

## Lesson 8: The Bald Hills Boys are now The Law.

### Nuisance is a tort.

Tort law is determined by precedent.

Bald Hills is the precedent. [Uren 2022]

And the Bald Hills precedent is now law.

[The Bald Hills precedent can be found here](#)

Authentic diaries and complaints history are valid evidence in a tort law case of nuisance.

The Bald Hills Boys told their stories of the adverse impacts of the wind farm to the Judge and backed them up with diaries and complaints evidence.

The Judge listened and took notes, although she did send them home to dig up their original handwritten diaries for authentication.

And after all the evidence was in, the Judge preferred The Boys' account of the truth over the proponent's "high-handed nature" <sup>(383)</sup> and "patently absurd conclusions" <sup>(384)</sup>.

For your information here's an example of a complaint proforma to get you started.

Remember always use the word "complaint" to leave no doubt you are making a new complaint.

**To:** ..... *email address* (Authority/wind farm/ local council - use a central email address, not a rep's email)

**Subject: Complaint - XYZ Wind Farm**

Can ..... acknowledge receipt of this email and forward my **Letter of Complaint** to the relevant officer.

Dear .....

I wish to submit a complaint about the XYZ Wind Farm.

My Complaint is as follows:

For the last 4 nights, the XYZ wind farm has kept me awake ..... etc .. etc..

I am feeling ..... etc ... etc ... (note the adverse effects you are experiencing as a result of the operations of the wind farm).

I request that you modify, mitigate or abate the wind farm to prevent further harm to my health.

## The Bald Hills Judgement

The Bald Hills Judgement is now the law.

It is based on the Bald Hills Boy's evidence before the court.

[The Bald Hills Judgement can be found here](#) .... or google search "Uren 2022".

***Here's the law, set in concrete for all time, to be used by your lawyer as required.***

### ***The Judgement: Paragraph 11***

*"Having regard to the answers to questions 3 to 10, has the interference with the plaintiffs' use and enjoyment of their land been unreasonable?"*

*Yes. Noise from the wind turbines on the wind farm has amounted, intermittently at night, to a substantial and unreasonable interference with the plaintiffs' enjoyment of their land. The wind farm noise has been a common law nuisance at both properties."*

### ***The Judgement: Paragraph 12***

*If yes to question 11, will noise from the turbines continue to cause a substantial and unreasonable interference with Mr Zakula's use and enjoyment of his land?*

*Yes. The nuisance is ongoing at Mr Zakula's property.*

### ***Injunction***

### ***The Judgement: Paragraph 13***

*If yes to question 12, should an injunction be granted restraining Bald Hills from continuing the nuisance?*

*Yes. An injunction to abate the nuisance is the primary remedy sought by Mr Zakula, and an injunction will be granted. I do not consider that damages would be an adequate remedy, or that I should exercise my discretion to award damages instead of an injunction for any other reason.*

### ***The Judgement: Paragraph 14***

*If so, in what terms?*

*I will grant an injunction restraining Bald Hills from continuing to permit noise from wind turbines on the wind farm to cause a nuisance at Mr Zakula's house at night, and requiring it to take necessary measures to abate the nuisance. The injunction will be stayed for three months.*

### ***The Judgement: Paragraph 29***

*“After 2016, Mr Zakula continued to keep records of turbine noise that disturbed him, although his complaint letters became less frequent. I have reviewed those records, as well as his complaints. The records are consistent with Mr Zakula’s evidence about noise disturbance from the wind farm from 2015 onwards. Between September 2015 and December 2019, he recorded more than 450 nights on which his sleep was disturbed by wind turbine noise, including 11 nights on which he could not sleep at all.”*

### ***The Judgement: Paragraph 23***

*“By September 2015, Mr Zakula had started keeping records of the turbine noise, including when it disturbed his sleep, and had made the first of many complaints to Bald Hills. The Bald Hills complaint register records that on 14 September 2015, Mr Zakula reported:*

- Why are we turning the turbines when there is no wind?*
- Noise is very bad*
- Sounds like a steam train*
- It is an aerodynamic noise. I can hear the blade passing the tower.*
- the Noise from the turbines is varying all the time.*
- Its worst when wind coming from south west.*
- can hear the sound loudest on western side of bedroom*
- can hear a machine Noise as well*
- Believe the machine Noise is coming from the substation*
- there is a steady drone*
- Noise is worst when wind turbines are operated as fans (ie not generating but taking power from grid and being run like a motor)”*

### ***The Judgement: Paragraph 24***

*“Mr Zakula made 14 more noise complaints to Bald Hills during 2015, initially by telephone and then, from November 2015, by letter. By that time he felt that it was pointless to keep making telephone calls and repeating the same things over and over again, and so he started to put his complaints in writing. He made notes when he was disturbed by noise from the turbines, which he then compiled into letters to the wind farm. Initially he did this monthly.”*

