

## Deed of Variation

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The Honourable Michael John Atkinson, Attorney-General  
and

Minister for Mineral Resources Development  
and

William Herbert Lennon Snr, Ian Crombie, Keith Smith  
Snr, David Brown, Herbert Joseph Lennon and Jean Wood,  
as registered native title claimants for and on behalf of the  
Antakirinja native title claim group

and

Antakirinja Land Management Aboriginal Corporation  
and

Aboriginal Legal Rights Movement Inc  
and

South Australian Chamber of Mines and Energy Inc.

*to vary the ALMAC Area Indigenous Land Use Agreement  
dated 5 December 2003*

*and*

*registered by the Native Title Registrar (Registration No. SI 2003-007)  
on 18 May 2004*



# Deed of Variation

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<b>Date</b>	30 <sup>th</sup> of November 2004
<b>Parties</b>	<ol style="list-style-type: none"><li>1. <b>The Honourable Michael John Atkinson, Attorney-General</b> for and on behalf of the Crown in right of the State of South Australia of Level 11 ING Building, 45 Pirie Street Adelaide South Australia 5000 (<i>state</i>)</li><li>2. <b>Minister for Mineral Resources Development</b> a corporation sole constituted by Section 11 of the Mining Act No. 109 of 1971 and whose office is situated at 17<sup>th</sup> Floor, 25 Grenfell Street, Adelaide, 5000 in the State of South Australia (<i>minister</i>)</li><li>3. <b>William Herbert Lennon Snr, Ian Crombie, Keith Smith Snr, David Brown, Herbert Joseph Lennon and Jean Wood, as registered native title claimants for and on behalf of the Antakirinja native title claim group</b> in application no SG 6007/98 in the Federal Court of Australia, of care of Mr T J Wooley, Aboriginal Legal Rights Movement Inc, 4<sup>th</sup> Floor, 345 King William Street, Adelaide SA 5000 (<i>native title parties</i>)</li><li>4. <b>Antakirinja Land Management Aboriginal Corporation</b>, an Aboriginal Association incorporated under the Aboriginal Councils and Associations Act No 186 of 1976 (Cth), of care of Mr T J Wooley, Aboriginal Legal Rights Movement Inc, 4<sup>th</sup> Floor, 345 King William Street, Adelaide SA 5000 (<i>association</i>)</li><li>5. <b>Aboriginal Legal Rights Movement Inc</b> ABN 32 942 723 464, an incorporated association incorporated under the Associations Incorporation Act No 30 of 1985 (SA), of Level 4, 345 King William Street, Adelaide SA 5000 (<i>ALRM</i>) and</li><li>6. <b>South Australian Chamber of Mines and Energy Inc</b> ABN 62 620 804 910, an incorporated association incorporated under the Associations Incorporation Act No 30 of 1985 (SA), of 4 Greenhill Road, Wayville SA 5034 (<i>SACOME</i>)</li></ol>
<b>Recitals</b>	<p>A The <i>parties</i> are parties to the <i>ALMAC area indigenous land use agreement</i>.</p> <p>B The <i>parties</i> wish to amend the <i>ALMAC area indigenous land use agreement</i> to:</p> <p>(a) provide for an expanded <i>ILUA area</i> to include areas of land which were at the time of the registration of the <i>ALMAC area indigenous land use agreement</i> subject to the two separate overlapping native title claims of Ted Roberts (SG 6005/98) and the Kokotha Munta (SG 6003/99) and which overlaps have subsequently been removed due to agreements between the <i>association</i> and Ted Roberts dated 23</p>

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May 2004 and the *association* and Kokotha Munta dated 24 May 2004; and

- (b) to provide that an *explorer* may, where the *native title parties* have provided their prior written consent on the *acceptance document* to the *explorer* entering into the *accepted exploration contract*, sign the *acceptance document* to enter into the *accepted exploration contract* in circumstances where the *explorer* has given notice to initiate negotiations under the *right to negotiate procedure* in relation to any of the *exploration tenements* and may have entered into an agreement with the *native title parties* pursuant to the *right to negotiate procedure* in relation to any of the *exploration tenements*.

- C The *parties* have agreed to record those amendments to the *ALMAC area indigenous land use agreement* in this deed.

