



PARLIAMENT OF AUSTRALIA
HOUSE OF REPRESENTATIVES

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Has the PM misled Parliament on Water? What FOI documents reveal

The ongoing impasse over the taxation status of payments to groundwater users in NSW has caused the Independent Member for New England Tony Windsor to question whether the Prime Minister John Howard has misled the Parliament about negotiations in the lead up to and after the announcement of the Achieving Sustainable Groundwater Entitlements (ASGE) Programme in June 2005 and the Prime Minister's handling of the issue since then.

Mr Windsor has raised the issue many times in the Parliament and lodged a Freedom of Information request with the Commonwealth Government seeking correspondence between the relevant Commonwealth and State Government Ministers including the Prime Minister and Treasurer in relation to the ASGE Programme.

Mr Windsor's request drew a "NO documents could be found" response.

Mr Windsor then met with the NSW Minister for Primary Industries the Hon Ian Macdonald and on lodging a similar FOI request he received copies of documents which have his concern about what the Prime Minister has told the Parliament.

"I first raised the issue of the taxation status of payments to irrigators through the Achieving Sustainable Groundwater Entitlements Programme in December 2005 after I had been contacted by irrigators in the Namoi Valley and their accountants seeking clarification on the issue.

On raising it with the Prime Minister in Question time and in subsequent correspondence, the Prime Minister said, "*All grants under the Water Smart Australia programme are treated in a manner that is consistent with tax law. I am advised that assistance payments are generally assessable income for taxation purposes, subject to the provisions of the Income Tax Assessment Act (1997). For the sake of equity and consistency the government will not be altering these arrangements.*"

I again raised it with the Prime Minister in February 2006 when he continued to state "*the principles we have applied are longstanding principles that have been applied for decades by governments of both political persuasions*" and confirmed in a letter to me that Taxation Commissioner had confirmed the status of the payments as being taxable," Mr Windsor said.

According to Mr Windsor, the Prime Minister to his credit changed his view saying in response to a question from Mr Windsor on September 6 2006, "*It is my view that these payments are in the nature of compensation for the withdrawal of the previously conferred water right.*"

However, Mr Windsor points out that in doing so, the Prime Minister in continuing his answer put the blame for the situation on the NSW Government saying, "*The New South Wales government thus far have represented to us that they want the payment treated as income because, apparently, they are fearful of a precedent being established whereby such payments are seen as truly they are, and that is as compensation for the withdrawal of a previously conferred water right.*"

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The Prime Minister went on to say in the same answer, ***“I would say to the New South Wales government, through the vehicle of your question, that it would be a very good idea if you treated the payment for what it is, and the true nature of it is a capital compensation for the loss in value of a capital entitlement. That is what the tax act says. So it is not the tax act that is wrong and it is not the Australian Taxation Office that is wrong. I think the way in which this payment is being treated by the New South Wales government is wrong. I would appeal, even, to the New South Wales government to see the sense and the fairness of treating this as a capital payment. It is, and I think it is unfair to the irrigators and it would be wrong of us to twist the tax law to accommodate a payment that has been improperly described by the New South Wales government.”***

Mr Windsor says that the Freedom of Information documents that he has now received reveal quite a different story with regard to how the payments to groundwater users should be paid through the ASGE Programme.

A letter from the NSW Minister for Primary Industries, the Hon Ian Macdonald MLC, dated 28th March 2006 states ***“... The purpose of this letter is to seek your urgent reconsideration of the proposed taxation of the payments to be made under the programme (ASGE) to eligible licence holders for a reduction of their irrigation water assets.***

I am advised that it is the Australian Government’s intent to treat such payments as income despite the fact that payments are clearly being made as a result of a loss in value of their capital assets. Should such a proposal proceed, individual irrigators could lose up to 47% of their total payments in tax, depending on their current financial position....

I believe that it would be against the spirit of our original agreement for the Australian Government to retain up to \$47m or 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....

The letter concludes, ***“I have also forwarded a copy of this letter to the Prime Minister and the Parliamentary Secretary to the Prime Minister (responsible for the National Water Initiative).***

Mr Windsor says that the FOI documents also included a letter from the NSW Minister for Infrastructure and Planning and Minister for Natural Resources, Craig Knowles dated April 5 2005 agreeing to meet with the then Deputy Prime Minister John Anderson, Mr Miell and irrigation industry reps “ASAP” with attachment on issues raised in a previous letter from Mr Miell including “Point 7 - Taxation Status of payments” with the comment: ***“The Department (DIPNR) is aware of this issue, however, as this falls under the Australian Government’s jurisdiction, it is a matter that must be duly considered by the Australian Government.”***

Also included in the FOI documents is a copy of the Intergovernmental Agreement (IGA) for the ASGE Programme that was written by the Australian Government Solicitor.

“Everything points to the Australian Government dictating what goes into the ASGE Programme and how the ASGE Programme would work.

I will be calling on the Prime Minister to release the documents that the Australian Government possesses in relation to the establishment of the ASGE Programme to prove his claims that it was as he stated on September 6 2006, ***“The New South Wales government thus far have represented to us that they want the payment treated as income because, apparently, they are fearful of a precedent being established whereby such payments are seen as truly they are, and that is as compensation for the withdrawal of a previously conferred water right.”***

I also ask in relation to the Prime Minister’s 10 point Water Plan, how can he be trusted to preside over a \$10b programme when he can’t preside over the \$160m ASGE Programme,” Mr Windsor said.