Australian Government
Australian Energy Infrastructure Commissioner

“Hold Harmless” Approach for Renewable Energy Projects

ADDITIONAL INFORMATION and FREQUENTLY ASKED QUESTIONS

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Please note: this reference material should be read alongside the

Joint Statement and **template developer deed poll**, both available on the AEIC website

Helping to make the energy shift *smoother* and *fairer*

Landholders' Public Liability Insurance Concerns

Has a local resident ever been pursued for public liability damages to a nearby renewable energy facility?

At the time of publication, the AEIC is not aware of any cases where a neighbouring landholder has been held liable for accidental damage. Even so, many farmers and landholders have told the AEIC they are worried about what could happen if an accident occurs. These concerns have been raised in communities across Australia.

The AEIC believes it is better to address these concerns now, before they become a larger issue. This can help build trust. It can also improve conversations between communities and renewable energy projects.

The “Hold Harmless” Approach Explained

What is the practical outcome of the “hold harmless” Joint Statement?

The goal of the Joint Statement is simple. Renewable energy developers, insurers and neighbouring landholders work together to provide greater certainty.

If a neighbour accidentally causes damage to project infrastructure, they will not be pursued for recovery costs. This does not apply where the damage is caused by gross negligence or deliberate misconduct.

Who is the primary audience for this statement?

The Joint Statement is focused on the needs of rural and regional landholders, including farming businesses. It is also intended to provide a baseline standard for the energy sector.

It is not intended to address urban landholders or their neighbours, or industrial businesses.

When a project in my area has committed to “hold harmless”, what does that mean for me (as a local resident)?

If the project developer / asset owner and their insurance company have operationalised the “hold harmless” approach – by executing a deed poll and including a waiver clause in their relevant insurance policies – then it means one simple thing:

The project developer / asset owner and their insurance company have both legally agreed, in writing, that they will NOT come after you for any costs if your ordinary farming activities accidentally damage the project’s equipment.

That’s it. You won’t be chased. You won’t be billed. You won’t be taken to court. These commitments are legally binding on both parties.

However, the protection is not unlimited. It does not apply where damage results from wilful misconduct, gross negligence, or other serious wrongdoing by the landholder. In those circumstances, the project developer or insurer will still retain their usual legal rights.

Why is this approach voluntary?

The AEIC – and the other organisations that have endorsed the **Joint Statement** – cannot make laws or require projects to adopt this approach.

However, a version of this approach has already been incorporated in the Victorian Government's *Community Engagement and Social Value Guidelines*, which outline minimum expectations for new projects in Victoria.

Importantly, the current voluntary approach is still legally-binding on those developers that make a public commitment to "hold harmless", by executing a deed poll and incorporating in their insurance a waiver of subrogation.

The AEIC will be monitoring the voluntary implementation of this approach by developers. We will work with governments, community, and industry stakeholders on potential options to embed it in relevant mandatory regimes.

Is this work retrospective to existing projects?

Yes. The "hold harmless" approach can be adopted by both new and existing renewable energy projects. Project owners can implement the approach at any stage. They would need to put in place a developer deed poll and a waiver of subrogation clause. This would provide greater certainty for neighbouring landholders.

How will I know whether I am covered?

If you are a neighbouring landholder, you should contact the renewable energy project owner or developer. You should ask whether they participate in the "hold harmless" approach. If they do, they can explain the arrangements they have in place. This should include the developer deed poll and the waiver of subrogation clause. They should also explain how these apply to neighbouring landholders.

What if there are multiple projects around me – am I covered for all?

Not necessarily. The "hold harmless" approach is voluntary. Each project owner or developer decides whether to adopt it.

If there are multiple renewable energy projects near you, you should contact each project owner or developer separately. Ask whether they participate in the "hold harmless" approach and what arrangements they have in place.

Each project may have different arrangements, so it is important to check with each project individually.

Do I have to sign anything?

No. You do not need to sign anything to benefit from the "hold harmless" approach.
You do not need to support the project. You do not need to enter into a neighbour agreement.
You simply need to contact the project owner or developer and ask whether they have adopted the "hold harmless" approach.

If they have, they can explain the arrangements they have in place and how they apply to neighbouring landholders.

What should I do if the project near me isn't adopting the "hold harmless" approach?

Ask the developer/project owner why they will not be adopting the "hold harmless" approach.

If you believe their response does not adequately address your concerns, please contact the AEIC.

The AEIC can talk to the developer about the "hold harmless" approach and encourage them look into it further – but we cannot make them adopt it. The AEIC's role is to help bring parties together and support practical resolutions of community concerns.

How will this approach impact on local residents' own insurance costs and coverage needs?

