

FIRST PRINT

**PRISONS (SYRINGE PROHIBITION) 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 person:

- (a) to introduce (or attempt to introduce) a syringe into a prison without the consent of the prison governor; or
- (b) to supply (or attempt to supply) a syringe to a prisoner in custody, except when authorised to do so by a doctor and, if the prisoner is in a prison, with the written consent of the prison governor.

Such an offence may be committed even though only part of a syringe, such as a needle, is involved. (The unauthorised possession of a syringe by a prisoner who is in lawful custody is already a prison offence under a regulation made under that Act.)

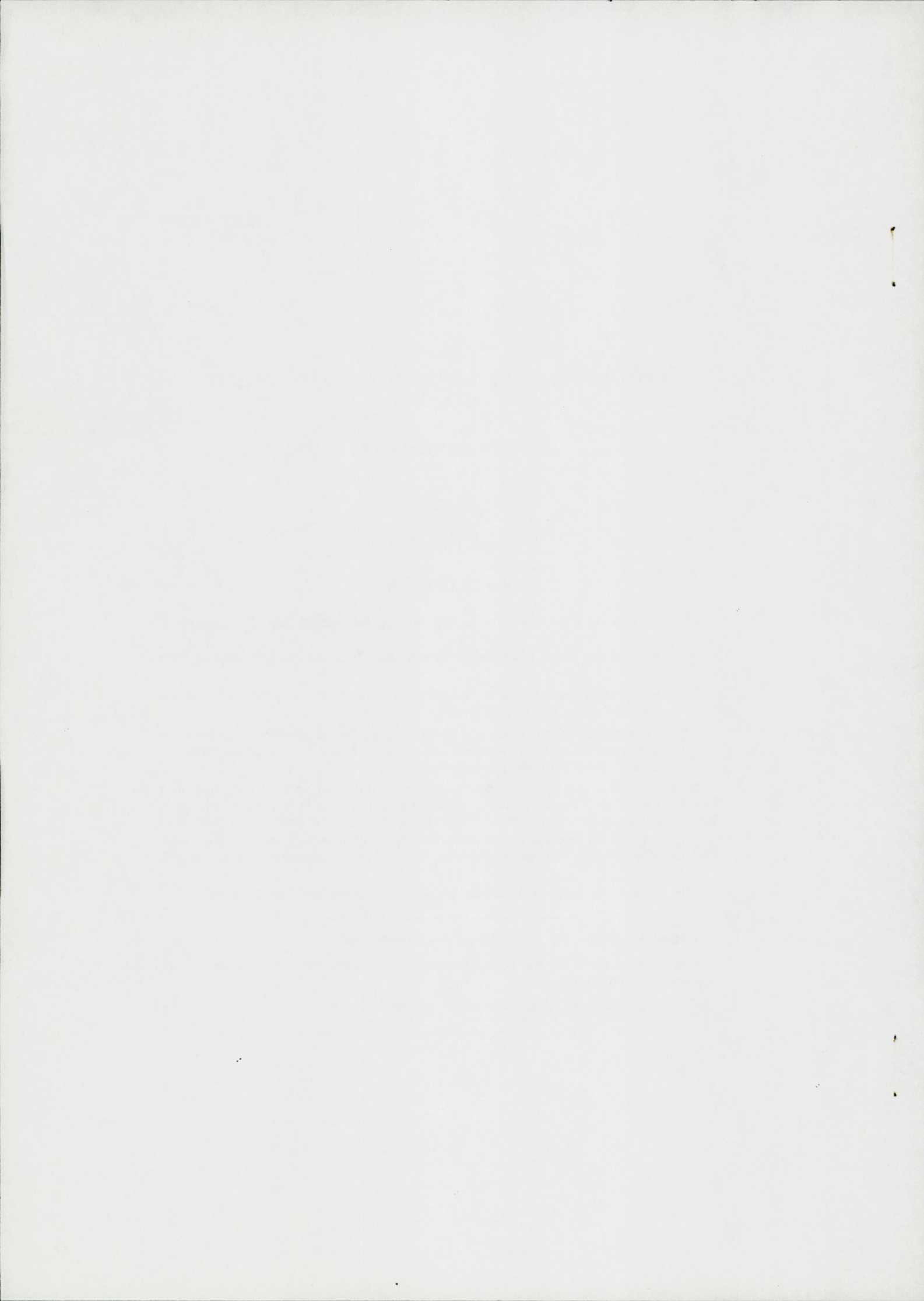
The proposed offence will not prohibit the supply of a syringe to a prisoner who, because of a diabetic condition or for some other medical reason, requires access to a syringe.

