

FIRST PRINT

PRISONS (FURTHER AMENDMENT) BILL 1986

NEW SOUTH WALES



EXPLANATORY NOTE

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

The Crimes (Remissions) Further Amendment Bill 1986 is cognate with this Bill.

The object of this Bill is to amend the Prisons Act 1952—

- (a) to alter the method of granting to prisoners remission of their sentences (the present system prescribed by regulations for automatic crediting of remissions is to be replaced by a system that provides, in general, for remission of approximately one-third of their sentences to be earned by prisoners);
- (b) to replace the existing provisions relating to prison discipline (in particular, to allow the governor of a prison to deal with certain minor prison offences, to specify the procedures to be followed by the governor or a Visiting Justice, to define the penalties that may be imposed and to provide for appeals against decisions of Visiting Justices); and
- (c) for other purposes.

Clause 1 specifies the short title of the proposed Act.

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

Clause 3 is a formal provision that gives effect to the Schedules of amendments to the Prisons Act 1952.

SCHEDULE 1—AMENDMENTS TO THE PRISONS ACT 1952 RELATING TO REMISSION

Schedule 1 (1) (a) enables a prisoner to be released on the last day before a Saturday, Sunday or public holiday on which the sentence would otherwise expire (at present remissions are granted for that purpose).

Schedule 1 (1) (b) omits, as a consequence of the insertion of a new Part relating to remission into the Principal Act, the existing provisions of the Principal Act that authorise regulations to be made for the grant of remission and for the release of prisoners on remission of their sentences.

Schedule 1 (1) (c) is consequential on the amendment made by Schedule 1 (1) (b).

Schedule 1 (2) makes it clear that the Royal prerogative of mercy is not affected by the enactment of the proposed Act.

Schedule 1 (3) inserts a new Part relating to remission into the Principal Act which contains the following proposed sections:

Proposed section 62 defines "imprisonment" for the purposes of the new Part. The definition ensures that remission cannot be earned during "street-time", namely, when a prisoner is on parole or otherwise released early or has escaped. However, remission may be earned in respect of any period of imprisonment on remand that is part of a backdated sentence.

Proposed section 63 requires the Corrective Services Commission to determine each month the remission to be granted to convicted prisoners in accordance with the new provisions. Provisional remission may be determined during a period of remand in custody and then credited if the prisoner is convicted of the offence for which the prisoner was on remand and the sentence is backdated. The determinations of the Commission are not subject to appeal or review.

Proposed section 64 sets out the remission to be granted to a convicted prisoner for each month of imprisonment. A maximum of 15 days' remission is available having regard to the prisoner's general conduct and performance in industry or education. In addition, 2 days' remission is available for prisoners in open institutions. The regulations may prescribe further remission, including "strike remission", for periods of industrial disputes at a prison. Remission is not to be denied to a prisoner on account of particular misconduct that constitutes a prison offence or other offence for which the prisoner has been or is likely to be dealt with.

Proposed section 65 requires the Commission to notify a prisoner of its determinations relating to the grant of remission and the reasons for those determinations. Provision is also made for information as to the expected date of early release to be given to prisoners.

Proposed section 66 specifies the sentences of imprisonment that cannot be reduced by remission, namely—

- (a) sentences of less than 1 month's duration;
- (b) sentences for life or during the Governor's pleasure;
- (c) sentences which a Judge has directed should not be reduced by remission; and

(d) sentences prescribed by the regulations.

Proposed section 67 provides that a prisoner who escapes from prison forfeits accrued remission unless the court sentencing the prisoner for the escape otherwise orders.

Proposed section 68 provides that remission reduces sentences of imprisonment by the number of days of remission granted and not forfeited.

Proposed section 69 transfers from the Crimes Act 1900 a provision which authorises a Judge who sentences a person for an offence to direct that no remission or reduced remission is to be granted in regard to the sentence because of the nature of the offence or the antecedent character of the person convicted.

SCHEDULE 2—AMENDMENTS TO THE PRISONS ACT 1952 RELATING TO PRISON DISCIPLINE

Schedule 2 (1) inserts a definition of "prison offence" as a consequence of the proposed substitution of Part IV of the Principal Act.

Schedule 2 (2) substitutes Part IV of the Principal Act relating to prison discipline. The substituted Part contains the following proposed sections:

Proposed section 23 authorises the regulations to specify which breaches of the regulations or other acts or omissions constitute prison offences.

Proposed section 24 provides that the governor of a prison may charge a prisoner with an alleged prison offence and conduct an inquiry into the allegation. Proceedings before a governor of a prison are of an administrative nature and a prisoner is not entitled to legal representation. However a prisoner not able to properly represent himself or herself may be assisted.

Proposed section 25 authorises the governor of a prison, in the case of a minor prison offence described in the regulations, to impose a penalty if satisfied beyond reasonable doubt that the allegation against the prisoner has been proved. The penalty that may be imposed by the governor of a prison is limited to reprimand and caution, deprivation of certain amenities and privileges for a period not exceeding 28 days, confinement to cells for a period not exceeding 3 days, cancellation of any right to bonus rates of payment for prison work or forfeiture of remissions (not exceeding 7 days) credited to the prisoner.

Proposed section 26 provides for referral of charges to a Visiting Justice. The governor of a prison is required to refer a charge if it is not a minor prison offence or is a charge that is so serious that it should be referred.

Proposed section 26A provides that the procedure to be followed before a Visiting Justice is, as far as practicable, the procedure set out in the Justices Act 1902. A prisoner is entitled to legal representation in proceedings before a Visiting Justice.

Proposed section 26B authorises a Visiting Justice, in the case of a prison offence referred by the governor of a prison, to impose a penalty if satisfied beyond reasonable doubt that the allegation against the prisoner has been proven. The penalty that may be imposed by a Visiting Justice is limited to reprimand and caution, deprivation of certain amenities and privileges for a period not exceeding 56 days, confinement to cells for a period not exceeding 28 days, cancellation of any right to bonus rates of payment for prison work or forfeiture of remissions (not exceeding 28 days) credited to the prisoner.

Proposed section 26C authorises the Visiting Justice to refer an alleged prison offence to an ordinary court if satisfied it constitutes a criminal offence that should be dealt with summarily or on indictment.

Proposed section 26D provides that the governor of a prison or Visiting Justice who deals with a charge against a prisoner may order that the prisoner pay compensation to the Commission or other owner of any property destroyed or damaged as a result of the prison offence. The maximum amount that may be awarded by a Visiting Justice is \$300 and the maximum that may be awarded by the governor of a prison is \$50.

Proposed section 26E limits cumulative punishments being imposed on a prisoner relating to charges heard together or arising from a single incident.

Proposed section 26F requires particulars of penalties imposed on a prisoner for committing a prison offence to be recorded.

Proposed section 26G confirms that a prisoner may appeal to the District Court against a decision of a Visiting Justice. Provision is made for a stay of execution of a penalty pending any such appeal.

Proposed section 26H prevents criminal proceedings being brought against a prisoner for a prison offence dealt with by a Visiting Justice.

Proposed section 26I makes it an offence to make false or misleading statements at or in connection with an inquiry by or hearing before the governor of a prison or a Visiting Justice.

Schedule 2 (3) (a) authorises regulations to be made under the Principal Act requiring prisoners to undergo breath tests and provide specimens of urine, etc., and to enable certificates of the results of the analysis of those tests or specimens to be admissible as prima facie evidence.

Schedule 2 (3) (b) is a consequential amendment to make it clear that breaches of the regulations relating to prison offences do not constitute separate criminal offences.

SCHEDULE 3—MISCELLANEOUS AND CONSEQUENTIAL AMENDMENTS TO THE PRISONS ACT 1952

Schedule 3 (1) and (2) (a) effect amendments by way of statute law revision.

Schedule 3 (2) (b) is a formal provision that gives effect to the proposed Schedule of savings and transitional provisions.

Schedule 3 (3), (4) and (7) delete the power of the Commission to make rules relating to prisons as a consequence of the enactment of the new provisions relating to prison discipline.

Schedule 3 (5) makes it clear that, except in the case of certain indictable offences, proceedings for offences against the Act are to be dealt with summarily.

