



5 August 2021

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

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

CC: [rezana.berman@health.gov.au](mailto:rezana.berman@health.gov.au)

Dear Minister,

**Therapeutic Goods (Charges) Amendment (2021 Measures No. 1) Regulations 2021 [F2021L00694]**

**Narcotic Drugs (Licence Charges) Amendment (Charge Amounts and Other Measures) Regulations 2021 [F2021L00752]**

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.

The Therapeutic Goods (Charges) Amendment (2021 Measures No. 1) Regulations 2021 amend the Therapeutic Goods (Charges) Regulations 2018 to increase the annual charges set out in those regulations for most products by 1.05 per cent for the financial year 2021-22.

Similarly, the Narcotic Drugs (Licence Charges) Amendment (Charge Amounts and Other Measures) Regulations 2021 amend the Narcotic Drugs (Licence Charges) Regulation 2016 to increase charges for licences for medicinal cannabis related activities.

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 relation to each of the instances described above, it does not appear there is a cap on the face of either of the relevant 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 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 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](mailto:sdlc.sen@aph.gov.au).

Yours sincerely,

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