

CHILD WELFARE (BAIL) AMENDMENT BILL, 1978

EXPLANATORY NOTE

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

This Bill is cognate with the Bail Bill, 1978.

The object of this Bill is to make amendments to the Child Welfare Act, 1939 ("the Principal Act"), so as to bring it into conformity with the proposed Bail Act, 1978 ("the Bail Act").

The Bill removes from the Principal Act authority to grant bail in the course of criminal proceedings to accused persons being dealt with under the Principal Act, leaving bail to be dealt with by the Bail Act. The procedures set out in the Principal Act are subject to the provisions of the Bail Act, and a section 128A is to be inserted to this effect (Schedule 1 (7)).

The Bill contains other provisions of a minor, consequential or ancillary nature.



**CHILD WELFARE (BAIL) AMENDMENT BILL,
1978**

No. , 1978.

A BILL FOR

An Act to amend the Child Welfare Act, 1939, consequent upon
the enactment of the Bail Act, 1978.

[MR F. J. WALKER—13 December, 1978.]

Child Welfare (Bail) Amendment.

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 **1.** This Act may be cited as the "Child Welfare (Bail) Amendment Act, 1978". Short title.
- 2.** (1) This section and section 1 shall commence on the date of assent to this Act. Commencement.
- (2) Except as provided in subsection (1), this Act shall
10 commence on the day appointed and notified under section 2 (2) of the Bail Act, 1978.
- 3.** The Child Welfare Act, 1939, is referred to in this Act as the Principal Act. Principal Act.
- 4.** This Act contains the following Schedules :— Schedules.
- 15 **SCHEDULE 1.—AMENDMENTS TO THE PRINCIPAL ACT.**
- SCHEDULE 2.—SAVINGS AND TRANSITIONAL PROVISIONS.**
- 5.** The Principal Act is amended in the manner set forth in Schedule 1. Amendment of Act No. 17, 1939.
- 6.** Schedule 2 has effect. Savings and transitional provisions.
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Child Welfare (Bail) Amendment.

SCHEDULE 1.

Sec. 5.

AMENDMENTS TO THE PRINCIPAL ACT.

(1) (a) Section 4 (1), definition of "Accused person"—

Before the definition of "Admitted to State control",
insert :—

5

"Accused person" means an accused person, as
referred to in the Bail Act, 1978.

(b) Section 4 (4)—

After section 4 (3), insert :—

10

(4) Where the expression "accused person" is used
in a provision of this Act, it refers to a person in his
capacity as an accused person in relation only to the
offence to or with which that provision relates or is
connected.

15 (2) Section 14 (2)—

Omit "admit to", insert instead "grant".

(3) (a) Section 18 (3)—

After "appellant" where firstly occurring, insert ", not
being an accused person,".

20

(b) Section 18 (3A)—

After "person" where firstly occurring, insert ", not
being an accused person,".

(c) Section 18 (3A)—

25

Omit "admitted to bail", insert instead "discharged
on recognizance".

Child Welfare (Bail) Amendment.

SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(d) Section 18 (3B), (3C)—

After section 18 (3A), insert :—

5 (3B) An appellant who is a child or young person, being an accused person, may, subject to the Bail Act, 1978, be committed by the court from which the appeal is made to a shelter pending the hearing of the appeal.

10 (3C) During the period of any adjournment of the hearing of the appeal the child or young person, being an accused person, may, subject to the Bail Act, 1978, be detained at any shelter.

(4) (a) Section 81 (7)—

15 After “person” where firstly occurring, insert “, not being an accused person,”.

(b) Section 81 (7)—

Omit “admitted to bail”, insert instead “discharged on recognizance”.

20 (c) Section 81 (7A)—

After section 81 (7), insert :—

25 (7A) During the period of any adjournment of the hearing of the matter or charge, the child or young person, being an accused person, may, subject to the Bail Act, 1978, be detained in any shelter.

