

Seeking Damages From Wind Energy Project Owners/Operators

Disclaimer

Many people have had their lives adversely impacted by the deployment of wind turbines in their district. Many more will become impacted by permitted but yet to be built wind projects. Often the impacts are of a magnitude that justify compensation in various forms.

This document has been prepared as a general guide to help identify the elements and possible magnitude of claims against the owner and/or the operator of a wind turbine project. The author is not a lawyer and takes no responsibility whatsoever for any use of any of the numbers herein which are merely presented for orientation purposes.

Any person who wishes to make a claim needs to consider their own circumstances and to obtain legal advice and assistance in making a claim.

Prepared by: Peter R. Mitchell
3 May, 2017

Seeking Damages From Wind Turbine Project Owners/Operators

The Purpose of This Document

This document is intended to give some guidance to those neighbours of wind turbine projects (WTPs) seeking relief on the construction of a financial claim for damages.

It also answers some questions about making a claim, but does not instruct how the claim might be supported, i.e., the detail that needs to be documented to support an impacted person's claim. That will require the help of an informed lawyer.

Note that this document has been written based mainly upon the Australian context but it is felt that it may be a useful starting point in other jurisdictions.

Cause of Damage

Wind turbines emit airborne (sound) and ground-borne (vibration) pressure waves. Much is known about sound waves (the audible portion of which is identified as noise). and their ability to harm and disturb neighbours up to 10 to 12 km from turbines. It is also known that vibration can also be a factor in disturbance, but at this point, it is low frequency sound and ultra-low frequency sound (infrasound) particularly where amplitude modulation is present that is understood to cause most damage.

Useful data for supporting a claim can be accessed from the extensive Waubra Foundation website (www.waubrafoundation.org.au), e.g. under the tab Resources see Health and Legal; Friends Against Wind (<http://www.friends-against-wind.org/>) using the Justice tab; National Wind Watch (<https://www.wind-watch.org/>) search for Litigation; and Stop These Things (<https://stopthesethings.com/>) search for Litigation.

Form of Damage

The airborne pressure pulses which emanate from wind turbines cause physiological and psychological damage to individuals in different ways and at different intensities.

In time the body can become increasingly sensitised and ultimately permanently damaged. Homes become uninhabitable and very difficult to sell. People become trapped in unsafe locations.

A second form of damage is productivity of farm animals and the possibility that farm strategies and processes have to be changed.

However the principal matters of damage are family health and well-being, the habitability of the family residence and the safety of any associated workplace.

Constructing a Financial Claim

Here are the components of a claim and some indicative numbers.

1. The major element is the sale of your house to the Wind Turbine Project (WTP) owner and/or operator as applicable. The price asked should not be a present valuation, i.e., with turbines in place; but the price that the property would be worth today if there was no WTP in the area. This will involve briefing a first class valuer.
2. There should be an add-on for the disturbance of having to move, which might be a 10% to 20% addition to the property price.
3. There should be a refund of all the property replacement expenses such as stamp duty, legal documentation and conveyancing, and direct moving expenses.
4. Compensation for the damage and hurt caused by living in a dangerous and harmful environment for the period since the project was commissioned. It is suggested this compensation should be calculated by multiplying the number of persons living in the house by the number of years the damage has been endured by a dollar sum per person per year.

This dollar sum will depend on the severity of disturbance which generally will correlate with the separation between the house and the nearest turbines, and speculation on what courts might award then discounted for the risk and expense of going to court.

Here is a Suggested Scale For Assessing Damage or Nuisance

Condition	\$US/Person/Year
Forced to evacuate the home	\$150,000 to \$200,000
Forced to live away as much as possible	\$100,000 to \$150,000
Major discomfort	\$50,000 to \$100,000

If you wish to make a claim then consider where your family fits in the above categories, and be sensible in that rating. Again take your lawyer's advice.

Should You Engage a Lawyer?

Yes. A lawyer is required to draft your claim and to be present and lead discussions with the representative of the WTP owner and/or developer. (In the Australian context, discussions may initially involve the National Wind Farm Commissioner).

Should You Join With Others Affected by the Same Wind Project?

Yes, if you consider they are willing to pay their share of costs, will be rational, particularly not wanting to rank their claims at a higher level than is reasonable, and will act in concert with the group. The group arrangements should be drafted by a lawyer so that there is the best possible protection against the WTP owner trying to break up the group with side deals.

Combining with others will, of course, reduce the cost of hiring a lawyer to draft and present your claim and also to draft some agreement on group arrangements.

Beware of Inappropriate Confidentiality Agreements

In settling problems in the past the industry has used "gag" clauses in some largely property based settlements and those gag clauses effectively stopped people who had sold properties from saying just about anything.

However it is reasonable for owners/operators to require that financial terms offered or agreed not be disclosed. Equally you may be disclosing personal and health information that you may want to keep confidential. These objectives should be able to be achieved by a specific agreement.

What About Court Action?

It is in the interests of both parties to negotiate a settlement.

Court actions are expensive and there is a risk of losing and having to meet in some jurisdictions not only your own costs, but those of the other side.

On the other side there is much evidence that would be exposed in a court action by a skilled barrister that could be hugely damaging to the wind company and indeed the whole industry.

Thus it is better to see if a reasonable settlement can be reached and if it cannot, you will need to consider further options with your lawyers.