The offence will carry a maximum penalty of imprisonment for 2 years.

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.



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TABLE OF PROVISIONS

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

**PRISONS (SYRINGE PROHIBITION) 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 the introduction of syringes into prisons or the supply to prisoners of syringes.

Prisons (Syringe Prohibition) Amendment 1991

The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the Prisons (Syringe Prohibition) 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 37 the following section:

Introduction or supply of syringes

37A. (1) A person:

- (a) who introduces a syringe into a prison or attempts to introduce a syringe into a prison; or
- (b) who supplies a syringe to a prisoner who is in lawful custody or attempts to supply a syringe to a prisoner who is in lawful custody,

is guilty of an offence and liable to imprisonment for a term not exceeding 2 years.

(2) A person is not guilty of an offence of introducing or attempting to introduce a syringe into a prison if the person satisfies the court that the governor of the prison had consented to the person's introducing the syringe into the prison.

(3) A person is not guilty of an offence of supplying or attempting to supply a syringe to a prisoner in lawful custody if the person satisfies the court:

- (a) that the supply was authorised on medical grounds by a registered medical practitioner; and
- (b) if the prisoner is in lawful custody in a prison, that the governor of the prison had consented in writing to the supply.

(4) In respect of an offence under this section, the powers of arrest of a police officer may be exercised:

- (a) by a prison officer; or
- (b) in connection with a prisoner (or any other person) at a prison which is managed under an agreement in accordance with Part 6A—by a person employed by the management company as a custodian of prisoners.

Prisons (Syringe Prohibition) Amendment 1991

(5) While absent from a prison in any of the circumstances referred to in section 29A (Absent prisoners deemed to be in custody), a prisoner is taken to be in lawful custody for the purposes of an offence under this section only if the prisoner is being escorted by a prison officer or a police officer.

(6) In this section, “**syringe**” means a hypodermic syringe and includes anything designed for use or intended to be used as part of such a syringe and a needle designed for use or intended to be used in connection with such a syringe.

PRISONS (SYRINGE PROHIBITION)

AMENDMENT BILL 1991

SECOND READING SPEECH - LEGISLATIVE COUNCIL

MR PRESIDENT,

I MOVE,

THAT THIS BILL BE NOW READ A SECOND TIME.

MR PRESIDENT,

THE PRISONS (SYRINGE PROHIBITION) AMENDMENT BILL IS DESIGNED TO PRODUCE A CLEAR AND UNEQUIVOCAL DETERRENT TO THE UNLAWFUL INTRODUCTION OF SYRINGES INTO THE NEW SOUTH WALES CORRECTIONAL SYSTEM AND THE SUPPLY OF SYRINGES TO PRISONERS.

..12.....THE INTENTION



THE INTENTION OF THE LEGISLATION IS THREEFOLD. FIRSTLY, IT WILL ENHANCE THE SAFETY OF PRISONERS AND STAFF EMPLOYED IN THE NEW SOUTH WALES CORRECTIONAL SYSTEM. SECONDLY, IT IS A MEASURE DESIGNED TO REDUCE THE OPPORTUNITY FOR SYRINGE-RELATED OFFENCES WHICH MAY BE COMMITTED BY PRISONERS. THIRDLY, IT REPRESENTS A STRATEGY TO FURTHER RESTRICT INTRAVENOUS DRUG USE AMONG PRISONERS.

THE LEGISLATION SIGNALS THIS GOVERNMENT'S FIRM INTENTION THAT BOTH THE AVAILABILITY AND USE OF SYRINGES IN CORRECTIONAL CENTRES, AND THE PERPETRATORS WHO WOULD SEEK TO ILLEGALLY INTRODUCE SYRINGES INTO THE NEW SOUTH WALES CORRECTIONAL SYSTEM, WILL NOT BE CONDONED.

..3.....MR SPEAKER,

MR SPEAKER,

DESPITE INITIATIVES TO REDUCE CONTRABAND IN THE NEW SOUTH WALES CORRECTIONAL SYSTEM, SIGNIFICANT NUMBERS OF SYRINGES CONTINUE TO BE SEIZED. ANY MEASURE LIKELY TO FURTHER REDUCE THE VOLUME OF SYRINGES ILLEGALLY INTRODUCED INTO CORRECTIONAL CENTRES WILL HAVE A POSITIVE IMPACT ON THE GOOD ORDER AND MANAGEMENT OF NEW SOUTH WALES CORRECTIONAL CENTRES.

