

Lesson 4: Collecting the Evidence

The Common Law of noise nuisance is argued on evidence. A lawyer requires evidence to make a case.

The Bald Hills precedent determined that authentic and genuine subjective evidence is tenable in court.

Subjective Evidence

1. Diary

A diary is an affidavit of ones "lived experience".

It is crucial evidence unique to the individual.

It must be a truthful account of the nuisance experienced by the individual.

It is not uncommon for a husband and wife to document different experiences.

The Bald Hills precedent has determined:

- Original handwritten diaries are accepted as evidence.
- Notes and comments jotted in farm diaries are accepted as evidence.
- The date and time of the noise nuisance is to be accurately recorded.
- There was no requirement to include objective evidence such as wind speed, however the plaintiffs often observed wind direction and atmospheric conditions.
- It is up to the Judge or adjudicator to determine the authenticity of the diary.

The Wind Farm will argue collusion between neighbours, or that a diary is not accurate, or that it is fabricated.

It is important a diary reflects the reality of one's lived experience. There is no refuting a truthful lived experience.

2. Complaints History

Bald Hills Precedent

- Only a Judge or adjudicator can determine if noise nuisance has occurred.
- Only a Judge or adjudicator can determine if the noise nuisance has caused unreasonable interference.
- Only a Judge has the authority to close or resolve a complaint file. Acousticians, wind farm proponents, the EPA, the Minister, the Municipal Council, and Wind Farm Commissioner do NOT have the authority to determine if noise nuisance has occurred, and therefore do not have the authority to close a complaint file.

If there is no history of complaints, there's no problem.

An individual must show a history of complaints to demonstrate that the noise nuisance has caused unreasonable interference to their life.

Continuous and persistent complaints over many months are required.

Complaints must only be submitted in response to a noise nuisance occurrence and not for the sake of submitting a complaint.

Complaints must reconcile with diary accounts.

There is no requirement for any individual to provide objective or technical evidence to any authority.

It is assumed that a complainant has no technical knowledge of why the wind farm is causing a nuisance.

How to Submit a Complaint

It is important to realise that a wind farm will never turn back or turn off turbines because they receive a number of complaints.

They're only interested in profit NOT the protection of people's health.

The Bald Hills Judge called the approach "heavy handed".

The purpose of submitting complaints is to

1. Collect subjective evidence to present to a Judge or adjudicator.
2. Negotiating leverage for monetary (millions) compensation.

The wind farms will try to sign the neighbour up to a "Neighbour Agreement". This legally stops the neighbour from complaining or litigating. When a wind farm offers this to the neighbour, it indicates the wind farm is threatened and worried.

Where to submit complaints

It is important to cooperate with each of the various authority's procedural systems.

Keep a copy of all complaints submitted.

Importantly, keep a screenshot or copy of any complaint submitted via a website portal.

Always record the date, time and recipient of any phone calls made.

The more complaints you submit the stronger your case.

The Judge wants to see the plaintiff persistently alert each group to the noise nuisance problem.

The complaint system is designed to be convoluted, obstructive, stressful and time consuming. It aims to influence the neighbour to give up and go away.

It's an exhausting game – but the neighbour needs to play it to their advantage.

1. Wind Farm Company

Don't be bullied into using the wind farm's website/portal. It is convoluted and you won't hold the hard copy.

If you prefer, you can submit your complaint via email. Emails are tenable at court.

Emails allow you to cc the local council "Responsible Authority" as a record of your complaint.

All complaints made in writing and by phone must be recorded by the company.

If the wind farm requests a copy of your diary, cooperate by sending a brief snippet only.

A wind farm's acoustician does NOT have the authority to determine noise compliance or refute noise nuisance.

A wind farm does NOT have the authority to close a complaint. They must keep the complaint file open.

2. Local Council

It is important to 'cc' in the Local Council (Responsible Authority) on all complaints' correspondence.

The local council does NOT have the authority to determine noise compliance, refute noise nuisance or close a complaint.

3. EPA

The EPA is a bureaucracy with NO authority to determine permit compliance or noise nuisance.

The EPA does not hold any raw data to make any assumptions on noise compliance or noise pollution.

The EPA does NOT have the authority to close a complaint, it must keep the complaint file open.

4. Australian Energy Infrastructure Commissioner (AEIC)

Complaints to the AEIC provides evidence that formal complaints are made, and complaints procedures are followed. The AEIC has no authority to refute or close a complaint.

5. Host

Complaints to the Host alert them to the noise nuisance coming from their land.

It maybe the case that the Host is the weakest link, and easier and cheaper to sue in a torts law case of nuisance.