

Lesson 5: Why Wind Farms are Exposed to Litigation

Wind farms thought they were untouchable.
Then Bald Hills happened.

Now they are running scared.

Wind farms are exposed to litigation because:

- There is no regulatory watch dog overseeing wind farm operational systems or compliance integrity.
- Permit compliance is not enforceable under the Renewable Energy Certificate (REC's) system.
- Permits are issued by a politician without the usual commercial industry scrutiny.
- The industry relies on wind farms to self-report breaches of permit compliance.

Without regulatory oversight, wind farms have been free to make up the rules to suit themselves. They have cut corners, ignored compliance, and not bothered with the detail.

Example

Acciona of Mortlake South Wind Farm declared in a CEC meeting that their complaints process system does NOT require Acciona to fix the problem, it only requires Acciona to make a response (see box below).

- Acciona maintains that a response of any kind, no matter how unsatisfactory, deems the complaint resolved.
- And this complaints process system has been accepted by the Moyne Shire (Responsible Authority) without question.

A judge would describe this type of behaviour as "heavy-handed".

Lack of regulatory governance

Because of this lack of regulatory governance, wind farms have been slack.

- They are light on technical evidence. (e.g. background noise data).
- Their deficient reporting methodology has been accepted without question.
- They have little or no objective evidence to justify their business operations in court. They are completely exposed.

Legal advice to wind farms

As a result of Bald Hills, lawyers are advising wind farms to:

1. Undertake all year-round noise testing – including specific reporting of individual nights.
2. Adjust the operation of the wind farm to abate nuisance, i.e. turn them off at night, OR
3. Ramp up neighbour agreements to remove the risk of litigation.

Wind farms are only concerned with business profits, so 1 and 2 are not an option for them.

They will step up the hard sell tactics to pressure neighbours into signing Neighbour Agreements.

Section 10.3

Neil Blain asked if a response made to a complaint in a CEC meeting is then considered by Acciona to be closure of that complaint....."even if he advised that Acciona's response is unsatisfactory. Acciona responded that it considers the complaint is resolved"

Neighbour agreements

Neighbour Agreements protect Wind Farms from litigation by:

- A Neighbours Agreement deems the neighbour a business partner or stakeholder in the wind farm, therefore they are legally prevented from making any further claims for compensation or take legal action against the wind farm business.
- As a stakeholder, neighbours are deemed compensated for their pain and suffering. No complaints or further claims can be made.
- Confidentiality clauses prevent neighbours making any negative comments about the wind farm.
- Confidentiality clauses prevent Neighbours submitting complaints to the local council or AEIC. This disguises the problems with wind farms and allows the AEIC to skite about the low number of complaints received.
- The wind farm has the legal right to the landowner's title for the life of the wind farm.
- The "right to title" is transferrable upon sale of the property and/or the sale of the business – it will inevitably end up in the hands of foreign investors.
- Wind farms use the neighbour's title as business collateral to borrow against.
- The neighbour's title becomes part of the wind farm business' *Going Concern* sales pitch for foreign investors.

Warning to Hosts

- Most hosts can't live on their farms because of the noise renders their property unliveable – they become absentee farmers.
- Wind farms are usually \$2 shell companies owned by offshore investors.
- There is no *Regulatory Body* to enforce the Lease Agreement, including decommissioning.
- Lease Agreements are readily sold on to offshore investors. And it is often the case that the protective conditions in the lease are not transferred to the new owner with the sale of the business.
- Unless there is a clause in the agreement that "fixes" all conditions to ensure the original lease conditions are transferred with the sale, the existing clauses can be removed or amended by the new foreign owner.
- As per usual business contracts, lease conditions can be breached. In the event of a breach, a host will need to undergo a lengthy dispute resolution process to enforce compliance with contract clauses such as decommissioning.
- Insurance underwriters may not recognise indemnity clauses in the lease agreement and disqualify the whole of the farmers' public liability policy.
- Insurance underwriters won't insure the farmer under their existing farm public liability policy against third party businesses such as wind farm leases.
- The General Environmental Duty (GED) laws apply to Host Landowners.