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## Wind Projects, the Moral Dilemma - A Rational Solution

Put simply the moral dilemma is:

Should State governments allow wind projects to continue operating in the present mode and/or honour permits for yet unbuilt projects in the face of recent evidence<sup>1</sup> that wind projects inflict unreasonable damage to country residents?

Of additional concern to residents and, no doubt, to the Responsible Authority is that compliance testing, where it has been completed, has either shown indications of non-compliance or not been adequate to guarantee reliable results.

Independent audits<sup>2</sup> have also shown that Noise Impact Studies presented to planning panels have not been about impacts, but simply noise forecasts to show a project seeking approval will meet guidelines; which is entirely different to forecasting the impact of noise likely to be emitted by a project.

We believe it can be concluded that compliance testing by the industry's chosen noise experts has always been, and remains, unsatisfactory. Couple this with the incontrovertible health problems arising from current wind projects, compliant or not, and **the conclusion is that the wind industry is substantially out of control, and its noise pollution is not being adequately regulated by the responsible authorities, with predictable and serious adverse health impacts on the surrounding population.**

Two other relevant factors concern, a) the high probability that the projects are creating actionable nuisance; and b) court findings that planning consent or permission is not a defense against nuisance.<sup>3</sup> Also it seems probable that many projects are transgressing human rights.<sup>4</sup>

Taken together, these matters seemingly create a need, and the opportunity, for the Responsible Authority to require the operators and developers to quickly bring their dangerous wind projects into **non-damaging mode.**

An entirely reasonable way to achieve this is for the Responsible Authority to require action in accord with the advised<sup>5</sup> application of the Precautionary Principle by placing certain caveats on the use of permits; caveats designed in the light of present knowledge to avoid severe collateral damage to human health and wellbeing.

The caveats quite properly need to move responsibility and liability to the industry and its experts, so no longer can they dissemble in responding to questions about health by saying, as they do: “we have met the guidelines,” or for example, “the guidelines are amongst the toughest in the world”.

Acceptance of the following suggestions will allow owners and developers to truthfully say that “we have taken all the necessary steps to ensure that all project neighbours can continue to live in their houses free from any noise nuisance or negative effects on their health.”

Since the industry continues to claim “there are no health problems arising and no significant infrasound from turbines” they cannot object to the additional requirements which, if the industry statements are correct, can only prove their claims.

The following suggestions also utilise the growing trend to transfer<sup>6</sup> projects or approvals. Thus an overall statement by a State government or the relevant authority might be made along the following lines.

*“Wind turbines at present sizes and with placements designed to meet existing guidelines are causing unacceptable health problems to a disturbing number of nearby residents.*

*For this government, even one family being forced to abandon their home as uninhabitable, is one too many. The numbers suffering and the numbers abandoning their homes and farms are already significant and growing. Those staying and suffering are finding their symptoms rising with continuing exposure.*

*Over the last twelve months independent acousticians and health professionals have collected evidence that suggests a majority of the health problems around turbines are directly caused by the already known adverse effects of infrasound and low frequency sound and vibration on human health, which typically travel long distances and, at the lower frequencies, readily penetrate houses regardless of normal insulation.*

*It is now evident that existing noise standards often introduced by a former government, even with amended setbacks are, unfortunately, incompetent in protecting the health of project neighbours. The existing standards do not set noise limits inside homes, nor do they place any limits on, or even the need to measure, infrasound and low frequency sound.*

*Accordingly the Government requires that the industry provides additional and adequate protection for the large number of families already suffering and many more set to suffer as even larger projects with larger turbines are constructed. Therefore the Government has decided to act, and act now, by requiring that:-*

***Operating wind projects, whether they have proven compliance or not, will need to complete or update that compliance within the next twelve months according to testing protocols established by independent acousticians with relevant field experience in this area who do NOT have financial connections with the wind industry; including the measurement of infrasound within and without any so called “sick” residences near the project. In effect, the Government is seeking to confirm with properly conducted***

*independent noise studies that each project is, or is not, causing homes to become uninhabitable.*

*Until these requirements are met **and** all residents are able occupy their homes without noise nuisance, ill health or sleep disturbance; then the following **temporary** constraints will need to be applied:*