BEFORE DETAILING THE FEATURES OF THE LEGISLATION I WANT TO SAY SOMETHING ABOUT THE RATIONALE BEHIND IT. STEMMING FROM RECOGNITION OF THE POTENTIAL LETHAL USE OF SYRINGES AS WEAPONS, THE GOVERNMENT HAS AN OBLIGATION TO REDUCE THE AVAILABILITY OF SYRINGES IN CORRECTIONAL CENTRES AND ENSURE A DUTY OF CARE IS AFFORDED TO BOTH PRISONERS AND CORRECTIONAL STAFF.

..4..... AS HONOURABLE MEMBERS

AS HONOURABLE MEMBERS WOULD BE AWARE, IT IS A FACT THAT INTRAVENOUS DRUG USERS COMPRISE A SIGNIFICANT PROPORTION OF OFFENDERS SENTENCED TO FULL-TIME IMPRISONMENT. RESEARCH CONDUCTED BY THE DEPARTMENT OF CORRECTIVE SERVICES HAS INDICATED THAT APPROXIMATELY ONE-THIRD OF A RANDOM SAMPLE OF 158 PRISONERS ADMITTED TO HAVING, AT SOME POINT, USED INTRAVENOUS DRUGS IN PRISON. HOWEVER, THEREAFTER, OVER HALF OF THIS SAMPLE OF PRISONERS HAD, REPORTEDLY, CEASED THIS DRUG USE.

MR SPEAKER,

IT IS PATENTLY CLEAR THAT A PERCENTAGE OF PRISONERS MAINTAIN INTRAVENOUS DRUG USE WITHIN THE CORRECTIONAL SYSTEM. ACCORDINGLY, THERE IS A CONCOMITANT DEMAND FOR SYRINGES IN CORRECTIONAL CENTRES. THIS IS DESPITE THE AVAILABILITY OF THE PRISON METHADONE PROGRAMME, THE PROVISION OF DRUG AND ALCOHOL COUNSELLING SERVICES, AND MEASURES ALREADY

../5..... INTRODUCED BY



INTRODUCED BY THIS GOVERNMENT TO RESTRICT THE AVAILABILITY OF DRUGS IN CORRECTIONAL CENTRES.

THE FREQUENCY OF DETECTION AND THE VOLUME OF SYRINGES DISCOVERED IN CORRECTIONAL CENTRES INDICATES THAT SYRINGES CONTINUE TO BE AVAILABLE TO PRISONERS. SENIOR CUSTODIAL STAFF ADVISE THAT OVER 400 SYRINGES WERE SEIZED IN PRISON SEARCHES IN 1990.

IN SEPTEMBER 1990 THE PRISONER PROPERTY POLICY WAS IMPLEMENTED TO REDUCE CONTRABAND IN PRISONS AND TO AID THE SEARCH PROCESS. DESPITE THIS STRATEGY THE AVAILABILITY OF SYRINGES IN CORRECTIONAL CENTRES REMAINS UNACCEPTABLY HIGH. TO ILLUSTRATE THIS POINT, IN THE TWO MONTHS IMMEDIATELY FOLLOWING THE IMPLEMENTATION OF THE PRISONER PROPERTY POLICY, 39 SYRINGES WERE DETECTED STATE-WIDE.

..16..... MR SPEAKER,

MR SPEAKER,

I BELIEVE TO DETER THE INTRODUCTION OF SYRINGES, WHICH HAVE THE POTENTIAL TO BE USED AS LETHAL WEAPONS, INTO THE STATE'S CORRECTIONAL SYSTEM, EVEN STRONGER MEASURES MUST BE PUT IN PLACE.

I HAVE REFERRED TO SYRINGES AS "LIFE-THREATENING" AND "POTENTIALLY LETHAL" WEAPONS. I DO NOT CONSIDER THIS TO BE AN EXAGGERATION. THERE IS INCREASING RECOGNITION, BOTH IN THE COMMUNITY AND WITHIN THE CRIMINAL JUSTICE SYSTEM, OF THE POTENTIAL FOR SYRINGES TO BE USED AS WEAPONS. THE CRIMES (INJURIES AMENDMENT) ACT 1990 RESULTED, IN PART, FROM CONCERN OVER INCIDENTS OF ROBBERY IN NEW SOUTH WALES BY OFFENDERS ARMED WITH SYRINGES PURPORTEDLY FILLED WITH AIDS INFECTED BLOOD.

