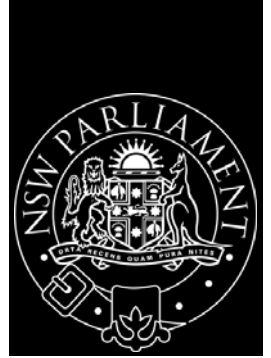


PARLIAMENT OF NEW SOUTH WALES



Legislation Review Committee

LEGISLATION REVIEW DIGEST

No 3 of 2009

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FUNCTIONS OF THE LEGISLATION REVIEW COMMITTEE

The functions of the Legislation Review Committee are set out in the *Legislation Review Act 1987*:

8A Functions with respect to Bills

- (1) The functions of the Committee with respect to Bills are:
 - (a) to consider any Bill introduced into Parliament, and
 - (b) to report to both Houses of Parliament as to whether any such Bill, by express words or otherwise:
 - (i) trespasses unduly on personal rights and liberties, or
 - (ii) makes rights, liberties or obligations unduly dependent upon insufficiently defined administrative powers, or
 - (iii) makes rights, liberties or obligations unduly dependent upon non-reviewable decisions, or
 - (iv) inappropriately delegates legislative powers, or
 - (v) insufficiently subjects the exercise of legislative power to parliamentary scrutiny
- (2) A House of Parliament may pass a Bill whether or not the Committee has reported on the Bill, but the Committee is not precluded from making such a report because the Bill has been so passed or has become an Act.

9 Functions with respect to Regulations:

- (1) The functions of the Committee with respect to regulations are:
 - (a) to consider all regulations while they are subject to disallowance by resolution of either or both Houses of Parliament,
 - (b) to consider whether the special attention of Parliament should be drawn to any such regulation on any ground, including any of the following:
 - (i) that the regulation trespasses unduly on personal rights and liberties,
 - (ii) that the regulation may have an adverse impact on the business community,
 - (iii) that the regulation may not have been within the general objects of the legislation under which it was made,
 - (iv) that the regulation may not accord with the spirit of the legislation under which it was made, even though it may have been legally made,
 - (v) that the objective of the regulation could have been achieved by alternative and more effective means,
 - (vi) that the regulation duplicates, overlaps or conflicts with any other regulation or Act,
 - (vii) that the form or intention of the regulation calls for elucidation, or
 - (viii) that any of the requirements of sections 4, 5 and 6 of the Subordinate Legislation Act 1989, or of the guidelines and requirements in Schedules 1 and 2 to that Act, appear not to have been complied with, to the extent that they were applicable in relation to the regulation, and
 - (c) to make such reports and recommendations to each House of Parliament as it thinks desirable as a result of its consideration of any such regulations, including reports setting out its opinion that a regulation or portion of a regulation ought to be disallowed and the grounds on which it has formed that opinion.
- (2) Further functions of the Committee are:
 - (a) to initiate a systematic review of regulations (whether or not still subject to disallowance by either or both Houses of Parliament), based on the staged repeal of regulations and to report to both Houses of Parliament in relation to the review from time to time, and
 - (b) to inquire into, and report to both Houses of Parliament on, any question in connection with regulations (whether or not still subject to disallowance by either or both Houses of Parliament) that is referred to it by a Minister of the Crown.
- (3) The functions of the Committee do not include an examination of, inquiry into or report on a matter of Government policy, except in so far as such an examination may be necessary to ascertain whether any regulations implement Government policy or the matter has been specifically referred to the Committee under subsection (2) (b) by a Minister of the Crown.

GUIDE TO THE *LEGISLATION REVIEW DIGEST*

Part One – Bills

Section A: Comment on Bills

This section contains the Legislation Review Committee's reports on Bills introduced into Parliament. Following a brief description of the Bill, the Committee considers each Bill against the five criteria for scrutiny set out in s 8A(1)(b) of the *Legislation Review Act 1987* (see page 3).

Section B: Ministerial correspondence – Bills previously considered

This section contains the Committee's reports on correspondence it has received relating to Bills and copies of that correspondence. The Committee may write to the Minister responsible for a Bill, or a Private Member of Parliament in relation to his or her Bill, to seek advice on any matter concerning that Bill that relates to the Committee's scrutiny criteria.

Part Two – Regulations

The Committee considers all regulations made and normally raises any concerns with the Minister in writing. When it has received the Minister's reply, or if no reply is received after 3 months, the Committee publishes this correspondence in the *Digest*. The Committee may also inquire further into a regulation. If it continues to have significant concerns regarding a regulation following its consideration, it may include a report in the *Digest* drawing the regulation to the Parliament's "special attention". The criteria for the Committee's consideration of regulations is set out in s 9 of the *Legislation Review Act 1987* (see page 3).

Regulations for the special attention of Parliament

When required, this section contains any reports on regulations subject to disallowance to which the Committee wishes to draw the special attention of Parliament.

Regulations about which the Committee is seeking further information

This table lists the Regulations about which the Committee is seeking further information from the Minister responsible for the instrument, when that request was made and when any reply was received.

Copies of Correspondence on Regulations

This part of the *Digest* contains copies of the correspondence between the Committee and Ministers on Regulations about which the Committee sought information. The Committee's letter to the Minister is published together with the Minister's reply.

Appendix 1: Index of Bills Reported on in 2009

This table lists the Bills reported on in the calendar year and the *Digests* in which any reports in relation to the Bill appear.

Appendix 2: Index of Ministerial Correspondence on Bills for 2009

This table lists the recipient and date on which the Committee sent correspondence to a Minister or Private Member of Parliament in relation to Bills reported on in the calendar year. The table also lists the date a reply was received and the *Digests* in which reports on the Bill and correspondence appear.

Appendix 3: Bills that received comments under s 8A of the Legislation Review Act in 2009

This table specifies the action the Committee has taken with respect to Bills that received comment in 2008 against the five scrutiny criteria. When considering a Bill, the Committee may refer an issue that relates to its scrutiny criteria to Parliament, it may write to the Minister or Member of Parliament responsible for the Bill, or note an issue. Bills that did not raise any issues against the scrutiny criteria are not listed in this table.

