



PARLIAMENT OF AUSTRALIA
HOUSE OF REPRESENTATIVES

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Documents reveal Commonwealth Govt the road block in impasse over taxation of groundwater compensation payments

Documents relating to the taxation of compensation payments to groundwater entitlement holders in six valleys across New South Wales reveal that the Commonwealth Government has been the road block to an equitable outcome for irrigators and that the Commonwealth Government appears to have deliberately withheld documents from the public view according to Tony Windsor, the Independent Member for New England.

Mr Windsor said that payments to the groundwater entitlement holders were coming from the joint Commonwealth/State/Groundwater users \$160m Achieving Sustainable Groundwater Entitlements (ASGE) Program that was announced jointly by the Prime Minister and then NSW Premier Bob Carr on June 9 2005.

However shortly after that it was revealed that the payments would be taxed as income effectively meaning that that up to 47% of the total payment – including the NSW Government's - could be clawed back by the Commonwealth Government through the Australian Taxation Office.

Mr Windsor told the Parliament yesterday, "As part of that process, and on agreement between the farmers, the irrigators, and the state and federal governments, this \$160 million package was applauded as a first in terms of the Commonwealth and the states working together. ... As part of that process irrigators were told that there would be a compensation package made available to them, and some months later an absolute shock was sent through the system: on receipt of those compensation moneys—the \$50 million from the state and the \$50 million from the Commonwealth—it would not be considered as loss of a capital asset.

Irrigators were told that, on receipt of the compensation, those moneys would not be considered as loss of capital assets, although everybody in this place, including the Prime Minister, agrees that it is the loss of capital assets. And the Premier of New South Wales, at the Prime Minister's water meeting last year said that it was, in his mind, the loss of a capital asset, but the Commonwealth is still treating the payment of those moneys—the \$100 million to groundwater irrigators across the six valleys—as income in the year of receipt. Obviously, individuals have different taxation arrangements, but theoretically it is possible for 47 per cent of that money to be clawed back by the Commonwealth. So the Commonwealth can actually make a donation in terms of a compensation package and then take a considerable amount of it back in the year of receipt as income."

Mr Windsor said that in October 2006, he lodged a "Freedom of Information" (FOI) request to the Commonwealth Government for documents relating to the negotiations between the NSW and Commonwealth Governments had met with a response that NO documents could be found.

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Further discussion with the NSW Primary Industry Minister, the Hon Ian McDonald MLC last week revealed that documents do exist and that although the State has been calling for the compensation to be treated as a capital loss, the Commonwealth has insisted that the compensation is considered as a “grant” and hence is taxed as income in the year of receipt.

Mr Windsor told the Parliament, “I made a request to the government, particularly in terms of the former federal minister John Anderson and his conversations, letters et cetera with former state minister Craig Knowles. I think they did a good job because the two of them actually sat down and tried to work out a process which would lead to sustainability and compensate those people who were going to be impacted by the change or allow them to adjust. There was no mention of being charged income tax. It was the loss of a capital asset that was in everybody’s mind.

“I made a request for the various communications in my quest to find out who is to blame. If it is the state, let’s flog them to death; if it is the Commonwealth, they deserve the same fate. The FOI request went in and, strange as it may seem, the morning before I met with New South Wales minister Ian Macdonald last week, I received a letter. Before dealing with that, I will read out essentially what my FOI request was:

Correspondence (letters, faxes, emails, memos) between Federal Minister John Anderson and NSW State Minister Craig Knowles and their respective Departments with regard to the “Achieving Sustainable Groundwater Entitlements” ... Program jointly announced by the Prime Minister and then NSW Premier Bob Carr on June 9 2005. Further, I seek any correspondence about this matter between the Department and the Prime Minister’s office and the Treasurer’s office. Dates between 2001 and the present are requested.

The decision that has come back to me reads:

Section 24A of the FOI act provides that a request for access to documents may be refused where those documents are in the department’s possession but cannot be found. Before coming to the conclusion that the documents cannot be found, the department must take all reasonable steps to find the documents. The steps taken to locate the documents to which you are seeking access have been interrogations of all files on which the documents may have been located, including searches of electronic filing systems, searches of desks, filing cabinets, drawers, safes, cupboards, files by staff in the Western NSW Regional Office Regional Partnerships Branch and Strategic Projects Division, searches of backup tapes of electronic records by Ms Marie Cooper, Western NSW Regional Office and Mr Roger Fisher, Strategic Projects Division, searches of all archived documents from the Western NSW Regional Office and Strategic Projects Division and searches of the registry. Despite the searches undertaken, no documents could be found.

The document actually says ‘no documents could not be found’—there might be more truth in the actual wording of it. It goes on:

I am satisfied that all reasonable steps have been taken to locate the documents in question and that no documents can be located in the department at this time, and I am unable to provide you with any documents as per your request.

Strangely enough, that afternoon I happened to meet with the state minister. Somewhat contradictory to what was being said in terms of the FOI request, he was able to give me a few documents in relation to this process, the discussions between the Hon. John Anderson and Craig Knowles. As I said, I have subsequently put in an FOI request for all the documents, including the intergovernmental agreement, because I think it has great significance in terms of what the Prime Minister is trying to do with the Murray-Darling.

One of those letters is from the state minister, writing to the Treasurer.

The first letter is from Ian Macdonald, the state minister, written on 20 March 2006, nearly a year ago. I will quote it a little bit:

The purpose of this letter is to seek your urgent reconsideration of the proposed taxation of the payments to be made under the program—

that is the Achieving Sustainable Groundwater Entitlements Program—

To eligible licence holders for a reduction in their irrigation water assets.

... ..

I believe that it would be against the spirit of our original agreement—

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that was the agreement between Knowles and Anderson—

for the Australian Government to retain up to \$47 million, or almost 85% of its total support as a result of income tax, when the clear intention was for the program to be equally funded by both the NSW and Australian Governments.

There is also a letter from the Hon. Peter Dutton MP written on 14 June.

The Hon. Peter Dutton responded on behalf of the Treasurer to this particular issue, where he raises the issue of a grant. There was no mention of it before. It reads:

Under the income tax law, a grant received in relation to carrying on a business is assessable income.

It goes on to say that these people are carrying on a business, and even though it was never mentioned on prior occasions that it would be taxed up to the rate of 47 per cent, the government, in his view—representing the Treasurer—believed that they should be taxed.”

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Mr Windsor said the constant blame game over this issue as to who was responsible has allowed the Commonwealth to stagnate on the matter for over eighteen months now.

“The Intergovernmental Agreement (IGA) which sets out the terms and conditions of the joint State/Commonwealth Agreement is under the auspices of the Commonwealth Solicitor General, not the NSW State authorities.

“Water entitlement holders deserve an apology over the handling of this matter and need a quick resolution NOW. Payments were due to be made by January 1 just gone.

“If the Commonwealth Government can’t solve a simple issue like this, how will it handle the management of the entire Murray Darling system with any credibility,” Mr Windsor said.

Mr Windsor is expecting more documents on this matter to be released this coming week.