

## PRISONS (AMENDMENT) BILL 1986

NEW SOUTH WALES



### EXPLANATORY NOTE

**(This Explanatory Note relates to this Bill as introduced into Parliament)**

The objects of this Bill are to amend the Prisons Act 1952—

- (a) to make further provision with respect to inquiries into prisons;
- (b) to permit the absence of prisoners from prison in limited circumstances;
- (c) to increase penalties;
- (d) to enable prima facie evidence of the lawful custody of a prisoner to be given on the certificate of a full-time Commissioner of the Corrective Services Commission;
- (e) to enable the conferring of awards on prison officers; and
- (f) to vary and clarify the regulation-making powers under that Act.

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Clause 1 specifies the short title of the proposed Act.

Clause 2 provides that the proposed Act will, with minor exceptions, commence on a day to be appointed by the Governor-in-Council.

Clause 3 is a formal provision which gives effect to the Schedule of amendments.

Clause 4 validates the making of certain regulations.

Schedule 1 (1) inserts proposed section 11A into the Principal Act. The proposed section enables the Minister for Corrective Services to appoint a suitably qualified person to inquire into and report upon any matter relating to the security, good order, control or management of a prison. The proposed section confers on a Visiting Justice who holds an inquiry under section 10 (3) of the Principal Act and a person appointed under the proposed section the powers of a commissioner under the Royal Commissions Act 1923. Protection is given against self-incrimination at an inquiry. A Visiting Justice or person conducting an inquiry is not bound by the rules of evidence and may, subject to the Principal Act, determine the procedure to be followed at the inquiry.

Schedule 1 (2) empowers the Corrective Services Commission to grant a permit to a prisoner to enable the prisoner to be absent from a prison for the purpose of weekend leave, to attend a course of education or training or, in the case of the mother of a young child, to serve her sentence with her child in an appropriate environment. The Commission may grant a permit subject to conditions and may amend the conditions or revoke the permit at any time. A member of the Commission is authorised to issue a warrant for the apprehension by the police of a prisoner who breaks a condition of the permit or who fails to return to prison on the expiration of the permit.

Schedule 1 (3) makes an amendment consequential on the amendment made by Schedule 1 (2).

Schedule 1 (4), (5), (6) and (8) (d) increase penalties for various offences under the Principal Act.

Schedule 1 (7) enables prima facie evidence of the lawful custody of a prisoner to be given in proceedings for an offence under the Principal Act on the certificate of a full-time Commissioner of the Corrective Services Commission.

Schedule 1 (8) (a), (b) and (c) clarify and extend the regulation-making powers under the Principal Act.

Schedule 1 (8) (c) also enables the making of regulations with respect to the conferring of awards for bravery, good conduct and long service of prison officers.

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# PRISONS (AMENDMENT) BILL 1986