SADLY, THE UTILISATION OF THE SYRINGE AS A LETHAL

..../7.....WEAPON HAS ALREADY

LETHAL WEAPON HAS ALREADY BEEN REALISED IN THE CORRECTIONAL SYSTEM. A 22 YEAR OLD PRISON OFFICER, MR GEOFFREY PEARCE, WAS ATTACKED WITH A SYRINGE CONTAINING AIDS CONTAMINATED BLOOD ON 22 JULY 1990. MR PEARCE WAS SUBSEQUENTLY FOUND TO BE " HIV " POSITIVE. THE INMATE WHO STABBED MR PEARCE HAS SINCE DIED AS A RESULT OF THE VIRUS.

MR SPEAKER,

ALTHOUGH THE CRIMES (INJURIES AMENDMENT) ACT 1990 MAKES IT AN OFFENCE TO WILFULLY TRANSMIT A DISEASE, NEEDLE-STICK INJURIES MAY OCCUR IN CORRECTIONAL CENTRES WHICH CAN BE CONSTRUED AS ACCIDENTAL AND THUS FALL OUTSIDE OF THE PROVISIONS OF THAT LEGISLATION. IN SEPTEMBER 1990, TWO PRISON OFFICERS RECEIVED SUCH INJURIES IN THE COURSE OF THEIR DUTIES. NEITHER INCIDENT COULD BE REGARDED AS A DELIBERATE ATTACK. BOTH, HOWEVER, RESULTED IN THE NEED FOR

../8..... "HIV" MEDICAL

" HIV " MEDICAL TESTING AND COUNSELLING. THE INCIDENTS CAUSED CONSIDERABLE ANXIETY AND DISTRESS FOR THE OFFICERS INVOLVED, AS WELL AS FOR THEIR FAMILIES AND COLLEAGUES.

MR SPEAKER,

NON-CUSTODIAL AND NON CORRECTIVE SERVICES PERSONNEL, SUCH AS PRISON MEDICAL SERVICE STAFF AND POLICE, HAVE REGULAR DIRECT CONTACT WITH PRISONERS. FORTUNATELY, THEY ARE YET TO BE COUNTED AMONG THE VICTIMS OF SUCH INCIDENTS IN CORRECTIONAL CENTRES, DELIBERATE OR OTHERWISE. HOWEVER, THE POSSIBILITY OF SUCH AN EVENT CANNOT BE DISREGARDED.

IT MUST BE RECOGNISED THAT THE SUPPLY OF SYRINGES TO PRISONERS MAY OCCUR BOTH WITHIN AND OUTSIDE OF THE CUSTODIAL ENVIRONMENT. IT IS POSSIBLE THAT SYRINGES MIGHT BE, AND INDEED IN THE PAST HAVE BEEN, SUPPLIED

..19.....TO PRISONERS

TO PRISONERS WHO ARE ATTENDING COURT OR RECEIVING OUTSIDE MEDICAL ATTENTION. IN THESE SITUATIONS SYRINGES COULD POTENTIALLY BE USED AS WEAPONS TO ASSAULT POLICE OR PRISON OFFICERS OR TO FACILITATE ESCAPE.

MR SPEAKER,

I TURN NOW TO THE FIRST PART OF THE BILL, WHICH MAKES IT AN OFFENCE TO INTRODUCE A SYRINGE INTO A CORRECTIONAL CENTRE, OR SUPPLY ONE TO A PRISONER, OR ATTEMPT TO DO SO, WITHOUT THE WRITTEN CONSENT OF THE SUPERINTENDANT OF THE CORRECTIONAL CENTRE. IT IS IMPORTANT TO NOTE THAT SUCH AN OFFENCE WILL BE COMMITTED EVEN IF ONLY A PART OF THE SYRINGE, FOR EXAMPLE THE NEEDLE, IS INVOLVED. A PERSON FOUND GUILTY OF SUCH AN OFFENCE UNDER THIS PROVISION WILL BE LIABLE TO A MAXIMUM PENALTY OF TWO YEARS IMPRISONMENT.