Schedule 3 (6) deletes a provision relating to the annual report of the Commission and the Department of Corrective Services as a consequence of the enactment of legislation relating to the making of reports by statutory bodies and departments generally.

Schedule 3 (8), (9) and (10) are amendments consequential on the repeal of section 462 of the Crimes Act 1900 by the proposed Crimes (Remissions) Further Amendment Act 1986.

Schedule 3 (11) inserts a Schedule of savings and transitional provisions into the Principal Act consequent on the enactment of the proposed Act. In particular, the Schedule preserves existing entitlements to remission and pending proceedings for offences against prison discipline. The Schedule also continues in force existing rules made by the Commission for a maximum period of 2 years pending the making of the necessary regulations to deal with the matters currently dealt with in the rules.

PRISONS (FURTHER AMENDMENT) BILL 1986

NEW SOUTH WALES



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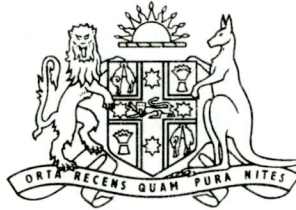
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PRISONS (FURTHER AMENDMENT) BILL 1986

NEW SOUTH WALES



No. , 1986

A BILL FOR

An Act to amend the Prisons Act 1952 with respect to the remission of sentences and prison discipline and in certain other respects.

See also Crimes (Remissions) Further Amendment Bill 1986.

Prisons (Further 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 (Further Amendment) Act 1986".

Commencement

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

(2) Except as provided by subsection (1), this Act shall commence on such day or days 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 Schedules 1-3.

SCHEDULE 1

(Sec. 3)

**20 AMENDMENTS TO THE PRISONS ACT 1952 RELATING TO
REMISSION**

(1) Section 41 (Expiration of sentence)—

(a) Section 41 (2)—

Omit the subsection, insert instead:

25 (2) If the term of imprisonment of a convicted prisoner would otherwise terminate on a Saturday, Sunday or public holiday, the Commission may discharge the prisoner from prison on the last day that is not a Saturday, Sunday or public holiday.

(b) Section 41 (3), (4)—

Omit the subsections.

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

(c) Section 41 (5)—

Omit “granted remission pursuant to the foregoing provisions”,
insert instead “granted remission under Part XI”.

(2) Section 41A (**Royal prerogative of mercy preserved**)—

5 After “this Act”, insert “(including Part XI)”.

(3) Part XI—

After Part X, insert:

PART XI

REMISSION

10 **Definitions**

62. In this Part—

“imprisonment” means a period served by a convicted prisoner
in prison or otherwise in lawful custody, and includes—

15 (a) a period so served as a consequence of a sentence of
penal servitude; and

(b) a period so served on remand which forms part of the
sentence for the offence of which the prisoner is
convicted,

but does not include—

20 (c) street-time, being a period during which the prisoner
is—

(i) released under a probation order, a parole order or
a licence under section 463 of the Crimes Act 1900;
or

25 (ii) unlawfully at large after escaping from prison or
other lawful custody;

(d) a period served by way of periodic detention under the
Periodic Detention of Prisoners Act 1981; or

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

- (e) a period served before the commencement of this Part;
“month” means a calendar month and not a named month of
a year.

Commission to determine each month remissions to be granted

5 63. (1) The Commission shall, at the end of each month of imprisonment, determine the number of days of remission (if any) to be granted to each convicted prisoner in respect of the sentence or sentences being served during that month.

10 (2) If a sentence is backdated to a time when the prisoner was on remand in connection with the offence, the Commission shall, as soon as practicable after the sentence is imposed, determine the number of days of remission (if any) to be granted to the prisoner in respect of each month of the sentence served on remand.

15 (3) The Commission may make provisional determinations under this section in respect of prisoners on remand for the purposes of determinations to be made under subsection (2).

(4) If, at the end of a month of imprisonment—

(a) a convicted prisoner is granted a number of days of remission under section 64 (1) (a) or (b);

20 (b) as a result the prisoner is due to be released at or after the end of the next month; and

25 (c) it appears to the Commission that the prisoner would be entitled to be released before the end of that next month if the prisoner were to be granted the same number of days of remission at the end of that next month,

the Commission shall thereupon make a further determination and grant the prisoner that same number of days of remission.

30 (5) A determination of the Commission under this section is final and shall not be liable to be challenged, appealed against, quashed or called into question by any court.

SCHEDULE 1—*continued*AMENDMENTS TO THE PRISONS ACT 1952 RELATING TO
REMISSION —*continued***Number of days of remission to be granted**

64. (1) The Commission shall grant the following remission to a convicted prisoner in respect of each month of imprisonment:

- 5 (a) such number of days of remission (not exceeding 15 days) as the Commission considers appropriate having regard to the prisoner's general conduct during the whole of the month and the prisoner's performance in industry or education (or both) during the whole of the month;
- 10 (b) 2 days of remission if the prisoner is imprisoned in an open institution during the whole of the month;
- 15 (c) such number of days of remission as may be prescribed by the regulations for any period during the month that the Minister has certified to be a period throughout which the prisoner, or prisoners of a class including the prisoner, has or have suffered deprivation due to an industrial dispute;
- (d) such further remission as may be prescribed by the regulations.
- 20 (2) The Commission shall not grant remission under subsection (1) (b) or (c) in respect of any period unless it is satisfied that the prisoner has exhibited good general conduct during that period.
- 25 (3) The Commission shall not, in considering the general conduct of a prisoner for the purposes of granting remission, take into account particular misconduct which constitutes a prison offence or other offence and for which the prisoner has been or is likely to be dealt with under this Act or under any other Act or law.
- 30 (4) If a prisoner is dealt with under this Act or under any other Act or law for misconduct that the Commission previously took into account in making a determination for the purpose of granting remission, the Commission shall revise the determination previously made but without taking that misconduct into account in determining the number of days of remission to be granted to the prisoner.

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

(5) In determining the number of days of remission to be granted under this section, the Commission shall have regard to such guidelines as the Minister may, after consultation with the Attorney General, determine from time to time.

- 5 (6) The granting of remission under this Part to a convicted prisoner shall be subject to any order made by a judge under section 69 with respect to the prisoner.

Notification of determinations, etc.

- 10 65. (1) The Commission shall notify a convicted prisoner in writing of any determination to grant, or not to grant, any remission of the prisoner's sentence and of the reasons for the determination.

- 15 (2) The reasons for a determination shall include a reference to any particular misconduct taken into account in making the determination.

- 20 (3) Notifications under this section shall contain such information as may be prescribed by the regulations relating to the expected date of release of convicted prisoners on the remission of their sentences.

Prisoners not entitled to remission

66. (1) A convicted prisoner is not entitled under this Part to remission of—

- 25 (a) a sentence of imprisonment for a term of less than 1 month, unless the term of the sentence and any other cumulative sentence imposed on the prisoner exceeds 1 month;
- (b) a sentence of imprisonment for life;
- (c) a sentence of imprisonment during the Governor's pleasure; or

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

(d) a sentence of imprisonment in respect of which remission is not to be granted by order of the judge imposing the sentence under section 69.

(2) The regulations may provide that remission—

5 (a) shall not be granted under this Part in respect of sentences of a class specified in the regulations; or

(b) may be granted only in such circumstances as the regulations may specify.

Forfeiture of remission for escape

10 67. (1) A prisoner who is convicted of an offence for escaping from prison or otherwise from lawful custody forfeits all remission previously granted under this Part in respect of the sentence or sentences being served at the time of the escape.

15 (2) A court which sentences the prisoner for the offence may restore all or any part of the remission forfeited under this section.

Reduction of sentences and release from prison after remission

20 68. (1) Any remission granted under this Part in respect of a period of imprisonment reduces, by the number of days of remission granted and not forfeited, the sentence, or each sentence, being served by the prisoner during that period (other than a sentence that expired during that period).

25 (2) A convicted prisoner shall, unless sooner released under this or any other Act or law, be released from prison when the sentence, or each sentence, being served by the prisoner has, by reduction under this Part, expired.

