JUSTICES (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 Justices Act, 1902 ("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 153B is to be inserted to this effect (Schedule 1 (33)).

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

JUSTICES (BAIL) AMENDMENT BILL, 1978

No. , 1978.

A BILL FOR

An Act to amend the Justices Act, 1902, consequent upon the enactment of the Bail Act, 1978.

[MR F. J. WALKER—13 *December*, 1978.]

57289F 138—

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 "Justices (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 Justices Act, 1902, 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. 27, 1902.

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

SCHEDULE 1.

Sec. 5.

AMENDMENTS TO THE PRINCIPAL ACT.

(1) (a) Section 3 (1), definition of "Accused person"—

Before the definition of "Justice", insert :—

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

(b) Section 3 (3)—

After section 3 (2), insert :—

(3) Where the expression "accused person" is used
10 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) (a) Section 13 (1)—

15 Omit "or admit to bail".

(b) Section 13 (1)—

At the end of the subsection, insert :—

Provided further that nothing in this Part shall abridge or prejudice the powers of any Justice relating
20 to bail.

(3) Section 25 (2) (b)—

Omit "or admit him to bail in manner hereinafter mentioned".

(4) (a) Section 31 (2)—

25 After "shall" where firstly occurring, insert ", subject to the Bail Act, 1978,".

SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(b) Section 31 (2) (b)—

Before "discharge", insert "except in the case of an accused person—".

(5) Section 33 (2)—

After "days", insert ", but this proviso does not apply where the defendant is refused bail (as referred to in section 25 of the Bail Act, 1978)".

(6) (a) Section 34 (1)—

After "may" where firstly occurring, insert ", subject to the Bail Act, 1978".

(b) Section 34 (1) (b)—

Omit "or" where lastly occurring.

(c) Section 34 (1) (c)—

Omit the paragraph.

(d) Section 34 (1)—

Omit the second proviso.

(7) (a) Section 35 (1)—

After "may" where firstly occurring, insert ", subject to the Bail Act, 1978,".

(b) Section 35 (1)—

Omit ", or may discharge him upon his entering into a recognizance".

SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(8) Section 39 (1)—

Omit "if the defendant is admitted to bail the recognizances of the defendant and of his surety or sureties", insert instead "if the defendant is released on bail, his bail undertaking, the instrument by which any bail conditions were imposed on the grant of bail and any agreement or acknowledgment entered into or made pursuant to any such condition".

(9) (a) Section 41 (1A)—

After "days", insert ", but this proviso does not apply where the defendant is refused bail (as referred to in section 25 of the Bail Act, 1978)".

(b) Section 41 (1B) (b)—

Omit "to be excused", insert instead "the Justice or Justices may excuse the defendant".

(c) Section 41 (1B) (b)—

Omit "the Justice or Justices, if", insert instead ", if the Justice or Justices is or are".

(d) Section 41 (1B) (b)—

Omit ", may discharge the defendant upon his entering into a recognizance".

(e) Section 41 (1B) (c)—

Omit the paragraph, insert instead :—

(c) Any period during which a defendant is excused, pursuant to paragraph (b), from attendance during the taking of any evidence shall, in relation to the defendant so excused, be deemed to be an adjournment for the purposes of section 34.

SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(10) (a) Section 42 (1)—

Omit the subsection, insert instead :—

5 (1) Where a person is committed for trial, the committing Justice or Justices shall, subject to the Bail Act, 1978, commit him to prison, there, subject to that Act, to be safely kept until the sittings of the Court before which he is to be tried or until he is 10 delivered by due course of law.

(b) Section 42 (2)—

Omit "paragraph (a) of".

(11) Heading before section 44—

Omit "BAIL AND".

15 (12) Sections 44, 45, 46—

Omit the sections.

(13) Section 47—

Omit the section, insert instead :—

47. Where a person in prison on committal for trial is 20 released on bail, the person to whom the bail undertaking is given shall forthwith transmit the bail undertaking, the instrument by which any bail conditions were imposed on the grant of bail and any agreement or acknowledgment entered into or made pursuant to any such condition to the 25 committing Justice or Justices, who shall transmit them with the depositions to the Attorney-General.

Transmission of bail undertaking, etc., of person in prison.

SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(14) Section 48—

Omit the section.

