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PUBLIC STATEMENT

Public Officials Are at Risk of Criminal Charges for Torture by Ignoring Prolonged Sleep Deprivation from Environmental Noise

Summary

Public officials involved in the investigation, assessment and regulation of environmental noise, or in giving authoritative advice on that matter, are at personal risk of being charged with a serious criminal offence under Australian law, based on international human rights covenants and conventions, if their actions and decisions lead to, or are complicit in, causing prolonged sleep deprivation for residents in excessive noise impacted communities. ⁱ

Prolonged Sleep Deprivation Confirmed as a Method of Torture

The UN Committee Against Torture (UN CAT) has explicitly identified prolonged sleep deprivation as a method of torture. The Committee had this to say about the impact of prolonged sleep deprivation:

“The Committee against Torture (CAT) has noted that sleep deprivation used for prolonged periods constitutes a breach of the CAT, and is primarily used to break down the will of the detainee. Sleep deprivation can cause impaired memory and cognitive functioning, decreased short term memory, speech impairment, hallucinations, psychosis, lowered immunity, headaches, high blood pressure, cardiovascular disease, stress, anxiety and depression.” ⁱⁱ

The Physicians for Human Rights also consider sleep deprivation as well as sensory bombardment with noise to be methods of torture, and list the clinical evidence of the harm to physical and mental health, and the legal precedents to support this opinion in their document **“Leave No Marks”**. ⁱⁱⁱ

There have been a number of recent developments internationally with respect to wind turbine noise specifically, which are directly relevant to the responsibilities of public officials to prevent torture from prolonged sleep deprivation resulting from excessive levels of acoustic pollution. These are listed below.

Wind Development Declared a “Human Health Hazard” by Town Board Health Authority

The Brown County Town Health Board in Wisconsin recently declared Duke Energy’s Shirley Industrial Wind Turbine Development to be a Human Health Hazard. The precise wording of the declaration follows:

“To declare the Industrial Wind Turbines in the Town of Glenmore, Brown County, WI. a Human Health Hazard for all people (residents, workers, visitors, and sensitive passersby) who are exposed to Infrasound/Low Frequency Noise and other emissions potentially harmful to human health.”^{iv}

The declaration was made after acoustic investigators found evidence that acoustic emissions from the Shirley Wind Turbines could be directly causing the symptoms including repetitive sleep disturbance reported by residents. The symptoms were confirmed by the residents’ treating doctors, including Dr Jay Tibbetts, the Vice Chair of the local Health Authority.^v

The Brown County Ordinances (Chapter 38) describe a human health hazard as:

“a substance, activity or condition that is known to have the potential to cause acute or chronic illness or death if exposure to the substance, activity or condition is not abated.”^{vi}

Acoustic Impact Zone from Wind Turbine Noise of 10km Confirmed

The updated *“Diagnostic criteria for adverse health effects in the environs of wind turbines”* was recently published in the peer reviewed Journal of the Royal Society for Medicine (Open Access).^{vii} The symptoms listed in this revised McMurtry & Krogh Diagnostic Criteria are consistent with the symptoms described as “wind turbine syndrome”, also known as “noise annoyance” symptoms to some acoustic engineers.^{viii}

The McMurtry and Krogh Diagnostic Criteria, and the acoustic and clinical data collected from the Shirley Wind Development and other locations have confirmed the Waubra Foundation’s advice to the public in our **Explicit Cautionary Notice**, issued on 29th June, 2011^{ix} that the adverse health impacts, particularly relating to sleep disturbance, **extend out to at least 10km** from Industrial Wind Turbine Developments, especially with larger, more powerful wind turbine generators.

Recent acoustic evidence collected by Emeritus Professor Colin Hansen’s team from the Waterloo Wind Development in South Australia^x has confirmed that **residents living out to 8.7km from the nearest wind turbine were subjected to excessive levels of low frequency noise, sufficient to disturb sleep.**

The National Health & Medical Research Council (NHMRC) conceded in their recent 2014 systematic literature review,^{xi} and their draft information statement, and public comments in the media by the NHMRC CEO Professor Warwick Anderson, that there is evidence of sleep disturbance, annoyance symptoms and impaired quality of life around wind turbines.^{xii}

Repetitive sleep disturbance with chronic exposure is inevitably leading to prolonged sleep deprivation and is being reported by these residents living near wind turbines, but is commonly ignored or dismissed in Australia by the responsible authorities and public officials.

The reported distance of the acoustic impact zone from wind turbine noise pollution of 500 metres mentioned by the CEO of the NHMRC Professor Warwick Anderson in his interview with the ABC in February 2014,^{xiii} and also written in the draft NHMRC information statement^{xiv} is incorrect, and underestimates, by a factor of twenty, the documented distance of the acoustic impact zone resulting in sleep deprivation from chronic exposure to wind turbine noise pollution.

