

FIRST PRINT

PRISONS (ESCAPE TUNNELS) AMENDMENT BILL 1991

NEW SOUTH WALES



EXPLANATORY NOTE

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

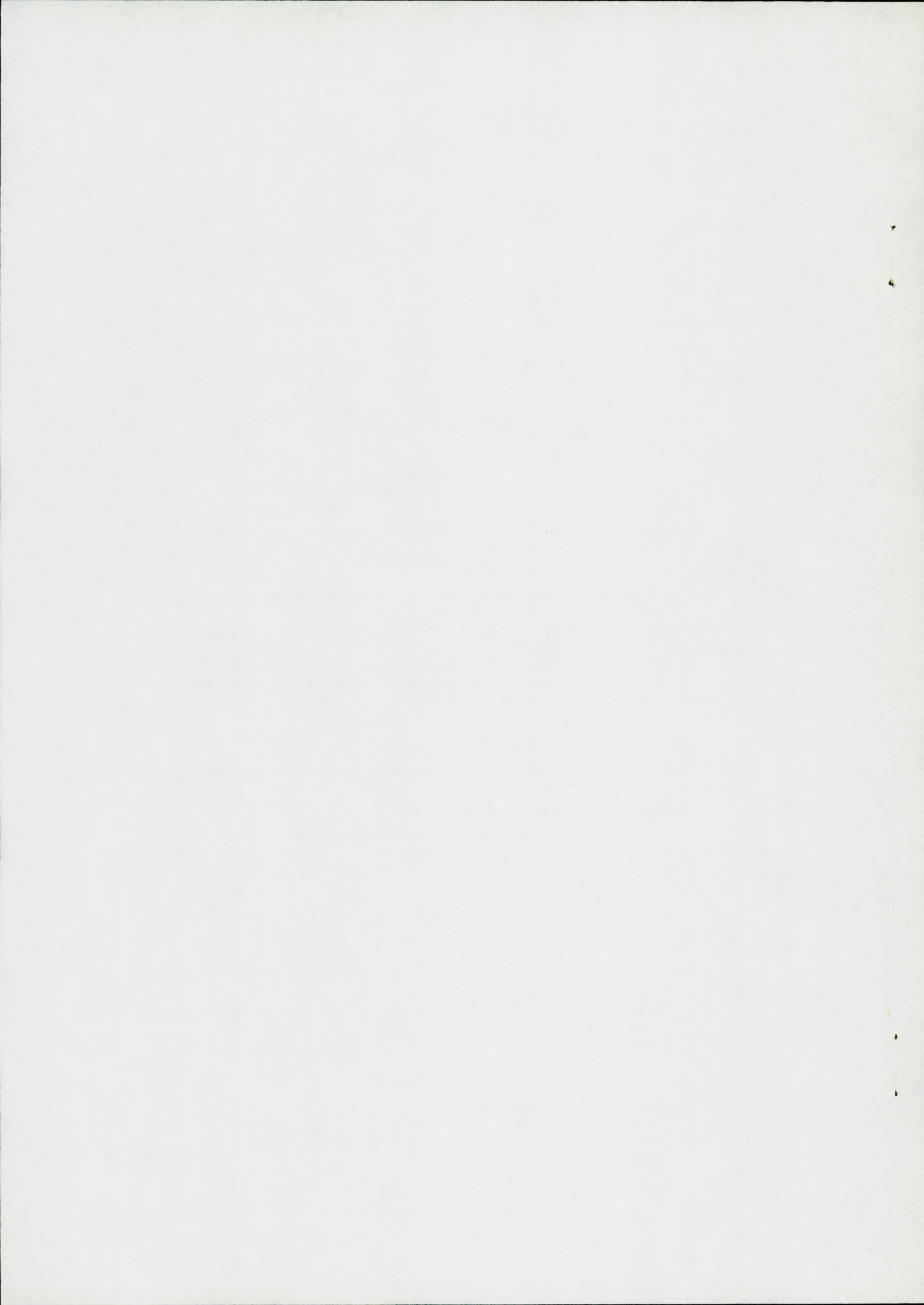
The object of this Bill is to amend the Prisons Act 1952 to make it an offence for a prisoner to construct or take part in the construction of a tunnel or excavation which could reasonably be thought likely to be intended for use in facilitating an escape.

The new offence will carry a maximum penalty of 10 years and any sentence will be required to be cumulative on existing sentences.