5 (15) (a) Section 49 (2A)—

Omit the subsection.

(b) Section 49 (5)—

Omit "admitted to bail, the amount of bail that ought to be required", insert instead "discharged, the amount
10 of recognizance".

(c) Section 49 (6)—

Omit the subsection.

(16) (a) Section 49A (1)—

Omit " or any special condition of the recognizance, or
15 has reasonable grounds for believing that the defendant is breaking or has broken any such special condition".

(b) Section 49A (2)—

Omit "or special condition".

(c) Section 49A (2) (a)—

20 After "recognizance;", insert "or".

(d) Section 49A (2) (b)—

Omit the paragraph.

(e) Section 49A (4)—

Omit the subsection.

SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(17) (a) Section 50 (1A)—

After section 50 (1), insert :—

5 (1A) Where—

(a) a bail condition referred to in section 36 (2) (c)–(h) of the Bail Act, 1978, is imposed on the grant of bail to an accused person; and

10 (b) the accused person does not appear in accordance with his bail undertaking at the time and place notified to him,

the Justice or Justices then and there present shall transmit the bail undertaking, the instrument by which 15 any such bail condition was imposed and any agreement entered into pursuant to any such condition to the Clerk of the Peace to be proceeded upon according to law.

(b) Section 50 (2)—

20 After "recognizance", insert "or bail undertaking".

(c) Section 50 (2)—

Omit "bound thereby", insert instead "required to appear".

(18) Section 51A (2)—

25 Omit ", and bail may be similarly granted".

(19) (a) Section 66 (2)—

After "shall" where firstly occurring, insert ", subject to the Bail Act, 1978,".

SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(b) Section 66 (2) (b)—

Before "discharge", insert "except in the case of an accused person—".

(20) (a) Section 69 (1)—

Omit the subsection, insert instead :—

(1) Where the hearing is adjourned under section 65 or 68—

(a) in the case of an accused person—the Justice or Justices may, subject to the Bail Act, 1978, commit the defendant to a prison or lock-up or to some other safe custody; or

(b) except in the case of an accused person—the Justice or Justices may—

(i) commit the defendant to a prison or lock-up or to some other safe custody;

(ii) discharge the defendant upon his entering into a recognizance; or

(iii) suffer the defendant to go at large,

but where the defendant remains in custody any Justice may order the defendant to be brought before him or any other Justice or Justices at any time before the expiration of the period for which the hearing was adjourned and the gaoler or officer in whose custody the defendant then is shall duly obey the order.

(b) Section 69 (2)—

Omit "paragraph (a) of".

SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(21) (a) Section 96 (2A)—

Omit the subsection.

5 (b) Section 96 (5)—

Omit "admitted to bail, the amount of the bail that ought to be required", insert instead "discharged, the amount of recognizance".

(22) (a) Section 96A (1)—

10 Omit "or any special condition of the recognizance, or has reasonable grounds for believing that the person is breaking or has broken any such special condition".

(b) Section 96A (2)—

Omit "or special condition".

15 (23) (a) Section 97 (1A)—

After section 97 (1), insert :—

(1A) Where—

(a) a bail condition referred to in section 36 (2) (c)–(h) of the Bail Act, 1978, is
20 imposed on the grant of bail to an accused person; and

(b) the accused person does not appear in accordance with his bail undertaking at the time and place notified to him,

SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

the Justice or Justices then and there present shall transmit the bail undertaking, the instrument by which any such bail condition was imposed and any agreement entered into pursuant to any such condition to the Clerk of the Peace to be proceeded upon according to law.

(b) Section 97 (2)—

After "recognizance", insert "or bail undertaking".

(c) Section 97 (2)—

Omit "bound thereby", insert instead "required to appear".

(24) (a) Section 102 (3)—

After "appellant", insert ", not being an accused person,".

(b) Section 102 (4)—

After section 102 (3), insert :—

(4) If the appellant, being an accused person, is granted bail in accordance with the Bail Act, 1978, he shall not be released on bail unless, in his bail undertaking, he undertakes to appear before the same or such other Justice or Justices as may then be sitting within 10 days after judgment has been given by the Supreme Court to abide such judgment, unless the determination appealed against is reversed.

SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(25) Section 110 (4), (5)—

At the end of section 110, insert :—

5 (4) Where—

(a) a bail condition referred to in section 36 (2) (c)—(h) of the Bail Act, 1978, is imposed on the grant of bail to an accused person; and

(b) the accused person does not appear in
10 accordance with his undertaking, as referred to in section 102 (4),

any Justice or Justices may transmit the accused person's bail undertaking, the instrument by which any such bail condition was imposed and any agreement entered into
15 pursuant to any such condition to the Clerk of the Peace to be proceeded upon according to law.

(5) The Justice or Justices so transmitting any such undertaking shall certify on the back of it in what respects the undertaking has not been complied with, and
20 the certificate shall be deemed prima facie evidence of the non-appearance of the accused person.

(26) Section 122 (5)—

After "shall" where secondly occurring, insert "(except in the case of an accused person)".

25 (27) (a) Section 123—

After "If", insert ", in the case of an appellant who is not an accused person".

SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(b) Section 123 (2), (3), (4)—

At the end of section 123, insert :—

(2) If, in the case of an appellant who is an accused person and who is not in custody—

(a) notice of appeal has been duly given within the time specified in section 122 (1); and

(b) the appellant—

(i) after the determination mentioned in section 122 (5) but before the District Court has commenced to hear the appeal, enters before a Justice into a recognizance of the kind referred to in subsection (1) (b) (ii); or

(ii) where money only has been adjudged to be paid—makes a deposit of the kind referred to in subsection (1) (b) (iii),

then the execution of the conviction or order shall be stayed.

(3) If, in the case of an appellant who is an accused person and who is in custody—

(a) notice of appeal has been duly given within the time specified in section 122 (1); and

(b) the appellant is granted bail in accordance with the Bail Act, 1978,

the appellant shall not be released on bail unless, in his bail undertaking, he undertakes to appear at the District Court and prosecute the appeal, and abide the judgment of the District Court thereon and pay such costs as may be awarded by the District Court.

SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(4) Where the appellant referred to in subsection (3) is, having given the undertaking so referred to, released from custody, the execution of the conviction or order shall be stayed.

(28) (a) Section 125A (1)—

Omit "(b) (ii)".

(b) Section 125A (2)—

Omit "The", insert instead "In the case of an appellant who is not an accused person, the".

(c) Section 125A (2A), (2B)—

After section 125A (2), insert :—

(2A) In the case of an appellant who is an accused person, the Court by which an appeal under this Division is adjourned may, subject to the Bail Act, 1978, commit the appellant to a place of safe custody there, subject to that Act, to be kept until the hearing of the appeal.

(2B) If the appellant referred to in subsection (2A) is granted bail in accordance with the Bail Act, 1978, he shall not be released on bail unless, in his bail undertaking, he undertakes—

(a) to appear before the District Court and prosecute the appeal;

(b) to abide the judgment of the District Court on the appeal; and

(c) to pay such costs as may be awarded by the District Court.

SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(d) Section 125A (3), (4)—

Omit the subsections.

5 (e) Section 125A (5)—

After "(2) (a)", insert "or (2A)".

(f) Section 125A (7)—

After "(2) (a)", insert "or (2A)".

(g) Section 125A (9) (a)—

10 Omit "; or", insert instead "or (2A);".

(h) Section 125A (9) (b)—

Omit "(2) (b)", insert instead "(2) (b); or".

(i) Section 125A (9) (c)—

After section 125A (9) (b), insert :—

15 (c) release of the appellant on bail.

(29) Section 127A (3) (a)—

Omit the paragraph.

(30) (a) Section 131B (2)—

Omit "or to comply with any condition included in
20 a recognizance by virtue of section 125A (3)".

(b) Section 131B (3) (b)—

Omit "(b) (ii)".

SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(c) Section 131B (4) (a)—

Omit the paragraph.

5 (d) Section 131B (5)—

Omit "(b) (ii)".

(31) (a) Section 153 (1)—

Omit ", if he so demands,".

(b) Section 153 (1A)—

10 Omit the subsection.

(c) Section 153 (1B)—

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

(32) (a) Section 153A (1)—

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

(b) Section 153A (1) (a)—

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

(c) Section 153A (1) (b)—

20 Omit "admit him to bail", insert instead "discharge him on recognizance".

SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(d) Section 153A (1)—

Omit "admitted to bail, stating the amount of bail", insert instead "discharged, stating the amount of recognizance".

