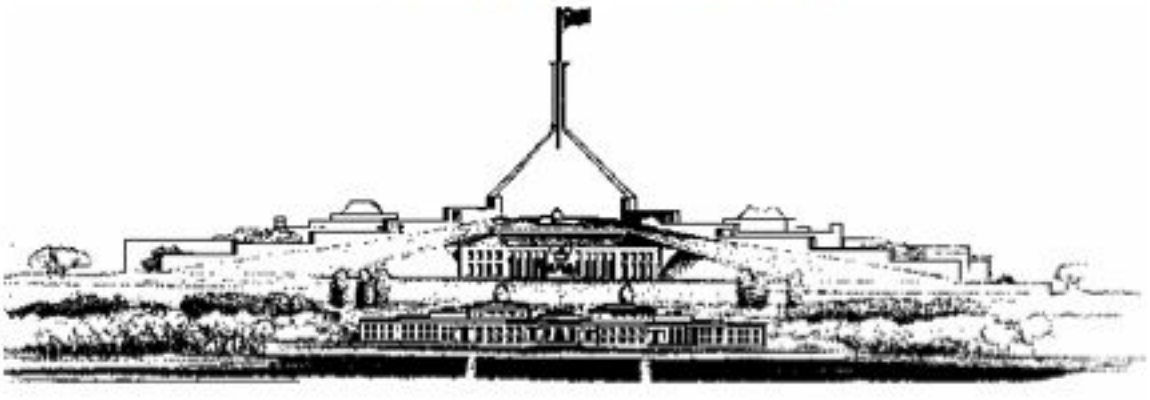
COMMONWEALTH OF AUSTRALIA

PARLIAMENTARY DEBATES



THE SENATE

PROOF

ADJOURNMENT

Wind Turbines

SPEECH

Tuesday, 30 October 2012

BY AUTHORITY OF THE SENATE

SPEECH

Date	Tuesday, 30 October 2012	**Source**	Senate
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Questioner		**Responder**	
Speaker	Back, Sen Chris	**Question No.**	

Senator BACK (Western Australia—Deputy Opposition Whip in the Senate) (20:43): This evening I wish to reflect on some aspects associated with industrial wind turbines around Australia and to report what I would regard as undesirable sequences that are occurring. I refer to a statement by the National Health and Medical Research Council of July 2010 in which they express concern regarding the adverse health impacts of wind turbines, focusing on infrasound noise, electromagnetic interference, shadow flicker and blade glint produced by the turbines. In that same document they question the validity, or the extent or accuracy, of evidence associated with health impacts and also make the recommendation that:

… relevant authorities take a precautionary approach and continue to monitor research outcomes. Complying with standards relating to wind turbine design, manufacture, and site evaluation will minimise any potential impacts of wind turbines on surrounding areas.

The concluding remark that I wish to quote from that statement is:

The situation is further complicated by findings that people who benefit economically from wind turbines were less likely to report annoyance, despite exposure to similar sound levels as people who were not economically benefiting.

It is that point that I wish to reflect on this evening and, in fact, put to bed some of the assertions which are often made—that those people who make a dollar out of wind turbines do not seem to get sick, whereas their neighbours upon whose land the turbines are not established somehow do.

In the middle of August this year I met with, at his request, Mr Russell Marsh, Policy Director of the Clean Energy Council. During that meeting we discussed confidentiality clauses in the wind developer contracts, particularly as they relate to health effects and whether a turbine host, as they are known, could comment publicly on adverse health effects for themselves or, indeed, members of their family, staff or friends. Following that meeting, I wrote to Mr Marsh requesting clarification on a comment that he made that the existence of confidentiality clauses in these contracts would not preclude a person from such a statement in the event that they were adversely affected by health impacts. I have received Mr Marsh's reply on behalf of the Clean Energy Council—previously known as the Australian Wind Energy Association—and is dated 5 October. I quote from it:

I can confirm that as far as we are aware, and based on discussions with our wind industry members, landholder contracts do not contain any clauses that would prevent or penalise a person for speaking publicly if they claim to be suffering health effects.

That sounds like a very straightforward statement. I do not know who of the developers and the promoters are members of the Clean Energy Council, but I have in my possession a number of wind development contracts which have been forwarded to me from around Australia. I can state quite categorically that these contracts do contain confidentiality clauses that would actually penalise a person if they spoke publicly—including if they were suffering health effects. This, in my view, directly counters what Mr Marsh asserted in his letter to me. I do not know which, if any or most, of these companies are members of the Clean Energy Council, but I will refer to companies including Acciona, Infigen, Goldwind, Epuron, Wind Prospect, Windlab, Wind Assessment, Wind Corporation, Wind Power, Repower, Suzlon, Ratch, Union Fenosa and, of course, there are others.