Judge may refuse remission

69. (1) Where a person—

(a) was convicted before, or is convicted on or after, the day on which this Part commences; and

30 (b) is sentenced on or after that day by a judge,

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SCHEDULE 1—*continued*

AMENDMENTS TO THE PRISONS ACT 1952 RELATING TO
REMISSION —*continued*

the judge may, on sentencing the person, order that the person shall not be entitled to any remission, or to any remission granted in such circumstances as the judge may specify, in so far as the remission would, but for the order, reduce the term of the sentence.

(2) A judge shall not make an order under subsection (1) unless it appears to the judge that the making of the order is desirable by reason of the nature of the offence or the antecedent character of the person convicted.

(3) Where a judge makes an order under subsection (1), the judge shall state the reasons for the order.

SCHEDULE 2

(Sec. 3)

AMENDMENTS TO THE PRISONS ACT 1952 RELATING TO
PRISON DISCIPLINE

(1) Section 4 (**Definitions**)—

Section 4, definition of “prison offence”—

After the definition of “prison”, insert:

“prison offence” means a prison offence declared under section 23;

SCHEDULE 2—*continued*AMENDMENTS TO THE PRISONS ACT 1952 RELATING TO
PRISON DISCIPLINE—*continued*

(2) Part IV—

Omit the Part, insert instead:

PART IV

PRISON DISCIPLINE

5 **Prison offences to be declared by regulations**

23. (1) The regulations may declare as a prison offence—

(a) a contravention (whether by act or omission) of a specified provision of the regulations by a prisoner; or

(b) any other act or omission by a prisoner,

10 if it occurs while the prisoner is within a prison or is deemed to be in the custody of the governor of a prison.

(2) An act or omission may be declared to be a prison offence even though it constitutes an offence against this or any other Act or any other law.

15 (3) A prison offence may be dealt with under this Part by the governor of a prison or the Visiting Justice for a prison, even though the offence was committed or was alleged to have been committed while the prisoner was within another prison or in the custody of the governor of another prison.

20 **Laying of charges and inquiries by governor of prison**

24. (1) If it is alleged that a prisoner has committed a prison offence, the governor of a prison may charge the prisoner with the offence and conduct an inquiry into the allegation.

25 (2) Regulations may be made with respect to the making of any such charge and the conduct of any such inquiry.

SCHEDULE 2—*continued*AMENDMENTS TO THE PRISONS ACT 1952 RELATING TO
PRISON DISCIPLINE—*continued*

(3) The following provisions apply to any inquiry by the governor of a prison into an alleged prison offence:

- 5 (a) The inquiry shall be conducted with as little formality and technicality, and with as much expedition, as fairness to the prisoner charged, the requirements of this Act or the regulations and the proper consideration of the charge permit.
- 10 (b) The governor of the prison is not bound by the rules of evidence but may inform himself or herself of any matter in such manner as the governor thinks fit.
- (c) The prisoner is entitled to be heard at any hearing during the inquiry and to examine and cross-examine witnesses.
- 15 (d) Except as provided by paragraph (e), the prisoner is not entitled to be represented by a barrister or solicitor or by any other person.
- 20 (e) The governor of the prison shall allow a person (other than a barrister or solicitor) to represent or assist the prisoner if the governor is satisfied that the prisoner does not sufficiently understand the nature of the inquiry or that the prisoner does not understand English or is otherwise unable properly to represent himself or herself during the inquiry.
- 25 (f) If the prisoner refuses or fails to attend at any hearing during the inquiry, the governor of the prison may hear and determine the matter in the prisoner's absence.
- (g) Evidence shall not be given on oath or affirmation or by affidavit at any hearing during the inquiry.
- 30 (h) The governor of a prison may allow such prison officers or other persons to be present and be heard at any hearing during the inquiry as the governor thinks fit.

SCHEDULE 2—*continued*AMENDMENTS TO THE PRISONS ACT 1952 RELATING TO
PRISON DISCIPLINE—*continued*

- (i) The governor of a prison may transfer the conduct of an inquiry to the governor of another prison to which the prisoner has been transferred.

Governor of prison may impose penalties for certain prison offences

5 25. (1) In this section—

“minor prison offence” means a prison offence declared by the regulations to be a minor prison offence for the purposes of this section.

10 (2) If, after conducting an inquiry into an alleged minor prison offence, the governor of a prison is satisfied beyond reasonable doubt that the allegation against the prisoner has been proved, the governor may impose one (but not more than one) of the following penalties:

- (a) reprimand and caution;
- 15 (b) deprivation of specified amenities or privileges for a period not exceeding 28 days (being amenities or privileges of a kind prescribed by the regulations for the purposes of this paragraph);
- 20 (c) confinement to the prisoner’s cell for a period not exceeding 3 days, with or without deprivation of amenities or privileges as referred to in paragraph (b);
- 25 (d) cancellation of any right to specified payments under section 20 (3) for a period not exceeding 14 days, but only where those payments are bonus or other payments additional to the payments made at the base rate to all or any class of prisoners;
- (e) forfeiture of a specified number of days of remission, not exceeding 7 days, credited to the prisoner.

SCHEDULE 2—*continued*AMENDMENTS TO THE PRISONS ACT 1952 RELATING TO
PRISON DISCIPLINE—*continued*

(3) If, after conducting an inquiry into an alleged minor prison offence, the governor of a prison is satisfied beyond reasonable doubt that the allegation has been proved but is of the opinion that a penalty should not be imposed—

- 5 (a) the governor may dismiss the charge; or
- (b) the governor may defer imposing a penalty on condition that the prisoner be of good behaviour for a specified period (not exceeding 2 months) and, if the condition is
- 10 complied with, dismiss the charge after the end of that period.

(4) If, after conducting an inquiry into an alleged minor prison offence, the governor of a prison is not satisfied beyond reasonable doubt that the allegation has been proved, the governor shall dismiss the charge.

- 15 (5) A penalty imposed on a prisoner by the governor of a prison may be rescinded or remitted by the governor of the prison or the Commission.

- (6) If a prisoner does not have credited, when a penalty is imposed under subsection (2) (e), the specified number of days of
- 20 remission forfeited, the forfeiture operates as and when remission accrues.

Reference of certain prison offences to Visiting Justice

- 25 26. (1) The governor of a prison who has charged a prisoner with a prison offence may refer the charge to a Visiting Justice for hearing and determination.

(2) A charge must be referred to a Visiting Justice—

- (a) if the alleged offence is not a minor prison offence within the meaning of section 25; or
- 30 (b) if the alleged offence is such a minor prison offence but the governor is satisfied that the seriousness of the matter is such that it should be referred to a Visiting Justice.

SCHEDULE 2—*continued*AMENDMENTS TO THE PRISONS ACT 1952 RELATING TO
PRISON DISCIPLINE—*continued*

(3) A charge may be referred to a Visiting Justice without any inquiry being conducted into the allegation by the governor of the prison or may be so referred after or during the course of any such inquiry.

5 **Procedure at hearings before Visiting Justice**

26A. (1) In proceedings before a Visiting Justice under this Part, the procedures under the Justices Act 1902 in relation to the hearing and determination of an information laid under section 52 of that Act apply, subject to such modifications as are
10 prescribed by the regulations and to such other modifications as the Visiting Justice considers appropriate.

(2) In proceedings before a Visiting Justice under this Part, the prisoner is entitled to be represented by a barrister or solicitor.

(3) Any hearing in proceedings before a Visiting Justice shall
15 be held in the prison for which the Visiting Justice has been appointed.

(4) A Visiting Justice may transfer proceedings to the Visiting Justice for another prison to which the prisoner has been transferred.

20 **Imposition of penalty by Visiting Justice**

26B. (1) If, after hearing a charge referred under section 26, a Visiting Justice is satisfied beyond reasonable doubt that the allegation against the prisoner has been proved, the Visiting Justice may impose one (but not more than one) of the following
25 penalties:

(a) reprimand and caution;

(b) deprivation of specified amenities or privileges for a period not exceeding 56 days (being amenities or privileges of a kind prescribed by the regulations for the purposes of this
30 paragraph);

*Prisons (Further Amendment) 1986*SCHEDULE 2—*continued*AMENDMENTS TO THE PRISONS ACT 1952 RELATING TO
PRISON DISCIPLINE—*continued*

(c) confinement to the prisoner's cell for a period not exceeding 28 days, with or without deprivation of amenities or privileges as referred to in paragraph (b);

5 (d) cancellation of any rights to specified payments under section 20 (3) for a period not exceeding 14 days, but only where those payments are bonus or other payments additional to the payments made at the base rate to all or any class of prisoners;

10 (e) forfeiture of a specified number of days of remission, not exceeding 28 days, credited to the prisoner.

