



PARLIAMENT OF AUSTRALIA  
HOUSE OF REPRESENTATIVES

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## Media Release

14 February 2007

### PM confirms that water entitlement holders have been misled on taxation of groundwater payments

The Prime Minister John Howard has confirmed that the Intergovernmental Agreement signed by the Commonwealth and NSW Government under the hand of the Australian Government Solicitor *“had in fact been structured and made in an environment where they were not intended to provide compensation for any perceived loss to farmers.”*

*“In those circumstances, they fell to be taxed as income.”*

Mr Windsor in Question Time today, took the Prime Minister to task over comments made by him in the Parliament on September 6 2006 and again on October 30 2006.

“The Prime Minister said in answer to my questions on September 6 and October 30 last year that *‘the NSW Government had represented to us (The Commonwealth Govt) that they want the payment treated as income’*.

“Freedom of Information documents received on the matter from the NSW Government clearly indicate that the NSW Government had in fact been pleading the case that the ASGE payments should not be taxed as income but rather come under the capital gains tax arrangements.

This would mean that in most cases tax liability would be nil whilst if treated under the Income Tax Act, the liability would be up to 47% of the compensation,” Mr Windsor said.

Mr Windsor said the Prime Minister compounded his misrepresentation in Question Time today where he now agrees that *“if we are ever going to settle this water thing, we will have to take back entitlements and people will be entitled to some compensation.”*

“This is clearly the opposite of what the Prime Minister and his Ministers have been saying in correspondence uncovered by the Freedom of Information request to the NSW Government.

“In fact, on 22<sup>nd</sup> December 2005, the Prime Minister under his own hand confirmed that the assistance payments would be subject to the provisions of the Income Tax Assessment Act (1997) *and “for the sake of equity and consistency, the government will not be altering these arrangements”* ie the Commonwealth Government,” Mr Windsor said.

Attached are five instances of the Prime Minister and his Minister’s misrepresentation of the issue.

“The five examples attached clearly demonstrate that the Australian Government Solicitors office never intended the payments to be treated as capital.

“The question that needs to be answered now is, who instructed the Australian Government Solicitors in the drawing up of the IGA if not the Prime Minister and his Ministers,” Mr Windsor said.

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# **Prime Minister's and Australian Govt Minister's references to taxation of ASGE Programme payments**

## **19 September 2005 - Prime Minister's Office – Narrabri Shire Council**

The tax treatment of the structural adjustment assistance payments is a matter for determination by the Australian Taxation Office (ATO), consistent with existing taxation law.

Where financial assistance is provided by governments to industry, as is the case for this package, I understand that the payments will generally be treated as income for tax purposes, even if the payment is capital in nature – **Helen Georgopoulos – Senior Adviser**

## **28 October 2005 - Minister for Revenue & Assistant Treasurer (Mal Brough) – NSW Irrigators Council (Doug Miell)**

“I (Mal Brough) can confirm that such payments are generally treated as assessable income for tax purposes. Technically, even if the payments were to be capital in nature, they would still be assessable through the operation of 15-10 (Bounties and subsidies) of the Income Tax Assessment Act 1997. The provision includes such payments in assessable income where they are received in relation to carrying on a business and where they are not assessable as ordinary income (for example, where they might be capital in nature) under section 6-5 of the ITAA 1997.

## **22 December 2005 - Prime Minister – Tony Windsor - Letter**

“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.”

## **27 February 2006 - Prime Minister – Tony Windsor – Letter**

**The Commissioner of Taxation** advised the PM that where financial assistance is provided by governments to businesses, as is the case for this package, the payments will generally be treated as income for tax purposes. This is in accordance with a long-standing general principle that bounties and subsidies for businesses are assessable income.

In the interest of fairness, this principle does not discriminate between payments by the Commonwealth and payments by states and territories.

## **8 June 2006 - Minister Assisting Treasurer – (Peter Dutton) - NSW Minister for Primary Industries (Ian McDonald) - Response to his Letter dated 28 March 2006**

Under the income tax law, a grant received in relation to carrying on a business is assessable income. Therefore, where financial assistance is provided by governments to industry, as is the case for this package, the payments will generally be treated as assessable income for tax purposes.

This is a long-standing feature of the income tax law and is based on the principle that a grant increases the net wealth of a taxpayer and hence should be taxed.....

... The treatment of the assistance payments..... is ultimately a matter for determination by the Australian Taxation Office (ATO) consistent with taxation law....