

Committee Secretary
Senate Standing Committees on Environment and Communications
PO Box 6100
Parliament House
Canberra ACT 2600
By email

2 November 2012

Dear Senate Committee,

Senate Inquiry – Renewable Energy (Electricity) Amendment (Excessive Noise from Wind Farms) Bill 2012

I am a member of Young Lawyers for Law Reform (**YLLR**), a newly established Melbourne-based advocacy body. YLLR comprises law graduates who are committed to using their legal skills to make contributions to law reform processes in Australia.

This submission details the following reasons why the Committee should not support the Bill:

- it is not necessary or appropriate for the Commonwealth to regulate noise levels, as this is a matter for the states and territories;
- the Bill could adversely affect achievement of the 20% Renewable Energy Target;
- the rationale for the Bill is not based on independent, verified scientific research; and
- the limits the Bill seeks to impose are arbitrary.

I thank you for your consideration.

Yours sincerely,

Lisa Caripis
Member, Young Lawyers for Law Reform

It is not necessary or appropriate for the Commonwealth to regulate noise levels

The regulation of noise levels is a matter for state and territory law. It is at this level of government that noise from wind farms as well as more general noise pollution issues are regulated. Experience in this area means that state agencies and departments have developed the relevant expertise, standards and institutions for regulating noise from wind farms.

For example, in Victoria, environment protection law and planning law set standards for acceptable noise levels.¹ The Environment Protection Authority is tasked with monitoring and enforcing compliance with noise standards. Development approval authorities must consider the effect of proposed development on the environment, including noise impacts, when deciding whether to permit a particular development, such as a wind farm.²

In regard to wind farms specifically, legally binding guidelines at the state level impose specific standards with which wind farms must comply. In 2011 Victoria updated its mandatory noise limit guidelines to bring the Victorian standards in line with the stringent 2010 New Zealand Standard for Wind Farm Noise – 40 decibels for dwellings in the vicinity of a proposed turbine.³ In New South Wales, 2011 draft guidelines propose standards more stringent than any other jurisdiction in Victoria, Europe or the United States.⁴ Guidelines in both states also prescribe limits on the level of noise that can be made in excess of background noise, something which this Bill proposes to do as well.

State law already provides for standards, laws and institutions to regulate noise from wind farms. The examples of Victoria and New South Wales demonstrate that standards are updated to account for changes in technology and medical research. It is unnecessary and inappropriate for the Commonwealth to impose another layer of regulation in an area that is best dealt with by the states. It is also unnecessary to duplicate responsibilities by imposing additional noise assessment and monitoring duties on the Clean Energy Regulator, to implement the scheme proposed in the Bill.

The Renewable Energy Target depends on wind farm development

The 20% Renewable Energy Target (RET) is a critical mechanism to assist Australia to move to a low carbon economy, embrace clean energy technology innovation and protect the interests of future generations, by mitigating climate change. As one of the most commercially viable renewable energy technologies, wind farms are the primary technology that will enable Australia to achieve the RET.

¹ Numerous statutory policies and regulations existing in Victoria for the regulation of noise: State Environment Protection Policy (Control of Music Noise from Public Premises); State Environment Protection Policy (Control of Noise from Commerce, Industry and Trade); Environment Protection (Residential Noise) Regulations 2008; Environment Protection (Vehicle Emissions) Regulations 2003.

² *Planning and Environment Act 1987* (Vic) s 60(1)(e).

³ These are the New Zealand Standard NZS 6808:2010, Acoustics – Wind Farm Noise: see, Victorian Government, *Policy and Planning Guidelines for Wind Energy Facilities in Victoria* (Department of Community Development and Planning, 2012), p 45.

⁴ New South Wales, *The Draft NSW Planning Guidelines: Wind Farms*, (Department of Planning and Infrastructure, 2010) p 6

Limiting the eligibility of wind farms to receive certificates under the RET will diminish the effectiveness of this mechanism in supporting investment in renewable energy technologies and should only be done where there is compelling evidence that it is the only way to achieve outcomes in the public interest. It is not clear that such conditions have been met, as outlined in the following sections.

Changes are not based on independent, verified scientific research

Numerous inquiries and reputable bodies have investigated the noise impacts of wind farms in recent years at both federal and state level. None have recommended changes such as those contained in the Bill.

In 2010 the Environment Protection and Heritage Council of the Council of Australian Governments (COAG) released the Draft National Wind Development Guidelines, a set of best practice (voluntary) guidelines for industry and planning authorities. The guidelines include detailed methodologies on a number of areas including turbine noise.

In 2011 a Commonwealth Senate Committee published the results of its inquiry into the Social and Economic Impacts of Rural Wind Farms,⁵ which included examination of

- (a) any adverse health effects for people living in close proximity to wind farms; [and]
- (b) concerns over the excessive noise and vibrations emitted by wind farms, which are in close proximity to people's homes.

In 2012 the CSIRO published a report on rural community attitudes to wind farms.⁶ On the whole the CSIRO found that wind farms enjoyed a high level of community support, and quoted numerous interviewees who did not cite noise as a major issue for them.

Currently, the National Health and Medical Council is undertaking 'a systematic review of the scientific literature to examine the possible impacts of wind farms on human health including audible and inaudible noise', following its 2010 review on the evidence of the impact of wind turbines on health.⁷

In the absence of clear and compelling medical research or justification for such changes, the Bill should not be supported. It would be prudent to wait for the results of the NHMC's review before considering what intervention, if any, the Commonwealth should have in the regulation of wind farm noise levels.

⁵ Senate Standing Committee on Community Affairs, The Social and Economic Impacts of Rural Wind Farms – Final Report, 2011
http://www.aph.gov.au/Parliamentary_Business/Committees/Senate_Committees?url=clac_ctte/impact_rural_wind_farms/report/index.htm

⁶ CSIRO, *Exploring Community Acceptance of Rural Wind Farms in Australia: A Snapshot* (2012).

⁷ See NHMC website <http://www.nhmrc.gov.au/your-health/wind-farms-and-human-health>.

The limits the Bill seeks to impose are arbitrary

The Bill seeks to restrict ‘excessive noise’ from wind farms which it defined at clause 4:

For the purposes of this Act, a wind farm creates excessive noise if the level of noise that is attributable to the wind farm exceeds background noise by 10 dB(A) or more when measured within 30 metres of any premises:

- (a) that is used for residential purposes; or*
- (b) that is a person’s primary place of work; or*
- (c) where persons habitually congregate.*

Unlike the standard applicable in Victoria, it is not clear from the second reading speech on what scientific or medical research the standard in this Bill is based. The relevant distance at which the limit applies appears to be arbitrary, considering some larger turbines have blades in excess of 30 metres (making the rotor diameter approximately double that length). It is unlikely that any premises would be located in such proximity to a turbine.

Even if there was compelling evidence to regulate noise from wind farms, it is not clear that the method proposed in the Bill is appropriate, proportionate or sensible.

Conclusion

Any proposal to introduce constraints on wind farms’ eligibility to receive certificates under the RET on the basis that they create ‘excessive noise’ must make a case as to why such changes are warranted, why state noise regulations are deficient and why Commonwealth intervention, rather than amendment of state regulations, is appropriate. Standards sought to be imposed by such a proposal should be based on credible evidence and proportionate to the ends sought to be achieved by the proposal. The case for this Bill does not rest on solid foundations in any of these respects and as such, the Committee should withhold its support.