**It is agreed** as follows.

### 1. Preliminary

#### 1.1 Definitions

In addition to the following definitions, the definitions in this deed have the same meaning as the definitions in the *ALMAC area indigenous land use agreement*:

*ALMAC area indigenous land use agreement* means the area agreement made between the *parties* on 5 December 2003 and registered by the *native title registrar* pursuant to sections 24CA to 24CL of the *native title act* and regulation 7 of the *Native Title (Indigenous Land Use Agreements) Regulations 1999* (Cth);

*ALRM* means the *party* referred to in item 5 under the heading “Parties”;

*amendment date* means the date upon which the agreement constituted by this deed is registered by the *native title registrar* pursuant to section 199B of the *native title act*, notwithstanding the date of execution of this deed;

*Association* means the *party* referred to in item 4 under the heading “Parties”;

*Minister* means the Minister of the Crown in the right of South Australia for the time being administering the Mining Act No. 109 of 1971 (SA) or that Minister’s duly authorised delegate being the *party* referred to in item 2 under the heading “Parties”;

*native title act* means the Native Title Act No. 110 of 1993 (Cth);

*native title parties* means the native title claim group and includes the *registered native title claimants* being the *party* referred to in item 3 under the heading “Parties”;

*native title registrar* means the Native Title Registrar appointed under Part 5 of the *native title act*;

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*parties* means the parties to this deed and *party* means any one of the *parties*;

*register* means the Register of Indigenous Land Use Agreements established and kept under Part 8A of the *native title act*;

*registered native title claimants* means the registered native title claimants (as defined in the *native title act*) from time to time in respect of the *native title claim*;

*SACOME* means the *party* referred to in item 6 under the heading “Parties”; and

*state* means the *party* referred to in item 1 under the heading “Parties”.

### 1.2 Interpretation

In this deed, unless the context otherwise requires:

- (a) the singular includes the plural and conversely;
- (b) a gender includes all genders;
- (c) if a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (d) a reference to a person, corporation, trust, partnership, unincorporated body or other entity includes any of them;
- (e) a reference to a clause, schedule, annexure or appendix is a reference to a clause of, or a schedule, annexure or appendix to, this deed;
- (f) a reference to a clause includes a reference to a sub-clause, paragraph or sub-paragraph of that clause;
- (g) a reference to an agreement, deed or document (including this deed) is a reference to the agreement, deed or document as amended, varied, supplemented, novated or replaced, except to the extent prohibited by this deed or that other agreement, deed or document;
- (h) a reference to writing includes any method of representing or reproducing words, figures, drawings, or symbols in a visible form but excludes any communication using electronic mail;
- (i) a reference to a *party* to this deed or another agreement or document includes the party's successors, permitted substitutes and permitted assigns (and, where applicable, the *party's* legal personal representatives);
- (j) a reference to legislation or to a provision of legislation includes a modification or re-enactment of it, legislation or a legislative provision substituted for it and a regulation or statutory instrument issued under it;
- (k) a reference to conduct includes an omission, statement or undertaking, whether or not in writing;
- (l) a reference to an agreement includes any undertaking, deed, agreement and legally enforceable arrangement, whether or not in writing;

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- (m) a reference to a document includes an agreement (referred to in paragraph (l)) in writing and any certificate, notice, instrument and document of any kind;
- (n) a reference to dollars and \$ is to Australian currency;
- (o) a reference to a right or obligation of any two or more persons confers that right, or imposes that obligation, as the case may be, jointly and severally;
- (p) the meaning of general words is not limited by specific examples introduced by including, or for example, or similar expressions;
- (q) a reference to agree, approve or consent on the part of a *party* is a reference to agree, approve or consent (as the case may be) on the part of that *party* in writing; and
- (r) nothing in this deed is to be interpreted against a *party* solely on the ground that the *party* put forward this deed or any part of it.

### 1.3 Headings

Headings do not affect the interpretation of this deed.

### 1.4 Schedule

The schedule to this deed forms part of it.

## 2. Amendment of ALMAC Area Indigenous Land Use Agreement

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### 2.1 Variation

- (a) The *parties* acknowledge and agree that, with effect from the *amendment date*, the *ALMAC area indigenous land use agreement* is amended as reflected in the schedule to this deed by:
  - (i) the deletion of all provisions struck through in the schedule; and
  - (ii) the insertion of all provisions underlined in the schedule.
- (b) For reference purposes only, the provisions of the *ALMAC area indigenous land use agreement* to which amendments are made are as follows:
  - (i) *framework ILUA*, clauses 5.1(a)(i), 5.1(c)(i) and (ii), 5.1(f) and Schedule 1, Item 1;
  - (ii) *ALMAC exploration contract conditions*, clause 1.1 “*commencement date*” and clause 13.3; and
  - (iii) *acceptance document* clauses 1, 2(a), 3.1 and the execution clause.

