amount, if any,

by which the following amount:

(i) the amount of royalty, unless the Minister and the holders of each Special Mining Lease otherwise agree, calculated and payable on the basis which, subject always to the provisions of Clause 34 as to non-discrimination, is equivalent to that specified, from time to time, to be payable in respect of the mining of the relevant mineral as provided in the Mining Act,

exceeds the following amount:

(ii) the actual amount of royalty otherwise payable in respect of the Non-minesite Material from which any such Non-minesite Product is produced.

Any failure by the Minister and the said holders to agree as aforesaid shall not be arbitrable.

(3) Each Joint Venturer shall, together with and at the same time as a Joint Venturer furnishes to the Minister each return required pursuant to subclause 32(4), furnish or cause to be furnished to the Minister a return itemizing the following matters:

(a) the source, type, amount and form of any Non-minesite Materials processed or treated at a treatment plant;

(b) the type, amount and form of any Non-minesite Product produced from such Non-minesite Materials;

(c) the type, amount and form of all Non-minesite Product which leaves the Special Mining Lease within which the treatment plant is situated; and

(d) the type, amount and form of such Non-minesite Product which is owned by each Joint Venturer,

during the quarter to which the relevant return furnished pursuant to sub-clause 32(4) relates.

(4) The Joint Venturers shall keep or cause to be kept a record of each of the matters specified in paragraphs (a), (b), (c) and (d) of subclause (3).

(5) The provisions of subclause 32(2) shall apply, mutatis mutandis, to the calculation of the value ex mine lease of Non-minesite Product for the purpose of this Clause 32B.

(6) The provisions of sub-clause 32(5) shall apply, mutatis mutandis, to any return furnished pursuant to subclause (3) and to the records kept pursuant to subclause (4) of this Clause.

(7) The provisions of each of subclauses 32(4), (16) and (17) shall apply, mutatis mutandis, to the calculating or paying of any royalty payable to the Minister pursuant to subclause (1) or any failure to pay any such amount.

28. Paragraph 32(11)(g): insert the following words at the end of the current provision:

"and except further in relation to any Subsequent Project within the Olympic Dam Area to the extent, and only to the extent, that any such Subsequent Project includes income derived from and expenses incurred in the production and sale of Non-minesite Product".

29. Clause 33: insert the words "or Non-minesite Product" after each reference to "Product" in the third line.

30. Subclause 34(1): insert the words "or Non-minesite Product" after "Product" in the eighth line.

31. Subclause 34(2): insert the words "or Non-minesite Product" after "Product" in the third line.

32. Paragraph 34(2)(c): insert the words "or Non-minesite Product" after "Product" in the fourth line.

33. Subclause 34(3): insert the words "or Non-minesite Product" after "Product" in the third line.

34. Paragraph 41(1)(a): insert the words "the Pipeline Licence" after "Special Exploration Licence" in the sixth line.

35. Clause 44: delete the existing clause and replace it with the following provision:

"44. The Residential Tenancies Act, 1995 does not apply to an agreement that relates to residential premises which are situated in the town site and which are the subject of a tenancy agreement to which a Joint Venturer or an associated company is a party as a landlord."

36. First Schedule, clause 9: delete the words commencing from the "and" after "otherwise" in the third line to the end of this provision.

37. Second Schedule: insert a new clause numbered (2A) after the existing clause numbered (2):

"(2A) to treat or process Non-minesite Materials (other than opal) always in accordance with the Indenture".

DATED: DAY OF 1996

AMENDMENT DEED

BETWEEN

THE STATE OF SOUTH AUSTRALIA
(The "State")

- AND -

MINISTER FOR MINES AND ENERGY
(The "Minister")

- AND -

WMC (OLYMPIC DAM CORPORATION) PTY LTD
A.C.N. 007 835 761
("ODC")

- AND -

WMC RESOURCES LTD
A.C.N. 004 184 598
("WMC")

SOUTH AUSTRALIA

CROWN SOLICITOR
9th Floor, 45 Pirie Street Adelaide SA 5000

In the name and on behalf of Her Majesty, I hereby assent to this Bill.

E. J. NEAL Governor