Appendix 4: Index of correspondence on Regulations reported on in 2009

This table lists the recipient and date on which the Committee sent correspondence to a Minister in relation to Regulations reported on in the calendar year. The table also lists the date a reply was received and the *Digests* in which reports on the Regulation and correspondence appear.

SUMMARY OF CONCLUSIONS

SECTION A: Comment on Bills

1. BioFuel (Ethanol Content) Amendment Bill 2009

Issue: Schedule 1 [13] – Part 3 – proposed section 10 (1) Offence – failure to comply with minimum biofuel requirements – Strict Liability:

20. The Committee notes that proposed section 10 (2) provides for a defence to a prosecution for a failure to comply with a minimum biofuel requirement if the defendant proves that the defendant took all reasonable steps to comply with the requirement. The regulations may make provision for or with respect to prescribing actions which by a volume fuel seller will constitute the taking of reasonable steps to comply with a biofuel requirement under subsection (3). Proposed section 10 (4) also provides that: The regulations do not prevent a volume fuel seller from proving that other actions taken by the volume fuel seller constitute the taking of reasonable steps to comply with a biofuel requirement.
21. The Committee concludes that, given the inclusion of defences and safeguards as provided by the proposed subsections 10 (2), (3) and (4) of Schedule 1 [13], and by limiting the penalties that may be imposed to monetary ones, personal rights and liberties are not unduly trespassed by the inclusion of strict liability offences.

Issue: Clause 2 - Commencement by proclamation - Provide the executive with unfettered control over the commencement of an Act.

23. Although there may be good reasons why such discretion is required such as allowing time for appropriate administrative arrangements to be made, the Committee has concerns about commencement by proclamation and asks Parliament to consider whether the Bill commencing by proclamation rather than on assent, is an inappropriate delegation of legislative power.

Issue: Schedule 1 [13] – Part 3 – proposed section 17 (1) Suspension of minimum biofuel requirements – Ministerial orders to influence the exercise of powers without any obligation for them to be tabled in Parliament or subject to disallowance:

25. The Committee is concerned that the Minister may suspend the operation of a minimum biofuel requirement which underpins the whole of the legislation, by an order in the Gazette, which could in effect be an exercise of legislative powers that is not subject to disallowance or scrutiny by the Parliament. Therefore, the Committee refers the proposed section 17 (1) to the attention of Parliament.

2. Education Amendment Bill 2009

10. The Committee has not identified any issues under s 8A(1)(b) of the *Legislation Review Act 1987*.

3. Hurlstone Agricultural High School Site Bill 2009*

- | | |
|----|--|
| 6. | The Committee has not identified any issues under s 8A(1)(b) of the <i>Legislation Review Act 1987</i> . |
|----|--|

4. Parking Space Levy Bill 2009

Issue: Clause 2 – Commencement by Proclamation – Provide the Executive with unfettered control over the commencement of an Act

- | | |
|----|--|
| 9. | Although there may be good reasons why such discretion is required such as allowing time for appropriate administrative arrangements to be made, the Committee has concerns about commencement by proclamation and asks Parliament to consider whether the Bill commencing by proclamation rather than on assent, is an inappropriate delegation of legislative power. |
|----|--|

Issue: Schedule 2: Section 9(vii) LRA – Failure to Comply with Sections 4, 5 and 6 of the *Subordinate Legislation Act 1989*

- | | |
|-----|--|
| 13. | The Committee is concerned that, as the Regulation has been included within the Bill, it is not subject to the requirements of Section 5 of the <i>Subordinate Legislation Act 2009</i> and as such a Regulatory Impact Statement has not been prepared. The Committee is concerned that the Regulation has therefore not been subject to cost benefit analysis and stakeholder scrutiny and consultation. The Committee resolves to write to the Minister and ask why the standard regulation making processes have not been followed in this instance. |
|-----|--|

5. Transport Administration Amendment (CountryLink Pensioner booking Fee Abolition) Bill 2009*

- | | |
|-----|--|
| 11. | The Committee has not identified any issues under s 8A(1)(b) of the <i>Legislation Review Act 1987</i> . |
|-----|--|

Part One – Bills

SECTION A: COMMENT ON BILLS

1. BIOFUEL (ETHANOL CONTENT) AMENDMENT BILL 2009

Date Introduced:	12 March 2009
House Introduced:	Legislative Assembly
Introduced By:	Hon Kristina Keneally MP
Portfolio (Minister Responsible):	Hon Tony Kelly MLC, Minister for Lands

Purpose and Description

1. This Bill amends the *Biofuel (Ethanol Content) Act 2007* to make further provision with respect to the required ethanol content in petrol sold in NSW and to make provision with respect to a required biodiesel content in diesel fuel; and for other purposes.
2. The proposed section 6 of this Bill maintains the current requirement of a primary wholesaler of petrol must ensure the volume of ethanol sold (in the form of petrol-ethanol blend) during a certain period is not less than 2% of the volume of all petrol sold by them within that period. However, the Bill also requires that this percentage is to be increased to 4% from the beginning of 2010 and 6% from the beginning of 2011. The minimum ethanol percentage will also apply to a major retailer.
3. The Bill will expand membership of the expert panel to include a representative from Treasury. The expert panel will continue to advise the Minister on whether there is any need to suspend the provisions in whole or in part and whether exemptions should be granted to individual companies.
4. Under the current wholesale scheme, the major retailers in the State have not been bound to comply. This Bill will broaden the application of the Act to include major retailers controlling more than 20 service stations.

Background

5. The current Act imposes a minimum ethanol percentage mandate on sales of petrol by a primary wholesaler to persons in NSW or for delivery in NSW.
6. At present, a primary wholesaler of petrol must ensure that the volume of ethanol sold by them (in the form of petrol-ethanol blend) during a certain period is not less than 2% of the volume of all petrol sold by them in that period.
7. This Bill now proposes that the 2 per cent increases towards a 10 per cent ethanol by 2011, by progressively increases to 4 per cent and then 6 per cent in the next two years, and then phasing out regular-grade unleaded petrol from July 2011. The Bill also expands to include biodiesel, at an initial 2 per cent level, but increasing to 5 per cent as supplies are available.

