



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\\_sdsc](http://www.aph.gov.au/senate_sdsc)

14 April 2021

The Hon Angus Taylor MP  
Minister for Energy and Emissions Reduction  
Parliament House  
CANBERRA ACT 2600

Via email: [DLOTaylor@environment.gov.au](mailto:DLOTaylor@environment.gov.au)

CC: [legislation@environment.gov.au](mailto:legislation@environment.gov.au)

  
Dear Minister,

**Greenhouse and Energy Minimum Standards (Registration Fees) Instrument (No. 2) 2020  
[F2021L00039]**

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  
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 instrument is made under the *Greenhouse and Energy Minimum Standards (Registration Fees) Act 2012* and specifies the fees payable in relation to applications to register models of Greenhouse and Energy Minimum Standards products under the *Greenhouse and Energy Minimum Standards Act 2012*. Section 8(2) of the Act provides that regulations made under the Act impose registration fees as taxes.

The explanatory statement to the instrument states these fees are set with reference to the identified costs of registration staff and the registration system, as well as costs incurred in the inspection and monitoring program, such as purchasing and testing equipment.

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**