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### 2.2 No Other Amendments

Except as amended as set out in those provisions indicated in clause 2.1 above, the *parties* confirm the terms and conditions of the *ALMAC area indigenous land use agreement* in all other respects.

## 3. General Provisions

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### 3.1 Entire agreement

This deed contains the entire agreement between the *parties* with respect to its subject matter and supersedes all prior agreements and understandings between the *parties* in connection with it.

### 3.2 Amendment

No amendment or variation of this deed is valid or binding on a *party* unless made in writing executed by all *parties*.

### 3.3 Assignment

The rights and obligations of each *party* under this deed are personal and cannot be disposed of, encumbered or otherwise dealt with and no *party* may attempt, or purport, to do so without the prior written consent of the other *parties*.

### 3.4 No waiver

- (a) No failure to exercise nor any delay in exercising any right, power or remedy by a *party* operates as a waiver.
- (b) A single or partial exercise of any right, power or remedy does not preclude any other or further exercise of that or any other right, power or remedy.
- (c) A waiver is not valid or binding on the *party* granting that waiver unless made in writing.

### 3.5 Further assurances

Each *party* agrees to do all things and sign all documents necessary or desirable to give full effect to the provisions of this deed and the transactions contemplated by it.

### 3.6 No merger

- (a) The rights and obligations of the *parties* will not merge on the completion of any transaction contemplated by this deed.
- (b) Those rights and obligations will survive the execution and delivery of any assignment or other document entered into for the purpose of implementing a transaction.

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**3.7 Costs and stamp duty**

- (a) Each *party* must bear its own costs arising out of the negotiation, preparation and execution of this deed.
- (b) All stamp duty (including fines, penalties and interest) that may be payable on or in connection with this deed and any instrument executed under this deed must be borne by the *state*.

**3.8 Governing law and jurisdiction**

- (a) This deed is governed by the laws of South Australia.
- (b) Each *party* submits to the non-exclusive jurisdiction of courts exercising jurisdiction there in connection with matters concerning this deed.

**3.9 Counterparts**

- (a) This deed may be executed in any number of counterparts.
- (b) All counterparts when exchanged will be taken to constitute one document.

**3.10 Relationship**


- (a) The relationship between the *parties* is that of independent contractors.
- (b) The *parties* are not partners, joint venturers or principal and agent.

**Executed** as a deed in South Australia.

SIGNED by the HONOURABLE )  
 MICHAEL JOHN ATKINSON )  
 Attorney-General, for and on behalf )  
 of the Crown in right of the State of )  
 South Australia, in the presence of: )



.....  
 THE HONOURABLE MICHAEL  
 JOHN ATKINSON



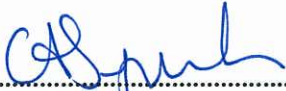
.....  
 Signature of witness

**ELIZABETH ANN EATTS**  
 .....  
 Full name of witness  
 (BLOCK LETTERS)





Deed of Variation

THE COMMON SEAL of the )  
MINISTER FOR MINERAL )  
RESOURCES DEVELOPMENT )  
was hereunto affixed in the presence )  
of:

  
.....  
Signature of witness

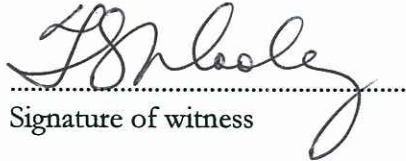
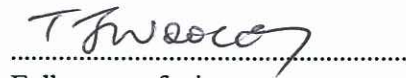
CAROLYN ANNE SYNCH  
Full name of witness  
(BLOCK LETTERS)

  
  
.....  
THE HONOURABLE PAUL  
HOLLOWAY

SIGNED by WILLIAM )  
HERBERT LENNON SNR for )  
and on behalf of the Antakirinja )  
Native Title Claim Group in the )  
presence of: )