15 (2) If, after hearing a charge referred under section 26, a Visiting Justice is satisfied beyond reasonable doubt that the allegation has been proved but is of the opinion that a penalty should not be imposed, the Visiting Justice may dismiss the charge.

(3) If, after hearing a charge referred under section 26, a Visiting Justice is not satisfied beyond reasonable doubt that the allegation has been proved, the Visiting Justice shall dismiss the charge.

20 (4) If a prisoner does not have credited, when a penalty is imposed under subsection (1) (e), the specified number of days of remission forfeited, the forfeiture operates as and when remission accrues.

Prison offences may be dealt with summarily or on indictment

25 26C. If, on the hearing of a charge against a prisoner, the Visiting Justice is of the opinion that the act or omission constituting the alleged prison offence is an offence which could be prosecuted summarily before a Local Court or on indictment and which should be so prosecuted, the Visiting Justice shall
30 terminate the hearing and order that the prisoner be conveyed to a Local Court to be dealt with according to law.

SCHEDULE 2—*continued*AMENDMENTS TO THE PRISONS ACT 1952 RELATING TO
PRISON DISCIPLINE—*continued***Payment of compensation by prisoner for damage to property, etc.**

26D. (1) If a prisoner causes any loss of or damage to property as a result of committing a prison offence, the governor of the prison or the Visiting Justice who deals with the charge may, whether or not a penalty is imposed for the offence, order that the prisoner pay to the Commission or, if the property is owned by some other person, to that other person a specified amount as compensation for the loss or damage.

(2) The maximum amount that a prisoner may be ordered to pay as compensation shall not exceed—

(a) in the case of an order by a Visiting Justice—\$300; or

(b) in the case of an order by the governor of a prison—\$50.

(3) Compensation that a prisoner is ordered to pay under this section is payable out of any money held by the governor of a prison on behalf of the prisoner or out of any other money otherwise payable to the prisoner under this Act or the regulations.

Cumulative punishments

26E. If—

(a) a prisoner is charged with 2 or more prison offences; and

(b) those charges are determined together or arise out of a single incident,

any cumulative penalties imposed under this Act by the governor of a prison or a Visiting Justice shall not, in respect of any particular kind of penalty, exceed the maximum forfeiture, deprivation, confinement or cancellation that may be imposed for that penalty in the case of a single prison offence.

Record of punishments imposed for prison offences

26F. (1) If the governor of a prison or a Visiting Justice imposes a penalty on a prisoner for committing a prison offence, the governor or Visiting Justice shall cause to be recorded—

(a) a statement of the nature and date of the offence;

SCHEDULE 2—*continued*AMENDMENTS TO THE PRISONS ACT 1952 RELATING TO
PRISON DISCIPLINE—*continued*

- (b) the name of the offender;
- (c) the date of sentence;
- (d) the punishment imposed; and
- (e) any order under section 26D for the payment of compensation.

(2) Any such record shall be kept at the prison concerned and may be made available for inspection to such persons as the Commission considers appropriate.

(3) The regulations may make provision for or with respect to the disposal of any such record.

Appeals against decisions of Visiting Justices

26G. (1) An appeal lies to the District Court under section 122 of the Justices Act 1902 against the decision of a Visiting Justice to impose a penalty on a prisoner in proceedings under this Part as if the decision were a decision of a Local Court constituted by a Magistrate.

(2) The provisions of the Justices Act 1902 relating to the determination of appeals against decisions of a Local Court apply to the determination of an appeal against a decision of a Visiting Justice, subject to such modifications as are prescribed by the regulations or as the District Court considers appropriate.

(3) The regulations may make provision for or with respect to the lodging and determination of appeals under this section.

(4) A prisoner is entitled, subject to any order of the District Court on the appeal, to a stay in the execution of a penalty imposed by a Visiting Justice (other than a reprimand and caution) if an appeal is lodged within the period of 7 days after the penalty was imposed.

(5) In this section—

“penalty” includes an order under section 26D for the payment of compensation.

SCHEDULE 2—*continued*AMENDMENTS TO THE PRISONS ACT 1952 RELATING TO
PRISON DISCIPLINE—*continued***Other criminal proceedings for same offence**

5 26H. (1) The decision of a Visiting Justice in proceedings under this Part in relation to a prison offence shall be deemed to be the decision of a court in relation to a criminal offence for the purpose of determining whether criminal proceedings may be brought for the same act or omission that constituted the prison offence.

10 (2) Proceedings shall not be taken or continued under this Part in relation to a prison offence if criminal proceedings are brought in a court for the same act or omission that constitutes the prison offence.

Offence for making false, etc., statements

15 26I. (1) A person shall not make a statement that is false or misleading in a material particular at or in connection with an inquiry by, or hearing before, the governor of a prison or a Visiting Justice under this Part.

(2) This section does not apply to evidence given on oath or affirmation or by affidavit before a Visiting Justice or a statement verified by statutory declaration.

20 Penalty: \$500.

(3) Section 50 (Regulations)—**(a) Section 50 (1) (j1), (j2)—**

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

25 (j1) requiring prisoners to undergo breath tests, to supply specimens of urine and to undergo other tests and provide other specimens in connection with the good order, discipline and health of prisoners;

30 (j2) the analysis of any such test or specimen and the admission as prima facie evidence in any proceedings of certificates relating to the results of any such analysis;

Prisons (Further Amendment) 1986

SCHEDULE 2—*continued*

AMENDMENTS TO THE PRISONS ACT 1952 RELATING TO
PRISON DISCIPLINE—*continued*

(b) Section 50 (2)—

After “impose”, insert “(except in the case of a prison offence)”.

SCHEDULE 3

(Sec. 3)

5 MISCELLANEOUS AND CONSEQUENTIAL AMENDMENTS TO THE
PRISONS ACT 1952

(1) Section 2 (**Division into Parts**)—

Omit the section.

(2) Section 3 (**Repeals and savings**)—

10 (a) Section 3 (3)—

Omit the subsection.

(b) Section 3 (5)—

After section 3 (4), insert:

(5) Schedule 8 has effect.

15 (3) Section 4 (**Definitions**)—

Section 4, definition of “prison rules”—

Omit the definition.

(4) Section 7A (**Chairman’s powers, authorities, duties and functions**)—

(a) Section 7A (1) (b)—

20 Omit “, under regulations made under this or any other Act or
under the prison rules”, insert instead “or under regulations made
under this or any other Act”.

(b) Section 7A (2)—

Omit “, regulation or prison rules”, insert instead “or regulation”.

*Prisons (Further Amendment) 1986*SCHEDULE 3—*continued*MISCELLANEOUS AND CONSEQUENTIAL AMENDMENTS TO THE
PRISONS ACT 1952—*continued*

(5) Section 47—

After section 46, insert:

Proceedings for offences

- 5 47. Subject to Part IV, proceedings for offences against this Act or the regulations (not being offences for which a sentence of penal servitude may be imposed) shall be dealt with summarily before a Local Court constituted by a Magistrate sitting alone.

(6) Section 48C (**Annual report**)—

Omit the section.

10 (7) Section 49 (**Rules**)—

Omit the section.

(8) Section 60 (**Functions of the Board**)—

(a) Section 60 (1) (b)—

Omit the paragraph.

15 (b) Section 60 (3)—

Omit “, (b)”.

(9) Section 61 (**Special provisions relating to certain recommendations of the Board**)—

(a) Section 61 (1)—

20 Omit “, (b)”.

(b) Section 61 (2), (3)—

Omit “, or a recommendation referred to in section 60 (1) (b) that an offender be granted a remission under section 462 (1) of that Act,” wherever occurring.