../10....THE EXISTING

THE EXISTING PROVISIONS OF THE PRISONS ACT 1952, RELATING TO BOTH THE SUPPLY OF SYRINGES TO PRISONERS AND THE UNLAWFUL INTRODUCTION OF SUCH ITEMS INTO THE PRISON ENVIRONMENT, ARE CLEARLY INADEQUATE FOR TWO REASONS. FIRSTLY, THE RELEVANT SECTION, SECTION 38, WAS DRAFTED WITH GENERAL CONTRABAND IN MIND. MONEY, LETTERS, DOCUMENTS AND CLOTHING ARE SPECIFIED. HOWEVER, SYRINGES ARE NOT SPECIFIED AND MUST FALL WITHIN THE REMAINING CATEGORY OF "OTHER ARTICLE OR THING". SECONDLY, A MAXIMUM PENALTY OF SIX MONTHS IMPRISONMENT IS ALL THAT CAN BE IMPOSED UNDER THIS SECTION OF THE ACT.

MR SPEAKER,

THAT LEAVES A SITUATION IN WHICH THE INTRODUCTION OF A LETTER INTO A CORRECTIONAL CENTRE ATTRACTS THE SAME MAXIMUM PENALTY UNDER THE LAW AS THE INTRODUCTION OF A POTENTIALLY LETHAL WEAPON, A SYRINGE.

../11.....MOREOVER

MOREOVER, THE EXISTING MAXIMUM PENALTY OF SIX MONTHS FAILS TO SIGNIFY TO THE JUDICIARY, THE COMMUNITY AND, INDEED, PERSONS TEMPTED TO COMMIT THIS TYPE OF OFFENCE, THE GRAVITY OF SUCH ACTIONS.

THIS IS A HIGHLY UNSATISFACTORY SITUATION AND ONE WHICH THIS BILL ENDEAVOURS TO ADDRESS BY THE CREATION OF A SPECIFIC OFFENCE WITH AN APPROPRIATE PENALTY.

MR SPEAKER,

THE SECOND AND THIRD PARTS OF THE AMENDMENT BEFORE THE HOUSE PROVIDE THAT SYRINGES MAY BE INTRODUCED INTO A CORRECTIONAL CENTRE OR SUPPLIED TO A PRISONER IN CERTAIN CIRCUMSTANCES WITH THE CONSENT OF THE SUPERINTENDANT OF THE CORRECTIONAL CENTRE. SUPPLY OF A SYRINGE TO A PRISONER MAY ALSO BE AUTHORISED ON MEDICAL GROUNDS BY A REGISTERED MEDICAL

../12.....PRACTITIONER

PRACTITIONER. THIS ALLOWS THAT PRISONERS, FOR EXAMPLE THOSE REQUIRING A SYRINGE FOR MEDICAL REASONS SUCH AS A DIABETIC CONDITION, WILL NOT BE DISADVANTAGED.

THE FOURTH PART OF THE AMENDMENT RELATES TO THE POWERS OF ARREST EXTENDED TO PRISON OFFICERS TO SUCCESSFULLY EXECUTE THEIR DUTIES UNDER THE PROPOSAL. IN THE CASE OF CORRECTIONAL CENTRES MANAGED UNDER CONTRACT, THIS POWER WILL ALSO BE EXTENDED TO PERSONS EMPLOYED BY THE MANAGEMENT COMPANY AS CUSTODIANS OF CORRECTIONAL CENTRES.

IT IS NOTEWORTHY THAT THESE POWERS WILL NOT EXTEND PAST THOSE ALREADY EXISTING IN THE PARENT LEGISLATION, THE PRISONS ACT 1952. PRISON OFFICERS WILL ONLY BE EMPOWERED TO EXERCISE THEIR POWERS OF ARREST DURING, OR IMMEDIATELY FOLLOWING, THE COMMISSION OF AN OFFENCE UNDER THIS LEGISLATION.

../13..... THE AUTHORITY

THE AUTHORITY TO INVESTIGATE PREVIOUSLY COMMITTED OFFENCES, AND THE POWER TO STRIP-SEARCH CIVILIANS SUSPECTED OF ATTEMPTING TO INTRODUCE A SYRINGE INTO A CORRECTIONAL CENTRE OR SUPPLY A SYRINGE TO A PRISONER WILL REMAIN, AS IT SHOULD, WITH THE POLICE.

THE FINAL FEATURE OF THE LEGISLATION PROVIDES A PREREQUISITE THAT A PRISONER MUST BE IN "LAWFUL CUSTODY" FOR THE OFFENCE AND ATTENDANT PENALTY TO APPLY. LET ME EXPLAIN WHY THIS IS THE CASE.