Important Recent Legal Developments – Wind Turbine Acoustic Pollution

The Victorian Civil Administrative Tribunal members Wright and Liston confirmed the legitimacy of the reports of sleep disturbance to wind turbine neighbours in the Cherry Tree case decision in November 2013 (para 46). Their decision stated that:

“The Tribunal has no doubt that some people who live close to a wind turbine experience adverse health effects, including sleep disturbance”.^{xv}

Courts in Falmouth, USA and Portugal have also confirmed the existence of serious adverse health effects from wind turbines, including prolonged sleep disturbance, and have ordered that turbines should be immediately shut down overnight in order to prevent irreversible harm to physical and psychological health (Falmouth)^{xvi} or turned off permanently (Portugal).^{xvii}

The Provisions of Torture Prohibition Legislation in Australia

We therefore bring to the attention of all public officials, including elected officials and public servants, that if they are complicit in allowing torture and cruel inhuman and degrading treatment to occur, or to continue, this behaviour is punishable under the provisions of the UN Convention Against Torture, to which Australia is a signatory.

The **UN Convention Against Torture and Cruel, Inhuman and Degrading Treatment**, Article 4 states:

- “1. *Each State Party shall ensure that all acts of torture are offences under its criminal law. The same shall apply to an attempt to commit torture and to an act by any person which constitutes complicity or participation in torture.*
2. *Each State Party shall make these offences punishable by appropriate penalties which take into account their grave nature.”^{xviii}*

The **Commonwealth legislation** dealing with Torture is Section 274.2 of the Criminal Code Act 1995. which states at subsection (2) that:

- (2) *A person (the perpetrator) commits an offence if the perpetrator:*
 - (a) *engages in conduct that inflicts severe physical or mental pain or suffering on a person; and*
 - (b) *the conduct is engaged in for any reason based on discrimination of any kind; and*
 - (c) *the perpetrator engages in the conduct:*
 - (i) *in the capacity of a public official; or*
 - (ii) *acting in an official capacity; or*
 - (iii) *acting at the instigation, or with the consent or acquiescence, of a public official or other person acting in an official capacity.*

Penalty: Imprisonment for 20 years.

- (3) *Absolute liability applies to paragraphs (1)(c) and (2)(c)*

In other words ***there is no legal excuse for any public official to allow torture to occur, not even “following orders”.***

The **Victorian Legislation** prohibiting torture is section 10 of the Victorian Charter of Rights and Responsibilities Act 2006. It provides explicit legislative direction to ensure that torture is not committed by “public authorities” who include Ministers of the Crown, heads of government departments, public servants, and elected officials in local government. Section 10 provides that:

“A person must not be—

- a) *subjected to torture; or*
- b) *treated or punished in a cruel, inhuman or degrading way; or*
- c) *subjected to medical or scientific experimentation or treatment without his or her full, free and informed consent.”^{xix}*

As a consequence, all Australian public officials responsible for, or involved in, the investigation, assessment and regulation of environmental noise including wind turbine noise, need to understand their important legal responsibilities with respect to ensuring that residents' sleep is not regularly disrupted because of excessive levels of acoustic pollution. Public officials arguably include individuals funded by the taxpayer and working with the NHMRC and other government organizations as experts on panels advising governments, State and Federal politicians, and public servants working in Health, Planning and noise pollution Regulatory Authorities, as well as local government.

Complaints Against Public Officials

As a result of these important recent clinical, acoustic, research and legal developments, and the lack of effective action to prevent the ongoing torture of Australian residents from prolonged sleep deprivation from excessive environmental noise, particularly wind turbine noise, the Waubra Foundation will provide such assistance as it can to members of the public who wish to lodge complaints with the relevant authorities for being subjected to torture, under the provisions of section 274 of the Australian Criminal Code Act, 1995, and pursuant to articles 1, 2 and 4 of the UN Convention Against Torture and Cruel Inhuman and Degrading Treatment.

Victorian residents will also be assisted to lodge complaints against specific responsible “public authorities” for breaches of section 10 of the Victorian Charter of Rights and Responsibilities relating to torture and, where applicable, for being subjected to scientific experimentation without full, free and informed consent, a clause specific to this legislation which is based on the Nuremburg Code.^{xx}

Legal action may be initiated by relevant parties at any time in the future against individuals who are perceived to have authorized, participated in or advised activities constituting torture.