NEW SOUTH WALES

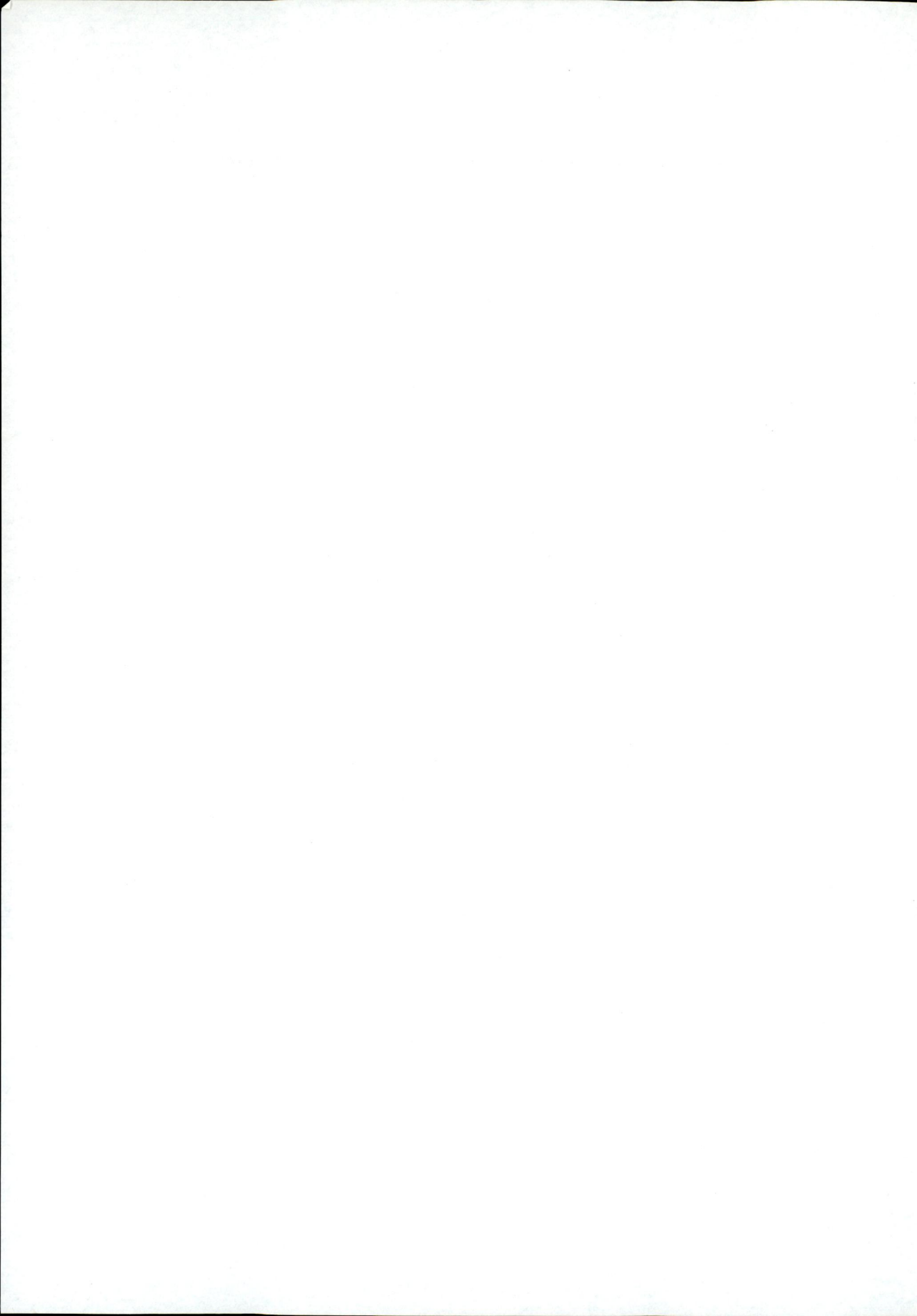


## TABLE OF PROVISIONS

1. Short title
2. Commencement
3. Amendment of Act No. 9, 1952
4. Validation of certain regulations

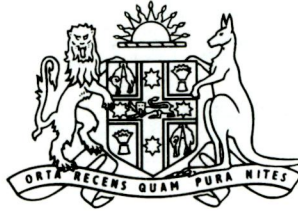
SCHEDULE 1—AMENDMENTS TO THE PRISONS ACT 1952

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# PRISONS (AMENDMENT) BILL 1986

NEW SOUTH WALES



No.           , 1986

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## A BILL FOR

An Act to amend the Prisons Act 1952 with respect to inquiries into prisons,  
the granting of absences to prisoners and in certain other respects.

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*Prisons (Amendment) 1986*

**BE** it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:

**5 Short title**

1. This Act may be cited as the "Prisons (Amendment) Act 1986".

**Commencement**

2. (1) Sections 1 and 2 shall commence on the date of assent to this Act.
- 10 (2) Except as provided by subsection (1), this Act shall commence on such day as may be appointed by the Governor and notified by proclamation published in the Gazette.

**Amendment of Act No. 9, 1952**

- 15 3. The Prisons Act 1952 is amended in the manner set forth in Schedule 1.

**Validation of certain regulations**

- 20 4. A regulation made or purporting to be made under the Prisons Act 1952 before the commencement of this Act which would be valid, had section 50 of the Prisons Act 1952, as amended by this Act, been in force at the time the regulation was made or purported to be made, is validated.

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**SCHEDULE 1**

(Sec. 3)

**AMENDMENTS TO THE PRISONS ACT 1952**

(1) Section 11A—

25           After section 11, insert:

SCHEDULE 1—*continued*AMENDMENTS TO THE PRISONS ACT 1952—*continued***Inquiries**

5 11A. (1) Without affecting section 10 (3), the Minister may appoint a person, having such qualifications and experience as may be determined by the Minister, to inquire into and report to the Minister upon any matter relating to the security, good order, control or management of a prison.