PRISONERS MAY BE ABSENT FROM A CORRECTIONAL CENTRE FOR A NUMBER OF REASONS, INCLUDING ATTENDANCE AT A FUNERAL, HOSPITAL, WORKS RELEASE AND DAY LEAVE, IN ACCORDANCE WITH THE PRISONS ACT 1952. PART FIVE OF THE BILL STATES THAT WHILE ABSENT FROM THE PRISON IN SUCH CIRCUMSTANCES, A PRISONER WILL BE DEEMED TO BE IN LAWFUL CUSTODY ONLY IF ESCORTED BY A PRISON OFFICER OR POLICE OFFICER. ACCORDINGLY, MEMBERS OF THE COMMUNITY, FOR EXAMPLE DOCTORS, WHO MAY

../14.....UNKNOWINGLY SUPPLY

IN MY ADMINISTRATION.

NO POLICY OR PROGRAM WILL BE IMPLEMENTED IN THE DEPARTMENT OF CORRECTIVE SERVICES, NOR LEGISLATIVE PROPOSAL INTRODUCED TO THIS HOUSE, WHICH WILL COMPROMISE OFFICER SAFETY IN ANY WAY.

WHILST THIS BILL SIGNALS THE STRENGTH OF MY ONGOING CONCERN FOR OFFICER SAFETY IN CORRECTIONS, IT ALSO REFLECTS MY FURTHER COMMITMENT TO PROVIDING A SAFE ENVIRONMENT FOR THOSE OFFENDERS INCARCERATED IN NEW SOUTH WALES CORRECTIONAL CENTRES.

I COMMEND THE BILL.



UNKNOWINGLY SUPPLY A SYRINGE TO A PRISONER IN THE COMMUNITY, UNAWARE OF THAT PERSON'S STATUS AS A PRISONER, WILL BE PROTECTED FROM LIABILITY.

IT IS IMPORTANT TO NOTE, HOWEVER, THAT A PRISONER OBTAINING A SYRINGE WHILE OUTSIDE THE CORRECTIONAL CENTRE WHO THEREAFTER ATTEMPTS TO INTRODUCE IT INTO THE CORRECTIONAL CENTRE WILL BE GUILTY OF AN OFFENCE UNDER THIS LEGISLATION.

MR SPEAKER,

I BELIEVE I HAVE MADE IT QUITE CLEAR TODAY THAT ONE OF THE MAIN CONCERNS UNDERPINNING THIS LEGISLATION IS THE ENHANCEMENT OF THE SAFETY OF CORRECTIONAL OFFICERS.