8. To retain the option of ethanol-free petrol for older vehicles, ultralight aircraft, boats and small engines that may not be able to use the ethanol-blend fuel, the 10 per cent will apply only to regular grade unleaded petrol, commonly known as ULP.
9. The biodiesel requirement will be initially set at 2 per cent, but will be increased to 5 per cent in 2012. The 5 per cent is the maximum biodiesel content currently covered by most vehicle warranties, and the Federal Government has recently amended the diesel fuel standard to permit up to 5 per cent biodiesel in all diesel fuel.
10. According to the Agreement in Principle speech:

The distillers grain is so valuable as a livestock food that the production was all presold even before the ethanol was. This shows how biofuels plants are often integrated with food production. A number of benefits can flow from a greater uptake of biofuels. A number of proposed biofuel plants are currently on the drawing board across the State, although the ability of companies to deliver projects has been impeded by the global economic crisis. This bill demonstrates our commitment to the New South Wales biofuels industry, and will assist these projects to secure funding. Biofuels production facilities in regional New South Wales will support hundreds of jobs...Second-generation biofuels will add enormous value to regional agriculture and forestry industries, and algae have the potential to capture the carbon dioxide emitted by coal-fired power stations, while producing high quality biodiesel and stock food. First-generation biofuels provide new, stable domestic grain markets for farmers and produce high-quality stock food for the livestock, poultry and aquaculture industries. With the development of second-generation technologies, new energy crops will offer sustainable agricultural potential in marginal farmlands...Replacing all ULP with E10 will reduce the total greenhouse emissions from all petrol-engine vehicles by about 2 per cent. Replacing 5 per cent of our diesel with biodiesel could reduce the total greenhouse emissions from diesel-fuelled vehicles by about 1.3 per cent. The proposed mandates will reduce carbon dioxide emissions by about 450,000 tonnes per year, equivalent to taking 1,900 buses and trucks, and 77,000 light vehicles off the road. Biofuels burn cleaner than petroleum fuels, reducing toxic emissions, especially carbon monoxide and particulates. Fine particles are a major cause of illness and death and are responsible for 97 per cent of the health impacts of emissions from vehicles. Federal Government trials have recently demonstrated that E10 petrol will reduce fine particle emissions from petrol-engine vehicles by 33 per cent. B5 biodiesel will reduce particle emissions from diesel-engine vehicles by 4 per cent. These reductions will produce health benefits of approximately of \$22 million per annum in the Sydney basin.

11. The Agreement in Principle also explained that a 10-year biofuel strategy will be developed to pursue second and subsequent generation technologies and the strategy will be reviewed every three years.

The Bill

12. The object of this Bill is to amend the *Biofuel (Ethanol Content) Act 2007* (**the Act**) as follows:
 - (a) to provide for increases to the mandated minimum ethanol content for total petrol sales in NSW (currently 2%),
 - (b) to make provision for a mandated minimum biodiesel content for total diesel fuel sales in NSW,
 - (c) to provide that such mandates will apply to major retailers, in addition to primary wholesalers, of petrol and diesel fuel,

(d) to provide that from July 2011 regular unleaded petrol sold in NSW by primary wholesalers must contain 10% ethanol.

13. The Bill renames the *Biofuel (Ethanol Content) Act 2007* as the *Biofuels Act 2007*.

14. Minimum biofuel requirements

Schedule 1 [13] substitutes Part 2 (substituted sections 6–9) of the Act to specify new minimum biofuel requirements imposed on primary wholesalers and major retailers, together known as volume fuel sellers.

Proposed section 7 imposes on a volume fuel seller a minimum biodiesel percentage in respect of the volume of all diesel fuel sold by the seller (in the form of biodiesel blend). On the commencement of the proposed section, the minimum biodiesel percentage will be 2%. This percentage is to be increased to 5% from the beginning of 2012.

Proposed section 8 provides that from July 2011, or a later date prescribed by the regulations, a primary wholesaler must not sell regular unleaded petrol (unleaded petrol that has a research octane number of less than 95) unless the petrol is petrol-ethanol blend that contains between 9% and 10% ethanol by volume (known as E10).

Only ethanol or biodiesel that complies with a standard prescribed by the regulations in respect of the sustainable manufacture of ethanol or biodiesel may be counted towards a minimum biofuel requirement.

Schedule 1 [3] and [5]–[9] insert or amend definitions in the Act, including definitions of *biodiesel*, *biodiesel blend*, *biofuel sustainability standard*, *diesel fuel*, *E10*, *ethanol*, *fuel wholesaler*, *major retailer*, *relevant period*, *primary wholesaler* and *volume fuel seller*, as a consequence of the new minimum biofuel requirements.

Schedule 1 [10] extends the application of the Act to include both petrol and diesel fuel sales by a primary wholesaler and a major retailer, that is, a person operates or controls the operation of more than 20 service stations.

Schedule 1 [12] provides that the ethanol and biodiesel mandates (under substituted sections 6 and 7) do not apply to sales of petrol or diesel fuel by a primary wholesaler to a major retailer.

Schedule 1 [4], [11], [14]–[21], [23] and [24] make amendments consequential on the new minimum biofuel requirements.

Schedule 1 [2] changes the name of the Act from the *Biofuel (Ethanol Content) Act 2007* to the *Biofuels Act 2007* to reflect the additional biofuel (biodiesel) that will now be covered by the Act. **Schedule 1 [1]** amends the long title of the Act consequentially.

15. Compliance

Schedule 1 [13] substitutes Part 3 (substituted sections 10–17) of the Act to make a number of changes in respect of offences, exemptions from and suspensions of minimum biofuel requirements and other compliance-related matters.