25 (10) Schedule 5—

Clause 8 (2) (a) (ii)—

Omit “462 or”.

*Prisons (Further Amendment) 1986*SCHEDULE 3—*continued*MISCELLANEOUS AND CONSEQUENTIAL AMENDMENTS TO THE
PRISONS ACT 1952—*continued*

(11) Schedule 8—

After Schedule 7, insert:

SCHEDULE 8

(Sec. 3 (5))

5

SAVINGS AND TRANSITIONAL PROVISIONS

PART 1

SAVINGS AND TRANSITIONAL REGULATIONS CONSEQUENT ON
ENACTMENT OF CERTAIN ACTS**Regulations**

10

1. (1) The regulations may make provision of a savings or transitional nature consequent on the enactment of the following Acts:

Prisons (Further Amendment) Act 1986.

Crimes (Remissions) Further Amendment Act 1986.

15

(2) A provision made under subclause (1) may, if the regulations under this clause so provide, take effect as from the date of assent to the Act concerned or a later day.

(3) To the extent to which a provision referred to in subclause (1) takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as—

20

(a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication; or

25

(b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

(4) A provision made under subclause (1) shall, if the regulations under this clause so provide, have effect notwithstanding any other clause of this Schedule.

*Prisons (Further Amendment) 1986*SCHEDULE 3—*continued*MISCELLANEOUS AND CONSEQUENTIAL AMENDMENTS TO THE
PRISONS ACT 1952—*continued*

PART 2

PROVISIONS CONSEQUENT ON ENACTMENT OF PRISONS
(FURTHER AMENDMENT) ACT 1986**Interpretation**

5 2. In this Part—

“Amending Act” means the Prisons (Further Amendment) Act 1986.

Preservation of existing remission

10 3. (1) Any remission to which a convicted prisoner is entitled immediately
before the commencement of Part XI—

(a) pursuant to section 41 and the regulations; or

(b) pursuant to the exercise of the Royal prerogative of mercy,

15 in respect of that part of the sentence or sentences that the prisoner has served
(rounded off to the nearest whole number of days) shall, on that
commencement, be deemed to be remission granted to the prisoner under Part
XI.

(2) The Commission shall, as soon as practicable after the commencement
of Part XI, determine the number of days of remission to which each convicted
prisoner is entitled on that commencement and shall notify the prisoner in
writing of the determination.

20 (3) The period by which—

(a) a non-parole period is required to be reduced in relation to a prisoner
pursuant to section 25 of the Probation and Parole Act 1983; or

(b) a non-probation period is required to be reduced in relation to a
prisoner pursuant to section 10 of that Act,

25 may, in accordance with the regulations under that Act, be redetermined at
the commencement of Part XI having regard to the remission to which the
prisoner is entitled on that commencement under this clause.

Construction of references to remission regulations

30 4. On and from the commencement of Part XI, a reference (however
expressed) in any other Act or any instrument made under any Act or in any
other instrument of any kind to the regulations under this Act relating to the
remission of sentences of imprisonment shall be read as a reference to Part
XI.

*Prisons (Further Amendment) 1986*SCHEDULE 3—*continued*MISCELLANEOUS AND CONSEQUENTIAL AMENDMENTS TO THE
PRISONS ACT 1952—*continued***Preservation of existing orders refusing remission**

5. An order of a judge under section 460A of the Crimes Act 1900 and in force immediately before the repeal of that section shall be deemed to be an order under section 69 of this Act.

Rules continued in force

6. (1) Any rules made under this Act and in force immediately before the commencement of Schedule 3 (7) to the Amending Act shall, except to the extent that they are inconsistent with this Act or the regulations, continue to apply to the management, control, good government, supervision and inspection of prisons until they are repealed by the Commission or they expire under subclause (2), whichever first occurs.

(2) This clause and the rules made under this Act expire 2 years after the commencement of Schedule 3 (7) to the Amending Act.

Previous prison offences not affected

7. (1) In this clause—

“previous prison offence” means an offence against prison discipline within the meaning of section 23 (as in force before the commencement of Schedule 2 (2) to the Amending Act) which was committed before that commencement.

(2) A previous prison offence shall be dealt with, and any pending proceedings in respect of such an offence shall be disposed of, as if this Act had not been amended by the Amending Act.

(3) The Amending Act does not affect any penalty duly imposed for a previous prison offence.

Previous record of punishments to be kept

8. Any book kept under section 26 (as in force immediately before the commencement of Schedule 2 (2) to the Amending Act) shall be deemed to be a record made under section 26F.

PRISONS (FURTHER AMENDMENT) ACT 1986 No. 188

NEW SOUTH WALES



TABLE OF PROVISIONS

1. Short title
2. Commencement
3. Amendment of Act No. 9, 1952

SCHEDULE 1—AMENDMENTS TO THE PRISONS ACT 1952 RELATING TO
REMISSION

SCHEDULE 2—AMENDMENTS TO THE PRISONS ACT 1952 RELATING TO
PRISON DISCIPLINE

SCHEDULE 3—MISCELLANEOUS AND CONSEQUENTIAL AMENDMENTS TO
THE PRISONS ACT 1952



PRISONS (FURTHER AMENDMENT) ACT 1986 No. 188

NEW SOUTH WALES



Act No. 188, 1986

An Act to amend the Prisons Act 1952 with respect to the remission of sentences and prison discipline and in certain other respects. [Assented to 18 December 1986]

See also Crimes (Remissions) Further Amendment Act 1986.

Prisons (Further 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:

Short title

1. This Act may be cited as the "Prisons (Further 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 or days 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 Schedules 1-3.

SCHEDULE 1

(Sec. 3)

AMENDMENTS TO THE PRISONS ACT 1952 RELATING TO
REMISSION

(1) Section 41 (**Expiration of sentence**)—

(a) Section 41 (2)—

Omit the subsection, insert instead:

(2) If the term of imprisonment of a convicted prisoner would otherwise terminate on a Saturday, Sunday or public holiday, the Commission may discharge the prisoner from prison on the last day that is not a Saturday, Sunday or public holiday.

(b) Section 41 (3), (4)—

Omit the subsections.

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

(c) Section 41 (5)—

Omit “granted remission pursuant to the foregoing provisions”,
insert instead “granted remission under Part XI”.

(2) Section 41A (**Royal prerogative of mercy preserved**)—

After “this Act”, insert “(including Part XI)”.

(3) Part XI—

After Part X, insert:

PART XI
REMISSION

Definitions

62. In this Part—

“imprisonment” means a period served by a convicted prisoner
in prison or otherwise in lawful custody, and includes—

- (a) a period so served as a consequence of a sentence of
penal servitude; and
- (b) a period so served on remand which forms part of the
sentence for the offence of which the prisoner is
convicted,

but does not include—

- (c) street-time, being a period during which the prisoner
is—
 - (i) released under a probation order, a parole order or
a licence under section 463 of the Crimes Act 1900;
or
 - (ii) unlawfully at large after escaping from prison or
other lawful custody;
- (d) a period served by way of periodic detention under the
Periodic Detention of Prisoners Act 1981; or

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

- (e) a period served before the commencement of this Part;
“month” means a calendar month and not a named month of a year.

Commission to determine each month remissions to be granted

63. (1) The Commission shall, at the end of each month of imprisonment, determine the number of days of remission (if any) to be granted to each convicted prisoner in respect of the sentence or sentences being served during that month.

(2) If a sentence is backdated to a time when the prisoner was on remand in connection with the offence, the Commission shall, as soon as practicable after the sentence is imposed, determine the number of days of remission (if any) to be granted to the prisoner in respect of each month of the sentence served on remand.

(3) The Commission may make provisional determinations under this section in respect of prisoners on remand for the purposes of determinations to be made under subsection (2).

(4) If, at the end of a month of imprisonment—

- (a) a convicted prisoner is granted a number of days of remission under section 64 (1) (a) or (b);
- (b) as a result the prisoner is due to be released at or after the end of the next month; and
- (c) it appears to the Commission that the prisoner would be entitled to be released before the end of that next month if the prisoner were to be granted the same number of days of remission at the end of that next month,

the Commission shall thereupon make a further determination and grant the prisoner that same number of days of remission.