I WISH TO CONCLUDE BY STRESSING MY INTENTION THAT OFFICER SAFETY WILL REMAIN OF PRIMARY CONSIDERATION

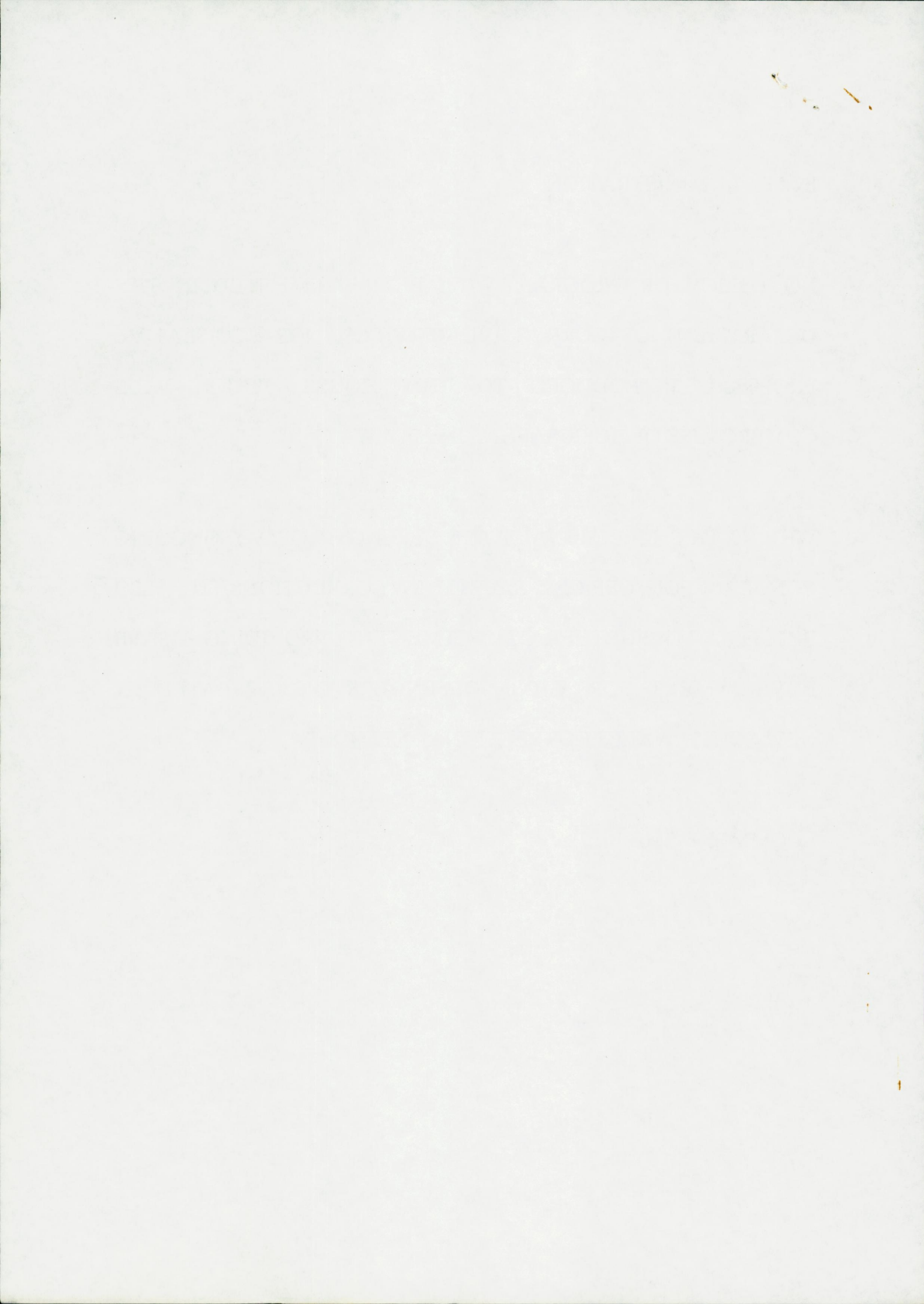
.. /15.....IN MY ADMINISTRATION

IN MY ADMINISTRATION.

NO POLICY OR PROGRAM WILL BE IMPLEMENTED IN THE DEPARTMENT OF CORRECTIVE SERVICES, NOR LEGISLATIVE PROPOSAL INTRODUCED TO THIS HOUSE, WHICH WILL COMPROMISE OFFICER SAFETY IN ANY WAY.

WHILST THIS BILL SIGNALS THE STRENGTH OF MY ONGOING CONCERN FOR OFFICER SAFETY IN CORRECTIONS, IT ALSO REFLECTS MY FURTHER COMMITMENT TO PROVIDING A SAFE ENVIRONMENT FOR THOSE OFFENDERS INCARCERATED IN NEW SOUTH WALES CORRECTIONAL CENTRES.

I COMMEND THE BILL.



