



AUSTRALIAN  
SENATE

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

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8 October 2020

The Hon Dan Tehan MP  
Minister for Education  
Parliament House  
CANBERRA ACT 2600

Via email: [minister@education.gov.au](mailto:minister@education.gov.au)

CC: [Steve.Irons.MP@aph.gov.au](mailto:Steve.Irons.MP@aph.gov.au); [dlo@education.gov.au](mailto:dlo@education.gov.au)

Dear Minister,

**Higher Education Support (HELP Tuition Protection Levy) (Risk Rated Premium and Special Tuition Protection Components) Determination 2020 [F2020L00960]**

**VET Student Loans (VSL Tuition Protection Levy) (Risk Rated Premium and Special Tuition Protection Components) Determination 2020 [F2020L00961]**

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 instruments determine various matters relevant to the calculation of the risk rated premium component and special tuition protection component of the HELP and VSL tuition protection levies for the 2020 calendar year. The committee notes that these levies are imposed as taxes under the *Higher Education Support (HELP Tuition Protection Levy) Act 2020* and the *VET Student Loans (VSL Tuition Protection Levy) Act 2020* (the enabling Acts).

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 only limited guidance on the face of the enabling Acts as to the amounts of levy that may be imposed, which compounds the committee's scrutiny concerns in relation to determining core elements of these levies in delegated legislation.

As the levying of taxation in delegated legislation is a systemic matter, the committee has resolved draw these instruments to the attention of the Senate in its *Delegated Legislation Monitor 11 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**