### ***The Judgement: Paragraph 27***

*“At the trial, Mr Zakula said that he was still experiencing the same noise levels from the wind farm that he had complained about in 2015 and 2016. The noise was more disturbing during the cooler months, less so in the summer months. It tended to be louder when the wind was coming from the west, particularly the south-west in the cooler seasons, and when the wind speed was in the low to medium range.”*

### ***The Judgement: Paragraph: 21***

*According to Mr Zakula, the noise was loudest in cooler conditions, particularly at night. He described having difficulty getting to sleep, and also being woken during the night and then having trouble getting back to sleep. The wind conditions and noise from the turbines that disturbed his sleep were variable and intermittent. Mr Zakula said that the noise from the turbines could continue for several days, was extremely disturbing and made him feel as if he was seasick or carsick. There were occasions when he drove to Walkerville beach and slept in his car to escape from the noise. He estimated that he did this two or three times a month between April and September each year, typically after several consecutive nights of sleep disturbance.*

### ***The Judgement: Paragraph: 22***

*Mr Zakula was also bothered by wind turbine noise during the day, particularly on cool, still mornings. He said that the noise subsided slightly as the day warmed up, ‘but it’s still roaring during the day and you walk around the property and the garden and it’s in your face’.<sup>12</sup> The turbine noise was less disturbing to him in windier conditions, because it was drowned out by the sound of the wind and the surrounding trees. Daytime noise levels tended to be lower during the warmer months, and louder in the winter months.*

### ***The Judgement: Paragraph 33***

*Mr Uren said that after the wind farm began operating in 2015 he could hear noise from the turbines inside his house. The noise varied. He could hear the ‘whoosh, whoosh’ sound of the blades turning, sometimes there was a ‘rolling noise’, sometimes there was a ‘real roaring going on’, like a car over-governing, and at other times there was a mechanical noise, like engine brakes on a big truck. Mr Uren noticed these noises from the wind farm more often when the atmosphere was cool, especially in the wintertime, and he said he ‘used to cop it’ when a northerly or north-westerly wind was blowing.*

### ***The Judgement: Paragraph 34***

*These noises interrupted Mr Uren's sleep. He said he could be woken 'at all hours of the night'. Quite often he moved from his bedroom to the lounge, where he would turn the radio on and sleep on the couch. It was not noisy all the time: sometimes there would be no noise, and at other times he was woken two or three times in a week. The noise gave him headaches, which he just put up with. As well as sleeping in the lounge, Mr Uren sometimes went to a friend's place and camped the night there.*

### ***The Judgement: Paragraph 36***

*There are a total of 36 complaints from Mr Uren recorded in the Bald Hills complaint register between March 2015 and April 2018, most of them in autumn and winter. His complaints were consistent with his evidence about the noises he heard, the weather conditions in which he heard them, and their effect on his sleep. For example, on 5 May 2015, Mr Uren reported: -*

He was woken from his sleep about 4:40am by [noise] from the turbines which he could hear inside his house

- He believes the wind was a westerly or north westerly
- Seems again the noise occurred when wind was at lower levels as he couldn't hear

presently..

A year later, on 5 May 2016, Mr Uren complained:

- Woken at 5 am this morning
- Woke with headache
- Could hear the turbines over the radio
- Fell asleep with the radio on but could hear it over the radio when I woke

***The Judgement: Paragraph 26***

*“Mr Zakula continued to send complaint letters to Bald Hills during 2016. The Bald Hills complaint register records eight complaints from Mr Zakula in 2016, all of them in similar terms. For example, on 19 October 2016, Mr Zakula wrote to Matthew Croome, the general manager of the wind farm at that time, as follows:*

As previously stated I have significant concerns regarding the disturbing nuisance noise generated by the Bald Hills Wind Farm and the manner in which they are operated. I formally lodge a nuisance noise complaint at the following times.

September 3rd 2016	0700hrs	All night
September 4th	0600hrs	All night
September 8th	0600hrs	All night
September 9th	0600hrs	All night
September 14th	0700hrs	All night
September 18th	0400hrs	All night
September 19th	0500hrs	All night
September 21st	0700hrs	All night
September 24th	0400hrs	All night
September 30th	0600	All night

The noise is causing me considerable disturbance and is seriously affecting my sleep as can be seen in the early morning disturbances. This situation is affecting my health causing anxiety and stress, headaches and other issues. The noise is severe and at its worst at night time and is [continuous] throughout the entire night and days and has been ongoing since the startup of the industrial facility. I also have information that these sound levels exceed the background levels including night time levels as specified in the Planning Permit.

I also note there are significantly notable Special Audible Characteristics produced for a significant period of the night (2200 to 0800 hrs) exceeding the night time specifications defined in the Planning Permit and consistent with previous noise nuisance complaints.”