Proposed section 10 substantially re-enacts the current section that makes it an offence for a primary wholesaler of petrol to fail to comply with the minimum 2% ethanol sales volume requirement, but instead makes it an offence for a person to fail to comply with a minimum biofuel requirement.

Proposed sections 11 and 12 substantially re-enact the current requirements that primary wholesalers of petrol furnish returns and keep adequate records in respect of petrol and ethanol sales, extending the requirements to major retailers and to cover diesel fuel and biodiesel sales.

Proposed section 13 substantially re-enacts the current section that makes it an offence for a primary wholesaler to fail to furnish the required returns or keep the required records, or to furnish or keep returns or records containing false or misleading information. The offence will now also apply to major retailers.

Proposed section 14 substantially re-enacts the current section that authorises the Minister to publish information about compliance by primary wholesalers with the requirements of the Act, extending the authorisation to publication of information about compliance by major retailers.

Proposed section 15 substantially re-enacts the current exemption provisions that provide for the Minister to exempt a primary wholesaler from the 2% ethanol mandate, extending this to exemptions from a minimum biofuel requirement.

Proposed section 16 provides that the Minister may grant an E10 exemption to a person who is a small business selling petrol by retail or a business that sells petrol by retail for the fuelling of vessels or watercraft. An E10 exemption entitles the person to be sold regular unleaded petrol that is not E10 from a primary wholesaler.

Proposed section 17 substantially re-enacts the current suspension provisions that provide for the Minister to suspend the operation of the minimum 2% ethanol mandate, extending this to suspensions of a minimum biofuel requirement.

16. Miscellaneous amendments

Schedule 1 [22] provides that the Director-General of the Department of Lands (or his or her nominee) is to chair the Expert Panel that advises the Minister on any proposed exemption from or suspension of a minimum biofuel requirement. The current chair, the Director-General of the Department of State and Regional Development (or his or her nominee), will now be a member of the Expert Panel. The Secretary of the Treasury (or the Secretary's nominee) will also be a member of the Expert Panel. The item also amends the current Expert Panel provisions consequential on the new minimum biofuel requirements.

Issues Considered by the Committee

Trespasses on personal rights and liberties [s 8A(1)(b)(i) LRA]

Issue: Schedule 1 [13] – Part 3 – proposed section 10 (1) Offence – failure to comply with minimum biofuel requirements – Strict Liability:

17. Proposed section 10 (1) reads: A person who fails to comply with a minimum biofuel requirement is guilty of an offence. Maximum penalty: (1) in the case of a first offence – 100 penalty units, or (b) in the case of a second or subsequent offence – 1,000 penalty units.
18. Part 2 of Schedule 1 [13] sets out the minimum biofuel requirements under the proposed sections 6, 7, 8 and 9.
19. The Bill is silent on the mental elements or intention required to be proven in relation to the minimum biofuel requirements. The imposition of strict liability may give rise to concern as the authority is not required to prove that the defendant intended to commit the offence. However, in some circumstances, the imposition of strict liability may be warranted after considering the community impact of the offence, the availability of defences or safeguards, and the type of penalty that may be imposed (where terms of imprisonment are generally considered inappropriate in relation to strict liability offences).

- 20. The Committee notes that proposed section 10 (2) provides for a defence to a prosecution for a failure to comply with a minimum biofuel requirement if the defendant proves that the defendant took all reasonable steps to comply with the requirement. The regulations may make provision for or with respect to prescribing actions which by a volume fuel seller will constitute the taking of reasonable steps to comply with a biofuel requirement under subsection (3). Proposed section 10 (4) also provides that: The regulations do not prevent a volume fuel seller from proving that other actions taken by the volume fuel seller constitute the taking of reasonable steps to comply with a biofuel requirement.**
- 21. The Committee concludes that, given the inclusion of defences and safeguards as provided by the proposed subsections 10 (2), (3) and (4) of Schedule 1 [13], and by limiting the penalties that may be imposed to monetary ones, personal rights and liberties are not unduly trespassed by the inclusion of strict liability offences.**

Delegation of legislative powers [s 8A(1)(b)(iv) LRA]

Issue: Clause 2 - Commencement by proclamation - Provide the executive with unfettered control over the commencement of an Act.

22. The Committee notes that the proposed Act is to commence on a day or days to be appointed by proclamation. This may delegate to the government the power to commence the Act on whatever day it chooses or not at all. While there may be good reasons why such discretion is required, the Committee considers that, in some circumstances, this may give rise to an inappropriate delegation of legislative power.

- 23. Although there may be good reasons why such discretion is required such as allowing time for appropriate administrative arrangements to be made, the Committee has concerns about commencement by proclamation and asks Parliament to consider whether the Bill commencing by proclamation rather than on assent, is an inappropriate delegation of legislative power.**

Parliamentary scrutiny of legislative power [s 8A(1)(b)(v) LRA]

Issue: Schedule 1 [13] – Part 3 – proposed section 17 (1) Suspension of minimum biofuel requirements – Ministerial orders to influence the exercise of powers without any obligation for them to be tabled in Parliament or subject to disallowance:

24. Proposed section 17 (1) of Part 3 reads: The Minister may by order published in the Gazette suspend the operation of a minimum biofuel requirement if satisfied that compliance with that requirement: (a) is uneconomic as a result of the price at which volume fuel sellers are reasonably able to obtain ethanol or biodiesel or industry-wide ethanol or biodiesel shortages, as appropriate, or (b) may result in a risk to public health or safety, or (c) may have an adverse effect on the retail price of petrol or diesel fuel for motorists, or (d) should be suspended for some other extraordinary reason.

- 25. The Committee is concerned that the Minister may suspend the operation of a minimum biofuel requirement which underpins the whole of the legislation, by an order in the Gazette, which could in effect be an exercise of legislative powers that is not subject to disallowance or scrutiny by the Parliament. Therefore, the Committee refers the proposed section 17 (1) to the attention of Parliament.**

The Committee makes no further comment on this Bill.