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References

- ⁱ Information about the variety of sources of environmental night time noise including coal mines, gas fired power stations, gas fired power stations, CSG field compressors and wind turbines is detailed here: <http://waubrafoundation.org.au/resources/environmental-noise-sleep-deprivation-torture-september-2014/>
- ⁱⁱ <http://waubrafoundation.org.au/resources/un-convention-against-torture/> Original source for this quote is at http://thejusticecampaign.org/?page_id=273#T2
- ⁱⁱⁱ <http://waubrafoundation.org.au/resources/physicians-for-human-rights-leave-no-marks/> This document can also be sourced from the Physicians for Human Rights website library at <http://physiciansforhumanrights.org/library/reports/leave-no-marks-report-2007.html>
- ^{iv} Background information is available from the following: <http://waubrafoundation.org.au/2014/duke-energys-shirley-wisconsin-wind-development-hazard-human-health-declares-brown-county-board-health/> .
- ^v Dr Jay Tibbetts also wrote to the Australian Medical Association and shared some of his first hand knowledge of the health problems reported by residents <http://waubrafoundation.org.au/resources/tibbetts-dr-jay-j-md-appalled-at-ama-statement/>. Dr Tibbetts also provided information to Dr Paul Schomer, director of Acoustics Standards in America for his research presented at an Acoustics Conference in Denver, Colorado in August 2013. Other medically trained colleagues who shared information with Dr Schomer for that paper were Professor Robert McMurtry, from Ontario, and Waubra Foundation CEO, Sarah Laurie. That paper can be accessed here: <http://waubrafoundation.org.au/resources/schomer-et-al-wind-turbine-noise-conference-denver-august-2013/>
- ^{vi} The Ordinance is reproduced here <http://waubrafoundation.org.au/resources/brown-county-ordinance-chapter-38-public-health-nuisance/> . The source from the Brown County website is here: http://www.co.brown.wi.us/departments/page_c581ca2d560f/?department=e4cd9418781e&subdepartment=3810f83bcbd2
- ^{vii} Accessed from <http://shr.sagepub.com/content/5/10/2054270414554048.full.pdf> .
- ^{viii} See for example the statement made by Professor Geoffrey Leventhall at the National Health and Medical Research Council (NHMRC) workshop in June 2011 that “wind turbine syndrome” symptoms as described by Dr Nina Pierpont were the same as “noise annoyance” symptoms and had been known to him for years <http://waubrafoundation.org.au/resources/leventhall-g-comments-nhmrc-june-2011-wind-turbine-syndrome-symptoms-same-as-noise-annoyance/> . Dr Nina Pierpont’s study is accessible as part of the evidence she gave to the 2011 Federal Senate Inquiry into the Social and Economic Impacts of Wind Farms <http://waubrafoundation.org.au/resources/dr-nina-pierpont-submission-australian-senate-inquiry/> . The Executive Summary is available here: <http://waubrafoundation.org.au/resources/wind-turbine-syndrome-executive-summary/> and the peer reviews here: <http://waubrafoundation.org.au/resources/wind-turbine-syndrome-peer-reviews/>
- ^{ix} <http://waubrafoundation.org.au/about/explicit-cautionary-notice/>
- ^x <http://waubrafoundation.org.au/resources/hansen-zajamsek-hansen-noise-monitoring-waterloo-wind-farm/>
- ^{xi} Both the NHMRC commissioned 2014 Systematic Literature Review and the Draft Information Statement are available via the following link, which also facilitates access to some of the critiques of these NHMRC documents by the Waubra Foundation, Professor Colin Hansen, Dr Michael Crawford, Dr Alan Watts, and others <http://waubrafoundation.org.au/resources/responses-nhmrc-draft-information-paper-systematic-literature-review/>
- ^{xii} <http://www.abc.net.au/pm/content/2014/s3951273.htm>
- ^{xiii} <http://www.abc.net.au/pm/content/2014/s3951273.htm>
- ^{xiv} <http://waubrafoundation.org.au/wp-content/uploads/2014/04/NHMRC-Draft-Information-Paper-February2014.pdf>
- ^{xv} <http://waubrafoundation.org.au/resources/cherry-tree-vcat-final-orders-november-2013/>
- ^{xvi} <http://waubrafoundation.org.au/resources/us-judge-rules-wind-turbine-neighbours-suffer-irreparable-harm/>
- ^{xvii} <http://waubrafoundation.org.au/2014/portugese-supreme-court-orders-four-wind-turbines-removed/>
- ^{xviii} <http://waubrafoundation.org.au/resources/un-convention-against-torture/>
- ^{xix} <http://waubrafoundation.org.au/resources/victorian-charter-human-rights-responsibilities-act-2006/>
- ^{xx} <http://waubrafoundation.org.au/resources/video-health-windfarms-experimentation-people/>
- ^{xxi} To access the objectives of the Waubra Foundation, please see <http://waubrafoundation.org.au/about/objectives/>
- ^{xxii} For further information about the CEO and others involved as either Directors or Patrons of the Waubra Foundation please see <http://waubrafoundation.org.au/about/people/> . For specific information about the CEO’s knowledge and expertise in this field please see <http://waubrafoundation.org.au/resources/letters-support-for-waubra-ceo/>