A leading barrister who has an intimate knowledge of wind development contracts has provided me with information about the 2010 Windlab contract for a proposed wind farm to be operated by Suslon, now Repower, in New South Wales. I quote from a clause in the contract: 'The landholder acknowledges and agrees that it accepts the noise impact which the landholder also agrees will not cause him or her nuisance and agrees that he or she will not make any claim, objection or complaint; and releases the developer from any claims or liability.' Clearly, the effect of that clause is that the turbine host would sign away their rights to prevent noise nuisance and that they would suffer the consequences without being able to make any statement. The noise impact is assessed by reference to what are known as the noise impact guidelines. They are defined in that particular contract as relating to the EPA (South Australia) wind farm guidelines of 2009. Under those guidelines, the base limit is 40dBA, not 35dBA as appears in another clause in the same

contract. I would therefore contend that these terms mean the landholder would agree to and be bound to accept the noise that has been created and has agreed not to complain to anyone or to bring a claim against the developer. This means that the landholder can do nothing about the noise without breaching the contract.

I refer to another clause relating to confidentiality and I quote:

The Landlord may not conduct interviews with media organisations or other members of the public or issue press releases or other announcements unless the Tenant [Wind Developer] has first approved the content of the disclosure and has otherwise consented to the use of the Tenant's name in association with that disclosure.

By signing this contract, the landholder is giving the developer a right to vet and veto any statement that the landholder may wish to make to the media or anybody else. Nothing that the clause indicates limits the capacity to reach into the contract on matters of any particular accord for the exercise, including adverse health effects. But it does not improve from there.

There are well-known cases of acquisitions of affected properties with the associated so-called 'gag agreements'. I quote one from the Waubra Wind Farm owned by Acciona in Victoria. The confidentiality clause states that the person signing it—in this case the host—must keep the deed and its terms confidential and not themselves, nor their servants, agents, employees or family members directly or indirectly disclose the deed. Furthermore, in terms of public announcements, except as required by applicable law or the requirements of a regulatory body, all press releases or other public announcements in relation to the deed must be approved by the developer. Furthermore, the host agrees to not make any comments, statements—whether adverse, critical, disparaging or otherwise—or allegations with respect to the conduct of the developer, Acciona, or their affiliates in any professional or personal capacity, and agrees not to lodge or to make, encourage or procure others to lodge, make or procure any complaint or statement.

I turn now to South Australia and the Lake Bonney project and to New South Wales and the Flyers Creek projects and those contracts binding the hosts to the business Infigen. The clause regarding confidentiality states, 'The lessee agrees to keep confidential and not to disclose, divulge or make known at any time to any third party any information not in the public domain regarding the activities.' Nobody would have any concern at all on matters that are purely to do with commercial in confidence. The matters I am referring to, of course, are those that could possibly be related to adverse health impacts, which naturally we are starting to see.

Another one, owned by the Chinese company Goldwind, states, 'The landowner may not disclose any confidential information to any person.' It goes on to describe what it is, and of course it relates to the activities to which the host cannot refer.

Even more concerning to me is another wind farm contract that has come to my attention. It is associated with a licence held by Technology Management and Engineering Services in Berrybank, Victoria. This particular confidentiality agreement is a little bit more interesting. It says:

The Confidential Information and any industrial or intellectual property rights of whatsoever nature in and to the Confidential Information are and will at all times remain the exclusive property of the disclosing party—

in this case, the developer—

… and the party receiving such … Information … will have no right, title or interest to or in the Confidential Information otherwise than as permitted by the Discloser.

I refer, in my home state of Western Australia, to not only host agreements but also what are referred to as neighbouring contract agreements, where again there are attempts in contract to limit the capacity of the hosts and the neighbours to make any adverse comments associated with health impacts. If anybody is so confident of their technology, then there should never be an occasion in which the host themselves, but particularly a neighbour, would be in some way tied up along these lines.

I refer to a contract associated with the Black Springs Wind Farm in New South Wales. Again, this is a cause of concern to me because it talks about sound pressure levels. Clause 3, relating to sound pressure levels, and clause 4 require the landowner to acknowledge and give consent regarding sound pressure levels. It says:

The Landowner acknowledges that the Black Springs Wind Farm will generate sound pressure levels which may exceed the guideline limits set out in clause 3.2 of this Deed, but will not exceed 50dB(A)—

that is, decibels audible. Furthermore, in a subsequent clause, it says:

By entering into this Deed the Landowner accepts that the—

operator—

… will generate sound pressure levels of a maximum 50dB(A) and consents to the proposed operation of the Black Springs Wind Farm despite its non-compliance with the Noise Guidelines sound pressure levels set out in clause 3.2 of this Deed.

As I read that, it seems to me that the developer is writing that they could be operating at a sound level above state planning legislation and state noise guidelines.

