



AUSTRALIAN  
SENATE

Senate Standing Committee for the  
Scrutiny of Delegated Legislation

Parliament House, Canberra ACT 2600  
02 6277 3066 | [sdlc.sen@aph.gov.au](mailto:sdlc.sen@aph.gov.au)  
[www.aph.gov.au/senate\\_sdlc](http://www.aph.gov.au/senate_sdlc)

3 September 2020

The Hon Greg Hunt MP  
Minister for Health  
Parliament House  
CANBERRA ACT 2600

Via email: [Greg.Hunt.MP@aph.gov.au](mailto:Greg.Hunt.MP@aph.gov.au)

CC: [Minister.Hunt.DLO@health.gov.au](mailto:Minister.Hunt.DLO@health.gov.au)

  
Dear Minister,

**Narcotic Drugs (Licence Charges) Amendment (2020 Measures No. 1) Regulations 2020 [F2020L00901]**

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 instruments.

***Levying 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). 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 imposition of charges for certain medicinal cannabis licences and cannabis research licences. The explanatory statement notes that the charges imposed by the instrument are for the purposes of administrative cost recovery as incurred in the course of regulating the medicinal cannabis regulatory scheme.

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 *Narcotic Drugs (Licence Charges) Act 2016* (the Act). Section 6 of the Act provides for the levying of taxation in relation to

narcotic drugs licences. Subsection 8(1) further provides that the amount of the relevant charge may be prescribed by regulations made under the Act; however, it does not set any cap on the amount that may be charged.

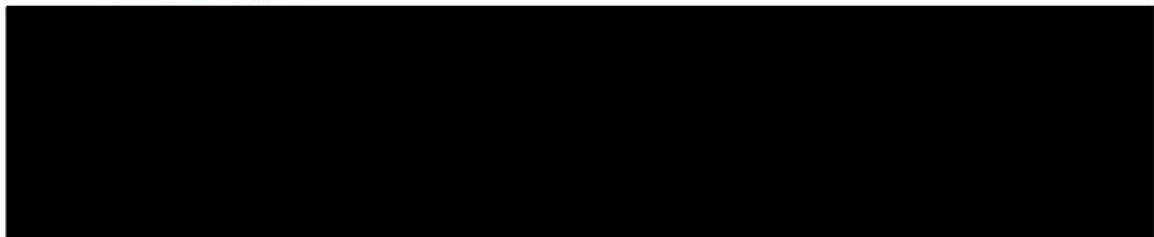
The committee considers that one of the most fundamental functions of the Parliament is to levy taxation. In this regard, the committee's consistent scrutiny view is that it is for the Parliament, rather than makers of delegated legislation, to set a rate of tax. In this instance, there is no cap on the amount that can be charged for licences issued for the purpose of the Act, which compounds the committee's scrutiny concerns in relation to this charge due to the limited parliamentary oversight afforded to it.

As the levying of taxation in delegated legislation is a systemic matter, the committee has resolved draw this instrument to the attention of the Senate in its *Delegated Legislation Monitor 10 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*.

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**