Wind Farm Living – Submission "Victorian Wind Turbine Noise Regulations".

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https://engage.vic.gov.au/changes-regulation-wind-farm-noise

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Wind Farm Living Submission

The proposed changes by the Victorian Government to alter the concept of noise annoyance/nuisance from wind turbine noise is seeking to take the rights of Victorians to complain in relation to noise annoyance, amenity noise impacts, sleep disturbance and potential health impacts as a result of the operation of wind turbines.

Using a mathematical formula with "secret data" to judge whether a person should or should not be able to sleep peacefully at night near a turbine, without that person having any recourse of complaint, is a bad system.

Reference: DELWP:

https://engage.vic.gov.au/changes-regulation-wind-farm-noise

"From 1 July 2021, the new Environment Protection Act 2017 will introduce a 'general environmental duty' to take reasonable steps to minimise risks of harm to human health and the environment, as well as 'unreasonable noise' provisions. These will apply to all industries in Victoria, including wind farm operators."

The Government is purporting the following requirements for wind farm operators:

- Complying in an ongoing manner with the relevant noise standard (the New Zealand Noise Standard NZS 6808)
- Implementing a noise management plan, including a complaints management plan
- Providing an annual statement of actions taken to ensure compliance
- Completing a post-construction noise assessment
- Undertaking noise assessments every five years. "

Removing Noise Nuisance from the Health and Wellbeing Act

Removing noise nuisance or noise annoyance from the Health and Wellbeing Act and allocating it to a regulatory authority that applies an unchallengeable formula which prescribes the degree of "reasonable noise" a person should be able to endure, is discriminatory and denies a minority group of people living near wind farms natural justice.

New Zealand Standard

Hidden in the literature is the concept that if the wind farm complies with the noise criteria in the New Zealand Standard then there is not an issue.

Let us look at the failings of the NZ Standard:

Implementing a law that is based on a Standard that has no relation to Wind Turbine Noise is a gross travesty of justice and could be seen to be a "denial of justice".

Who says that 40dB(A) is a base level of noise that will:

- not be a nuisance to the people living near wind farms?
- not diminish the natural amenity of the area, and will?
- not create sleep disturbance?

The NZ 6808-2010 Standard certainly does not, as the basis of this standard - the WHO referenced criteria is from traffic noise in a city or a highway , not a noise emitted from a wind turbine in a quiet rural area.

This law will essentially say that as long as the wind farm company meets a measurement of 40dB(A) (or background + 5 dB(A) – whichever is the greater), then everyone (babies through to adults) can sleep peacefully at night, or the government doesn't care and is beholding to the wind industry.

This law provides no avenue for recourse for those people (or babies) who can't sleep peacefully at night.

The law and the perpetrators of the law may therefore find that they are denying people their natural justice and open themselves up to years of litigation.

It will only take one judge to find that this law is in fact "denying people their natural justice:", and class actions will come thick and fast

South Australia Example.

This new Governing regime is following the same basis as South Australia, where the SA EPA have a guideline that says the criteria is a compromise between the need for wind turbines and the amenity of residents.

The SA Environmental Resources and Development Court has identified that as the SA EPA have determined a policy and they in effect are presenting the criteria of the state government then if a wind farm satisfies that criteria, they are required to assess the noise in terms of the criteria. It doesn't matter that the SA EPA haven't identified the basis of the compromise and that the nominated levels will not give rise to unacceptable impacts the Court views the criteria issued by the SA EPA as the law.

The wind industry noise consultants then pass the blame for any disturbance back to the SA EPA because they nominated the noise criteria.

And the criteria are based upon averaging noise levels, and an assumed noise compliance method that cannot be checked, because the material/data upon which the "compliance" has been derived in not in the public domain.

What this means is that the residents would have to mount a class action against the SA EPA (and the financial backing of the SA Government). Nice trick by the Wind Industry?

Bald Hills – knee jerk reaction

The Bald Hills court action identified the Government produced an acoustic compliance test that was not in accordance with the permit.

The Bald Hills court action seems to have jolted the Government into changing the law to ensure that the wind companies are not impeded by noise complaints.

The Government and the wind industry have found this new way to "get around the issue of non-compliance", they simply complicate and make secret the criteria of compliance and/or extend it out to a 5-year check-up.

Hence the review "to provide certainty for all parties and to reduce regulatory uncertainty" is ultimate "Government Speak" for "let's keep the potential complainants in the dark and tie them up with regulatory rhetoric – lets treat them like mushrooms".

The Options Proposed.

DELWP have put forward three alternative approaches which they believe will regulate wind farm noise under this Act:

Base Case: The Base Case which consists of the primary legislation (including relevant provisions of the EP Act and the EP Regulations that are expected to commence on 1 July 2021) and the policy objective of EPA as the primary regulator of Wind Energy Facility turbine noise.

Option 1: Direct regulation: Additional industry specific direct regulation introduced as an amendment to the incoming EP Regulations that prescribes what constitutes compliance with the GED and unreasonable noise provisions.

Option 2: Permits: A permissions scheme is developed alongside the incoming legislation that allows EPA to issue permits for WEFs prescribing conditions which represent reasonably practicable requirements to minimise the risk of harm.

Unfortunately, none of the options as they currently stand will adequately protect people from sleep disturbance or annoyance caused by turbine noise.

