Chapter 5

A consideration of the administrative issues in the bill

5.1 The committee has established that there is no evidence available to it to show that wind farms produce health impacts different in nature to those caused by other noise sources. Wind farms do produce noise, which is why they are subject to planning regulations, including guidelines prepared specifically for wind farm proposals, intended to ensure that noise issues are addressed.

5.2 In the course of considering health and noise issues, the committee has identified a number of reasons why the bill is inappropriate. In addition to these points, there are a range of other arguments that were put to the committee regarding why the bill should not be supported.

The bill is discriminatory against one kind of power generator

5.3 In its current form the bill discriminates against one kind of industrial noise producer. Ratch-Australia Corporation argued that '[t]he amendment singles out wind farm developments for an increased level of scrutiny.'[1] The Clean Energy Council concurred with the view that wind farms are being singled out in the bill in comparison with the regulatory burden on other types of power generation:

> Appropriate regulations and community consultation should apply to any wind farm, as they do to any new infrastructure – be it a conventional fossil fuelled power station, a tourist development, a road, a dam or a mine. Where appropriate, on the basis of merit, the planning scheme should manage impacts and relevant concerns. However, that must be balanced within broader state policy objectives.
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> Treating wind farms differently from other forms of infrastructure could create a precedent that stifles investment in other projects essential to Australia.[2]

5.4 Energy Australia also argued that the bill was not consistent in its treatment of all infrastructure:

> The application of regulations and standards should apply equally to wind farms and other new infrastructure, for example, roads, fossil fuelled power stations, ports, or mines.[3]

5.5 The health implications from the noise from wind farms was discussed by the Public Health Association of Australia, which also could not understand why wind farms were being treated differently to other forms of power generation:

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1 Ratch-Australia Corporation, *Submission 117*, p. 1.

2 Clean Energy Council¸ *Submission 165*, p. 3.

3 EnergyAustralia, *Submission 159*, p. 5.

> We also note that electricity generation from other sources particularly fossil fuel mining and combustion has a range of well-documented adverse impacts. These include: visual impacts, dust and organic particulate and gas emissions, effects on local communities, and lifecycle environmental effects such as greenhouse gas emissions and consequent global warming. Noise is only one of the factors which affect health and well-being. These other impacts have received disproportionally less attention than issues relating to wind turbines. A focus on a single aspect of one method of electricity generation will create a skewed approach to the policy question of 'as-healthy-as-possible' electricity generation choices in Australia.
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> Given this broad context of adverse effects, we submit that it is not appropriate for a Bill intending to address any adverse effects to focus on only one aspect of a single electricity generation process.[4]

5.6 The Conservation Council of South Australia pointed out succinctly that 'noise is not unique to wind farm developments,'[5] while Joe Hallenstein suggested 'that any noise legislation should cover ALL emitters of noise, be it noise from energy generation, industry, cars, farm equipment, barking dogs or bleating sheep'.[6]

5.7 The committee also noted the submission from Community for the Accurate Impact Assessment of the Dalton Power Station, a residents' organisation concerned about noise issues associated with the construction of a gas turbine power station in a rural area.[7] The issues raised in that submission are the same as those raised about wind farms, and the committee sees no reason why the regulatory approaches to the two types of facility should be different.

The bill will not prevent wind farms from operating but could impact on electricity prices

5.8 The bill has also been criticised because it will not prevent wind farms from operating, even if there are issues of non-compliance. A wind farm that contravened the provisions in this bill would lose its capacity to earn Large Scale Generation Certificates (LGCs) until it established compliance. But this has no bearing on the wind farm's right to operate. As long as a wind farm complies with existing planning laws relating to noise, it will be able to operate, regardless of whether the bill passes.

5.9 This would not be the case. However, while not directly affecting wind farm operations, the bill's provisions would impose a financial penalty on the operating company and could increase electricity prices.

5.10 Energy Australia and the Energy Supply Association of Australia submitted that the *Renewable Energy (Electricity) Act 2000* currently creates a certain amount of LGCs to meet the Renewable Energy Target. They argued that if the number of LGCs falls then this would increase costs, and consequently prices:

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4 Public Health Association of Australia, *Submission 23*, pp 2-3.