(d) Section 81 (8)—

After “may” wherever occurring, insert “, subject to the Bail Act, 1978,”.

Child Welfare (Bail) Amendment.

SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(5) Section 86 (3)—

Omit “admitted to”, insert instead “released on”.

5 (6) (a) Section 87 (2) (c)—

After “may”, insert “, subject to the Bail Act, 1978,”.

(b) Section 87 (2) (c)—

Omit “or for his release on bail”.

(7) Section 128A—

10 After section 128, insert :—

128A. Except where expressly provided, the Bail Act, 1978, shall prevail to the extent of any inconsistency between that Act and this Act. Bail Act, 1978, to prevail.

(8) Section 137 (2)—

15 Omit the subsection.

SCHEDULE 2.

Sec. 6.

SAVINGS AND TRANSITIONAL PROVISIONS.

1. In this Schedule—

“authorised” means duly authorised by a court or person;

20 “bail” means bail that was authorised or granted before the commencement of this Schedule, so far as it could not have been so authorised or granted if this Act had then been in force;

Child Welfare (Bail) Amendment.

SCHEDULE 2—*continued.*

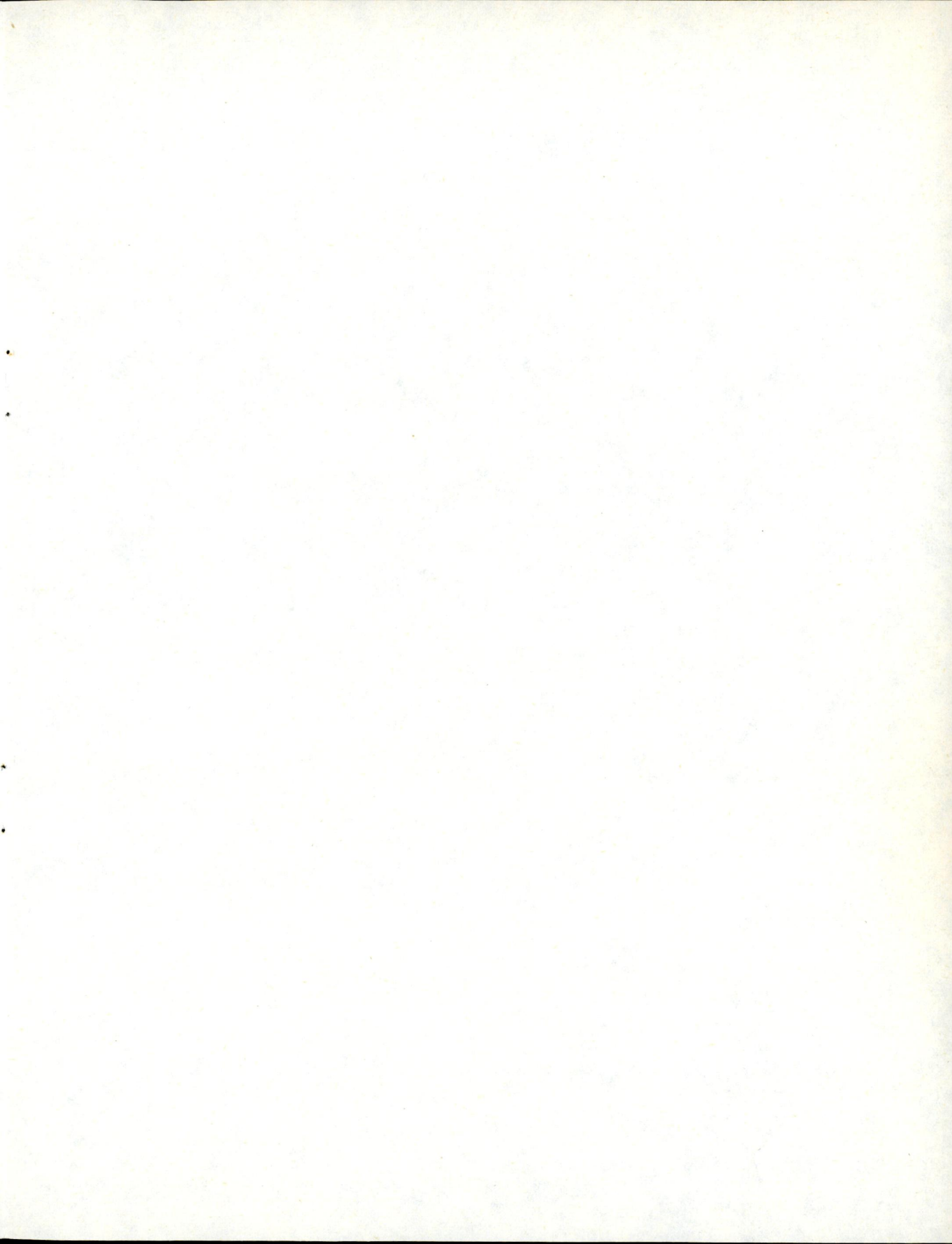
SAVINGS AND TRANSITIONAL PROVISIONS—*continued.*