Clause 1 specifies the short title of the proposed Act.

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

Clause 3 makes the amendment described above.



FIRST PRINT

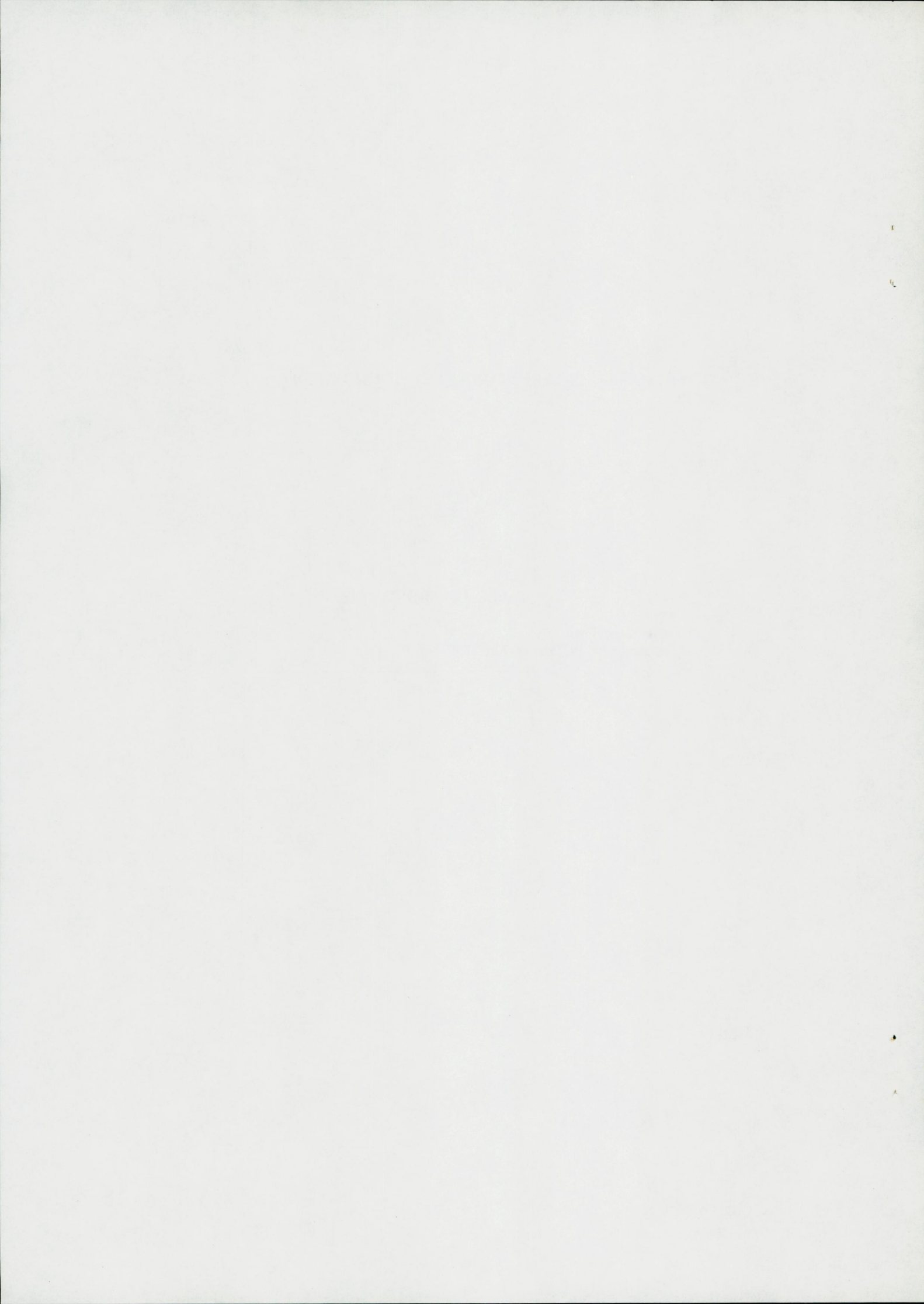
PRISONS (ESCAPE TUNNELS) AMENDMENT BILL 1991

NEW SOUTH WALES



TABLE OF PROVISIONS

1. Short title
 2. Commencement
 3. Amendment of Prisons Act 1952 No. 9
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PRISONS (ESCAPE TUNNELS) AMENDMENT BILL 1991

NEW SOUTH WALES



No. , 1991

A BILL FOR

An Act to amend the Prisons Act 1952 to create an offence concerned with tunnelling to facilitate escape from lawful custody.

