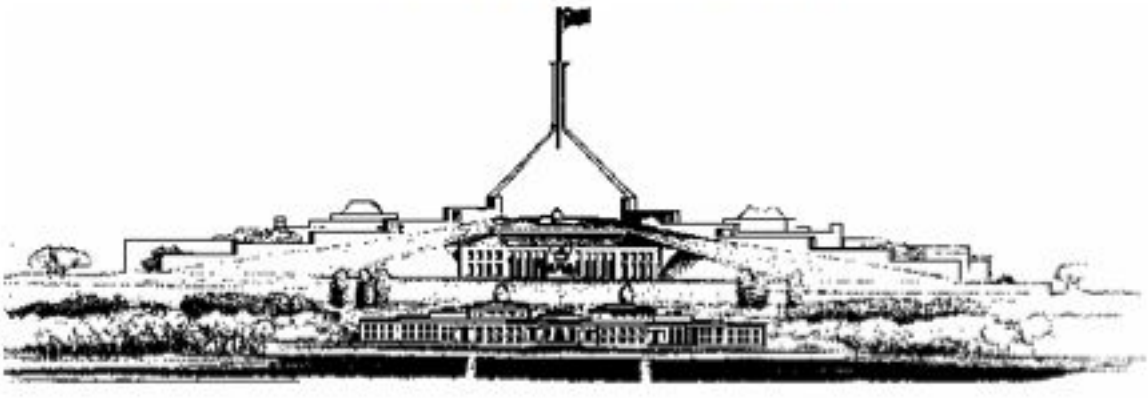
COMMONWEALTH OF AUSTRALIA

PARLIAMENTARY DEBATES



THE SENATE

ADJOURNMENT

Renewable Energy

SPEECH

Tuesday, 15 September 2015

BY AUTHORITY OF THE SENATE

SPEECH

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Questioner		**Responder**	
Speaker	Madigan, Sen John	**Question No.**	

Senator MADIGAN (Victoria) (21:41): Firstly, I seek leave to table a document, and it was disclosed to all the whips earlier today.

Leave granted.

Senator MADIGAN: Tonight, I speak about corruption and fraud in the power generation industry. The Senate wind turbine inquiry's final report made 15 important recommendations. Tonight, I rise to speak in support the Labor senators' dissenting report's fifth recommendation:

… that state and territory government consider reforming the current system whereby wind farm developers directly retain acoustic consultants to provide advice on post-construction compliance.

Avoiding noise from wind turbines is an expensive bother that does not hold any appeal to wind farm operators. Slowing down turbines increases costs and slows down profits. So I was not surprised to learn that, in the seven years of its controversial operation, the adjustments necessary to ensure Cape Bridgewater wind farm operated in compliance with its planning permit have never been applied. Wind farm operators have found a simple and far less expensive process to game the system: they employ compliant 'experts'.

In 2006, Marshall Day Acoustics, with consultant Christophe Delaire, prepared a preconstruction noise impact assessment for the Cape Bridgewater wind farm. The report predicted that compliance could not be achieved at Cape Bridgewater wind farm without operating 13 of the 29 turbines in reduced operational noise modes. Before it was even built, developers knew this wind farm would operate in breach of permit unless adjustments were made. But Delaire told the committee of inquiry, 'following measurements on site, it was found that noise optimisation was not required.' How did Delaire's 'expert' preconstruction and post-construction reports come to draw such contrasting conclusions? The answer is simple. Pacific Hydro did not noise optimise turbines at Cape Bridgewater, because they knew they would not have to. They only had to commission a post-construction noise report to say the wind farm was compliant. On both occasions, Pacific Hydro got exactly the report they wanted from MDA, but the compliance assessments were not compliant with the standard and neither were the reports.

Questions of multiple reports reaching opposite conclusions were raised at the Portland hearing. During the Cape Bridgewater wind farm's noise monitoring program, measurements were taken every month and monthly noise reports were generated to assess compliance at dwellings. Let us look at a few from house 63. October 2008: 'Wind farm noise levels exceed the New Zealand noise limits'. June 2009: 'The New Zealand limits are significantly exceeded.' July 2009: 'The New Zealand limits are significantly exceeded.' MDA's original reports identified noncompliance at multiple homes and every wind speed. This did not satisfy the client.

On 22 July, MDA reissued revised monthly reports for every house and every month. These reports were to Pacific Hydro's satisfaction but not the permit's. The reissued versions for October and July said, 'There is reasonable correlation between measured noise levels and wind speeds.' References to exceeding the New Zealand limits were erased. Without incriminating original reports, MDA's final report concluded, 'Noise emissions from the Cape Bridgewater wind farm comply with the New Zealand noise limits at all houses and at all assessed wind speeds.' Pacific Hydro submitted it to the planning minister as 'proof' the Cape Bridgewater wind farm was compliant. But how? MDA combined all the reissued monthly reports and averaged them out for each property. There is nothing in the 1998 New Zealand standard that allows acousticians to find 'average' post-construction noise levels and yet Pacific Hydro told the committee, 'Current noise standards require the average post-construction wind farm noise level.'