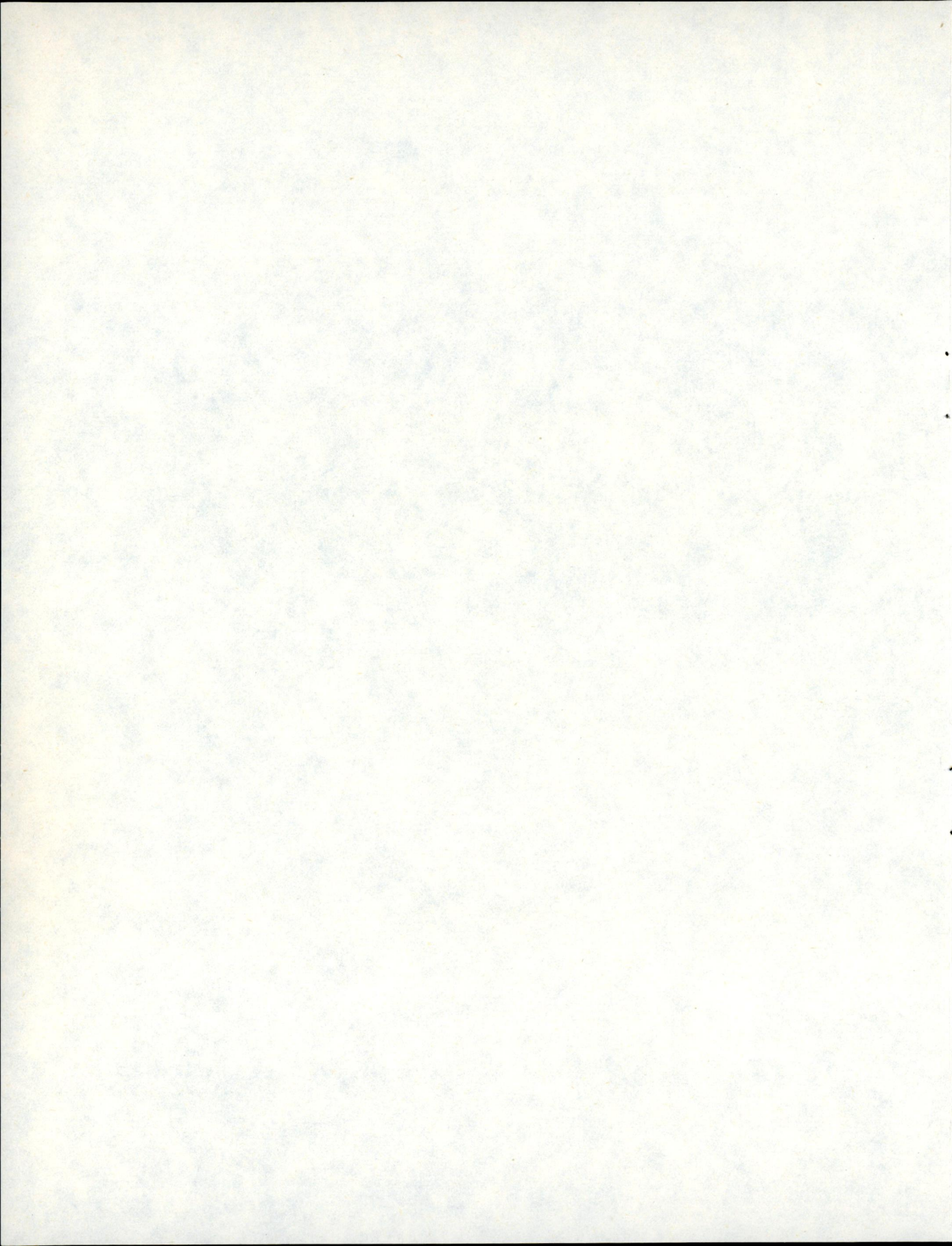
- 5 “recognizance of bail” means a recognizance that was authorised or entered into before the commencement of this Schedule, so far as it could not have been so authorised or entered into if this Act had then been in force.
- 10 2. This Act does not affect bail authorised or granted, or a recognizance of bail authorised or entered into, under the Principal Act before the commencement of this Schedule, and for the purposes of or for purposes connected with any such bail or recognizance of bail this Act and the Bail Act, 1978, shall be deemed not to have been enacted.
- 15 3. Nothing in clause 2 prevents the making of a decision under the Principal Act, as amended by this Act, or the Bail Act, 1978, or the exercise or performance of a power, authority, duty or function thereunder, in respect of an offence or other matter (or any proceedings in connection therewith) to or with which the bail or recognizance of bail referred to in that clause relates or is connected.
- 20 4. The regulations under the Principal Act may make other provisions of a savings or transitional nature consequent upon the enactment of this Act, and those provisions may, but need not, operate by reference to any provision of the Bail Act, 1978, and shall have effect notwithstanding anything in clause 2 or 3.