(e) Section 153A (1A)—

After subsection (1), insert :—

(1A) Where an accused person is apprehended under a bench warrant issued by a Judge in any criminal proceeding and a sitting of the Court out of which the bench warrant issued is not then being held, any Justice may, subject to the Bail Act, 1978, by warrant commit that person to prison, there, subject to that Act, to be safely kept until the next sittings of the Court out of which the bench warrant issued or until he is delivered in due course of law.

(f) Section 153A (2) (a)—

Omit "paragraph (a) of subsection (1)", insert instead "subsection (1) or (1A)".

(g) Section 153A (3) (a)—

Omit "admits a person to bail as aforesaid", insert instead "decides to discharge a person on recognizance as referred to in subsection (1),".

(h) Section 153A (4)—

Omit "admit such person to bail", insert instead "take the recognizance".

(i) Section 153A (5)—

Omit "or admitted to bail".

SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(j) Section 153A (5)—

After "section", insert "or discharged on recognizance or released on bail by a Justice".

(k) Section 153A (5)—

Omit "or, as the case may be, the recognizance or recognizances of bail", insert instead ", or the recognizance or recognizances, or the bail undertaking, the instrument by which any bail conditions were imposed on the grant of bail and any agreement or acknowledgment entered into or made pursuant to any such condition, as the case may be,".

(33) Section 153B—

After section 153A, insert :—

153B. 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.

SCHEDULE 2.

Sec. 6.

SAVINGS AND TRANSITIONAL PROVISIONS.

1. In this Schedule—

"authorised" means duly authorised by a court or person;

5 "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;

"recognizance of bail" means a recognizance that was authorised or entered into before the commencement of this Schedule, so far
10 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
15 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
20 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. A committal of a person to a prison or any other place of custody under the Principal Act before the commencement of this Schedule shall,
25 while the person remains there after that commencement, be deemed to have been effected under the Principal Act, as amended by this Act.

5. 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
30 of the Bail Act, 1978, and shall have effect notwithstanding anything in clause 2, 3 or 4.

BY AUTHORITY
D. WEST, GOVERNMENT PRINTER, NEW SOUTH WALES—1978
[40c]

JUSTICES (BAIL) AMENDMENT ACT, 1978, No. 162

New South Wales

ANNO VICESIMO SEPTIMO

ELIZABETHÆ II REGINÆ

* *

Act No. 162, 1978.

An Act to amend the Justices Act, 1902, consequent upon the enactment of the Bail Act, 1978. [Assented to, 29th December, 1978.]

P 58522B (40c)

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 "Justices (Bail) Amendment Act, 1978".

Commencement.

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 Justices Act, 1902, 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. 27, 1902.

5. The Principal Act is amended in the manner set forth in Schedule 1.

Savings and transitional provisions.

6. Schedule 2 has effect.

SCHEDULE 1.

Sec. 5.

AMENDMENTS TO THE PRINCIPAL ACT.

(1) (a) Section 3 (1), definition of "Accused person"—

Before the definition of "Justice", insert :—

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

(b) Section 3 (3)—

After section 3 (2), insert :—

(3) 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) (a) Section 13 (1)—

Omit "or admit to bail".

(b) Section 13 (1)—

At the end of the subsection, insert :—

Provided further that nothing in this Part shall abridge or prejudice the powers of any Justice relating to bail.

(3) Section 25 (2) (b)—

Omit "or admit him to bail in manner hereinafter mentioned".

(4) (a) Section 31 (2)—

After "shall" where firstly occurring, insert ", subject to the Bail Act, 1978,".

SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(b) Section 31 (2) (b)—

Before "discharge", insert "except in the case of an accused person—".

(5) Section 33 (2)—

After "days", insert ", but this proviso does not apply where the defendant is refused bail (as referred to in section 25 of the Bail Act, 1978)".

(6) (a) Section 34 (1)—

After "may" where firstly occurring, insert ", subject to the Bail Act, 1978".

(b) Section 34 (1) (b)—

Omit "or" where lastly occurring.

(c) Section 34 (1) (c)—

Omit the paragraph.