2. EDUCATION AMENDMENT BILL 2009

Date Introduced:	11 March 2009
House Introduced:	Legislative Assembly
Introduced By:	Hon Nathan Rees MP
Portfolio (Minister Responsible):	Education and Training (Hon Verity Firth MP)

Purpose and Description

1. This Bill amends the *Education Act 1990* to change the school leaving age.
2. It creates a new section 21B in the Act. This defines the minimum school leaving age as the age at which a student completes year 10 of secondary education, or the age of 17 years, whichever occurs first. Year 10 can be completed in a number of ways: it can be completed while attending a New South Wales government school or non-government school, or by being registered for home schooling where such registration covers the completion of year 10. A child will have completed year 10 through home schooling when he or she is registered to do so under the Education Act and has met the conditions upon which his or her registration is granted. Recognition will also be given to the achievements of children who have completed the equivalent of year 10 outside New South Wales.
3. The Director General of Education and Training, or a prescribed officer, will be given the authority to decide that the education a child has received is equivalent to the completion of year 10. The system will have the flexibility to allow for the special circumstances affecting particular students.
4. Proposed section 21B also introduces a new concept for education in New South Wales, which is that every young person must participate in some form of education or training or be in employment from the time he or she completes year 10 until he or she reaches 17 years of age. Where individual circumstances arise that require more flexibility, this can be done at the discretion of the Minister.
5. Proposed section 21B (3) contains flexibility by allowing young people to undertake paid work or a combination of paid work and education and training. If there are exceptional circumstances that warrant a younger child participating in paid work, the option exists to seek an exemption from the Minister. Proposed section 21B (4) also allows a young person to cease participation for a period of three months in any 12-month period.

Background

6. According to national and international evidence, young people who complete 12 years of education have greater opportunities for further education and sustainable employment. In 2006 the Productivity Commission found that early leavers tend to be less likely to work and to earn less when they are employed. Access Economics also conducted research that showed that early school leavers, on average, would earn

lower wages over a lifetime and would be more likely to be unemployed for periods of their lives.

7. From the Agreement in Principle speech:

This is the culmination of an extensive consultation period but, importantly, the implementation of research-based policy development. I move to legislate for the single most significant education policy advancement in New South Wales since the Second World War. From 2010 all students in New South Wales will, as a minimum, complete year 10 and, until they are 17 years old, continue to be engaged in some form of education, training or employment. This reform provides additional educational opportunities for every school student in New South Wales that will ultimately enhance their employment capacity, enhance their earning potential over the course of their employment, and set New South Wales up for the long term as a clever State.

The Bill

8. The object of this Bill is to change the current school leaving age of 15 years by requiring children:

- (a) to complete Year 10 of secondary education (unless they have reached the age of 17 years), and
- (b) if they have completed Year 10 but have not reached the age of 17 years:
 - (i) to continue with their school education, or
 - (ii) to participate on a full-time basis in approved education or training or, if they have reached the age of 15 years, in paid work. Participation in approved education or training includes an apprenticeship, a TAFE or other vocational course or a university course.

9. **Schedule 1 Amendment of *Education Act 1990* No 8:**

Schedule 1 [2] gives effect to the changes described above in the Overview by inserting proposed section 21B into the *Education Act 1990*. **Schedule 1 [1], [3] and [5]** make consequential amendments.

Schedule 1 [4] provides parents with a defence to a prosecution for failure to send a child of compulsory school-age to school if the child is of or above the age of 16 years and is no longer living with the parent (provided that the child's absence was not due to any default of the parent).

Schedule 1 [8] enables the Director-General or a prescribed officer to provide a certificate in relation to whether or not a child has completed Year 10 of secondary education in this State and whether or not specified education completed outside of the State is the equivalent of Year 10 of secondary education in this State. Such a certificate is admissible in evidence in any proceedings under the *Education Act 1990* for an offence against section 23 (1) (Offence to fail to send child to school or register child for home schooling) and is prima facie evidence of the matters stated in the certificate.

Schedule 1 [6] extends the matters that may be included in a similar certificate that is signed by the principal of a school to include a statement of whether or not the child has completed Year 10 at that school.

Schedule 1 [7] makes it clear that the certificate that may currently be provided by the Director-General in relation to enrolment at school and registration for home schooling may also be signed by any prescribed officer.

Schedule 1 [9] enables the making of regulations of a savings or transitional nature consequent on the enactment of the proposed Act.

Schedule 1 [10] provides that the amendments made by the proposed Act do not apply in respect of children who have reached the age of 15 years before 1 January 2010.

Issues Considered by the Committee

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| <p>10. The Committee has not identified any issues under s 8A(1)(b) of the Legislation Review Act 1987.</p> |
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The Committee makes no further comment on this Bill.

3. HURLSTONE AGRICULTURAL HIGH SCHOOL SITE BILL 2009*

Date Introduced: 13 March 2009
House Introduced: Legislative Assembly
Introduced By: Andrew Stoner MP
Portfolio: The Nationals

Purpose and Description

1. This Bill requires the Hurlstone Agricultural High School site to be retained for educational purposes.

Background

2. Hurlstone Agricultural High School is one of only two agricultural high schools in Sydney and one of only four in the State of New South Wales. The school site incorporates 160 hectares of land. The school runs model farms, such as horticultural cropping, including grains and livestock on site.
3. The Agreement in Principle speech stated that the Government in its mini-budget, proposes to sell 140 hectares of the site, leaving 20 hectares. The Government has also announced an inquiry into the sale.

The Bill

4. The objects of this Bill are:
 - (a) to ensure that the Hurlstone Agricultural High School site remains in public ownership, and
 - (b) to limit the use of the site to that of a government school.

5. Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on the date of assent to the proposed Act.

Clause 3 defines the Hurlstone Agricultural High School site and contains other interpretative provisions.

Clause 4 specifies the objects of the proposed Act (as referred to in the Overview above).

Clause 5 prohibits the Hurlstone Agricultural High School site from being sold, transferred, leased or otherwise alienated.