BY AUTHORITY

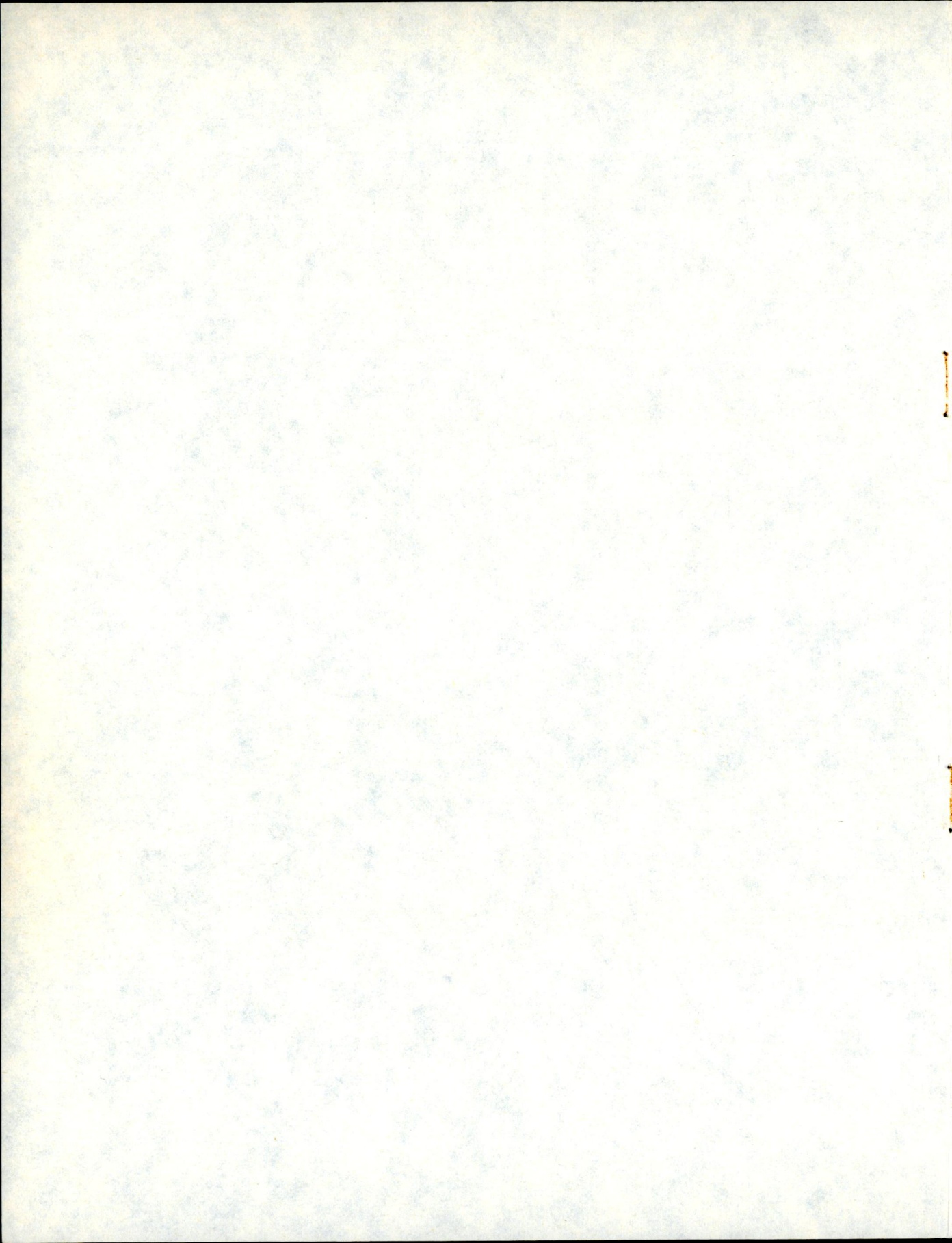
D. WEST, GOVERNMENT PRINTER, NEW SOUTH WALES—1978

[16c]









**CHILD WELFARE (BAIL) AMENDMENT ACT,
1978, No. 163**

New South Wales



ANNO VICESIMO SEPTIMO

ELIZABETHÆ II REGINÆ

Act No. 163, 1978.

An Act to amend the Child Welfare Act, 1939, consequent upon
the enactment of the Bail Act, 1978. [Assented to, 29th
December, 1978.]

Child Welfare (Bail) Amendment.

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 "Child Welfare (Bail) Amendment Act, 1978".

Commence-
ment. **2.** (1) This section and section 1 shall commence on the date of assent to this Act.

(2) Except as provided in subsection (1), this Act shall commence on the day appointed and notified under section 2 (2) of the Bail Act, 1978.

Principal Act. **3.** The Child Welfare Act, 1939, is referred to in this Act as the Principal Act.

Schedules. **4.** This Act contains the following Schedules :—

SCHEDULE 1.—AMENDMENTS TO THE PRINCIPAL ACT.

SCHEDULE 2.—SAVINGS AND TRANSITIONAL PROVISIONS.

Amendment
of Act No.
17, 1939. **5.** The Principal Act is amended in the manner set forth in Schedule 1.

Savings
and
transitional
provisions. **6.** Schedule 2 has effect.

Child Welfare (Bail) Amendment.

SCHEDULE 1.

Sec. 5.

AMENDMENTS TO THE PRINCIPAL ACT.

- (1) (a) Section 4 (1), definition of "Accused person"—

Before the definition of "Admitted to State control",
insert :—

"Accused person" means an accused person, as
referred to in the Bail Act, 1978.