10 (2) For the purposes of an inquiry by a Visiting Justice under section 10 (3) or an inquiry by a person appointed under subsection (1), the Visiting Justice or person shall have the powers, authorities, protections and immunities conferred on a commissioner by Division 1 of Part II of the Royal Commissions Act 1923 and the provisions of that Act, with the exception of section 13 and Division 2 of Part II, shall, with any necessary adaptations, apply to and in respect of the inquiry and to or in respect of any witness or person summoned by or appearing before the Visiting Justice or person appointed under subsection (1).

20 (3) It is a reasonable excuse for the purposes of section 11 (2) (a) of the Royal Commissions Act 1923 as applied by subsection (2) for a person—

(a) to refuse or fail to answer a question put to the person at an inquiry; or

(b) to refuse or fail to produce a document or other thing that the person was required to produce at an inquiry,

25 that the answer to the question, or the production of the document or other thing, as the case may be, might tend to incriminate the person.

30 (4) A Visiting Justice or person appointed under subsection (1) in conducting an inquiry is not bound by the rules of evidence but may inform himself or herself on any matter in such manner as the Visiting Justice or person thinks appropriate.

35 (5) A Visiting Justice or person appointed under subsection (1) in conducting an inquiry may, in respect of a matter not dealt with by or under this Act, give directions as to the procedure to be followed at or in connection with the inquiry.

*Prisons (Amendment) 1986*SCHEDULE 1—*continued*AMENDMENTS TO THE PRISONS ACT 1952—*continued*(2) Section 29 (**Absence from prison in certain circumstances permitted**)—

Section 29 (2)—(4)—

After section 29 (1), insert:

5 (2) Any prisoner may, in accordance with a permit granted to the prisoner by the Commission, be permitted to be absent from a prison, on such conditions as may be prescribed and such conditions as may be specified in the permit, for a period, being—

10 (a) for the purpose of weekend leave—such period not exceeding 3 consecutive days as may be specified in the permit;

15 (b) for the purpose of attending tuition or performing work in connection with a course of education or training being undertaken by the prisoner—such period not exceeding 7 consecutive days as may be specified in the permit; or

20 (c) in the case of a female prisoner who is the mother of a young child or young children, for the purpose of enabling the prisoner to serve her sentence with her child or children in an appropriate environment determined by the Commission—such period as may be specified in the permit.

(3) The Commission may, at any time—

(a) vary or omit any condition of a permit or substitute or add a new condition or conditions; or

25 (b) revoke a permit.

(4) Where—

(a) it appears to a member of the Commission that a prisoner has contravened or failed to comply with a condition of a permit, being a condition—

30 (i) which is prescribed;

(ii) which is specified in the permit; or



*Prisons (Amendment) 1986*SCHEDULE 1—*continued*AMENDMENTS TO THE PRISONS ACT 1952—*continued*

5 (iii) which is a varied, substituted or added condition, notice of the variation, substitution or addition of which has been given to the prisoner before the contravention of or failure to comply with the condition;

(b) a permit is revoked; or

(c) a prisoner has not returned to prison on the expiration of the period specified in the permit granted to the prisoner,

10 a member of the Commission may issue a warrant to a member of the police force directing that the prisoner be apprehended and returned to prison.

(3) Section 29A (**Absent prisoners deemed to be in custody**)—

(a) Section 29A—

15 After “section 29 (1)”, insert “or under a permit pursuant to section 29 (2)”.

(b) Section 29A—

After “order” where secondly and thirdly occurring, insert “or permit”.

(4) Section 36 (**Harbouring escapee**)—

20 Omit “one thousand dollars”, insert instead “\$5,000”.

(5) Section 37 (**Trafficking**)—

Omit “two hundred dollars”, insert instead “\$1,000”.

(6) Section 38 (**Miscellaneous offences**)—

Section 38 (1)—

25 Omit “two hundred dollars”, insert instead “\$1,000”.

*Prisons (Amendment) 1986*SCHEDULE 1—*continued*AMENDMENTS TO THE PRISONS ACT 1952—*continued*

## (7) Section 40B—

After section 40A, insert:

**Evidence of imprisonment, etc.**

5           40B. In proceedings for an offence against this Act or the  
regulations, a certificate purporting to be signed by a full-time  
Commissioner and to certify that a person specified in the  
certificate was detained in the custody of the governor of a prison  
10           specified in the certificate on a date so specified or during any  
period so specified, shall, without proof of the signature or of the  
official character or authority of the person purporting to have  
signed the certificate, be prima facie evidence that the person  
specified in the certificate was a prisoner in lawful custody on  
the date so specified or during the period so specified.