Clause 6 restricts development of the site so that it can only be used for the purposes of a government school.

Clause 7 prevents any development of the site from becoming a project to which Part 3A of the *Environmental Planning and Assessment Act 1979* applies.

Issues Considered by the Committee

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| <p>6. The Committee has not identified any issues under s 8A(1)(b) of the Legislation Review Act 1987.</p> |
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The Committee makes no further comment on this Bill

4. PARKING SPACE LEVY BILL 2009

Date Introduced: 11 March 2009
House Introduced: Legislative Assembly
Minister Responsible: The Hon David Campbell MP
Portfolio: Transport

Purpose and Description

1. The object of the Bill is to discourage car use in leviable districts by imposing a levy on parking spaces and using the revenue to encourage the use of public transport.

Background

2. The *Parking Space Levy Act* was introduced in 1992. The levy applies to part of the City of Sydney, North Sydney and Milsons Point as well as the CBDs of Bondi junction, Chatswood, St Leonards and Parramatta.
3. The levy is currently the sole source of income for the Public Transport Fund which provides capital funding for multi-use interchanges for rail, bus, ferry and taxi services, and for commuter car parking facilities at transport interchanges.
4. According to the Minister's Agreement in Principle speech, a review of the Act and regulations found that they are generally meeting their objectives. However, opportunities for improvements were identified in a number of areas. These included: clarifying the boundaries of the levy areas; freeing up the restrictions that limit the way the levy proceeds are used; and simplifying the administration by clarifying a few rules and definitions.
5. The Bill now defines the City of Sydney as demarcated by a map like all other areas subject to the levy. The current limitation on using levy revenue only for transport infrastructure and maintenance is also removed from the Act and regulation. There has also been a refinement of definitions in the Act to create more certainty.
6. Under the Act parking space levy liability is assessed once per year on 1 July for parking spaces that existed during the previous financial year. The period for which the levy assessment is issued has been misinterpreted and misapplied by parking space owners when assessing their liability for the levy. The calculation and liability of the levy is based on actuals and not estimates. Sections 9 and 13 have been removed from the Act and redrafted in the regulation so as to clarify the relationship between the liability date and assessment period. Under clause 7 (3) where parking spaces are not formally delineated a formula is used where a total area is divided by 25 square metres to determine the number of spaces. However, the Office of State Revenue audit program has identified that more motor vehicles are being parked into a space than the 25 square metres formula estimates. Accordingly, the formula is revised to 18 square metres, a value that reflects what is actually occurring.

7. Currently the six leviable areas are either prescribed under the Act or under the regulation. These amendments simplify this situation by removing references in the Act and prescribing all areas under the regulation.

The Bill

Clause 2 provides for the commencement of the proposed Act on a day to be appointed by proclamation.

Clause 4 defines certain words and expressions for the purposes of the proposed Act, including in particular **leviable district**, **levy** and **parking space**.

Clause 5 provides for the proposed Act to be read together with the *Taxation Administration Act 1996*. That Act makes provision with respect to the administration and enforcement of taxation laws. The current Act is a taxation law. Consequential amendments to the *Taxation Administration Act 1996* will ensure that the proposed Act is also a taxation law.

Clause 7 provides that premises are leviable premises if, during the previous financial year, they have been situated in a leviable district and contained one or more parking spaces. The clause further provides that the regulations may declare premises not to be leviable premises.

Clause 8 provides that on 1 July each year a levy is imposed on all leviable premises. The amount of the levy is to be calculated in accordance with the regulations, and is payable by the person who, as at that 1 July, was the owner of the premises.

Clause 9 provides that the person who was, as at 1 July, the owner of leviable premises must, on or before 1 September, furnish a return to the Chief Commissioner of State Revenue in relation to the parking spaces situated on those premises.

Clause 10 provides that all parking space levies that are paid to the Chief Commissioner of State Revenue are subject to a statutory trust for their use for the purposes for which money in the proposed Public Transport Fund may be used pursuant to proposed section 11 (3). This clause is similar to a provision of the current Act.

Clause 11 provides for the establishment in the Special Deposits Account of a Public Transport Fund out of which may be paid, in accordance with a direction of the Minister:

- (a) money to finance public transport services, and
- (b) money to finance projects that facilitate access to public transport services, including projects for the construction, maintenance and ongoing management of parking facilities, and other such infrastructure, and
- (c) money to finance initiatives for the communication of information to commuters, including initiatives that make use of new technologies, and
- (d) money to pay amounts that become payable under Parts 4 and 10 of the *Taxation Administration Act 1996* in relation to parking space levies paid to the Chief Commissioner of State Revenue, and
- (e) money that is directed to be paid from the Fund by or under this or any other Act.

This clause is similar to a provision of the current Act, but for the addition of the purposes referred to in paragraphs (a) and (c) above.

Clause 12 enables the Chief Commissioner of State Revenue to establish guidelines as to:

- (a) what does, and what does not, constitute a parking space in any particular circumstances, and
 - (b) whether, in particular circumstances, a parking space is, or is not, to be exempted from the calculation of the levy in respect of any leviable premises.
- Courts will be required to have regard to the guidelines when considering any such matter that is called into question in any proceedings.

Clause 13 provides for the delegation, and subdelegation, of the Minister's functions under the proposed Act.

Clause 14 enables regulations to be made for the purposes of the proposed Act, including regulations for or with respect to the following matters:

- (a) the manner in which the number of parking spaces on any leviable premises is to be calculated,
- (b) the amount of the levy payable in respect of leviable premises, and the manner in which it is to be calculated,
- (c) the circumstances in which parking spaces may be exempted from the calculation of the levy,
- (d) the administration of the Public Transport Fund,
- (e) the establishment of arrangements for contributions towards payment of the levy by specified classes of persons who use parking spaces in leviable premises.

