Joint Statement on "Hold Harmless" Approach for Renewable Energy Projects

niba National Insurance Brokers Association · Clean Energy Council · National Farmers Federation · Coexistence Queensland · Victorian Farmers Federation · QFF Queensland Farmers' Federation · NSW Farmers

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A collaborative effort to enable better dialogue about real issues

Across rural and regional Australia, some local residents living near renewable energy projects have expressed concerns about the possible impact on their public liability insurance coverage of this new infrastructure.

To reduce uncertainty and establish a shared understanding of this situation, the organisations endorsing this joint statement are committed to pursuing within their respective spheres of influence a consistent nation-wide approach on this issue.

The shared vision – taking a recurring concern off-the-table with a "hold harmless" approach

People who live near renewable energy facilities should not face or fear increased public liability insurance costs or coverage difficulties as a result of those developments.

To reinforce this shared objective – and recognising a balanced consideration of factual, legal, commercial and social factors and potential scenarios – the organisations endorsing this statement are committed to pursuing a "hold harmless" approach that provides comfort to local residents (and their insurers) that they will not be pursued by a renewable energy facility (or its insurers) in the event of accidental damage.

Putting this into practice through adaptative implementation

There are multiple regulatory and contractual ways to operationalise this commitment. For example, in some circumstances there may be mutually beneficial reasons for a project to invite neighbouring landholders to directly participate in their insurance coverage for that renewable energy facility, and for those arrangements to be incorporated into a wider neighbour agreement.

Whatever their specific individual views on other potential pathways, at a minimum the organisations endorsing this joint statement are committed to promoting practical steps to deliver a hold harmless approach.

For project developers/owners and their asset insurers, this means voluntarily making legally binding commitments to waive their recovery rights against relevant residents in the event of accidental damage to a renewable energy facility.

To facilitate consistency while enabling immediate progress, this commitment is supported by a template developer deed poll, a draft asset insurance policy "waiver of subrogation" clause, and other additional guidance material – all of which the endorsing organisations can tailor as necessary to local circumstances to ensure effective implementation.

Draft text for legal commitments to local residents (asset insurance policy version)

> *Notwithstanding anything to the contrary contained within this Policy, Insurer(s) hereon agree to waive all rights of subrogation, recourse or recovery against any Eligible Landholder and their Related Parties for any loss, damage, cost, liability or expense covered by this Policy arising out of or in any way connected with any act, omission or activity of the Eligible Landholder and their Related Parties or the condition or state of the neighbouring land or its use, whether or not it involves the migration, escape or spread of an insured peril.*
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> *This waiver applies notwithstanding any ordinary negligence, but does not apply where the loss arises from gross negligence or wilful misconduct.*

Initial scope and key definitions

This joint statement is focused on renewable energy generation and storage facilities in rural and regional locations. While these community concerns, shared stakeholder aspirations and potential options may also apply to new electricity transmission infrastructure, given other differences in the operational footprint and institutional arrangements for transmission it is out-of-scope for this initial phase.

Alongside this statement, draft definitions and additional information to support these key commitments and actions will be published by the AEIC.

Agreed next steps

The AEIC, as convenor of this collaborative effort to-date, commits to publicly updating this joint statement to reflect the endorsement of additional organisations, and maintaining the shared supporting collateral.

The AEIC will also invite relevant stakeholders to participate in an annual review on the impact and any potential changes to this statement.