Base Case

The Base Case refers to 'general environmental duty" to minimise the risk of harm arising from noise emission to both human health and the environment. But they add in the rider "as far as is reasonably practical".

The Base Case assumes the New Zealand Standard is OK and the "criteria" (read traffic) is acceptable and achieves the primary aim of the Standard that states it is to protect against sleep disturbance. A bit hard when there is no data showing what levels of wind farm noise do not give rise to sleep disturbance!

It is probably too late when the wind farm has been built and is too close to residents and they can't sleep peacefully at night because of the noise emitted from the wind farm. It would probably not be "reasonably practical" to relocate or remove a turbine after it has been built. This is a setting up and industry with no real oversight – and no real consideration for the people affected by wind turbine noise.

Option 1

Option 1 refers to wind farm noise regulations and basically relies upon the flawed New Zealand Standard 6808:2010 (although some press releases say NZS 6808:1998).

But compliance with the New Zealand Standard does not ensure there is no sleep disturbance.

A definition of 'unreasonable noise' is a noise that exceeds the noise limit determined in accordance with the relevant noise standard. As stated previously, the standard is based on traffic noise, not noise emitted from an industrial wind energy power plant in a quiet rural location.

The NZ Standard method averages out non-transparent material/data for determination of acoustic compliance.

Although night time limits are set (eg Bald Hills) at external locations, the NZS 6808 versions are averages assessed over 24 hours. There are no internal sleep disturbance noise limits in NZS 6808 as a result of wind turbine "noise". When you are woken at 3.00am in the morning from an annoying noise. There is no question that it is an annoying noise that is loud enough to wake you from a peaceful sleep. But what if you are woken by pressure pulsations (not actual noise) that is pounding in your head, as reported by residents near the Macarthur and Cape Bridgewater Wind Farms?

The regulators rely on reports from the wind farm companies, they don't rely on raw data in real time. The regulators will pass on information provided by the wind farm companies. They will inevitably say that the noise you are experiencing is not loud, that you should be able to sleep, that it doesn't wake you up at night, we know, because the company's reports say the wind farm is compliant with NZS, they say the turbines are not loud and therefore there is no grounds for complaint.

Victorian EPA

If the Victorian EPA is responsible for administrating the operation of wind farms, do they have the expertise to understand/administer wind farm noise?

Are they going to follow "like sheep" the use of a Standard that has no factual basis to identify noise levels that will protect residents from sleep disturbance?

Assuming the Victorian EPA have acousticians who are members of the Australian Acoustical Society, are those acousticians going to abide by the Code of Ethics of the Society and ensure the health and well-being of the community is protected?

The SA EPA certainly doesn't give a rats about residents, look at the bias in their wind farm guidelines and the questionable ("dud") report they prepared on Waterloo wind farm. No response to complaints of vibration or sensation in that study – they only responded to "noise complaints" and disregarded those complaints because the wind farm "was compliant with their guideline.

The SA EPA guideline identifies sleep disturbance as an adverse impact to a host (the person who receives money for have a turbine on their property) but does not identify what was in an adverse impact for non-hosts, i.e. rural residents impacted by wind turbine noise.

Option 1- also refers to post-construction and 5 yearly noise assessments.

Requiring residents to wait for 5 yearly testing is completely inadequate and, instead, full time noise monitoring should be implemented.

What is to say that the 5-yearly testing is not fudged (see Senator Madigan's speech to the Senate re Cape Bridgewater monitoring reports), the "testing" uses reduced power and turns off turbines whilst the testing is occurring?

The testing uses wake free (fake) wind data that is not the actual wind the turbines experience. This shifts the regression data to the right and makes it easier to comply.

Why do residents have to wait 5 years?

As the wind farm receives its REC (money) on the assumption of complying with the consent conditions then WHY NOT full time / permanent noise monitoring?

Surely on-going noise monitoring is required to ensure compliance. And on-going noise monitoring would be a good insurance for the community.

REC's are worth millions of dollars to wind farm companies, and the wind farm business model relies on these subsidies. Companies don't collect their millions unless they are compliant with the permit. Companies will pull out all stops to prove compliance rather than volunteer they have got it wrong. (Ref: There seems to be no documented evidence in the public arena where a company has admitted non-compliance – except for Cape Bridgewater where the acoustic consultant's MDA later re-issued reports with the same (non-compliant) data but changing the text – see Senator Madigan's speech).

Both the Base Option and Option 1 do not allow regulatory oversight. Why, because without access to the raw wind data and noise data, no real credible auditing can be undertaken.

What is needed is continuous monitoring where the raw data is on public display in real time. (There was a Senate Inquiry into Excessive Noise from Wind Farms. Lead by Senator Madigan that lost by 2 votes that summarised all of these issues). This is the only way any responsible authority, regulator, Council, or peer review can absolutely confirm compliance.

Logically it could be said that compliant wind farm companies would embrace continuous monitoring with data available to the public, whereas non-compliant wind farm companies would argue for a system that requires a token monitoring process with no disclosure of raw data.

<u>Option 2</u>

Option refers to new permission for wind farms

How does this option be relevant if the failings of the Base Case and Option 1 have not been addressed?

In Conclusion

In conclusion, what is required is the following:

1. A revised Base Option with full time monitoring.
2. For it to be mandatory that all noise data and wind data be made publicly available in real time.

3. The establishment of a regulatory authority, similar to the Victorian Building Authority and Livestock Production Assurance, to oversee regulation of the wind industry.

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