(d) Section 34 (1)—

Omit the second proviso.

(7) (a) Section 35 (1)—

After "may" where firstly occurring, insert ", subject to the Bail Act, 1978,".

(b) Section 35 (1)—

Omit ", or may discharge him upon his entering into a recognizance".

SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(8) Section 39 (1)—

Omit "if the defendant is admitted to bail the recognizances of the defendant and of his surety or sureties", insert instead "if the defendant is released on bail, his bail undertaking, the instrument by which any bail conditions were imposed on the grant of bail and any agreement or acknowledgment entered into or made pursuant to any such condition".

(9) (a) Section 41 (1A)—

After "days", insert ", but this proviso does not apply where the defendant is refused bail (as referred to in section 25 of the Bail Act, 1978)".

(b) Section 41 (1B) (b)—

Omit "to be excused", insert instead "the Justice or Justices may excuse the defendant".

(c) Section 41 (1B) (b)—

Omit "the Justice or Justices, if", insert instead ", if the Justice or Justices is or are".

(d) Section 41 (1B) (b)—

Omit ", may discharge the defendant upon his entering into a recognizance".

(e) Section 41 (1B) (c)—

Omit the paragraph, insert instead :—

(c) Any period during which a defendant is excused, pursuant to paragraph (b), from attendance during the taking of any evidence shall, in relation to the defendant so excused, be deemed to be an adjournment for the purposes of section 34.

SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(10) (a) Section 42 (1)—

Omit the subsection, insert instead :—

(1) Where a person is committed for trial, the committing Justice or Justices shall, subject to the Bail Act, 1978, commit him to prison, there, subject to that Act, to be safely kept until the sittings of the Court before which he is to be tried or until he is delivered by due course of law.

(b) Section 42 (2)—

Omit "paragraph (a) of".

(11) Heading before section 44—

Omit "BAIL AND".

(12) Sections 44, 45, 46—

Omit the sections.

(13) Section 47—

Omit the section, insert instead :—

Transmission of bail undertaking, etc., of person in prison.

47. Where a person in prison on committal for trial is released on bail, the person to whom the bail undertaking is given shall forthwith transmit the bail undertaking, the instrument by which any bail conditions were imposed on the grant of bail and any agreement or acknowledgment entered into or made pursuant to any such condition to the committing Justice or Justices, who shall transmit them with the depositions to the Attorney-General.

SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(14) Section 48—

Omit the section.

(15) (a) Section 49 (2A)—

Omit the subsection.

(b) Section 49 (5)—

Omit "admitted to bail, the amount of bail that ought to be required", insert instead "discharged, the amount of recognizance".

(c) Section 49 (6)—

Omit the subsection.

(16) (a) Section 49A (1)—

Omit " or any special condition of the recognizance, or has reasonable grounds for believing that the defendant is breaking or has broken any such special condition".

(b) Section 49A (2)—

Omit "or special condition".

(c) Section 49A (2) (a)—

After "recognizance;", insert "or".

(d) Section 49A (2) (b)—

Omit the paragraph.

(e) Section 49A (4)—

Omit the subsection.

SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(17) (a) Section 50 (1A)—

After section 50 (1), insert :—

(1A) Where—

(a) a bail condition referred to in section 36 (2) (c)–(h) of the Bail Act, 1978, is imposed on the grant of bail to an accused person; and

(b) the accused person does not appear in accordance with his bail undertaking at the time and place notified to him,

the Justice or Justices then and there present shall transmit the bail undertaking, the instrument by which any such bail condition was imposed and any agreement entered into pursuant to any such condition to the Clerk of the Peace to be proceeded upon according to law.

(b) Section 50 (2)—

After "recognizance", insert "or bail undertaking".

(c) Section 50 (2)—

Omit "bound thereby", insert instead "required to appear".

(18) Section 51A (2)—

Omit ", and bail may be similarly granted".

(19) (a) Section 66 (2)—

After "shall" where firstly occurring, insert ", subject to the Bail Act, 1978,".

SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(b) Section 66 (2) (b)—

Before "discharge", insert "except in the case of an accused person—".

