



AUSTRALIAN
SENATE

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

Parliament House, Canberra ACT 2600
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18 February 2021

The Hon David Littleproud MP
Minister for Agriculture, Drought and Emergency Management
Parliament House
CANBERRA ACT 2600

Via email: David.Littleproud.MP@aph.gov.au

CC: minister.littleproud@agriculture.gov.au; DLO-MO@agriculture.gov.au

Dear Minister,

Primary Industries (Customs) Charges Amendment (Dairy Cattle) Regulations 2020 [F2020L01530]

Primary Industries (Customs) Charges Amendment (Farmed Prawns and Macadamias) Regulations 2020 [F2020L01539]

Primary Industries (Excise) Levies Amendment (Dried Fruits, Farmed Prawns, Forest Growers and Macadamias) Regulations 2020 [F2020L01540]

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). 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.

The instruments are made under *Primary Industries (Customs) Charges Act 1999* and the *Primary Industries (Excise) Levies Act 1999*. The instruments amend the Primary Industries (Customs) Charges Regulations 2000 and the Primary Industries (Excise) Levies Regulations 1999 to set certain levies and charges in relation to agricultural products.

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 Acts 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 3 of 2021*. However, the committee is not seeking any further information or advice from you in relation to these particular instruments.

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.

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