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Mr Mark Rodrigues
Acting Deputy Secretary, Environment and Climate Change
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21 January 2022

Dear Mr Rodrigues

REGULATORY IMPACT STATEMENT FOR ENVIRONMENT PROTECTION AMENDMENT REGULATIONS 2022

I would like to thank staff at the Department of Environment, Land, Water and Planning (DELWP) for working with our team on to prepare the Regulatory Impact Statement (RIS) for the Environment Protection Amendment Regulations 2022 (the proposed Regulations).

As you know, under section 10 of the *Subordinate Legislation Act 1994* (the SLA), the Commissioner for Better Regulation is required to provide independent advice on the adequacy of analysis provided in all RISs in Victoria. A RIS is deemed to be adequate when it contains analysis that is logical, draws on relevant evidence, is transparent about any assumptions made, and is appropriate to the proposal's expected effects. The RIS also needs to be clearly written, so it can be a suitable basis for public consultation.

I am pleased to advise that the final version of the RIS received by us on 19 January 2022 meets the adequacy requirements of the SLA.

Background

On 1 July 2021, the *Environmental Protection Act 2017* (the EP Act) and the Environmental Protection Regulations 2021 (the EP Regulations) introduced a General Environmental Duty (GED) and unreasonable noise provisions. This regulates the noise emitted by wind energy facilities (WEFs), also known as wind farms, and imposes an obligation on WEF operators to take all reasonable steps to

reduce or eliminate any risks their activities pose to human health and the environment.

Previously, wind turbine noise was regulated by local councils through the planning permit system under the Victoria Planning Provisions (VPP). To complement the new obligations introduced under the EP regulatory framework in 2021, operational wind turbine noise requirements were removed from the VPP and incorporated under the EP Regulations through an amendment, the Environment Protection Amendment (Wind Turbine Noise) Regulations 2021 (EP Amendment Regulations 2021). A RIS was prepared for these Regulations and released in early 2021.

Due to a technical error in the RIS process, the EP Amendment Regulations 2021 (the revoked Regulations) were revoked shortly after their commencement and replaced with the Environment Protection Amendment (Interim) Regulations (the Interim Regulations). The Interim Regulations are effective for 12 months to 26 October 2022 or until replaced.

The proposed Regulations analysed in this RIS are intended to implement the same changes introduced under the revoked Regulations and will effectively mirror and replace the Interim Regulations. Analysis in this RIS takes the same broad approach and draws on analysis in the previous RIS.

Analysis of options

The objectives of the proposed Regulations, as with the revoked Regulations, are to reduce the costs of regulation for businesses, the community and the Environment Protection Authority (the EPA), while supporting investment in the wind energy industry and enhancing community confidence and trust in the regulatory framework for addressing windfarm noise.

In the RIS, DELWP analyses three options for incorporating wind turbine noise regulations under the EP regulatory framework:

- Base case: allow the current Interim regulations to expire without replacing them.
- Option 1 – Direct Regulation: industry specific direct regulation introduced as an amendment to the EP regulations which prescribes what constitutes compliance with the GED and unreasonable noise provisions.
- Option 2 – Permits: a permissions scheme developed alongside the EP Act where the EPA would issue permits for WEFs to prescribe conditions to comply with the obligations under the EP regulatory framework.

Both Options 1 and 2 require mandatory periodic noise assessments that assess ongoing compliance over the life of a WEF.

DELWP explains that Options 1 and 2 in the current RIS have been slightly changed, compared to the options in the previous RIS for the revoked Regulations. These modifications were made following useful feedback during the consultation process for the previous RIS and were implemented in the revoked and Interim Regulations. The two changes are to make allowances for:

- *Alternative monitoring points*: to reduce the practical challenges and costs associated with noise testing requirements, a minor change was made to allow for testing to be undertaken at alternative monitoring points closer to the turbine rather than at the noise sensitive location (e.g. a person's home). The EPA sought advice from an acoustician and found that this approach would still provide a valid noise assessment and potentially improve the quality of the reading by reducing the impact of background noise. This approach therefore reduces compliance costs for industry by allowing greater flexibility without compromising the quality of results.
- *Agreements with landholders*: changes were also made to allow pre-existing agreements between WEFs and neighbouring properties to continue even if they are technically non-compliant with the relevant noise standard under the proposed Regulations. Upper noise limits would be set for new agreements.

DELWP uses a Multi-Criteria Analysis (MCA) to analyse the qualitative and quantitative impacts of these options and to determine its preferred option. The criteria are:

1. *Costs to industry and government* (50 per cent weighting) — the cost of compliance for the industry and costs to government of implementation, monitoring and enforcement options;
2. *Reductions in complaints and legal disputes* (20 per cent weighting) — changes in the costs incurred by all stakeholders in managing complaints and legal disputes;
3. *Improved investment certainty* (20 per cent weighting) — improved investment conditions for the WEF sector with certainty providing reduced regulatory risk, leading to avoided lost investment for the Victorian WEF sector; and
4. *Avoided search costs and over-compliance* (10 per cent weighting) — avoided costs to industry and government to determine what constitutes compliance with the GED and unreasonable noise provisions.
 - *Search costs* – refer to the time and resources incurred by operators, government and the community as they seek to understand the obligations of WEFs and other elements of the regulatory framework (e.g. complaints pathways).

Option 1 is preferred. This option was implemented under the revoked Regulations and is currently in place under the Interim Regulations.

In the MCA, both Options 1 and 2 scored higher than the base case and have identical scores for all criteria, except for investment certainty.

DELWP explains that Option 2 would provide less investment certainty because there would be different requirements for WEFs based on their location and surrounds and WEFs would have to apply for permit renewals every 5 years. Option 1 is preferred as it sets out a consistent set of obligations for WEFs operating across Victoria and would not require WEFs to apply for regular renewals.

Implementation and Evaluation

In the RIS, DEWLP explains that the proposed Regulations are intended to commence prior to October 2022 when the current interim Regulations expire. Thus, current regulatory requirements will continue.

DELWP explains that implementation activities will be limited because the revoked Regulations are effectively being remade and consultation was undertaken for the previous RIS. EPA will lead implementation and evaluation with additional input and support from DELWP.

Implementation will include:

- broad consultation with stakeholders, local councils and the broader community through the RIS process and ongoing stakeholder engagement;
- the preparation of guidance material; and
- expansion of EPA's compliance and enforcement function.

EPA will evaluate the operation and effectiveness of the proposed Regulations through ongoing engagement with stakeholders and monitoring wind energy industry trends.

A formal evaluation of the proposed Regulations will be undertaken once the new regulatory framework has been operational for several years (likely in 2026) prior to the EP Regulations sunseting in 2031.

Yours sincerely



Anna Cronin

Commissioner for Better Regulation