(8) Section 50 (**Regulations**)—

## 15       (a) Section 50 (1) (a), (a1)—

Omit section 50 (1) (a), insert instead:

- (a) the management, control, good government, supervision  
and inspection of prisons;
- 20       (a1) the visits and examinations of prisons and the holding of  
inquiries and the making of reports by Visiting Justices  
and persons appointed under section 11A (1);

## (b) Section 50 (1) (m1), (m2)—

After section 50 (1) (m), insert:

- 25       (m1) the form of documents to be used for the purposes of this  
Act;
- (m2) the eligibility of prisoners to apply for permits pursuant to  
section 29 (2), applications for permits, the frequency of  
issue of permits, the conditions of permits and the giving  
of notices to prisoners to whom permits have been granted;

*Prisons (Amendment) 1986*

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SCHEDULE 1—*continued*

AMENDMENTS TO THE PRISONS ACT 1952—*continued*

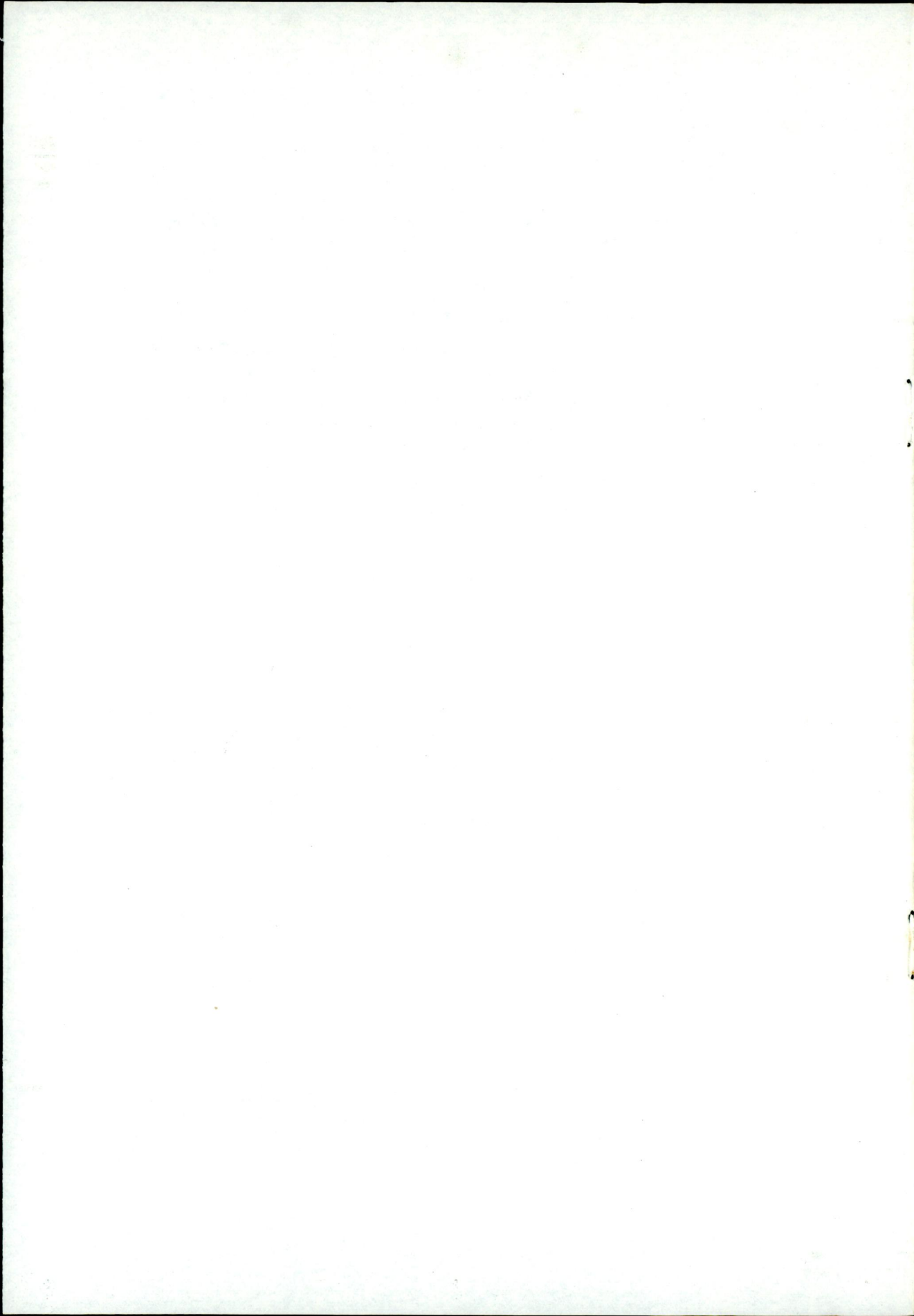
(c) Section 50 (1) (o), (p)—

After section 50 (1) (n), insert:

- (o) the conduct and functions of prison officers and other persons employed in or about a prison;
- 5 (p) the striking, awarding and wearing of medallions and the conferring of awards for bravery, good conduct and long service of prison officers.

(d) Section 50 (2)—

Omit “forty dollars”, insert instead “\$1,000”.



# PRISONS (AMENDMENT) ACT 1986 No. 109

NEW SOUTH WALES



## TABLE OF PROVISIONS

1. Short title
2. Commencement
3. Amendment of Act No. 9, 1952
4. Validation of certain regulations

SCHEDULE 1—AMENDMENTS TO THE PRISONS ACT 1952

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**PRISONS (AMENDMENT) ACT 1986 No. 109**

**NEW SOUTH WALES**



**Act No. 109, 1986**

An Act to amend the Prisons Act 1952 with respect to inquiries into prisons, the granting of absences to prisoners and in certain other respects. [Assented to 26 November 1986]

*Prisons (Amendment) 1986*

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**BE** it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:

**Short title**

1. This Act may be cited as the "Prisons (Amendment) Act 1986".

**Commencement**

2. (1) Sections 1 and 2 shall commence on the date of assent to this Act.

- (2) Except as provided by subsection (1), this Act shall commence on such day as may be appointed by the Governor and notified by proclamation published in the Gazette.