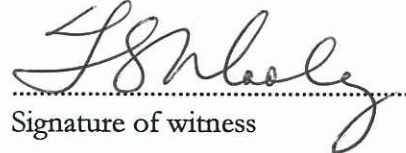
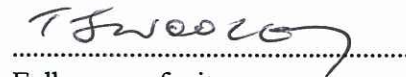
WILLIAM HERBERT LENNON  
SNR

  
Signature of witness  
Full name of witness  
(BLOCK LETTERS)

SIGNED by IAN CROMBIE for )  
and on behalf of the Antakirinja )  
Native Title Claim Group in the )  
presence of: )



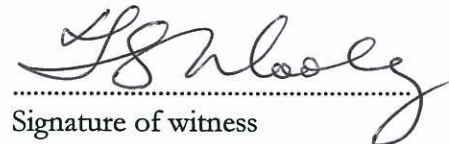
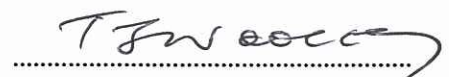
IAN CROMBIE

  
Signature of witness  
Full name of witness  
(BLOCK LETTERS)

SIGNED by KEITH SMITH SNR )  
for and on behalf of the Antakirinja )  
Native Title Claim Group in the )  
presence of: )



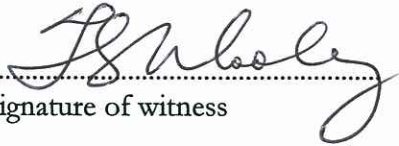
KEITH SMITH SNR

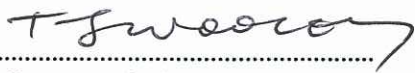
  
Signature of witness  
Full name of witness  
(BLOCK LETTERS)

Deed of Variation

SIGNED by DAVID BROWN for )  
and on behalf of the Antakirinja )  
Native Title Claim Group in the )  
presence of: )

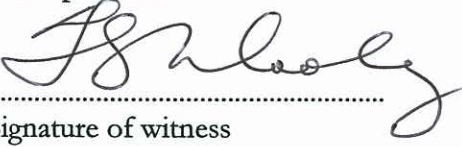
  
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DAVID BROWN

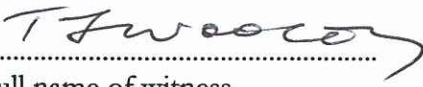
  
.....  
Signature of witness

  
.....  
Full name of witness  
(BLOCK LETTERS)

SIGNED by HERBERT JOSEPH )  
LENNON for and on behalf of the )  
Antakirinja Native Title Claim Group )  
in the presence of: )

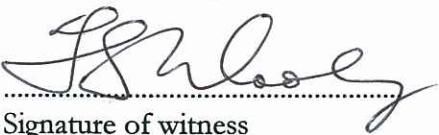
  
.....  
HERBERT JOSEPH LENNON

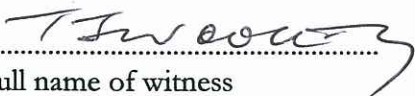
  
.....  
Signature of witness

  
.....  
Full name of witness  
(BLOCK LETTERS)

SIGNED by JEAN WOOD for and )  
on behalf of the Antakirinja Native )  
Title Claim Group in the presence of: )

  
.....  
JEAN WOOD

  
.....  
Signature of witness

  
.....  
Full name of witness  
(BLOCK LETTERS)

Deed of Variation

FINLAYSONS  
LAWYERS

THE COMMON SEAL of the )  
ANTAKIRINJA LAND )  
MANAGEMENT ABORIGINAL )  
CORPORATION was hereunto )  
affixed in accordance with its )  
constitution in the presence of: )

.....  
Signature of director



.....  
Signature of director/secretary

IAN CROMBIE

.....  
Name of director

DAVID BROWN

.....  
Name of director/secretary

THE COMMON SEAL of the )  
ABORIGINAL LEGAL RIGHTS )  
MOVEMENT INC was hereunto )  
affixed in the presence of: )

.....  
Chairperson

ROSNEY SNELL

.....  
Executive Member



Deed of Variation

THE COMMON SEAL of the )  
SOUTH AUSTRALIAN )  
CHAMBER OF MINES AND )  
ENERGY was hereunto affixed in the )  
presence of: )

*J. Roberts*  
.....  
President

*P. P. O'Herland*  
.....  
Chief Executive



Deed of Variation

**SCHEDULE**  
**AMENDED ALMAC AREA INDIGENOUS LAND USE AGREEMENT**