If I may, I will refer to one more. Wind Power uses a contract which includes a clause shifting liability for health effects due to noise from the developer to the landholder. Clause 7.3 says:

The Landlord releases the Tenant (Developer) from any liability for loss, damage or injury occurring in the Premises or on the Land arising from the Tenant's breach of the Environmental Protection Act 1970 (Vic) due to noise emitted from the Wind Turbine Generators.

It seems to me that you could not get a more direct statement than that.

The General Manager of Slater and Gordon, Mr Higgins, was quoted in the *Australian* newspaper on 4 May 2012 to have said that the company has 'acted for landowners who have been affected by the operation of nearby wind farms'. I am very anxious that the industry generally and its representative and spokesman, who courteously came to visit me at his request and responded to my correspondence, take this information and respond to it. We are now seeing many hosts. The most public and recent of them would be Mr David Mortimer from Millicent, South Australia. He has come out into the media, despite the fact that he is probably placing himself and his financial retirement at risk, to record and report adverse health effects as a result of the wind turbines being too close to habitation on his property.

In the same vein associated with wind turbines, I move to what has become a most unsavoury and personal attack on people who, for whatever reason, seem to have a view opposed to that of some of the developers. I refer to Mr Hamish Cumming, a gentleman who has been the subject of recent industry and media focus. He is a mechanical engineer residing in Darlington, Western Victoria. He attracted recent interest when he analysed the Australian Energy Market Operator energy data, the crux of which was reported in an article on 1 September in the *Weekend Australian* by Mr Graham Lloyd, the environmental editor. Mr Cumming has been heavily criticised—firstly, over his qualifications; secondly, over his method of analysis; and, thirdly, over the results that he has produced. Interestingly enough, they are well supported by recent evidence from the Netherlands and Ireland. His general conclusion was that wind farms do not reduce greenhouse gases and that the cost per tonne of carbon dioxide gas reduced can be up to 100 times greater than the price paid to emit the gas.

Mr Cumming is no stranger to the politics of the wind industry. He has a great interest in what we would know as the Australian crane, or the brolga, the *Grus rubicunda*. In fact, it is the state bird symbol of Queensland, Mr Deputy President, in case you have an interest in that area. Mr Cumming first became concerned about the development of a particular project as he was aware of a number of brolga nests and flocking sites in the area in south-eastern Australia that were not being recognised by wind developers. He discovered that important nesting data that was on the Atlas of Victorian Wildlife was not being used by developers and had been removed from the public domain. Since that time, he has been attempting to get the Victorian Minister for Planning and the Ombudsman involved. I understand he has even had the fraud squad involved. The omitting of this data has been confirmed in writing by the Regional Director of the Department of Sustainability and Environment, Mr Laurie Dwyer, in January this year. Since then, Mr Cumming has received further correspondence from Mr Dwyer promising that 700 pieces of data omitted from that atlas would be reinstated to the Biodiversity Interactive Map by the middle of August. You will not be surprised to learn that the middle of August has come and gone and the data is not there. But most importantly, according to Cumming, the omitting of that data from the *Atlas of Victorian Wildlife* is being seriously questioned because the omitting of those records and the information they contain may have stopped a development permit where the proponent would stand to make a substantial financial gain.

As a result of this, this gentleman, Cumming, has been personally attacked. He has received death threats and has had arson attacks on his property. To me, this is totally un-Australian and unacceptable and it needs to be the subject of investigations. Certainly, if his allegations are true and the data is being withheld, I hold grave concerns about the continuing good relationship between the various environmental consultants, local planning authorities and relevant state agencies. Regrettably, I also note that Mr Russell Marsh, whom I quoted a few moments ago in an earlier part of my contribution, wrote a letter to the *Australian* on 6 September, six days after Lloyd's letter, in which he made the observation:

THE forensic examination of wind energy by Hamish Cumming was a long series of emails by an activist who is not a mechanical engineer. It is a flawed

and amateur analysis that is riddled with errors and incorrect assumptions.

I have had correspondence subsequently from Mr Cumming, who has requested an apology from Mr Marsh along the lines that, firstly, the claim that he is not a mechanical engineer is false. Sadly for Marsh, as Cumming said to me in an email:

… not only did I graduate in Mechanical Engineering in 1983 at Victoria University, but I attained the highest marks for the Degree that year. I also did further studies in Marketing and Management, Accounting, Economics and Law. I have worked for four multinational companies and have done private contracting which together have taken me to 25 countries …

He is trying to draw some sort of an understanding as to why Mr Marsh would have attacked him personally, and, of course, he is still waiting for an answer.

The Clean Energy Regulator has been asked by the Executive Director of the Australian Environment Foundation in a letter of 7 September to work with the Australian Energy Market Operator to analyse the past two years of energy data in Victoria to answer Mr Cummings's question: are wind developments actually reducing greenhouse gas emissions? I wait with keen interest for that analysis, that data and that report from the regulator.