Clause 18 requires a review of the proposed Act to be undertaken 5 years after the date of assent to the proposed Act. Schedule 2 Parking Space Levy Regulation 2009

Clause 2 defines certain words and expressions for the purposes of the proposed Regulation, including in particular *parking area*, *regular parking space* and *stacked parking space*.

Clause 3 provides that each district referred to in Schedule 1 to the proposed Regulation is established as a leviable district for the purposes of the proposed Act. The proposed districts are identical to the districts established under the current Act.

Clause 4 provides that the carriageways of any street, road or lane are not leviable premises for the purposes of the proposed Act. This clause replicates a provision of the current Act.

Clause 5 provides that a stacked parking space is declared to be a parking space for the purposes of the proposed Act.

Clause 6 provides a method for calculating the number of parking spaces on leviable premises. The method is substantially the same as the method used under the current Act, except that the space allowed for each parking space in an area in which parking spaces are not specifically designated is 18 square metres, rather than the 25.2 square metres allowed under the current Act.

Clause 7 establishes the circumstances in which a parking space is exempt from payment of a levy. Exempt parking spaces include those situated in the various shopping centres described in Schedule 2 to the proposed Regulation. The exemptions under this clause are substantially the same as the exemptions under the current Act.

Clause 8 fixes the base rate of the levy for each financial year in relation to premises in a Category 1 or Category 2 area. The base rate for the financial year commencing 1 July 2009 is the same as that under the current Act, as is the formula for making CPI adjustments for future years.

Clause 9 establishes the method by which the levy is to be calculated in relation to any premises. The method is substantially the same as the method used under the current Act.

Clause 10 requires notice of the base rate of the levy payable in any financial year to be published in the Gazette on or before 1 July in that year. This clause replicates a provision of the current Act.

Clause 11 requires a person in a government service position to contribute towards the levy payable in respect of any parking space to which he or she has an entitlement in his or her capacity as a government employee. Arrangements for this purpose are to be entered into with the relevant person identified in Schedule 3 to the proposed Regulation. This clause replicates a provision of the current Act.

Issues Considered by the Committee

Issue: Clause 2 – Commencement by Proclamation – Provide the Executive with unfettered control over the commencement of an Act

8. The Committee notes that the proposed Act is to commence on a day or days to be appointed by proclamation. This may delegate to the government the power to commence the Act on whatever day it chooses or not at all. While there may be good reasons why such discretion is required, the Committee considers that, in some circumstances, this may give rise to an inappropriate delegation of legislative power.

9. **Although there may be good reasons why such discretion is required such as allowing time for appropriate administrative arrangements to be made, the Committee has concerns about commencement by proclamation and asks Parliament to consider whether the Bill commencing by proclamation rather than on assent, is an inappropriate delegation of legislative power.**

Issue: Schedule 2: Section 9(1)(b)(viii) LRA – Failure to Comply with Sections 4, 5 and 6 of the *Subordinate Legislation Act 1989*

10. Section 5 of the *Subordinate Legislation Act 1989* provides that before a Principle Statutory Rule is made the responsible Minister is required to ensure that a Regulatory Impact Statement (RIS) is made.
11. A regulatory impact statement must include the following matters: (a) A statement of the objectives sought to be achieved and the reasons for them. (b) An identification of the alternative options by which those objectives can be achieved (whether wholly or substantially). (c) An assessment of the costs and benefits of the proposed rule including the costs and benefits relating to resource allocation, administration and compliance. (d) An assessment of the costs and benefits of each alternative option to the making of the rule (including the option of not proceeding with any action), including the costs and benefits relating to resource allocation, administration and compliance. (e) An assessment as to which of the alternative options involves the greatest net benefit or the least net cost to the community. (f) A statement of the consultation program to be undertaken.
12. Section 5 also contains important provisions relating to stakeholder and community consultation. In this instance the RIS process does not appear to have been undertaken due to the fact that the regulation has been included within the Bill itself. The Committee always has concerns when the RIS process is not followed without very good reason.

13. **The Committee is concerned that, as the Regulation has been included within the Bill, it is not subject to the requirements of Section 5 of the Subordinate Legislation Act 1989 and as such a Regulatory Impact Statement has not been prepared. The Committee is concerned that the Regulation has therefore not been subject to cost benefit analysis and stakeholder scrutiny and consultation. The Committee resolves to write to the Minister and ask why the standard regulation making processes have not been followed in this instance.**

The Committee makes no further comment on this Bill.

5. TRANSPORT ADMINISTRATION AMENDMENT (COUNTRYLINK PENSIONER BOOKING FEE ABOLITION) BILL 2009*

Date Introduced: 13 March 2009
House Introduced: Legislative Assembly
Introduced By: Gladys Berejiklian MP
Portfolio: Liberal Party

Purpose and Description

1. This Bill amends the *Transport Administration Act 1988* to abolish booking fees on the use of pensioner travel vouchers and passes on CountryLink rail services.
2. It seeks to abolish the pensioner booking tax imposed by the Government in March 2006.
3. Schedule 1 [1] makes it clear that an order fixing charges for services of RailCorp cannot impose a CountryLink pensioner booking fee; that is, a fee, however described, charged for or in relation to a New South Wales or Australian Capital Territory pensioner booking a railway service provided by CountryLink using what would otherwise be a free travel pass, a concessional travel pass or a pensioner travel voucher.
4. Schedule 1 [2] provides that RailCorp must not charge any pensioner booking fee for travel on a railway service provided by CountryLink.

Background

5. Since 3 March 2006, pensioners using CountryLink services have had to pay \$10 (or 15 per cent) of the full adult fare, whichever is the highest, when using the free travel vouchers to book CountryLink services, in order to cover administrative costs.
6. This Bill was first introduced in October 2007 and subsequently lapsed. This Bill is now re-introduced, which, but for the change in date, is the same Bill that was introduced in October 2007.
7. In the first eight months of the booking fee, the Government raised \$2.6million. The introduction of the pensioner booking fee increased the revenue by 8 per cent from 2005-06 to 2006-07. However, due to declining patronage, the pensioner booking fee has decreased from 2006-07 to 2007-08. In 2006-07, the pensioner booking fee collected \$3.548 million, and in 2007-08, this decreased slightly to \$3.5 million.
8. According to the Agreement in Principle speech, community organisations such as the Australian Pensioners and Superannuants Federation (NSW) and the Council on the Ageing have been advocates on this matter.