Insurance costs can still change over time. However, increases in premiums are more likely to be caused by things such as natural disasters, inflation and broader insurance market pressures.
The presence of a nearby renewable energy project is unlikely to affect a person's insurance costs.

How far does the "hold harmless" approach reach across neighbouring properties?

The approach is intended to cover all neighbouring landholders. It does not depend on how close you are to the project. If the approach has been adopted, neighbouring landholders are covered for accidental damage that may be attributed to them, regardless of their distance from the project.

Will a developer's insurer make a claim against a landholder's public liability insurance if infrastructure is accidentally damaged?

If damage occurs to project infrastructure, the project owner's insurer will not seek payment from the neighbouring landholder or their insurer. This applies if the damage was accidental. It does not apply if the landholder acted recklessly or caused the damage on purpose.

What if something happens on the project's side of the fence that damages my property?

The approach only works one way. It is about providing certainty for neighbouring landholders.
If a project causes damage to a neighbouring property, the landholder can still seek compensation.
The "hold harmless" approach does not change a landholder's rights. It does not affect their ability to make a claim if they suffer loss or damage caused by a project.

What are some examples of scenarios where this approach would and would not apply?

The examples below show how the "hold harmless" approach may work in different situations. They are general examples only. They are not legal advice. They also cannot cover every possible situation.

Scenario 1: A grass fire spreads across multiple properties

A grass fire starts and spreads across several properties before reaching a renewable energy project.

If the project owner and insurer have adopted the "hold harmless" approach, neighbouring landholders will not be pursued for accidental damage. This applies whether the fire was started by lightning or an accident. This does not apply if someone acted recklessly or caused the damage on purpose.

Scenario 2: Animals escape from a neighbouring farm

Livestock escape from a neighbouring property and damage project infrastructure.

If the project owner and insurer have adopted the "hold harmless" approach, neighbouring landholders will not be pursued for accidental damage. The same principles apply as in Scenario 1.

Scenario 3: Someone starts a fire on a total fire ban day

A contractor starts a fire on a total fire ban day after being warned not to.

The "hold harmless" approach would not apply in this situation. This is because knowingly starting a fire on a total fire ban day may be considered reckless behaviour or deliberate misconduct. The key issue is what happened, not who caused it or where it occurred.

Scenario 4: A fire damages transmission infrastructure

A machinery accident starts a fire that damages transmission or distribution infrastructure.

Transmission and distribution infrastructure are not currently included in the "hold harmless" approach. This type of damage is outside the scope of the approach.

However, accidental damage to a project's private transmission or connection assets can be covered by the approach.

Deed Polls and Waiver Clauses: Key Differences

A Waiver Clause

A **waiver [of subrogation] clause** is a provision inserted into a project/asset insurance policy.

- It binds the **insurer**
- The insurer agrees not to pursue certain parties for recovery of a loss (often called a waiver of subrogation)
- It only applies if that insurance policy is in force
- The commitment comes from the insurer through the policy wording

Example: A wind farm's asset insurer agrees that if a neighbouring farmer accidentally damages a turbine, the insurer will not seek to recover its payout from that farmer (provided certain conditions are met).

A Deed Poll

A **deed poll** is a standalone legal document signed by one party for the benefit of others.

- It binds the **developer / asset owner**
- It can operate independently of the insurance policy
- It creates a direct, legally enforceable commitment to neighbouring landholders
- It can be relied upon even where the insurance arrangements change over time

Example: A solar project owner signs a deed poll promising neighbouring landholders that they will not be pursued for accidental damage claims relating to project infrastructure except in specified circumstances.

Why Are Both Used?

The two documents are often designed to work together:

The **waiver clause** says:
"Our insurer will not pursue neighbouring landholders for accidental damage."

The **deed poll** says:
"We, as the project owner/developer, won't allow neighbouring landholders to be exposed to those claims."

Overview of the Template Deed Poll

What is a deed poll?

A deed poll is a legal document. It allows one party to make a binding promise.

In this case, the promise is made by the project owner or developer. You do not need to sign anything. You do not need to agree to anything.

Under the "hold harmless" approach, the deed poll provides a legal commitment from the project owner. It says they will not pursue neighbouring landholders for accidental damage caused during normal farming activities. The protection applies automatically. You do not need to negotiate with the project owner.

Think of it this way. A normal contract requires both parties to sign. A deed poll is different. One party makes a promise and other people can rely on it without signing anything themselves.

How is a deed poll different to a neighbour agreement?

A neighbour agreement is a private agreement between a landholder and a project company. Both parties must agree to it and sign it. Neighbour agreements often cover things like payments, property access, or project impacts. Different neighbours may have different agreements.

