



5 August 2021

Senator the Hon Richard Colbeck
Minister for Senior Australians and Aged Care Services
Parliament House
CANBERRA ACT 2600

Via email: Minister.Colbeck.DLO@health.gov.au
CC: parliamentary.committees@health.gov.au

Dear Minister,

Australian Radiation Protection and Nuclear Safety (Licence Charges) Amendment Regulations 2021 [F2021L00690]

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.

Levying of taxation in delegated legislation

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, made under the *Australian Radiation Protection and Nuclear Safety (Licence Charges) Act 1998* (Act), amends the Australian Radiation Protection and Nuclear Safety (Licence Charges) Regulations 2018 to increase annual licence charges by an indexation amount of 2 per cent.

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 to draw this instrument to the attention of the Senate in its *Delegated Legislation Monitor 11 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.

Yours sincerely,

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