Prisons (Escape Tunnels) Amendment 1991

The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the Prisons (Escape Tunnels) Amendment Act 1991.

Commencement

2. This Act commences on a day to be appointed by proclamation.

Amendment of Prisons Act 1952 No. 9

3. The Prisons Act 1952 is amended by inserting after section 34 the following section:

Tunnels to facilitate escape

34A. (1) A prisoner in lawful custody who constructs, or takes part in the construction of, a tunnel which could reasonably be thought likely to be intended for use in facilitating the escape from lawful custody of any prisoner is guilty of an offence and liable to penal servitude for a term not exceeding 10 years.

(2) It is not necessary for the prosecution to prove that the tunnel was actually intended for use in facilitating such an escape, but it is a defence for the accused to establish that he or she did not intend it to be so used.

(3) A sentence of penal servitude imposed by a court under this section is to be imposed as a sentence that is cumulative on all previous sentences imposed by the court or to which the prisoner is subject.

(4) In this section:

“**tunnel**” includes any partially completed tunnel and any excavation.

SECOND READING SPEECH FOR
LEGISLATIVE COUNCIL
PRISONS (ESCAPE TUNNELS)
AMENDMENT BILL 1991

Mr President,

I move that this Bill be now read a second time.

Mr President,

It is with pleasure that I introduce legislation to the House which represents yet another step forward in the reform of the New South Wales correctional system. The legislation directly addresses an area of concern to the Government and to the community - that of escape from lawful custody. Members of the community must be able to have confidence in the



laws of the land that they uphold and be able to believe that criminals brought to justice cannot escape from justice being served.

An escape from a correctional centre creates a loss of faith by the community and the judiciary in the system of law and order, and every possible measure will be taken by this Government to prevent that from occurring. The Prisons (Escape Tunnels) Amendment Bill 1991 represents the latest in a series of initiatives which is considered vitally important for ensuring public confidence in the correctional system.

Every step that can be taken to discourage, deter and prevent offenders in correctional centres from escaping must be taken. This Government believes that the existing legislation does not provide an

effective deterrent to tunnelling because there have been difficulties in successfully charging prisoners who were allegedly involved in unauthorised tunnelling. This situation is unacceptable and must be addressed through the introduction of unauthorised tunnelling as an offence under the Prisons Act 1952.

The purpose of the legislation is to amend the Prisons Act 1952 to create an offence relating specifically to unauthorised tunnelling within the confines of a correctional centre. The aim is to effectively deter offenders in custody from constructing unauthorised tunnels and excavations. This amendment will remedy the existing loophole in the Prisons Act 1952 where there is a penalty for escape or attempted escape, but there is difficulty in establishing prisoners involved in tunnelling are, in fact, attempting to

escape. This is because preparatory acts in respect of the commissioning of an offence do not in themselves constitute an attempt to commit that offence.

So there is the preposterous situation that although a tunnel has been found, there remain difficulties in charging prisoners under the existing legislation who have allegedly been carrying out unauthorised tunnelling.

Where it has not been possible to prove that tunnelling was an attempt to escape, police, at times have had recourse to charging the offender with malicious damage to property! Such a charge is laid in the community against an offender who, for example, defaces a building with graffiti or vandalises a railway station.

It is abhorrent to consider an escape attempt as being equal with these community crimes, when a successful escape would endanger the community as well as fly in the face of the sentence imposed by the judiciary. Clearly, justice is not being done.

This travesty demands a sufficient remedy - an action which, as always, this Government is ready to take.

Over the last six years Prison Officers have discovered the existence of twelve tunnels in various stages of construction. This is of very serious concern to the Government and the amendment before the House is in response to the view that every possible measure to deter escape tunnels must be taken.

Honourable Members will recall the most recent incident at Long Bay Correctional Centre was a major tunnel which was discovered on 2 November, 1990 at the Reception Prison. The length of the tunnel was 11 metres and only 120 millimetres remained before the tunnel allowed the prisoners access to an area outside the prison walls. Had this attempt to escape been successful it would have posed a major threat to the community. Police are continuing their inquiries with regard to this excavation. The discovery of this tunnel illustrated that there were inadequate deterrents to prisoners in existence and highlighted the need for stronger measures.

