



# Australian Government

## Office of the National Wind Farm Commissioner

2 March 2021

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Dear Ms Graham

### **RE: Proposed Changes to the Regulation of Wind Farm Noise in Victoria**

The Office of the National Wind Farm Commissioner welcomes the opportunity to provide feedback on the preferred option for the regulation of wind farm noise proposed to be introduced with the commencement of the new *Environment Protection Act 2017* on 1 July 2021.

The National Wind Farm Commissioner has a national, independent role in Australia's energy sector and responsibilities include:

- facilitating the handling of complaints from concerned community residents about planned and operating wind farms, solar farms (5 MW or more) and energy storage facilities (1 MW or more)
- identifying and promoting best practices for industry, government and related agencies to adopt with regard to the planning, operation and governance of such projects, and
- improving information access and transparency about proposed and operating projects and wind, solar and energy storage industries.

Our Office has reviewed the consultation documentation and considers the appropriate option to regulating wind farm noise under the Act to be **Option 3: Permissions**, which would require permission from the Environment Protection Authority (EPA) to produce wind turbine noise within set limits.

In addition, the Office offers the following comments for your consideration:

#### ***Wind farm pre-construction noise data***

The Commissioner notes that the draft *Environment Protection Amendment Regulations 2021* do not currently address the noise compliance requirements of a wind farm that are assessed and measured prior to the construction of a wind farm.

Whilst the regulations set out the requirement for a wind farm operator to ensure compliance with the relevant noise standard (set out in section 131A of the draft Regulations), our Office considers that it would be appropriate for the regulations to explicitly include the requirement for a predictive noise assessment as well as the background noise testing, which would both be undertaken in accordance with the relevant noise standard. It is important that the regulations

capture this as it provides the benchmark documentation for which any post-construction compliance investigation would be measured against.

An alternate option would be for the draft regulations to refer specifically to the permit requirements as a basis for the benchmark documentation, which by default should include the predictive modelling and background noise data required under the permit conditions.

It is also important that the predictive modelling and background noise reports, that have been submitted and approved as part of a permit application, should be audited by an independent EPA accredited auditor. The reports and supporting data should also be provided to the EPA and carefully filed so they are easily accessible in any future event requiring the information contained in the reports and/or data.

### ***Post-construction noise testing and compliance***

In the Commissioner's view, it would be appropriate for the EPA to have the powers to seek any post-construction testing requirements from the wind farm operator at any time. This regulatory discretion would be based on factors such as complaint history, location and vicinity to residences and communities, age and condition of wind turbines etc.

There may also be scope for the draft regulations to make provision for periodic noise testing requirements (for instance, an appropriate period may be five years).

The Commissioner also supports the proposal to require an operator complete an annual statement of actions taken to ensure compliance. The information required within this documentation should be carefully considered to ensure that the EPA can have a clear understanding of operational activity at the wind farm as well as any other material changes (eg. change of project owner). Our Office would be pleased to assist with finalising the content requirements of the annual statement.

### ***Complaint pathways***

The Office considers that there is an opportunity to provide further clarity to community members and relevant authorities in relation to the various wind farm noise complaint pathways going forward. For example, there may be an opportunity to provide publicly available information which clearly explains the EPA's noise complaints process in relation to:

- complaints about alleged breach of compliance with the approved permit and/or permission conditions
- complaints relating to the duty holder's reasonable efforts required by the general environmental duty under *Environment Protection Act 2017*, and
- complaints in relation to unreasonable noise coming from the wind farm.

Such information should clearly explain how a complainant can lodge a complaint and how they may expect a complaint to be handled.

### ***Audits and peer reviews***

The Commissioner notes that the Victorian Government has now formally adopted a new framework for auditing predictive and post-construction wind farm noise assessments, whereby audits must be undertaken by an EPA accredited auditor for all new and modified wind farm planning permits.

These changes came into place in 2018 and are consistent with the Commissioner's recommendations, following observations in relation to conflicts of interest and the reliability of consultant reports.

Further, the Commissioner had observed that the assessment reports are highly dependent on acoustician judgements, such as inclusion and exclusion of data and the interpretation of the NZ Standard for assessing the final data. It therefore remains essential for these assessments to be audited by an independent EPA-accredited auditor, both at the predictive noise and background noise assessments stage, and after the post-construction noise assessment is undertaken.

Following the successful uptake of this requirement to provide increased transparency and certainty in relation to wind farm noise reports, it may be appropriate to consider an additional, mandatory requirement to require the appointment of a different acoustician to undertake the post-construction noise assessment to the acoustician that has undertaken the predictive and background noise assessments. We understand this approach is required in South Australia.

The selection and use of the same acoustician in both the pre- and then post-construction phases of a project may give rise to perceived or real conflicts of interest between the developer and the acoustician, including expectations that may be placed upon the acoustician to confirm the accuracy of the predictive assessment and therefore the project's compliance.

The Commissioner's 2019 Annual Report to the Federal Parliament includes further observations and recommendations regarding assurance and integrity in the use of experts and any consultant reports (see Section 6, pages 52-54 regarding use of experts). A copy of our report has been included with this submission.

### ***Unreasonable noise***

Section 131G of the draft regulations state that noise is unreasonable if it exceeds the noise limits determined in accordance with the relevant noise standard. There may be scope to include additional guidance or instruction in relation to tonal noise and Special Audible Characteristics.

For example, in the event of abnormal mechanical noise, normal acoustic measures under the NZ Standard may not properly capture the impacts of the noise on community members. It is recommended that complaints in this category should also be assessed on a subjective and reasonableness basis by an appropriately qualified and experienced field assessor.

### ***EPA issued licences***

There may be an opportunity for the EPA to require a wind farm operator to have an EPA issued environment protection licence to operate. The license, or equivalent, can be the vehicle under which the regulation can be enforced, with the EPA having the authority to revoke or not renew a license to an operator that is in material, unrectified breach of the regulations/license requirements.

Such a regime may also provide an opportunity for cost recovery from industry to fund the EPA resources required to carry out its responsibilities as a result of these reforms.

The EPA may wish to review the NSW EPA licencing regime for wind farms, available at:

<https://www.epa.nsw.gov.au/licensing-and-regulation/licensing/environment-protection-licences/wind-farm-regulation>

***Further discussion***

Thank you again for the opportunity to make a submission to this review. I would be pleased to discuss these matters with DELWP and the EPA, including how we can assist with the implementation and operation of these reforms, in much further detail and be delighted to meet for such a discussion.

In the meantime, if you have any questions about this submission or require any additional information, you may contact us via email at [nwfc@nwfc.gov.au](mailto:nwfc@nwfc.gov.au) or on 1800 656 395.

Sincerely

A handwritten signature in black ink, appearing to read 'Andrew Dyer', with a stylized flourish at the end.

Andrew Dyer  
National Wind Farm Commissioner