



AUSTRALIAN  
SENATE

**Senate Standing Committee for the  
Scrutiny of Delegated Legislation**

Parliament House, Canberra ACT 2600  
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14 April 2021

The Hon Alan Tudge MP  
Minister for Education and Youth  
Parliament House  
CANBERRA ACT 2600

Via email: [alan.tudge.mp@aph.gov.au](mailto:alan.tudge.mp@aph.gov.au)

CC: [DLO.Tudge@dese.gov.au](mailto:DLO.Tudge@dese.gov.au)



Dear Minister,

**Education Services for Overseas Students (TPS Levies) (Risk Rated Premium and Special Tuition Protection Components) Instrument 2020 [F2020L01672]**

The Senate Standing Committee for the Scrutiny of Delegated Legislation (the committee) assesses all legislative instruments subject to disallowance, disapproval or affirmative resolution by the Senate against the scrutiny principles outlined in Senate standing order 23. The committee has identified scrutiny concerns in relation to the above instrument.

***Levy of taxation in delegated legislation***

***Matters of interest to the Senate***

Senate standing order 23(3)(j) requires the committee to consider whether an instrument contains matters more appropriate for parliamentary enactment (that is, matters that should be enacted via primary legislation rather than delegated legislation). This includes whether an instrument imposes a tax or levy. In addition, Senate standing order 23(4) requires the committee to scrutinise each instrument to determine whether the attention of the Senate should be drawn to the instrument on the ground that it raises significant issues or otherwise gives rise to issues that are likely to be of interest.

This instrument specifies a method for working out the amount payable by all non-exempt Commonwealth Register of Institutions and Courses for Overseas Students (CRICOS) registered providers for the risk rated premium and special tuition protection components of the Tuition Protection Service (TPS) levy. The explanatory statement notes that the instrument assists the TPS Director in exercising functions under the *Education Services for Overseas Students Act 2000* by ensuring sufficient funds are credited to the Overseas Student Tuition Fund to refund or place students in the event of provider closures.

The committee considers that one of the most fundamental functions of the Parliament is to levy taxation. In this regard, the committee's consistent scrutiny view is that it is for the Parliament, rather than makers of delegated legislation, to set a rate of tax. In this instance, it does not appear there is a cap on the face of the Act as to the amount of tax that may be imposed, which

compounds the committee's scrutiny concerns in relation to this tax due to the limited parliamentary oversight afforded to it.

As the levying of taxation in delegated legislation is a systemic technical scrutiny matter, the committee has resolved draw these instruments to the attention of the Senate in its *Delegated Legislation Monitor 6 of 2021*. However, the committee is not seeking any further information or advice from you in relation to this particular instrument.

In the interests of transparency, I note that this correspondence will be published on the committee's website and recorded in the Delegated Legislation Monitor.

If you have any questions or concerns, please contact the committee's secretariat on (02) 6277 3066, or by email to [sdlc.sen@aph.gov.au](mailto:sdlc.sen@aph.gov.au).

Yours sincerely,

**Senator the Hon Concetta Fierravanti-Wells**  
**Chair**  
**Senate Standing Committee for the Scrutiny of Delegated Legislation**