Mr. President, I recently introduced to the House legislation to increase the maximum penalty for escape from 7 to 10 years. The intention of that legislation coupled with this, is part of a strategy to

minimise the number of escapes and attempts to escape. The community's expectation that prisoners sentenced to a term of imprisonment will remain in prison for the time specified by the courts must be fulfilled. Escapes and attempts to escape undermine the confidence of the community in the entire criminal justice system and this will not be tolerated under this Government. It is therefore of the utmost importance that effective deterrents be in place including an offence specifically for tunnelling.

The rate of escapes from correctional centres has successfully been reduced since the Government came to Office by almost half. In the 1987/88 financial year, the last financial year under the previous Government, the escape rate was 3.4 per 100 offender years. This is in contrast to the rates of 1.8 in 1988, 1.9 in 1989/90 and 1.8 in 1990/91.



These figures clearly demonstrate the marked improvements following the introduction of initiatives to deter prisoners from escaping.

Additional disincentives can only serve to further redress the escape rate.

The level of the maximum penalty for a prisoner who constructs, or takes part in the construction of a tunnel, to escape will also be a deterrent. The maximum penalty for aiding, or wilfully permitting an escape, is of the same order of magnitude as a conviction for the offence of escape. If the purpose of tunnelling is the intention to escape then the appropriate penalty for the offence should be the same as that for actually escaping. Thus, it is proposed to create the offence of tunnelling with a maximum penalty of ten years. If in fact the excavation was intended for another purpose, such



as concealing contraband, the offender is liable to be charged with a lesser offence.

This legislation is intended specifically to deter the construction of tunnels and other excavations intended for escape and is not directed at those prisoners secreting contraband or other items.

For the benefit of Honourable Members, let me turn to the specific clauses of the legislation. Section 34A(1) specifies that the construction of a tunnel or excavation which could reasonably be thought to be likely to be intended to be used for escape from lawful custody is an offence carrying a penalty of imprisonment for a term not exceeding 10 years.

Section 34A(2) makes it clear that if the tunnel was not intended for the purpose of escape, the prisoner



may mount a defence based on the fact that such work was not intended to be used in this way. The prosecution does not have to prove that the tunnel or excavation was intended for use in escaping, but it is a defence for the accused to establish that they did not intend to use the tunnel for escape purposes.

Section 34A(3) states that a sentence imposed by a court under this section is to be cumulative on all previous sentences to which the prisoner is liable.

Section 34A(4) defines a tunnel as including any partially completed tunnel and any excavation.

As Honourable Members no doubt can see this legislation is necessary so that an offence exists under which prisoners constructing a tunnel, as a means of escaping lawful custody, may be held



responsible for those actions and given a penalty in accordance with the threat that they pose to the community.

Mr. President,

I commend this legislation to the House.



PRISONS (ESCAPE TUNNELS) AMENDMENT ACT 1991
No. 86

NEW SOUTH WALES



Act No. 86, 1991

An Act to amend the Prisons Act 1952 to create an offence concerned with tunnelling to facilitate escape from lawful custody. [Assented to 17 December 1991]

Prisons (Escape Tunnels) Amendment 1991

The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the Prisons (Escape Tunnels) Amendment Act 1991.

Commencement

2. This Act commences on a day to be appointed by proclamation.

Amendment of Prisons Act 1952 No. 9

3. The Prisons Act 1952 is amended by inserting after section 34 the following section:

Tunnels to facilitate escape

34A. (1) A prisoner in lawful custody who constructs, or takes part in the construction of, a tunnel which could reasonably be thought likely to be intended for use in facilitating the escape from lawful custody of any prisoner is guilty of an offence and liable to penal servitude for a term not exceeding 10 years.

(2) It is not necessary for the prosecution to prove that the tunnel was actually intended for use in facilitating such an escape, but it is a defence for the accused to establish that he or she did not intend it to be so used.

(3) A sentence of penal servitude imposed by a court under this section is to be imposed as a sentence that is cumulative on all previous sentences imposed by the court or to which the prisoner is subject.

(4) In this section:

“**tunnel**” includes any partially completed tunnel and any excavation.

[*Minister's second reading speech made in—
Legislative Assembly on 2 July 1991
Legislative Council on 9 December 1991*]

PRISONS (ESCAPE TUNNELS) AMENDMENT ACT 1991
No. 86

NEW SOUTH WALES



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