5 Conservation Council SA, *Submission 198*, p. 2.

6 Joe Hallenstein, *Submission 46*, p. 1.

7 Community for the Accurate Impact Assessment of the Dalton Power Station, *Submission 167*.

> Under the RET, liable retailers of electricity are statutorily required to acquit a certain number of Large Scale Generation Certificates (LGCs) to the Clean Energy Regulator each year. The Excessive Noise Bill significantly exposes electricity retailers who are statutorily required to acquire LGCs under the RET, where the retailer is sourcing LGCs from a wind farm subject to suspension of accreditation.[8]
>
> The effect of this bill, should it be implemented, would be to increase the costs of complying with the RET. This would flow through to higher electricity prices. In many cases, wind farm developers have entered into power purchase agreements (PPAs) with electricity retailers. PPAs secure a price for the wind farm developer for the electricity generated and any associated RET certificates. This also helps retailers to secure a source of certificates to meet their obligations under the RET. If electricity generation and RET certificate creation from a wind farm decreases as a result of this bill, retailers would then need to source certificates elsewhere. This increases the costs of compliance for retailers and would increase electricity prices as a result.[9]

Increased monitoring cost

5.11 There was concern that monitoring the obligations contained in the bill would be costly and impractical. The Clean Energy Council queried the expense of installing additional monitoring equipment:

> The excessive noise bill requires ongoing monitoring of noise at numerous locations, as well as wind speed, direction, and undisclosed other "weather conditions". Such monitoring, done properly, would come at significant cost.[10]

5.12 Pacific Hydro also suggested that the requirement to assess noise levels against background noise would create an impossible situation:

> …we are of the view that the proposed legal limit cannot be measured continuously. To do so would require turning the wind farm on and off to establish the actual impact above the background noise level at the time. This is an entirely unworkable proposition.[11]

The bill involves the Commonwealth taking over planning and regulatory responsibilities from states

5.13 Several submissions highlighted that the bill involved the Commonwealth assuming control of planning and regulatory responsibilities that are the responsibility of State governments. Repower Australia put it that:

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8 Energy Australia, *Submission 159,* p. 2.

9 Energy Supply Association of Australia, *Submission 205,* p. 2.

10 Clean Energy Council¸ *Submission 165,* p. 3.

11 Pacific Hydro, *Submission 207,* p. 3.

> State Governments are responsible for establishing the planning framework for new infrastructure, such as wind farms, and already have clear standards relating to wind farm noise.[12]

5.14 The Energy Supply Association of Australia (ESAA) noted that:

> The proposed legislation would also set a worrying precedent in terms of Commonwealth involvement in state planning issues. Currently, planning laws are administered by state governments. There is no clear or justifiable reason for the Federal Parliament to interfere with existing state government planning laws in the case of wind farms.[13]

5.15 In the same vein, EnergyAustralia observed that:

> Currently, the relevant jurisdictional Environmental Protection Agency is the only body that regulates noise compliance of wind farms. The Excessive Noise Bill implicitly proposes that the Clean Energy Regulator (as the regulatory agency in relation to the RET) will also have a role to play in regulating compliance of noise arising from wind farms.[14]

5.16 In contrast to these views, the Waubra Foundation argued that the bill is necessary because:

> No responsible State noise pollution regulation authority is actively and thoroughly investigating the noise pollution, even when multiple complaints are made, and the seriousness of the situation is made clear. The investigation, if it occurs, is cursory, often with equipment which cannot measure the full acoustic spectrum or the true background noise accurately, and it always occurs when the wind project operators are well aware that such an investigation is occurring.[15]

5.17 The Clean Energy Council expressed fears that duplicating planning requirements at the Commonwealth and State level would create inconsistency and confusion:

> Noise guidelines form a part of an overall planning scheme and should be determined by individual state governments, to be considered and defined alongside other aspects of infrastructure planning. Setting a national rule sitting above existing state-based planning regimes will create inconsistency and confusion for planners, industry and the community...State governments should be left to design their noise requirements as part of their broader planning regime.[16]

5.18 The Queensland Government opposed most of the bill's provisions, and pointed out that it has existing processes for addressing impacts, including noise impacts. It also argued that the bill's removal of discretion in how a regulator acts

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12 REpower Australia, *Submission 137*, p. 1.