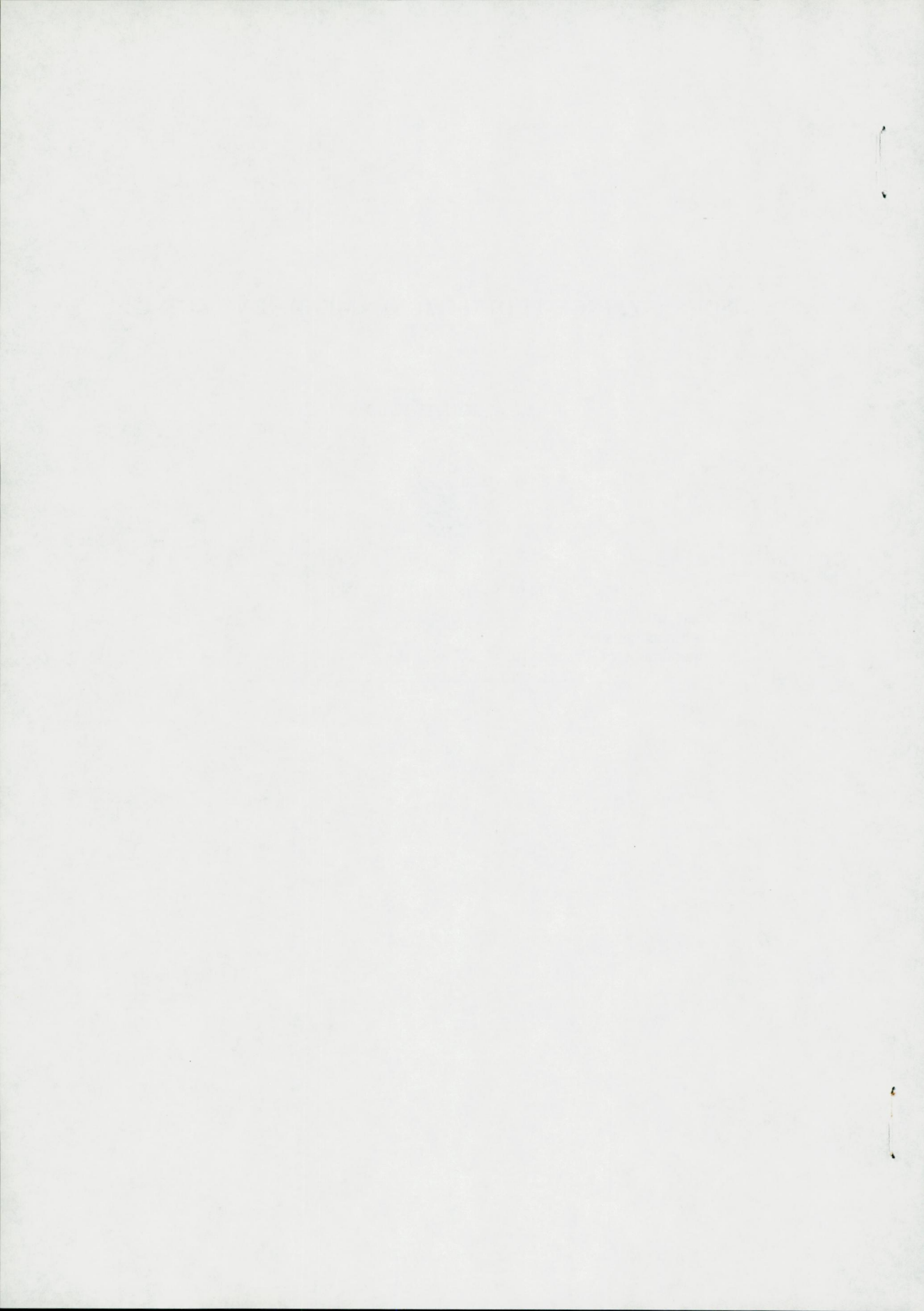
PRISONS (SYRINGE PROHIBITION) AMENDMENT ACT 1991
No. 87

NEW SOUTH WALES



TABLE OF PROVISIONS

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



PRISONS (SYRINGE PROHIBITION) AMENDMENT ACT 1991
No. 87

NEW SOUTH WALES



Act No. 87, 1991

An Act to amend the Prisons Act 1952 to create an offence concerned with the introduction of syringes into prisons or the supply to prisoners of syringes. [Assented to 17 December 1991]

Prisons (Syringe Prohibition) Amendment 1991

The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the Prisons (Syringe Prohibition) 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 37 the following section:

Introduction or supply of syringes

37A. (1) A person:

- (a) who introduces a syringe into a prison or attempts to introduce a syringe into a prison; or
- (b) who supplies a syringe to a prisoner who is in lawful custody or attempts to supply a syringe to a prisoner who is in lawful custody,

is guilty of an offence and liable to imprisonment for a term not exceeding 2 years.

(2) A person is not guilty of an offence of introducing or attempting to introduce a syringe into a prison if the person satisfies the court that the governor of the prison had consented to the person's introducing the syringe into the prison.

(3) A person is not guilty of an offence of supplying or attempting to supply a syringe to a prisoner in lawful custody if the person satisfies the court:

- (a) that the supply was authorised on medical grounds by a registered medical practitioner; and
- (b) if the prisoner is in lawful custody in a prison, that the governor of the prison had consented in writing to the supply.

(4) In respect of an offence under this section, the powers of arrest of a police officer may be exercised:

- (a) by a prison officer; or
- (b) in connection with a prisoner (or any other person) at a prison which is managed under an agreement in accordance with Part 6A—by a person employed by the management company as a custodian of prisoners.

Prisons (Syringe Prohibition) Amendment 1991

(5) While absent from a prison in any of the circumstances referred to in section 29A (Absent prisoners deemed to be in custody), a prisoner is taken to be in lawful custody for the purposes of an offence under this section only if the prisoner is being escorted by a prison officer or a police officer.

(6) In this section, “**syringe**” means a hypodermic syringe and includes anything designed for use or intended to be used as part of such a syringe and a needle designed for use or intended to be used in connection with such a syringe.

[*Minister's second reading speech made in—
Legislative Assembly on 18 September 1991
Legislative Council on 9 December 1991*]