(5) A determination of the Commission under this section is final and shall not be liable to be challenged, appealed against, quashed or called into question by any court.

*Prisons (Further Amendment) 1986*SCHEDULE 1—*continued*AMENDMENTS TO THE PRISONS ACT 1952 RELATING TO
REMISSION —*continued***Number of days of remission to be granted**

64. (1) The Commission shall grant the following remission to a convicted prisoner in respect of each month of imprisonment:

- (a) such number of days of remission (not exceeding 15 days) as the Commission considers appropriate having regard to the prisoner's general conduct during the whole of the month and the prisoner's performance in industry or education (or both) during the whole of the month;
- (b) 2 days of remission if the prisoner is imprisoned in an open institution during the whole of the month;
- (c) such number of days of remission as may be prescribed by the regulations for any period during the month that the Minister has certified to be a period throughout which the prisoner, or prisoners of a class including the prisoner, has or have suffered deprivation due to an industrial dispute;
- (d) such further remission as may be prescribed by the regulations.

(2) The Commission shall not grant remission under subsection (1) (b) or (c) in respect of any period unless it is satisfied that the prisoner has exhibited good general conduct during that period.

(3) The Commission shall not, in considering the general conduct of a prisoner for the purposes of granting remission, take into account particular misconduct which constitutes a prison offence or other offence and for which the prisoner has been or is likely to be dealt with under this Act or under any other Act or law.

(4) If a prisoner is dealt with under this Act or under any other Act or law for misconduct that the Commission previously took into account in making a determination for the purpose of granting remission, the Commission shall revise the determination previously made but without taking that misconduct into account in determining the number of days of remission to be granted to the prisoner.

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

(5) In determining the number of days of remission to be granted under this section, the Commission shall have regard to such guidelines as the Minister may, after consultation with the Attorney General, determine from time to time.

(6) The granting of remission under this Part to a convicted prisoner shall be subject to any order made by a judge under section 69 with respect to the prisoner.

Notification of determinations, etc.

65. (1) The Commission shall notify a convicted prisoner in writing of any determination to grant, or not to grant, any remission of the prisoner's sentence and of the reasons for the determination.

(2) The reasons for a determination shall include a reference to any particular misconduct taken into account in making the determination.

(3) Notifications under this section shall contain such information as may be prescribed by the regulations relating to the expected date of release of convicted prisoners on the remission of their sentences.

Prisoners not entitled to remission

66. (1) A convicted prisoner is not entitled under this Part to remission of—

- (a) a sentence of imprisonment for a term of less than 1 month, unless the term of the sentence and any other cumulative sentence imposed on the prisoner exceeds 1 month;
- (b) a sentence of imprisonment for life;
- (c) a sentence of imprisonment during the Governor's pleasure; or

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

- (d) a sentence of imprisonment in respect of which remission is not to be granted by order of the judge imposing the sentence under section 69.
- (2) The regulations may provide that remission—
 - (a) shall not be granted under this Part in respect of sentences of a class specified in the regulations; or
 - (b) may be granted only in such circumstances as the regulations may specify.

Forfeiture of remission for escape

67. (1) A prisoner who is convicted of an offence for escaping from prison or otherwise from lawful custody forfeits all remission previously granted under this Part in respect of the sentence or sentences being served at the time of the escape.

(2) A court which sentences the prisoner for the offence may restore all or any part of the remission forfeited under this section.

Reduction of sentences and release from prison after remission

68. (1) Any remission granted under this Part in respect of a period of imprisonment reduces, by the number of days of remission granted and not forfeited, the sentence, or each sentence, being served by the prisoner during that period (other than a sentence that expired during that period).

(2) A convicted prisoner shall, unless sooner released under this or any other Act or law, be released from prison when the sentence, or each sentence, being served by the prisoner has, by reduction under this Part, expired.

Judge may refuse remission

- 69. (1) Where a person—
 - (a) was convicted before, or is convicted on or after, the day on which this Part commences; and
 - (b) is sentenced on or after that day by a judge,

Prisons (Further Amendment) 1986

SCHEDULE 1—*continued*

AMENDMENTS TO THE PRISONS ACT 1952 RELATING TO
REMISSION —*continued*

the judge may, on sentencing the person, order that the person shall not be entitled to any remission, or to any remission granted in such circumstances as the judge may specify, in so far as the remission would, but for the order, reduce the term of the sentence.

(2) A judge shall not make an order under subsection (1) unless it appears to the judge that the making of the order is desirable by reason of the nature of the offence or the antecedent character of the person convicted.

(3) Where a judge makes an order under subsection (1), the judge shall state the reasons for the order.

SCHEDULE 2

(Sec. 3)

AMENDMENTS TO THE PRISONS ACT 1952 RELATING TO
PRISON DISCIPLINE

(1) Section 4 (**Definitions**)—

Section 4, definition of “prison offence”—

After the definition of “prison”, insert:

“prison offence” means a prison offence declared under section 23;

SCHEDULE 2—*continued*AMENDMENTS TO THE PRISONS ACT 1952 RELATING TO
PRISON DISCIPLINE—*continued*

(2) Part IV—

Omit the Part, insert instead:

PART IV

PRISON DISCIPLINE

Prison offences to be declared by regulations

23. (1) The regulations may declare as a prison offence—

- (a) a contravention (whether by act or omission) of a specified provision of the regulations by a prisoner; or
- (b) any other act or omission by a prisoner,

if it occurs while the prisoner is within a prison or is deemed to be in the custody of the governor of a prison.

(2) An act or omission may be declared to be a prison offence even though it constitutes an offence against this or any other Act or any other law.

(3) A prison offence may be dealt with under this Part by the governor of a prison or the Visiting Justice for a prison, even though the offence was committed or was alleged to have been committed while the prisoner was within another prison or in the custody of the governor of another prison.

Laying of charges and inquiries by governor of prison

24. (1) If it is alleged that a prisoner has committed a prison offence, the governor of a prison may charge the prisoner with the offence and conduct an inquiry into the allegation.

(2) Regulations may be made with respect to the making of any such charge and the conduct of any such inquiry.

SCHEDULE 2—*continued*AMENDMENTS TO THE PRISONS ACT 1952 RELATING TO
PRISON DISCIPLINE—*continued*

(3) The following provisions apply to any inquiry by the governor of a prison into an alleged prison offence:

- (a) The inquiry shall be conducted with as little formality and technicality, and with as much expedition, as fairness to the prisoner charged, the requirements of this Act or the regulations and the proper consideration of the charge permit.
- (b) The governor of the prison is not bound by the rules of evidence but may inform himself or herself of any matter in such manner as the governor thinks fit.
- (c) The prisoner is entitled to be heard at any hearing during the inquiry and to examine and cross-examine witnesses.
- (d) Except as provided by paragraph (e), the prisoner is not entitled to be represented by a barrister or solicitor or by any other person.
- (e) The governor of the prison shall allow a person (other than a barrister or solicitor) to represent or assist the prisoner if the governor is satisfied that the prisoner does not sufficiently understand the nature of the inquiry or that the prisoner does not understand English or is otherwise unable properly to represent himself or herself during the inquiry.
- (f) If the prisoner refuses or fails to attend at any hearing during the inquiry, the governor of the prison may hear and determine the matter in the prisoner's absence.
- (g) Evidence shall not be given on oath or affirmation or by affidavit at any hearing during the inquiry.
- (h) The governor of a prison may allow such prison officers or other persons to be present and be heard at any hearing during the inquiry as the governor thinks fit.

SCHEDULE 2—*continued*AMENDMENTS TO THE PRISONS ACT 1952 RELATING TO
PRISON DISCIPLINE—*continued*

- (i) The governor of a prison may transfer the conduct of an inquiry to the governor of another prison to which the prisoner has been transferred.

Governor of prison may impose penalties for certain prison offences

25. (1) In this section—

“minor prison offence” means a prison offence declared by the regulations to be a minor prison offence for the purposes of this section.

