Deed of Indemnity for a Carbon Farming Project

Why is a Deed of Indemnity required?

A Deed of Indemnity (Deed) is required when a Leaseholder and/or a Project Proponent seeks the Minister for Climate, Environment and Water's (Minister) consent to a carbon farming project (Project) on Crown land under the Australian Carbon Credit Unit (ACCU) Scheme. If the Minister determines to provide consent to the Project, it is provided in the Minister's capacity as the landowner and eligible interest holder under the *Carbon Credits (Carbon Farming Initiative) Act 2011* (Cth) (CFI Act). The Deed enables the Project to continue as an eligible offsets project and generate ACCUs.

As a condition of providing that consent, the Minister requires the parties undertaking the Project on Crown land to indemnify the Minister and the State against any losses, liabilities or costs that may arise from the Project.

What is the purpose of the Deed?

The Deed is primarily a risk-allocation document. The Leaseholder and Project Proponent agree to assume responsibility for the risks associated with undertaking the Project on Crown land and to protect the Minister and the State from claims, losses, liabilities and costs arising from the Project.

The Deed also confirms that the Leaseholder and Project Proponent are responsible for:

- complying with the requirements of the CFI Act and associated legislation
- maintaining appropriate insurance coverage
- meeting any obligations imposed by the Clean Energy Regulator
- managing the Project at their own risk.

How does the Deed interact with resource rights?

A key feature of the Deed is that it recognises the existing Crown land and resource management framework that applies to pastoral lease land. The Deed makes clear that the Project does not prevent the future grant or exercise of:

- mining rights
- petroleum rights
- energy and infrastructure rights
- hydrogen-related rights
- other resource access rights.

The Leaseholder and Project Proponent acknowledge and accept that future resource activities may affect the Project and agree not to hold the Minister or the State responsible for those impacts, except where they are caused directly by the negligence of the State.

What does the Deed not do?

The Deed:

- does **not** approve the Project
- does **not** guarantee the Project's success
- does **not** provide any financial benefit or assistance towards the Project
- does **not** alter the State's existing regulatory responsibilities.

Rather, it provides the protections the State requires before consenting to the Project and ensures that risks associated with the Project remain with the Leaseholder and Project Proponent throughout the life of the Project, and beyond where necessary.

Further information

This fact sheet is provided for general information only and does not constitute legal advice.

Parties considering entry into a Deed should seek their own independent legal advice regarding its terms and implications.

Contact the Australian Government for guidance on how to undertake a carbon farming project.

More information

The Department for Environment and Water can assist you with applications for the Minister for Climate, Environment and Water's eligible interest holder consent. Contact the Department for Environment and Water for more information at DEW.ClimateChange@sa.gov.au