**Amendment of Act No. 9, 1952**

3. The Prisons Act 1952 is amended in the manner set forth in Schedule 1.

**Validation of certain regulations**

4. A regulation made or purporting to be made under the Prisons Act 1952 before the commencement of this Act which would be valid, had section 50 of the Prisons Act 1952, as amended by this Act, been in force at the time the regulation was made or purported to be made, is validated.

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SCHEDULE 1

(Sec. 3)

AMENDMENTS TO THE PRISONS ACT 1952

(1) Section 11A—

After section 11, insert:



SCHEDULE 1—*continued*AMENDMENTS TO THE PRISONS ACT 1952—*continued***Inquiries**

11A. (1) Without affecting section 10 (3), the Minister may appoint a person, having such qualifications and experience as may be determined by the Minister, to inquire into and report to the Minister upon any matter relating to the security, good order, control or management of a prison.

(2) For the purposes of an inquiry by a Visiting Justice under section 10 (3) or an inquiry by a person appointed under subsection (1), the Visiting Justice or person shall have the powers, authorities, protections and immunities conferred on a commissioner by Division 1 of Part II of the Royal Commissions Act 1923 and the provisions of that Act, with the exception of section 13 and Division 2 of Part II, shall, with any necessary adaptations, apply to and in respect of the inquiry and to or in respect of any witness or person summoned by or appearing before the Visiting Justice or person appointed under subsection (1).

(3) It is a reasonable excuse for the purposes of section 11 (2) (a) of the Royal Commissions Act 1923 as applied by subsection (2) for a person—

- (a) to refuse or fail to answer a question put to the person at an inquiry; or
- (b) to refuse or fail to produce a document or other thing that the person was required to produce at an inquiry,

that the answer to the question, or the production of the document or other thing, as the case may be, might tend to incriminate the person.

(4) A Visiting Justice or person appointed under subsection (1) in conducting an inquiry is not bound by the rules of evidence but may inform himself or herself on any matter in such manner as the Visiting Justice or person thinks appropriate.