- *the project is to be shutdown between 6PM and 7AM in order that residents may enjoy their evening meal and a good night's sleep; and*
- *ownership of the project may not change, partially or wholly.*

***Projects approved, but as yet unbuilt, must have their noise impact studies reviewed to reflect the assessed impact on project neighbours of the full acoustic spectrum, both inside and outside neighbouring homes. Until this is completed and turbine layouts amended as necessary to ensure that all residents are able to occupy their homes without noise nuisance, ill health or sleep disturbance; then the following temporary constraints will need to be applied:***

- *The project not to be transferrable in part or in whole:*
  - a) *until the impact assessment and amended layout has been completed, reviewed and approved; and*
  - b) *unless the sale documents require the purchaser to acknowledge and agree to the following temporary constraints at start up;*
- *at start up no night time operation as defined above until compliance under existing guidelines has been proven according to the new protocols and full frequency noise measurements taken inside any affected houses; and*
- *the permanent shutdown of problem turbines as identified by the extended compliance testing."*

We further suggest that all projects be fitted with automatic noise management and control systems prior to 24 hour operation being permitted, and that it should be clearly stated that operating conditions may be subject to further change pending further information from both acoustic and clinical field research and peer reviewed published studies.

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## Notes and References

1. Noise and health measurements at Waubra and Cape Bridgewater June 2012, by Dr Robert Thorne and others. Also information is emerging from a study at Waterloo in South Australia which the researchers wish to replicate further before publishing; but its results are totally consistent with the findings of the Thorne group
2. At Flyer's Creek in NSW and at Goyder in SA, both undertaken by Stephen Cooper of The Acoustic Group Pty. Ltd.
3. Journal of Planning and Environment Law, 2012, Wind Farm noise and private nuisance: a return to common sense; Susan Ring and Barbara Webb.

Australian and UK court rulings have made it clear that planning consent or permission is not a defense to nuisance.

This fact has almost certainly been the driving force in the out of court settlement in the Davis case in the UK where the Davis family brought a case of nuisance against a wind energy operator. From the Davis case one can deduce that wind turbines do cause an actionable nuisance, and that owners of wind projects know that and will most likely be reluctant to appear as a defendant in such matter.

Does a wind project designed to meet existing guidelines cause a nuisance? The answer is an unequivocal yes, and at multiple dwellings.

4. Letter to Attorneys General Canada, April 12, 2012 from Eric K. Gillespie Corporation, Barristers and Solicitors re: the Universal Declaration of Human Rights, etc.

Health and wellbeing are fundamental human rights. These rights cannot be disregarded or traded for political or economic gain, nor for pseudo-religious advancement, and certainly not for theoretical mitigation of climate change.

5. The NHMRC, in its Public Statement accompanying the Rapid Review of literature of June 2010, concludes: *"Therefore it is recommended that relevant authorities take a precautionary approach and continue to monitor research outcomes."* This statement is reflected by Professor Warwick Anderson (CEO of the NHMRC).giving testimony at a Senate Committee hearing. *"....but I do want to make a point to anybody who is relying on this (Rapid Review). We regard this as a work in progress. We certainly do not believe that this question has been settled. That is why we are keeping it under constant review. That is why we said in our review that we believe authorities must take a precautionary approach to this."*
6. There have recently been a number of transactions of wind projects in the categories mentioned below which raise concern.

Where the original proponent, often of the entrepreneurial type with limited technical capability and a limited sense of responsibility to the community, has on-sold to a much larger

organisation in need of RECs, (e.g., AGL, Origin) and sometimes (partially or wholly) to foreign companies, e.g., Mitsui, Acciona, Ratch. This may generate profits for the original entrepreneurial group, but even the large Australian groups are not dealing honestly and equitably with neighbours despite being bound to do so by their own codes of conduct or equivalent. Ultimately these Australian majors are hostage to the extent of their large Australian businesses and their ASX listing.

The unknown nature of the foreign groups and the superficial involvement of these companies is ultimately a potential source of deeper problems including the different approach to the importance of individuals and their rights in our culture, and insufficient liquid assets in Australia in case of liabilities arising from the project acquired.

A degree of intransigence has been noticed in one or more of the overseas investors. Given the proliferation of health problems it is important to ensure there is not, impossible as it may seem to current victims, a continuation of, or further increase in, arrogance and dismissal of problems by these overseas operators.