13 Energy Supply Association of Australia, *Submission 205*, p. 2.

14 EnergyAustralia, *Submission 159*, p. 4.

15 Waubra Foundation, *Submission 197*, p. 4.

16 Clean Energy Council, *Submission 165*, pp 2–3.

because it bypasses opportunities for more appropriate enforcement actions such as directions to comply.[17]

Appropriateness of the noise standard in the bill

5.19 A number of submissions received by the committee queried the appropriateness of the bill establishing a noise standard that applies only to one kind of operation. For example, the ESAA posited that:

> A range of industrial and transport installations generate noise, often more consistently than turbines. There is no clear reason as to why wind farms alone should be shut down because of this. This Bill would place requirements on one particular technology which do not apply to any other form of technology. Furthermore, defining 'excessive noise' as exceeding background noise by 10dB within 30 metres of a range of premises sets an astonishingly low threshold for what is considered to be excessive noise.[18]

5.20 Similarly, EnergyAustralia argued that the proposed noise standards were inappropriate:

> In its operation, the [bill] would allow wind farms to be louder than existing noise guidelines at time of high background noise, and will restrict wind farms to unreasonable noise levels when background noise is very low. If background noise levels were about 5 dB then a wind farm would be allowed to emit only 15 dB, 30m from a dwelling, workplace or congregation area…The proposed standards are overly onerous given that the World Health Organisation recommends noise levels in sleeping areas are kept to less than 30 dB for healthy sleeping conditions.[19]

5.21 The Clean Energy Council also questioned the selection and appropriateness of the noise standards to be established by the bill:

> The excessive noise bill, at its core, demands that wind farms do not exceed background noise levels at residences by more than 10dB. However it does not describe the rationale behind the selection of this noise level. The excessive noise bill also neglects to describe the methodology of this measurement. For example, the measurement distance from dwellings or workplaces of 30m is totally arbitrary and unscientific.[20]

5.22 Vestas[21] and Alstom[22] also pointed out that the excessive noise provisions in the bill appear inappropriate and could have adverse consequences. Vestas states that:

> The provisions of section 4 will actually allow wind farms to be louder than they would be permitted to be under existing noise guidelines at times of

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17 Queensland Government, *Submission 217*.

18 Energy Supply Association of Australia, *Submission 205*, p. 2.

19 EnergyAustralia, *Submission 159*, p. 4.

20 Clean Energy Council, *Submission 165*, p. 2.

21 Vestas, *Submission 191*.

22 Alstom, *Submission 186*.

> high background noise. Such a rule will also restrict wind farms to unreasonable noise levels when background noise is very low.[23]

Impact on operators

5.23 Although not retrospective, the bill would treat some operators unfairly and undermine investment confidence. TrustPower, a New Zealand-based renewable energy company, noted possible repercussions of the passage of the bill:

> TrustPower's continued investment in Australian wind farms requires regulatory certainty over the life of a project. TrustPower considers the bill in its current form as practically unworkable with very significant unwarranted regulatory risk for existing and future wind farm investments.[24]

5.24 Similarly, EnergyAustralia noted:

> Imposing additional, more onerous, noise regulations in relation to existing assets is a serious concern and something that will have significant ramifications in relation to the existing commercial and financing arrangements which underpin these large infrastructure projects.[25]

5.25 The bill's requirement that operators provide various data measures was questioned on the grounds of cost, relevance, and reason. It was pointed out to the committee that a large amount of data is already publicly available through such sources as the Bureau of Meteorology and the Australian Energy Market Operator.[26]

5.26 The bill seeks to put commercially sensitive data into the public arena.[27] Some submissions questioned the rationale behind releasing data on individual turbines noting that:

> The power output of individual wind turbines is proprietary information and is protected vigorously by a project owner as well as the turbine manufacturer. Other power stations are not required to publish operational data.[28]

5.27 As well as commercial sensitivity, the committee heard allegations that the data provided by operators to stakeholders was often unreliable.[29] If the data is inaccurate, it is unclear how the public having access to this data would limit excessive noise.

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23 Vestas, *Submission 191*, p. [4].

24 TrustPower, *Submission 208*, p. 2.

25 EnergyAustralia, *Submission 159*, p. 3.

26 Energy Supply Association of Australia, *Submission 205*, p. 3.

27 Clean Energy Council, *Submission 165*, p. 3.

28 EnergyAustralia, *Submission 159*, p. 5.

29 Waubra Foundation, *Submission 197*, p. 4.

Conclusion

5.28 Every resident, whether in a city or rural area, should be protected from unreasonable environmental impacts by the operation of planning laws and guidelines. These processes, primarily the responsibility of states and territories, should be non-discriminatory as they apply to different kinds of development, and should make provision for monitoring and enforcement.

5.29 It is a principle of good practice law-making that laws and regulations should be designed to target their intended outcome, and minimise unintended consequences. They should, as far as possible consistent with meeting their objectives, minimise uncertainty and the costs associated with compliance.

5.30 On all of these tests, the current bill has significant shortcomings. The committee does not believe it should be passed.

Recommendation 4

5.31 The committee recommends that the bill not be passed.

Senator Doug Cameron

Chair