(2) If, after conducting an inquiry into an alleged minor prison offence, the governor of a prison is satisfied beyond reasonable doubt that the allegation against the prisoner has been proved, the governor may impose one (but not more than one) of the following penalties:

- (a) reprimand and caution;
- (b) deprivation of specified amenities or privileges for a period not exceeding 28 days (being amenities or privileges of a kind prescribed by the regulations for the purposes of this paragraph);
- (c) confinement to the prisoner's cell for a period not exceeding 3 days, with or without deprivation of amenities or privileges as referred to in paragraph (b);
- (d) cancellation of any right to specified payments under section 20 (3) for a period not exceeding 14 days, but only where those payments are bonus or other payments additional to the payments made at the base rate to all or any class of prisoners;
- (e) forfeiture of a specified number of days of remission, not exceeding 7 days, credited to the prisoner.

SCHEDULE 2—*continued*AMENDMENTS TO THE PRISONS ACT 1952 RELATING TO
PRISON DISCIPLINE—*continued*

(3) If, after conducting an inquiry into an alleged minor prison offence, the governor of a prison is satisfied beyond reasonable doubt that the allegation has been proved but is of the opinion that a penalty should not be imposed—

- (a) the governor may dismiss the charge; or
- (b) the governor may defer imposing a penalty on condition that the prisoner be of good behaviour for a specified period (not exceeding 2 months) and, if the condition is complied with, dismiss the charge after the end of that period.

(4) If, after conducting an inquiry into an alleged minor prison offence, the governor of a prison is not satisfied beyond reasonable doubt that the allegation has been proved, the governor shall dismiss the charge.

(5) A penalty imposed on a prisoner by the governor of a prison may be rescinded or remitted by the governor of the prison or the Commission.

(6) If a prisoner does not have credited, when a penalty is imposed under subsection (2) (e), the specified number of days of remission forfeited, the forfeiture operates as and when remission accrues.

Reference of certain prison offences to Visiting Justice

26. (1) The governor of a prison who has charged a prisoner with a prison offence may refer the charge to a Visiting Justice for hearing and determination.

- (2) A charge must be referred to a Visiting Justice—
 - (a) if the alleged offence is not a minor prison offence within the meaning of section 25; or
 - (b) if the alleged offence is such a minor prison offence but the governor is satisfied that the seriousness of the matter is such that it should be referred to a Visiting Justice.

SCHEDULE 2—*continued*AMENDMENTS TO THE PRISONS ACT 1952 RELATING TO
PRISON DISCIPLINE—*continued*

(3) A charge may be referred to a Visiting Justice without any inquiry being conducted into the allegation by the governor of the prison or may be so referred after or during the course of any such inquiry.

Procedure at hearings before Visiting Justice

26A. (1) In proceedings before a Visiting Justice under this Part, the procedures under the Justices Act 1902 in relation to the hearing and determination of an information laid under section 52 of that Act apply, subject to such modifications as are prescribed by the regulations and to such other modifications as the Visiting Justice considers appropriate.

(2) In proceedings before a Visiting Justice under this Part, the prisoner is entitled to be represented by a barrister or solicitor.

(3) Any hearing in proceedings before a Visiting Justice shall be held in the prison for which the Visiting Justice has been appointed.

(4) A Visiting Justice may transfer proceedings to the Visiting Justice for another prison to which the prisoner has been transferred.

Imposition of penalty by Visiting Justice

26B. (1) If, after hearing a charge referred under section 26, a Visiting Justice is satisfied beyond reasonable doubt that the allegation against the prisoner has been proved, the Visiting Justice may impose one (but not more than one) of the following penalties:

- (a) reprimand and caution;
- (b) deprivation of specified amenities or privileges for a period not exceeding 56 days (being amenities or privileges of a kind prescribed by the regulations for the purposes of this paragraph);

*Prisons (Further Amendment) 1986*SCHEDULE 2—*continued*AMENDMENTS TO THE PRISONS ACT 1952 RELATING TO
PRISON DISCIPLINE—*continued*

- (c) confinement to the prisoner's cell for a period not exceeding 28 days, with or without deprivation of amenities or privileges as referred to in paragraph (b);
- (d) cancellation of any rights to specified payments under section 20 (3) for a period not exceeding 14 days, but only where those payments are bonus or other payments additional to the payments made at the base rate to all or any class of prisoners;
- (e) forfeiture of a specified number of days of remission, not exceeding 28 days, credited to the prisoner.

(2) If, after hearing a charge referred under section 26, a Visiting Justice is satisfied beyond reasonable doubt that the allegation has been proved but is of the opinion that a penalty should not be imposed, the Visiting Justice may dismiss the charge.

(3) If, after hearing a charge referred under section 26, a Visiting Justice is not satisfied beyond reasonable doubt that the allegation has been proved, the Visiting Justice shall dismiss the charge.

(4) If a prisoner does not have credited, when a penalty is imposed under subsection (1) (e), the specified number of days of remission forfeited, the forfeiture operates as and when remission accrues.

Prison offences may be dealt with summarily or on indictment

26C. If, on the hearing of a charge against a prisoner, the Visiting Justice is of the opinion that the act or omission constituting the alleged prison offence is an offence which could be prosecuted summarily before a Local Court or on indictment and which should be so prosecuted, the Visiting Justice shall terminate the hearing and order that the prisoner be conveyed to a Local Court to be dealt with according to law.

SCHEDULE 2—*continued*AMENDMENTS TO THE PRISONS ACT 1952 RELATING TO
PRISON DISCIPLINE—*continued***Payment of compensation by prisoner for damage to property, etc.**

26D. (1) If a prisoner causes any loss of or damage to property as a result of committing a prison offence, the governor of the prison or the Visiting Justice who deals with the charge may, whether or not a penalty is imposed for the offence, order that the prisoner pay to the Commission or, if the property is owned by some other person, to that other person a specified amount as compensation for the loss or damage.

(2) The maximum amount that a prisoner may be ordered to pay as compensation shall not exceed—

(a) in the case of an order by a Visiting Justice—\$300; or

(b) in the case of an order by the governor of a prison—\$50.

(3) Compensation that a prisoner is ordered to pay under this section is payable out of any money held by the governor of a prison on behalf of the prisoner or out of any other money otherwise payable to the prisoner under this Act or the regulations.

Cumulative punishments

26E. If—

(a) a prisoner is charged with 2 or more prison offences; and

(b) those charges are determined together or arise out of a single incident,

any cumulative penalties imposed under this Act by the governor of a prison or a Visiting Justice shall not, in respect of any particular kind of penalty, exceed the maximum forfeiture, deprivation, confinement or cancellation that may be imposed for that penalty in the case of a single prison offence.

Record of punishments imposed for prison offences

26F. (1) If the governor of a prison or a Visiting Justice imposes a penalty on a prisoner for committing a prison offence, the governor or Visiting Justice shall cause to be recorded—

(a) a statement of the nature and date of the offence;

SCHEDULE 2—*continued*AMENDMENTS TO THE PRISONS ACT 1952 RELATING TO
PRISON DISCIPLINE—*continued*

- (b) the name of the offender;
- (c) the date of sentence;
- (d) the punishment imposed; and
- (e) any order under section 26D for the payment of compensation.

(2) Any such record shall be kept at the prison concerned and may be made available for inspection to such persons as the Commission considers appropriate.

(3) The regulations may make provision for or with respect to the disposal of any such record.

Appeals against decisions of Visiting Justices

26G. (1) An appeal lies to the District Court under section 122 of the Justices Act 1902 against the decision of a Visiting Justice to impose a penalty on a prisoner in proceedings under this Part as if the decision were a decision of a Local Court constituted by a Magistrate.

(2) The provisions of the Justices Act 1902 relating to the determination of appeals against decisions of a Local Court apply to the determination of an appeal against a decision of a Visiting Justice, subject to such modifications as are prescribed by the regulations or as the District Court considers appropriate.

(3) The regulations may make provision for or with respect to the lodging and determination of appeals under this section.

(4) A prisoner is entitled, subject to any order of the District Court on the appeal, to a stay in the execution of a penalty imposed by a Visiting Justice (other than a reprimand and caution) if an appeal is lodged within the period of 7 days after the penalty was imposed.

(5) In this section—

“penalty” includes an order under section 26D for the payment of compensation.

