



Dr Cathy Wilkinson  
Chief Executive Officer  
Environment Protection Agency  
200 Victoria Street  
MELBOURNE VIC 3053

24 December 2020

Dear Dr Wilkinson

**REGULATORY IMPACT STATEMENT FOR ENVIRONMENT PROTECTION AMENDMENT REGULATIONS 2021**

I would like to thank your staff at the Environmental Protection Agency (The EPA) for working with the team at Better Regulation Victoria (BRV) on the preparation of the Regulatory Impact Statement (RIS) for the proposed Environment Protection Amendment Regulations 2021, which will amend the proposed Environment Protection Regulations 2020 (EP Regulations) when they come into effect (scheduled for 1 July 2021).

As you know, the Commissioner for Better Regulation provides 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 proportionate to the proposal's expected effects. The RIS also needs to be written clearly so that 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 15 December 2020 meets the adequacy requirements set out in the Subordinate Legislation Act.

**Background**

From 1 July 2021, the *Environment Protection Act 2017* (the EP Act) and the proposed EP Regulations will form the bedrock of the regulatory framework for noise from wind energy facilities (WEFs), also known as wind farms. There is a General Environmental Duty (GED) in the EP Act that requires WEF operators to take all reasonable steps to reduce or eliminate the risks their activities pose to human health and the environment.

Since prolonged noise exposure can pose a risk to human health, the EP Act prohibits the emission of “unreasonable noise”. In common with several other Australian States (including South Australia, Queensland and New South Wales) Victoria currently bases its measurement, prediction and assessment of WEF noise on the NZ Standard. The EPA explains in the RIS that the NZ Standard provides an appropriate “fit-for-purpose” standard to safeguard the health and amenity of nearby residents, though in some high-amenity areas a more stringent noise limit may be used.

Other legislation and instruments will continue to be part of the WEF regulatory framework when the new EP Act and EP Regulations commence in July 2021. Under the *Planning and Environment Act 1987* and the Victorian Planning Provisions, permits from the Minister for Planning will continue to be required to develop and use land for WEFs. Pre- and post-construction noise assessments using the NZ Standard are also required.

### **Problems and Objectives**

In the RIS, the EPA explains that there will be three key challenges if the EP Act and proposed EP Regulations commence in July 2021 without amendments regarding WEFs. These challenges are:

- a) the complexity of WEF noise measurements;
- b) lack of community confidence; and
- c) lack of industry certainty

In responding to these challenges, the EPA notes that its objectives in amending the EP Regulations are to:

*“reduce the costs of regulation for businesses, the community and EPA, while supporting investment in the wind energy industry and enhancing community confidence and trust in the regulatory framework for windfarm noise.”*

## Policy Options

In order to achieve its objectives, the EPA analyses three options in the RIS:

- a) the Base Case — the EP Act and proposed EP Regulations come into effect, with no further amendments.
- b) Option 1: Direct Regulation — amendments to the proposed EP Regulations that prescribe how to comply with the GED and unreasonable noise provisions. This will be supported by an EPA guideline.
- c) Option 2: Permits — a permissions scheme that involves the EPA issuing permits for WEFs, prescribing conditions which represent “reasonably practicable requirements to minimise the risk of harm”.

The EPA explains that Options 1 and 2 impose the same general requirements on the industry, but the mechanism (regulations or permits) differs. Option 2 also includes an extra administrative stage of applying for or renewing permits.

## Impact Analysis

The EPA uses a Multi Criteria Analysis (MCA) to assess the impact of Options 1 and 2 against the base case, using four criteria:

1. Costs to industry and the Government including implementation, monitoring and enforcement (*50 per cent weighting*)
2. Reductions in complaints and legal disputes as a result of greater clarity and certainty about regulatory requirements (*20 per cent*)
3. Improved investment certainty and avoided costs from lost investment (*20 per cent*)
4. Avoided search costs and over compliance related to the Government and industry trying to determine compliance (*10 per cent*)

The EPA estimates the costs to the Government and industry of Options 1 and 2 is \$15.4 million. The EPA notes the offsetting benefits are more difficult to accurately estimate, and so provide qualitative explanation for the scores.

Options 1 and 2 are scored the same on each criterion except for criterion 3. The EPA explains that industry stakeholders generally preferred the certainty provided through direct regulations, and therefore scores Option 1 higher on criterion 3 making it their preferred option.

The EPA further explains that while Option 2 would provide flexibility to the EPA, for example, to apply more rigorous noise restrictions on WEFs in high amenity areas, concerns from operators about the uncertainty of a permit being granted or renewed outweighed the benefits of greater flexibility.

## **Implementation**

In the RIS, the EPA explains that its preferred option will amend the proposed EP Regulations via the addition of a WEF Division in Part 5.3 (Noise) of Chapter 5 (Environmental Protection) of the proposed EP Regulations, set to commence on 1 July 2021. The EPA explains that these amendments will not require substantial changes to the existing implementation plan for the EP Regulations. The EPA acknowledges that as a result of the amendments there will be some changes to EPA's industry consultation and preparation of guidance materials (reflecting the complexity of the regulatory changes) and a need to recruit additional resources for the purpose of supporting monitoring and evaluation activities.

## **Evaluation**

The EPA explains that it will monitor the effectiveness of its proposed amendments in two ways:

- a) Ongoing engagement with stakeholders, including liaising with councils and industry
- b) Ongoing review of trends in the wind energy industry.

The EPA also notes that there will be ongoing monitoring of whether the objectives of the EP Regulations are being met, which are to minimise the risk of harm to human health as far as reasonably practicable. It states that its proposed amendments will be included in the evaluation of the proposed EP Regulations. The EPA notes that the EP Regulation will be evaluated after they have been operating for four and a half years and anticipates this will take six months. They will also be evaluated when they sunset in 2031.

Should you wish to discuss any issues raised in this letter, please do not hesitate to contact my office on 03 9092 5800.

Yours sincerely



**Anna Cronin**

Commissioner for Better Regulation