The Bill

9. The object of this Bill is to abolish booking fees on the use of pensioner travel vouchers and passes on CountryLink rail services.

10. Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on the date of assent to the proposed Act.

Schedule 1 Amendment of *Transport Administration Act 1988* No 109

Schedule 1 [1] makes it clear that an order fixing charges for services of RailCorp cannot impose a CountryLink pensioner booking fee (that is, a fee, however described, charged for or in relation to a NSW/ACT pensioner booking a railway service provided by CountryLink using what would otherwise be a free travel pass, a concessional travel pass or a pensioner travel voucher).

Schedule 1 [2] provides that RailCorp must not charge any pensioner booking fee for travel on a railway service provided by CountryLink. The new section provides that any order published by RailCorp is of no effect to the extent that it imposes a pensioner booking fee.

Issues Considered by the Committee

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| 11. The Committee has not identified any issues under s 8A(1)(b) of the Legislation Review Act 1987. |
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The Committee makes no further comment on this Bill.

Appendix 1: Index of Bills Reported on in 2009

	Digest Number
Associations Incorporation Bill 2009	2
Barangaroo Delivery Authority Bill 2009	2
Biofuel (Ethanol Content) Amendment Bill 2009	3
Children and Young Persons (Care and Protection) Amendment (Children's Employment) Bill 2009	2
Children Legislation Amendment (Wood Inquiry Recommendations) Bill 2009	2
Crimes (Administration of Sentences) Amendment (Private Contractors) Bill 2009	2
Crimes (Appeal and Review) Amendment Bill 2009	2
Education Amendment Bill 2009	3
Education Amendment (Educational Support For Children With Significant Learning Difficulties) Bill 2008*	1
Food Amendment (Meat Grading) Bill 2008*	1
Hurlstone Agricultural High School Site Bill 2009	3
Law Enforcement (Powers and Responsibilities) Amendment (Search Powers) Bill 2009	2
Liquor Amendment (Special License) Conditions Bill 2008	1
Nation Building and Jobs Plan (State Infrastructure Delivery) Bill 2009	2
Parking Space Levy Bill 2009	3
Telecommunications (Interception and Access) (New South Wales) Amendment Bill 2008	1
Transport Administration Amendment (CountryLink Pensioner Booking Fee Abolition) Bill 2009	3
Western Lands Amendment Bill 2008	1

Appendix 2: Index of Ministerial Correspondence on Bills

Bill	Minister/Member	Letter sent	Reply received	Digest 2007	Digest 2008	Digest 2009
APEC Meeting (Police Powers) Bill 2007	Minister for Police	03/07/07		1		
Civil Liability Legislation Amendment Bill 2008	Attorney General	28/10/08			12	
Contaminated Land Management Amendment Bill 2008	Minister for Climate Change and the Environment	22/09/08	03/12/08		10	1
Crimes (Administration of Sentences) Amendment Bill 2008	Attorney General and Minister for Justice	2/12/07			15	
Crimes (Forensic Procedures) Amendment Bill 2008	Minister for Police	24/06/08	6/02/09		9	
Criminal Procedure Amendment (Vulnerable Persons) Bill 2007	Minister for Police	29/06/07	13/2/09	1		2
Drug and Alcohol Treatment Bill 2007	Minister for Health	03/07/07	28/01/08	1	1	
Environmental Planning and Assessment Amendment Bill 2008; Building Professionals Amendment Bill 2008	Minister for Planning		12/06/08		8	
Guardianship Amendment Bill 2007	Minister for Ageing, Minister for Disability Services	29/06/07	15/11/07	1,7		
Home Building Amendment	Minister for Fair Trading		30/10/08		10, 13	
Liquor Legislation Amendment Bill 2008	Minister for Gaming and Racing	24/11/08	5/01/09		14	2
Mental Health Bill 2007	Minister Assisting the Minister for Health (Mental Health)	03/07/07	22/01/09	1		2
Parking Space Levy Bill 2009	Minister for Transport	23/03/09				3
Statute Law (Miscellaneous) Provisions Bill 2007	Premier	29/06/07	22/08/07	1, 2		
Terrorism (Police Powers) Amendment (Preventative Detention) Bill 2007	Minister for Police	03/07/07		1		
Water Management Amendment Bill 2008	Minister for Water	28/10/08	15/12/08		12	2

Appendix 3: Bills that received comments under s 8A of the Legislation Review Act in 2009

	(i) Trespasses on rights	(ii) Insufficiently defined powers	(iii) Non reviewable decisions	(iv) Delegates powers	(v) Parliamentary scrutiny
Associations Incorporation Bill 2009		N, R			N, R
Barangaroo Delivery Authority Bill 2009	N				
Biofuel (Ethanol Content) Amendment Bill 2009	N			N	N, R
Law Enforcement (Powers and Responsibilities) Amendment (Search Powers) Bill 2009	N, R, C	R			
Liquor Amendment (Special Licence) Conditions Bill 2008				N, R	
Nation Building and Jobs Plan (State Infrastructure Delivery) Bill 2009	N,		N	N	
Parking Space Levy Bill 2009				N	N, C
Western Lands Amendment Bill 2008				R	

Key

- R Issue referred to Parliament
- C Correspondence with Minister/Member
- N Issue Note

Appendix 4: Index of correspondence on regulations

Regulation	Minister/Correspondent	Letter sent	Reply	Digest 2008	Digest 2009
Companion Animals Regulation 2008	Minister for Local Government	28/10/08		12	
Liquor Regulation 2008	Minister for Gaming and Racing and Minister for Sport and Recreation	22/09/08	5/01/09	10	2
Tow Truck Industry Regulation 2008	Minister for Roads	22/09/08		10	