A deed poll is different in two important ways:

- You do not need to sign anything. You do not need to negotiate anything. The "hold harmless" protection applies automatically if the project owner has adopted the approach.
- It applies equally to all neighbouring landholders. Everyone receives the same protection.

If you already have a neighbour agreement, the deed poll does not replace it. It sits alongside it and provides the same baseline protection for all neighbouring landholders.

Overview of the Waiver Clause

How are key terms defined?

While recognising that *key terms in the draft clause may be more specifically defined in the context of the specific asset and insurance policy*, the following default definitions are suggested:

> **Neighbouring Landholder** means the owner of any land in close enough proximity to the related renewable energy facility that an act or omission on that property could cause loss or damage to it.
>
> **Landholder** means, in relation to any land, the person or entity that:
>
> - is the registered owner of the freehold or the leasehold title to that land; or
> - holds a lease, licence or other contractual right of occupation or use of that land; or
> - in the case of Crown land, the Crown land manager or other person responsible for managing that land.
>
> **Related Parties** include tenants, occupiers, property or facility managers, and any contractor, subcontractor, consultant, employee or agent engaged by or acting on behalf of a Neighbouring Landowner.
>
> **Gross negligence** means any negligent act or omission involving a serious disregard to an obvious and material risk and which the party knew or ought reasonably to have known would result in substantial loss or damage being suffered or incurred.

All other terms, conditions and exclusions of relevant insurance policies would remain the same.

What is the purpose of this draft waiver clause?

The waiver clause is a commitment from the project's insurer. It means the insurer will not seek payment from neighbouring landholders if accidental damage occurs and is covered by the policy. The clause is designed to reduce disputes between renewable energy projects and neighbouring landholders. It recognises that accidents can happen during normal activities on nearby properties. The aim is to provide greater certainty for landholders and support positive relationships between projects and local communities.

In what kinds of asset insurance policies might the clause be applied?

This endorsement is intended to apply to the following policy classes:

- Construction / Erection All Risks and Contract Works (including Existing Structures where applicable);
- Industrial Special Risks / Property Damage;
- delay in Start-Up / Business Interruption.

This endorsement is intended to apply across both construction and operational-phase risks.

What is in-scope for this waiver?

The waiver applies where a covered loss arises:

- from acts or omissions of a Neighbouring Landholder or their Related Parties,
- from activities or operations conducted on their land, or
- from the condition or state of their land or its use.

Importantly, the clause is not limited to the "escape of a peril" (e.g. fire or water ingress). This avoids technical disputes around causation and ensures consistency in claims handling.

What limits and safeguards would apply from an Insurer's perspective?

The draft waiver does not apply to:

- gross negligence, or
- wilful misconduct of any Neighbouring Landholder or a Related Party.

This ensures Insurers retain their rights where conduct is egregious, reckless, or deliberate.

Additionally:

- The waiver does not increase the Insurer's liability to the Insured.
- It does not extend the Policy's coverage or alter exclusions.
- It only affects rights of recovery after a covered loss.

What impact on an insurer's risk exposure is this waiver expected to have?

This waiver is not expected to significantly increase insurance risk for the following reasons:

- Insurance premiums already take into account the risks associated with nearby properties and local operating conditions.
- Claims against neighbouring landholders for accidental damage are very rare. They are also unlikely to succeed where the damage results from ordinary activities rather than reckless behaviour.
- Keeping the right to pursue neighbouring landholders in these situations can create unnecessary disputes while providing little practical benefit.
- The waiver does not apply where someone has acted recklessly or deliberately caused damage. In these cases, insurers retain their normal legal rights.

Overall, the waiver helps reduce disputes and makes claims easier to resolve. It does not change the underlying risks being insured.

The approach can also help build trust and improve relationships between renewable energy projects and neighbouring landholders.

Why Transmission Is Not Included in This Work at this Stage

Transmission infrastructure is not included in the "hold harmless" approach at this stage.
The risk of a neighbouring landholder accidentally damaging transmission infrastructure is very low. Transmission infrastructure also has different insurance arrangements to renewable energy generation and storage projects. The AEIC will continue to monitor how the approach is used. The possible inclusion of transmission infrastructure may be considered in the future.
Importantly, accidental damage to a project's private transmission or connection assets can still be covered by the "hold harmless" approach.

More information

This and related documents are online: www.aeic.gov.au/publications/hold-harmless-joint-statement

Please send any questions via email to: aeic@aeic.gov.au

Acknowledgement of Country

We acknowledge the Traditional Custodians of Australia and their continuing connection to land and sea, waters, environment and community. We pay our respects to the Traditional Custodians of the lands we live and work on, their culture, and their Elders past and present.