SCHEDULE 2—*continued*AMENDMENTS TO THE PRISONS ACT 1952 RELATING TO
PRISON DISCIPLINE—*continued***Other criminal proceedings for same offence**

26H. (1) The decision of a Visiting Justice in proceedings under this Part in relation to a prison offence shall be deemed to be the decision of a court in relation to a criminal offence for the purpose of determining whether criminal proceedings may be brought for the same act or omission that constituted the prison offence.

(2) Proceedings shall not be taken or continued under this Part in relation to a prison offence if criminal proceedings are brought in a court for the same act or omission that constitutes the prison offence.

Offence for making false, etc., statements

26I. (1) A person shall not make a statement that is false or misleading in a material particular at or in connection with an inquiry by, or hearing before, the governor of a prison or a Visiting Justice under this Part.

(2) This section does not apply to evidence given on oath or affirmation or by affidavit before a Visiting Justice or a statement verified by statutory declaration.

Penalty: \$500.

(3) Section 50 (Regulations)—**(a) Section 50 (1) (j1), (j2)—**

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

(j1) requiring prisoners to undergo breath tests, to supply specimens of urine and to undergo other tests and provide other specimens in connection with the good order, discipline and health of prisoners;

(j2) the analysis of any such test or specimen and the admission as prima facie evidence in any proceedings of certificates relating to the results of any such analysis;

Prisons (Further Amendment) 1986

SCHEDULE 2—*continued*

AMENDMENTS TO THE PRISONS ACT 1952 RELATING TO
PRISON DISCIPLINE—*continued*

(b) Section 50 (2)—

After “impose”, insert “(except in the case of a prison offence)”.

SCHEDULE 3

(Sec. 3)

MISCELLANEOUS AND CONSEQUENTIAL AMENDMENTS TO THE
PRISONS ACT 1952

(1) Section 2 (**Division into Parts**)—

Omit the section.

(2) Section 3 (**Repeals and savings**)—

(a) Section 3 (3)—

Omit the subsection.

(b) Section 3 (5)—

After section 3 (4), insert:

(5) Schedule 8 has effect.

(3) Section 4 (**Definitions**)—

Section 4, definition of “prison rules”—

Omit the definition.

(4) Section 7A (**Chairman’s powers, authorities, duties and functions**)—

(a) Section 7A (1) (b)—

Omit “, under regulations made under this or any other Act or under the prison rules”, insert instead “or under regulations made under this or any other Act”.

(b) Section 7A (2)—

Omit “, regulation or prison rules”, insert instead “or regulation”.

SCHEDULE 3—*continued*MISCELLANEOUS AND CONSEQUENTIAL AMENDMENTS TO THE
PRISONS ACT 1952—*continued*

(5) Section 47—

After section 46, insert:

Proceedings for offences

47. Subject to Part IV, proceedings for offences against this Act or the regulations (not being offences for which a sentence of penal servitude may be imposed) shall be dealt with summarily before a Local Court constituted by a Magistrate sitting alone.

(6) Section 48C (**Annual report**)—

Omit the section.

(7) Section 49 (**Rules**)—

Omit the section.

(8) Section 60 (**Functions of the Board**)—

(a) Section 60 (1) (b)—

Omit the paragraph.

(b) Section 60 (3)—

Omit “, (b)”.

(9) Section 61 (**Special provisions relating to certain recommendations of the Board**)—

(a) Section 61 (1)—

Omit “, (b)”.

(b) Section 61 (2), (3)—

Omit “, or a recommendation referred to in section 60 (1) (b) that an offender be granted a remission under section 462 (1) of that Act,” wherever occurring.

(10) Schedule 5—

Clause 8 (2) (a) (ii)—

Omit “462 or”.

Prisons (Further Amendment) 1986

SCHEDULE 3—*continued*

MISCELLANEOUS AND CONSEQUENTIAL AMENDMENTS TO THE
PRISONS ACT 1952—*continued*

(11) Schedule 8—

After Schedule 7, insert:

SCHEDULE 8

(Sec. 3 (5))

SAVINGS AND TRANSITIONAL PROVISIONS

PART 1

SAVINGS AND TRANSITIONAL REGULATIONS CONSEQUENT ON
ENACTMENT OF CERTAIN ACTS

Regulations

1. (1) The regulations may make provision of a savings or transitional nature consequent on the enactment of the following Acts:

Prisons (Further Amendment) Act 1986.

Crimes (Remissions) Further Amendment Act 1986.

(2) A provision made under subclause (1) may, if the regulations under this clause so provide, take effect as from the date of assent to the Act concerned or a later day.

(3) To the extent to which a provision referred to in subclause (1) takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as—

(a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication; or

(b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

(4) A provision made under subclause (1) shall, if the regulations under this clause so provide, have effect notwithstanding any other clause of this Schedule.

Prisons (Further Amendment) 1986

SCHEDULE 3—*continued*

MISCELLANEOUS AND CONSEQUENTIAL AMENDMENTS TO THE
PRISONS ACT 1952—*continued*

PART 2

PROVISIONS CONSEQUENT ON ENACTMENT OF PRISONS
(FURTHER AMENDMENT) ACT 1986

Interpretation

2. In this Part—

“Amending Act” means the Prisons (Further Amendment) Act 1986.

Preservation of existing remission

3. (1) Any remission to which a convicted prisoner is entitled immediately before the commencement of Part XI—

(a) pursuant to section 41 and the regulations; or

(b) pursuant to the exercise of the Royal prerogative of mercy,

in respect of that part of the sentence or sentences that the prisoner has served (rounded off to the nearest whole number of days) shall, on that commencement, be deemed to be remission granted to the prisoner under Part XI.

(2) The Commission shall, as soon as practicable after the commencement of Part XI, determine the number of days of remission to which each convicted prisoner is entitled on that commencement and shall notify the prisoner in writing of the determination.

(3) The period by which—

(a) a non-parole period is required to be reduced in relation to a prisoner pursuant to section 25 of the Probation and Parole Act 1983; or

(b) a non-probation period is required to be reduced in relation to a prisoner pursuant to section 10 of that Act,

may, in accordance with the regulations under that Act, be redetermined at the commencement of Part XI having regard to the remission to which the prisoner is entitled on that commencement under this clause.

Prisons (Further Amendment) 1986

SCHEDULE 3—*continued*

MISCELLANEOUS AND CONSEQUENTIAL AMENDMENTS TO THE
PRISONS ACT 1952—*continued*

Construction of references to remission regulations

4. On and from the commencement of Part XI, a reference (however expressed) in any other Act or any instrument made under any Act or in any other instrument of any kind to the regulations under this Act relating to the remission of sentences of imprisonment shall be read as a reference to Part XI.

Preservation of existing orders refusing remission

5. An order of a judge under section 460A of the Crimes Act 1900 and in force immediately before the repeal of that section shall be deemed to be an order under section 69 of this Act.

Rules continued in force

6. (1) Any rules made under this Act and in force immediately before the commencement of Schedule 3 (7) to the Amending Act shall, except to the extent that they are inconsistent with this Act or the regulations, continue to apply to the management, control, good government, supervision and inspection of prisons until they are repealed by the Commission or they expire under subclause (2), whichever first occurs.

(2) This clause and the rules made under this Act expire 2 years after the commencement of Schedule 3 (7) to the Amending Act.

Previous prison offences not affected

7. (1) In this clause—

“previous prison offence” means an offence against prison discipline within the meaning of section 23 (as in force before the commencement of Schedule 2 (2) to the Amending Act) which was committed before that commencement.

(2) A previous prison offence shall be dealt with, and any pending proceedings in respect of such an offence shall be disposed of, as if this Act had not been amended by the Amending Act.

(3) The Amending Act does not affect any penalty duly imposed for a previous prison offence.

Prisons (Further Amendment) 1986

SCHEDULE 3—*continued*

MISCELLANEOUS AND CONSEQUENTIAL AMENDMENTS TO THE
PRISONS ACT 1952—*continued*

Previous record of punishments to be kept

8. Any book kept under section 26 (as in force immediately before the commencement of Schedule 2 (2) to the Amending Act) shall be deemed to be a record made under section 26F.