There is no tolerance within the standard that would allow a wind farm to casually comply with its noise limits in some months but not others. Condition 13 does not allow the wind farm to occasionally comply with its permitted use. The New Zealand standard is supposed to protect amenity and night-time sleep. Wind farm planning permits are issued with conditions that decision makers expect will protect the communities that host them—in real time.

In February 2009, the panel assessing the Lal Lal wind farm stated:

There is little point in giving permission for a WEF to operate under certain conditions unless compliance with those conditions can and is demonstrated.

It added:

any exceedance of the limit should be considered as a breach of the condition …

An 'average' noise level means absolutely nothing. That is why the permit requires that when the wind farm is operated it must comply with the New Zealand noise limits at all dwellings and, clearly, this one does not. The Cape Bridgewater wind farm has never been compliant, despite the falsified conclusions drawn by MDA and the claims of its master, Pacific Hydro. A Victorian Planning officer told the committee: 'Studies need to be done in a way which is robust. That is why the peer review of the work is important.' So why wasn't a review of the Cape Bridgewater report commissioned as a matter of due diligence, not to mention consistency?

When ACCIONA gave the minister its report, the minister sent a copy to the EPA, and within a week he had commissioned an independent technical review. He promptly wrote to ACCIONA, describing multiple breaches of permit and expressing his dissatisfaction that compliance had been achieved with the noise monitoring program required by condition 17. He said that the report shows that the operation of the Waubra wind farm does not comply with the noise standard at several dwellings and he was not satisfied in accordance with condition 14 that the operation of the facility complies with the relevant standard. Then he asked ACCIONA to 'noise optimise the turbines'. Delaire from MDA prepared Waubra's wind farm's preconstruction noise report, which predicted noise would exceed the New Zealand limits and would only comply if 50 of its 128 turbines were noise optimised. Same preconstruction formula, same post-construction problems. If not for that pesky peer review, ACCIONA might have got away with it. They had never intended to operate noise optimised turbines in compliance with the limits. Why? ACCIONA had an MDA post-construction noise report that concluded that Waubra wind farm operated in compliance with noise limits without needing to noise optimise any turbines, let alone 50 of them!

The minister wrote to ACCIONA again a year later, stating that the MDA report it submitted showed non-compliance and that testing was not undertaken in accordance with the New Zealand standard. The minister queried who it was that undertook the assessment and whether this person or people were qualified and experienced to do so. MDA's website says that Delaire graduated with an engineering diploma in 2002, after beginning with MDA as a work experience student the year before. Delaire has prepared acoustic reports for 50 wind farms. MDA's website promotes its 'proven record of successful wind farm approvals' and credits Delaire for developing a 'specialty' in wind farm environmental noise assessments.

At the beginning of MDA's reports there is an extraordinary disclaimer which acknowledges that reports are written to satisfy the client's brief. It says their reports 'may not be suitable' for other uses. MDA's disclaimer proves they are not fit for purpose as independent compliance documents. MDA is a member firm of the Association of Australian Acoustical Consultants, whose code of professional conduct requires that members avoid making statements that are misleading or unethical and that they endeavour to promote the wellbeing of the community. They must not knowingly omit from any finalised report any information that would materially alter the conclusion that could be drawn from the report.

MDA has clearly failed the community consistently. There is no doubt that MDA's commercial arrangements with both ACCIONA and Pacific Hydro adversely affected the independence of reports and the legitimacy of conclusions. This example alone shows exactly why we needed an inquiry that examined the regulatory governance of wind farms and why the scrutiny of an independent national wind farm commissioner is essential. There must be arm's length relationships between acousticians and wind farm operators. Independence would put a stop to the practice where false compliance documents allow operators to gain pecuniary advantage.

Local, state and Commonwealth government authorities, departments and agencies have been duped by sham compliance reports. A wind farm that is 'compliant' with state laws can receive RECs. A 'compliant' wind farm can secure finance, like the $70 million Pacific Hydro swindle from the Clean Energy Finance Corporation. But those who these reports fail most are decent rural people, left suffering the consequences of deception. A shonky noise report can erase away the harm and nuisance it has caused for those living, working and suffering beside excessively noisy industrial machines. Last month I asked the Victorian government to take a good hard look at all the submissions we received—in particular, those from the people duped by the regulatory failures

of the Waubra and Cape Bridgewater wind farms. Samantha Stepnell's submission is No. 470. Melissa Ware's submission is No. 206.

While ACCIONA and Pacific Hydro were busy breaching their permits to maximise their profits, residents were and still are often exposed to horrendously excessive noise. Twenty or more of these same people had sent affidavits to former health minister and current Victorian Premier Daniel Andrews in June 2010. They reported severe sleep disturbances and a series of unexplained adverse health effects that were not present before the wind farms started operating. Local doctors and a sleep specialist confirmed concerns of a correlation.

