

## Property owners have a right to compensation

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**A FUNDAMENTAL feature of sound administration is that government must pay full compensation if it takes anyone's property.**

Without this, people's incentives to save and invest would be much diminished, and living standards would fall.

Laws preventing government seizure of property are both implicit and formally stipulated under the Constitution. And judges adapt common law to cover new situations and technologies.

But there has also been a trend of courts updating the law in ways they think would improve society. Unfortunately, this invariably backfires by weakening the rights of individuals against those of the state.

This is illustrated in a judgment delivered last month concerning a New South Wales farmer, Peter Spencer.

From 1974, Mr Spencer's property was incrementally rezoned so that it could not be cleared for farming. That enabled the Commonwealth Government to claim the consequent reduced greenhouse gas emissions as credits toward meeting obligations under the Kyoto Protocol signed in 1997.

The government regulations reduced the value of the property by 80 per cent to about \$2 million. The NSW Government then offered to purchase it for that diminished amount.

Government passing laws that decrease the value of something then offering to buy at that reduced value is little removed from theft.

Mr Spencer sought compensation from the Commonwealth which had, on behalf of the nation as a whole, supposedly made benefits from the regulations in meeting its greenhouse gas-emission targets. One estimate of the nationwide costs to farmers was \$200 billion.

However, the judge decided the property rights were not taken but were "sterilised" under NSW state laws and that no compensation was called for.

So there we have it. Governments pass laws that they claim will benefit the community as a whole but which involve costs — and in this case, by preventing economic activity, reduce potential output. But, rather than face electoral disapproval by spreading the costs through general taxation, they find a way to impose them on a narrow group of people. And the courts refuse to accept that the administrative reduction in the property values warrants compensation.

This determination that governments can blatantly devalue property without being liable to compensate is also seen in the case of plain-packaging requirements imposed on cigarette producers.

The Government forced cigarette suppliers to abandon the brand images on their cigarette packets.

These are clearly very valuable but the High Court decided that no compensation was payable because the value of brands was extinguished. Inventively, it argued compensation would be merited only if the brands' worth had been taken and used for the benefit of the Government on behalf of the people as a whole.

While farmers are few in number and cigarette manufacturers receive little sympathy, their land and brand rights are of real value.

Without secure private property rights, Australia wouldn't have achieved its present living standards — and it was only once China gradually re-adopted such rights that its ride to prosperity commenced.

Preventing governments taking property was central to the Magna Carta signed 800 years ago and became a part of the US Constitution (the model for Australia's Constitution) in 1791. But, sadly, the courts are concocting new legal notions that validate governments seizing property without compensation.

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