



AUSTRALIAN
SENATE

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

Parliament House, Canberra ACT 2600

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3 December 2020

The Hon Keith Pitt MP
Minister for Resources, Water and Northern Australia
Parliament House
CANBERRA ACT 2600

Via email: Keith.Pitt.MP@aph.gov.au

CC: minister.pitt@industry.gov.au


Dear Minister,

**Offshore Petroleum and Greenhouse Gas Storage (Regulatory Levies) Amendment
(Cross-boundary Greenhouse Gas Storage) Regulations 2020 [F2020L01177]**

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). 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.

The instrument provides for the amount of annual titles administration levy imposed on a cross-boundary greenhouse gas assessment permit. The explanatory statement to the instrument notes that the levy imposed by the instrument is for cost-recovery purposes. Whilst noting this information, the committee is concerned that the instrument may impose charges which would be more properly regarded as taxation. In particular, the committee notes that the instrument is made under the *Offshore Petroleum and Greenhouse Gas Storage (Regulatory Levies) Act 2003* (Levies Act). Section 10E of the Levies Act provides for the imposition of annual titles administration levies. Section 11 further provides that the amount of the relevant levy may be prescribed by regulations made under the Act; however, it does not set any cap on the amount that may be charged.

In the committee's view, the levying of taxation is one of the most fundamental functions of the Parliament. Consequently, the committee considers that it is for the Parliament, rather than makers of delegated legislation, to set a rate of tax. In this instance, while the instrument is made under the Levies Act, that Act only provides limited guidance as to the amounts of levy that may be imposed. This heightens the committee's scrutiny concerns about the determination of levies by delegated legislation, rather than primary legislation.

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 13 of 2020*.

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*.

Thank you for your assistance with this matter.

Yours sincerely,

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