By December 2010, 11 families around Waubra alone had vacated their homes, citing noise nuisance as the reason. But the Victorian government refused Pyrenees Shire Council's request for a health impact assessment, citing the NHMRC's rapid review. That very rapid review found that there was no evidence of adverse effects when planning guidelines were followed. At Waubra, we know that they were not. A simple peer review would have found that they were not followed at Cape Bridgewater either. With callous indifference, the Victorian government has consistently failed in its duty of care to these people. These people represent the human cost of corporate fraud, regulatory failure and political indifference. These families still have the right to be able to sleep at night, to work safely on their farms and to live in peace and have the quiet enjoyment of their homes. This is as much a human rights issue as it is an environmental one.

The nocebo theory is obliterated by the fact that the noise measured at Waubra and Cape Bridgewater exceeds World Health Organisation recommendations for sleep protection. Sleep deprivation is an indisputable health effect. Even the NHMRC now admits there are probably adverse health impacts for residents living within 1.5 kilometres of a wind turbine.

I have been writing to the AMA since May 2014 about its wind farm position statement, asking why audible noise impacts had not been considered. The AMA has failed to respond, but blindly endorses the disproven nocebo drivel by Chapman and Crichton, stating:

The available Australian and international evidence does not support the view that the infrasound or low frequency sound generated by wind farms, as they are currently regulated in Australia, causes adverse health effects on populations residing in their vicinity.

That is because infrasound and low frequency sound from wind farms are not regulated in Australia. Irrespective of what the AMA has been told or wants to admit, exposures to excessive audible noise, low frequency pressure and vibration cause debilitating nuisance, sleep disturbance and compromised health and amenity that reduce quality of life.

So where does that leave those suffering the continuing nuisance at Cape Bridgewater? In submission No. 206, Melissa Ware said she was driven beyond despair and wretchedness. Last year, Pacific Hydro told residents: 'It is our goal to improve your quality of life or at least restore it to what it was before the wind farm was there.' They told me personally: 'We recognise that the wind farm has reduced their quality of life, and we want to help them get it back.' But that was before Steven Cooper's study found that all six residents surveyed are adversely impacted by the operation of the Cape Bridgewater wind farm. Funnily enough, Cooper was instructed not to test compliance. Despite the infamous screeching, thumping, whirring, whistling and siren-like audible sounds produced by the Cape Bridgewater wind farm, special audible characteristics were not assessed in MDA's report. If the five decibel SAC penalty were properly applied, an independent report would identify noncompliance at every dwelling, at every wind speed.

The Waubra and Cape Bridgewater reports were written within months of each other by the same acoustician from the same firm, using the same formula. Perhaps the planning minister has not commissioned a review of Cape Bridgewater's report because he already knows it shows noncompliance. Is this the real reason why the planning minister insists that it is Glenelg Shire's responsibility to enforce noise compliance at Cape Bridgewater, not his? Glenelg Shire cannot enforce compliance without any access to noise reports and the complaints procedure. Only the minister has that information. Condition 13 says compliance must be to the satisfaction of the minister. Council cannot legally exercise that judgement. Condition 13 remains unresolved. Cape Bridgewater wind farm continues to operate at full capacity and maximum noise, without any regulatory authority accepting responsibility for enforcement.

In submission No. 456, Sonia Trist explains how officers from the Victorian planning department admitted noise limits are exceeded at her home, one apologising that: 'The department adjusts information to obtain the required results.' In June 2014, this retiring officer called me and later sent me an email, blowing the whistle on his department: 'There is so such more to convey and I am sorry that I cannot do so now. Department incompetence and indifference is the primary reason for the current situation. I found it hard to find the truth, working inside, so it must be hard for your side.' On 'my side' are those exposed to excessive and harmful, sleep-destroying, audible noise emissions at levels that exceed noise standards and breach permits. Those not on my side include complicit regulators, wilfully blind health bodies and greedy operators who put corporate profits before country people. And also not on my side are crooked acousticians flaunting a fraudulent reporting formula that concludes compliance when there is not.

Notable for their refusal to attend the Senate inquiry and be questioned, the Australian Medical Association were not alone. Others who similarly refused were the authors of the two NHMRC-commissioned literature reviews from Adelaide University and Monash University, and Professor Gary Wittert.

In December 2013, I warned about the culture of noncompliance arising from systemic regulatory failure in Victoria. But that culture of noncompliance, aided, abetted and enabled by recklessly irresponsible reporting and regulatory indifference, will only continue for as long as we tolerate it. This industry demands root-and-branch regulatory reform. Those who have actively and deceptively harmed communities, gamed the planning system, rorted the RET and exposed the CEFC and the private sector to investment risk must be investigated and held to account. I urge the government to swiftly adopt the prudent recommendations of the wind turbine inquiry. We insist that the Labor senators' fifth recommendation is acted upon as a matter of urgency.