(20) (a) Section 69 (1)—

Omit the subsection, insert instead :—

(1) Where the hearing is adjourned under section 65 or 68—

(a) in the case of an accused person—the Justice or Justices may, subject to the Bail Act, 1978, commit the defendant to a prison or lock-up or to some other safe custody; or

(b) except in the case of an accused person—the Justice or Justices may—

(i) commit the defendant to a prison or lock-up or to some other safe custody;

(ii) discharge the defendant upon his entering into a recognizance; or

(iii) suffer the defendant to go at large,

but where the defendant remains in custody any Justice may order the defendant to be brought before him or any other Justice or Justices at any time before the expiration of the period for which the hearing was adjourned and the gaoler or officer in whose custody the defendant then is shall duly obey the order.

(b) Section 69 (2)—

Omit "paragraph (a) of".

SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(21) (a) Section 96 (2A)—

Omit the subsection.

(b) Section 96 (5)—

Omit "admitted to bail, the amount of the bail that ought to be required", insert instead "discharged, the amount of recognizance".

(22) (a) Section 96A (1)—

Omit "or any special condition of the recognizance, or has reasonable grounds for believing that the person is breaking or has broken any such special condition".

(b) Section 96A (2)—

Omit "or special condition".

(23) (a) Section 97 (1A)—

After section 97 (1), insert :—

(1A) Where—

(a) a bail condition referred to in section 36 (2) (c)–(h) of the Bail Act, 1978, is imposed on the grant of bail to an accused person; and

(b) the accused person does not appear in accordance with his bail undertaking at the time and place notified to him,

SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

the Justice or Justices then and there present shall transmit the bail undertaking, the instrument by which any such bail condition was imposed and any agreement entered into pursuant to any such condition to the Clerk of the Peace to be proceeded upon according to law.

(b) Section 97 (2)—

After "recognizance", insert "or bail undertaking".

(c) Section 97 (2)—

Omit "bound thereby", insert instead "required to appear".

(24) (a) Section 102 (3)—

After "appellant", insert ", not being an accused person,".

(b) Section 102 (4)—

After section 102 (3), insert :—

(4) If the appellant, being an accused person, is granted bail in accordance with the Bail Act, 1978, he shall not be released on bail unless, in his bail undertaking, he undertakes to appear before the same or such other Justice or Justices as may then be sitting within 10 days after judgment has been given by the Supreme Court to abide such judgment, unless the determination appealed against is reversed.

SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(25) Section 110 (4), (5)—

At the end of section 110, insert :—

(4) Where—

(a) a bail condition referred to in section 36 (2) (c)—(h) of the Bail Act, 1978, is imposed on the grant of bail to an accused person; and

(b) the accused person does not appear in accordance with his undertaking, as referred to in section 102 (4),

any Justice or Justices may transmit the accused person's bail undertaking, the instrument by which any such bail condition was imposed and any agreement entered into pursuant to any such condition to the Clerk of the Peace to be proceeded upon according to law.

(5) The Justice or Justices so transmitting any such undertaking shall certify on the back of it in what respects the undertaking has not been complied with, and the certificate shall be deemed prima facie evidence of the non-appearance of the accused person.

(26) Section 122 (5)—

After "shall" where secondly occurring, insert "(except in the case of an accused person)".

(27) (a) Section 123—

After "If", insert ", in the case of an appellant who is not an accused person".

SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(b) Section 123 (2), (3), (4)—

At the end of section 123, insert :—

(2) If, in the case of an appellant who is an accused person and who is not in custody—

(a) notice of appeal has been duly given within the time specified in section 122 (1); and

(b) the appellant—

(i) after the determination mentioned in section 122 (5) but before the District Court has commenced to hear the appeal, enters before a Justice into a recognizance of the kind referred to in subsection (1) (b) (ii); or

(ii) where money only has been adjudged to be paid—makes a deposit of the kind referred to in subsection (1) (b) (iii),

then the execution of the conviction or order shall be stayed.

(3) If, in the case of an appellant who is an accused person and who is in custody—

(a) notice of appeal has been duly given within the time specified in section 122 (1); and

(b) the appellant is granted bail in accordance with the Bail Act, 1978,

the appellant shall not be released on bail unless, in his bail undertaking, he undertakes to appear at the District Court and prosecute the appeal, and abide the judgment of the District Court thereon and pay such costs as may be awarded by the District Court.

SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(4) Where the appellant referred to in subsection (3) is, having given the undertaking so referred to, released from custody, the execution of the conviction or order shall be stayed.

(28) (a) Section 125A (1)—

Omit "(b) (ii)".

(b) Section 125A (2)—

Omit "The", insert instead "In the case of an appellant who is not an accused person, the".

(c) Section 125A (2A), (2B)—

After section 125A (2), insert :—

(2A) In the case of an appellant who is an accused person, the Court by which an appeal under this Division is adjourned may, subject to the Bail Act, 1978, commit the appellant to a place of safe custody there, subject to that Act, to be kept until the hearing of the appeal.

(2B) If the appellant referred to in subsection (2A) is granted bail in accordance with the Bail Act, 1978, he shall not be released on bail unless, in his bail undertaking, he undertakes—

(a) to appear before the District Court and prosecute the appeal;

(b) to abide the judgment of the District Court on the appeal; and

(c) to pay such costs as may be awarded by the District Court.

SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(d) Section 125A (3), (4)—

Omit the subsections.

(e) Section 125A (5)—

After "(2) (a)", insert "or (2A)".

(f) Section 125A (7)—

After "(2) (a)", insert "or (2A)".

(g) Section 125A (9) (a)—

Omit "; or", insert instead "or (2A);".

(h) Section 125A (9) (b)—

Omit "(2) (b)", insert instead "(2) (b); or".

(i) Section 125A (9) (c)—

After section 125A (9) (b), insert :—

(c) release of the appellant on bail.

(29) Section 127A (3) (a)—

Omit the paragraph.

(30) (a) Section 131B (2)—

Omit "or to comply with any condition included in a recognizance by virtue of section 125A (3)".

(b) Section 131B (3) (b)—

Omit "(b) (ii)".

SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(c) Section 131B (4) (a)—

Omit the paragraph.

(d) Section 131B (5)—

Omit "(b) (ii)".

(31) (a) Section 153 (1)—

Omit ", if he so demands,".

(b) Section 153 (1A)—

Omit the subsection.

(c) Section 153 (1B)—

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

(32) (a) Section 153A (1)—

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

(b) Section 153A (1) (a)—

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

(c) Section 153A (1) (b)—

Omit "admit him to bail", insert instead "discharge him on recognizance".

SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(d) Section 153A (1)—

Omit "admitted to bail, stating the amount of bail", insert instead "discharged, stating the amount of recognizance".

(e) Section 153A (1A)—

After subsection (1), insert :—

(1A) Where an accused person is apprehended under a bench warrant issued by a Judge in any criminal proceeding and a sitting of the Court out of which the bench warrant issued is not then being held, any Justice may, subject to the Bail Act, 1978, by warrant commit that person to prison, there, subject to that Act, to be safely kept until the next sittings of the Court out of which the bench warrant issued or until he is delivered in due course of law.

(f) Section 153A (2) (a)—

Omit "paragraph (a) of subsection (1)", insert instead "subsection (1) or (1A)".

(g) Section 153A (3) (a)—

Omit "admits a person to bail as aforesaid", insert instead "decides to discharge a person on recognizance as referred to in subsection (1),".

(h) Section 153A (4)—

Omit "admit such person to bail", insert instead "take the recognizance".

(i) Section 153A (5)—

Omit "or admitted to bail".

SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(j) Section 153A (5)—

After "section", insert "or discharged on recognizance or released on bail by a Justice".

(k) Section 153A (5)—

Omit "or, as the case may be, the recognizance or recognizances of bail", insert instead ", or the recognizance or recognizances, or the bail undertaking, the instrument by which any bail conditions were imposed on the grant of bail and any agreement or acknowledgment entered into or made pursuant to any such condition, as the case may be,".

(33) Section 153B—

After section 153A, insert :—

Bail Act, 1978, to prevail.

153B. Except where expressly provided, the Bail Act, 1978, shall prevail to the extent of any inconsistency between that Act and this Act.

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;

"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. A committal of a person to a prison or any other place of custody under the Principal Act before the commencement of this Schedule shall, while the person remains there after that commencement, be deemed to have been effected under the Principal Act, as amended by this Act.

5. 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, 3 or 4.

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

A. R. CUTLER,
Governor.

Government House,
Sydney, 29th December, 1978.

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