(5) A Visiting Justice or person appointed under subsection (1) in conducting an inquiry may, in respect of a matter not dealt with by or under this Act, give directions as to the procedure to be followed at or in connection with the inquiry.

SCHEDULE 1—*continued*AMENDMENTS TO THE PRISONS ACT 1952—*continued*(2) Section 29 (**Absence from prison in certain circumstances permitted**)—

## Section 29 (2)—(4)—

After section 29 (1), insert:

(2) Any prisoner may, in accordance with a permit granted to the prisoner by the Commission, be permitted to be absent from a prison, on such conditions as may be prescribed and such conditions as may be specified in the permit, for a period, being—

- (a) for the purpose of weekend leave—such period not exceeding 3 consecutive days as may be specified in the permit;
- (b) for the purpose of attending tuition or performing work in connection with a course of education or training being undertaken by the prisoner—such period not exceeding 7 consecutive days as may be specified in the permit; or
- (c) in the case of a female prisoner who is the mother of a young child or young children, for the purpose of enabling the prisoner to serve her sentence with her child or children in an appropriate environment determined by the Commission—such period as may be specified in the permit.

(3) The Commission may, at any time—

- (a) vary or omit any condition of a permit or substitute or add a new condition or conditions; or
- (b) revoke a permit.

(4) Where—

- (a) it appears to a member of the Commission that a prisoner has contravened or failed to comply with a condition of a permit, being a condition—
  - (i) which is prescribed;
  - (ii) which is specified in the permit; or

*Prisons (Amendment) 1986*SCHEDULE 1—*continued*AMENDMENTS TO THE PRISONS ACT 1952—*continued*

(iii) which is a varied, substituted or added condition, notice of the variation, substitution or addition of which has been given to the prisoner before the contravention of or failure to comply with the condition;

(b) a permit is revoked; or

(c) a prisoner has not returned to prison on the expiration of the period specified in the permit granted to the prisoner,

a member of the Commission may issue a warrant to a member of the police force directing that the prisoner be apprehended and returned to prison.

(3) Section 29A (**Absent prisoners deemed to be in custody**)—

(a) Section 29A—

After “section 29 (1)”, insert “or under a permit pursuant to section 29 (2)”.

(b) Section 29A—

After “order” where secondly and thirdly occurring, insert “or permit”.

(4) Section 36 (**Harbouring escapee**)—

Omit “one thousand dollars”, insert instead “\$5,000”.

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(6) Section 38 (**Miscellaneous offences**)—

Section 38 (1)—

Omit “two hundred dollars”, insert instead “\$1,000”.

SCHEDULE 1—*continued*AMENDMENTS TO THE PRISONS ACT 1952—*continued*

## (7) Section 40B—

After section 40A, insert:

**Evidence of imprisonment, etc.**

40B. In proceedings for an offence against this Act or the regulations, a certificate purporting to be signed by a full-time Commissioner and to certify that a person specified in the certificate was detained in the custody of the governor of a prison specified in the certificate on a date so specified or during any period so specified, shall, without proof of the signature or of the official character or authority of the person purporting to have signed the certificate, be prima facie evidence that the person specified in the certificate was a prisoner in lawful custody on the date so specified or during the period so specified.

(8) Section 50 (**Regulations**)—

## (a) Section 50 (1) (a), (a1)—

Omit section 50 (1) (a), insert instead:

- (a) the management, control, good government, supervision and inspection of prisons;
- (a1) the visits and examinations of prisons and the holding of inquiries and the making of reports by Visiting Justices and persons appointed under section 11A (1);

## (b) Section 50 (1) (m1), (m2)—

After section 50 (1) (m), insert:

- (m1) the form of documents to be used for the purposes of this Act;
- (m2) the eligibility of prisoners to apply for permits pursuant to section 29 (2), applications for permits, the frequency of issue of permits, the conditions of permits and the giving of notices to prisoners to whom permits have been granted;

*Prisons (Amendment) 1986*

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SCHEDULE 1—*continued*

AMENDMENTS TO THE PRISONS ACT 1952—*continued*

(c) Section 50 (1) (o), (p)—

After section 50 (1) (n), insert:

- (o) the conduct and functions of prison officers and other persons employed in or about a prison;
- (p) the striking, awarding and wearing of medallions and the conferring of awards for bravery, good conduct and long service of prison officers.

(d) Section 50 (2)—

Omit “forty dollars”, insert instead “\$1,000”.





