



PARLIAMENT OF AUSTRALIA
HOUSE OF REPRESENTATIVES

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MEDIA RELEASE

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PM Agrees – water compensation payments should not be taxed as income

But let's stop the blame game and fix the problem!

Independent Member for New England Tony Windsor was pleased with an answer given by the Prime Minister to him on the ongoing issue of the taxation of compensation payments to groundwater users in NSW.

The Prime Minister said "It is my view that these payments are in the nature of compensation for the withdrawal of the previously conferred water right.

I myself do not believe that you can regard these payments as being in the character of income."

The Prime Minister did however look to deflect blame for the situation back onto the NSW State Government saying "The NSW Government thus far have represented to us (the Federal Government) that they want the payment treated as income because, apparently, they are fearful of a precedent being established whereby such payments are seen as they truly are, and that is as compensation for the withdrawal of a previously conferred water right".

"Now that the Prime Minister has given his personal belief about the treatment of the payments as compensation for the loss of a capital asset, I would urge him to broker a positive outcome for the groundwater users as a matter of urgency so that they can move on with their lives and their businesses.

I have also indicated to the Prime Minister that he should look closely at the wording of the communication between the Commonwealth and the NSW Governments prior to the announcement of the joint Commonwealth-State package before allocating blame as I think he will find that certain provisos were placed on the Agreement by the Commonwealth," Mr Windsor said.

Following is the question asked by Mr Windsor and the answer given by the Prime Minister

Mr WINDSOR (2.46 pm)—My question is to the Prime Minister and relates to the ongoing debate about the taxation treatment of compensation payments to groundwater users for the loss of water entitlements in New South Wales. Is the Prime Minister aware of a taxation ruling dated 24 August 2006 concerning a similar adjustment package for the timber industry in the Brigalow bioregion, where compensation for loss of timber entitlements is going to be treated under the capital gain tax arrangements and not as income in the year of receipt, as is currently being applied to water entitlement holders? Prime Minister, will you intervene, as you did a couple of weeks ago in terms of the allocation of water entitlements, and put in place a consistent taxation policy so that those individuals being impacted by adjustment packages to achieve sustainable use of resources in Australia are not penalised unfairly by the taxation system?

Mr HOWARD—I thank the member for New England for that question. I have got very involved in this largely as a result of representations made to me by the member for Gwydir, the former Deputy Prime Minister. I did meet a delegation from the National Farmers Federation and from some of the irrigators. The problem here is the way in which the payments are currently structured by the New South Wales government. I understand that. I understand the point that the member for New England is making in relation to timber. 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. It is my view that these payments are in the nature of compensation for the withdrawal of the previously conferred water right.

I myself do not believe that you can regard these payments as being in the character of income. I do not believe that. So, in that sense, the law is not wrong. What the law says at the present moment is that if you get a payment which is in the nature of income then it is assessable but that if you get a payment which is in the nature of compensation for a capital loss then it is treated under the capital gains tax provisions of the law.

I have discussed this matter with the member for Gwydir and with the irrigators. I have asked my parliamentary secretary, the member for Wentworth, to discuss the matter with the New South Wales

government. I take the opportunity, because it is an important issue, of saying very plainly, and I think factually, that what has happened here is that the New South Wales government have in reality compensated irrigators for the withdrawal of their water entitlements, and we have provided some top-up funding, but they are wanting to treat the payment as income lest it be regarded as some kind of precedent for the future.

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.