- (b) Section 4 (4)—

After section 4 (3), insert :—

(4) Where the expression "accused person" is used
in a provision of this Act, it refers to a person in his
capacity as an accused person in relation only to the
offence to or with which that provision relates or is
connected.

- (2) Section 14 (2)—

Omit "admit to", insert instead "grant".

- (3) (a) Section 18 (3)—

After "appellant" where firstly occurring, insert " , not
being an accused person,".

- (b) Section 18 (3A)—

After "person" where firstly occurring, insert " , not
being an accused person,".

- (c) Section 18 (3A)—

Omit "admitted to bail", insert instead "discharged
on recognizance".

Child Welfare (Bail) Amendment.

SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(d) Section 18 (3B), (3C)—

After section 18 (3A), insert :—

(3B) An appellant who is a child or young person, being an accused person, may, subject to the Bail Act, 1978, be committed by the court from which the appeal is made to a shelter pending the hearing of the appeal.

(3C) During the period of any adjournment of the hearing of the appeal the child or young person, being an accused person, may, subject to the Bail Act, 1978, be detained at any shelter.

(4) (a) Section 81 (7)—

After “person” where firstly occurring, insert “, not being an accused person,”.

(b) Section 81 (7)—

Omit “admitted to bail”, insert instead “discharged on recognizance”.

(c) Section 81 (7A)—

After section 81 (7), insert :—

(7A) During the period of any adjournment of the hearing of the matter or charge, the child or young person, being an accused person, may, subject to the Bail Act, 1978, be detained in any shelter.

(d) Section 81 (8)—

After “may” wherever occurring, insert “, subject to the Bail Act, 1978,”.

Child Welfare (Bail) Amendment.

SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(5) Section 86 (3)—

Omit “admitted to”, insert instead “released on”.

(6) (a) Section 87 (2) (c)—

After “may”, insert “, subject to the Bail Act, 1978,”.

(b) Section 87 (2) (c)—

Omit “or for his release on bail”.

(7) Section 128A—

After section 128, insert :—

128A. Except where expressly provided, the Bail Act, 1978, shall prevail to the extent of any inconsistency between that Act and this Act. Bail Act, 1978, to prevail.

(8) Section 137 (2)—

Omit the subsection.

SCHEDULE 2.

Sec. 6.

SAVINGS AND TRANSITIONAL PROVISIONS.

1. In this Schedule—

“authorised” means duly authorised by a court or person;

“bail” means bail that was authorised or granted before the commencement of this Schedule, so far as it could not have been so authorised or granted if this Act had then been in force;

*Child Welfare (Bail) Amendment.*SCHEDULE 2—*continued.*SAVINGS AND TRANSITIONAL PROVISIONS—*continued.*

“recognizance of bail” means a recognizance that was authorised or entered into before the commencement of this Schedule, so far as it could not have been so authorised or entered into if this Act had then been in force.

2. This Act does not affect bail authorised or granted, or a recognizance of bail authorised or entered into, under the Principal Act before the commencement of this Schedule, and for the purposes of or for purposes connected with any such bail or recognizance of bail this Act and the Bail Act, 1978, shall be deemed not to have been enacted.

3. Nothing in clause 2 prevents the making of a decision under the Principal Act, as amended by this Act, or the Bail Act, 1978, or the exercise or performance of a power, authority, duty or function thereunder, in respect of an offence or other matter (or any proceedings in connection therewith) to or with which the bail or recognizance of bail referred to in that clause relates or is connected.

4. The regulations under the Principal Act may make other provisions of a savings or transitional nature consequent upon the enactment of this Act, and those provisions may, but need not, operate by reference to any provision of the Bail Act, 1978, and shall have effect notwithstanding anything in clause 2 or 3.

In the name and on behalf of Her Majesty I assent to this Act.

A. R. CUTLER,
Governor.

*Government House,
Sydney, 29th December, 1978.*



