

**SUPREME COURT (SUMMARY JURISDICTION)
BAIL (AMENDMENT) BILL, 1978**

EXPLANATORY NOTE

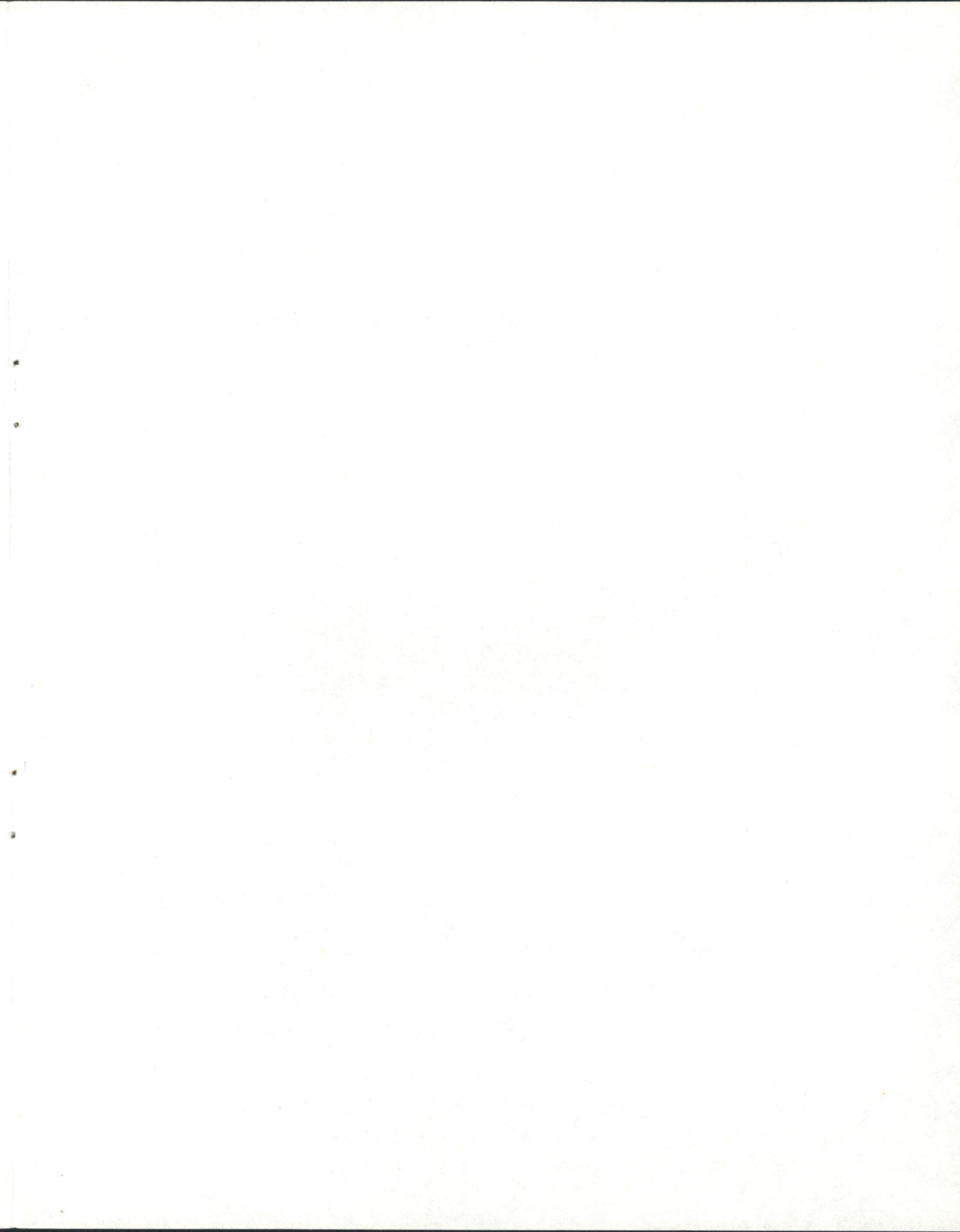
(This Explanatory Note relates to this Bill as introduced into Parliament)

This Bill is cognate with the Bail Bill, 1978.

The object of this Bill is to make amendments to the Supreme Court (Summary Jurisdiction) Act, 1967 ("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 28A is to be inserted to this effect (Schedule 1 (8)).

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



**SUPREME COURT (SUMMARY JURISDICTION)
BAIL (AMENDMENT) BILL, 1978**

No. , 1978.

A BILL FOR

An Act to amend the Supreme Court (Summary Jurisdiction) Act,
1967, consequent upon the enactment of the Bail Act, 1978.

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

Supreme Court (Summary Jurisdiction) 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 "Supreme Court (Summary Jurisdiction) 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 Supreme Court (Summary Jurisdiction) Act, 1967, 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. 72, 1967.
- 6.** Schedule 2 has effect. Savings and transitional provisions.
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Supreme Court (Summary Jurisdiction) Bail (Amendment).

SCHEDULE 1.

Sec. 5.

AMENDMENTS TO THE PRINCIPAL ACT.

(1) Sections 5, 5A—

Omit section 5, insert instead :—

5 5. Where any person apprehended pursuant to an order made under section 4 (1) (b) is brought before a Judge, the Judge shall, subject to the Bail Act, 1978, by warrant commit him to prison and order him to be there detained until he is brought before a Judge at a time and place specified in the order to answer to the offence with which he is charged.

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Powers of Judge where defendant apprehended.

5A. (1) The Prothonotary shall, as soon as practicable after the making of any order under section 5, cause notice of the order to be given to the prosecutor.

Notices to be given to prosecutor.

15 (2) The Prothonotary shall, as soon as practicable after a notice is given or sent (as referred to in section 34 of the Bail Act, 1978) to a person referred to in section 5, cause a copy of the notice to be given to the prosecutor.

(2) Section 7—

20 Omit the section, insert instead :—

25 7. Where the hearing of the proceedings for an offence punishable in the summary jurisdiction of the Court is adjourned, whether under section 6 or otherwise, the Judge before whom the proceedings are taken may, subject to the Bail Act, 1978, by warrant commit the defendant to prison and order him to be there detained until he is brought before the Judge at a time and place specified in the order to answer further to the offence with which he is charged.

How defendant dealt with during adjournment.

Supreme Court (Summary Jurisdiction) Bail (Amendment).

SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(3) (a) Section 9—

5 Omit “subsection (1) of section 5” wherever occurring, insert instead “section 5”.

(b) Section 9 (2)—

At the end of section 9, insert :—

10 (2) If, upon the day and at the time and place specified in a notice referred to in section 5A (2), the prosecutor does not appear in person or by his counsel or attorney, but the defendant attends, and the prosecutor has received a copy of the notice, the Judge shall dismiss the charge unless for some reason he thinks it proper to adjourn the hearing.

15 (4) (a) Section 18 (2)—

Omit “or 22”, insert instead “,22 or 26A”.

(b) Section 18 (2) (a)—

After “as”, insert “, or as including,”.

(5) Section 19 (2)—

20 Omit the subsection.

(6) Section 25—

Omit the section.

Supreme Court (Summary Jurisdiction) Bail (Amendment).

SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(7) Section 26A—

After section 26, insert :—

5

26A. (1) Where—

Release of
appellant
and stay of
conviction
or order.

(a) a case has been stated for the opinion of the Court of Appeal; and

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

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he shall not be released on bail unless—

(c) in his bail undertaking, he undertakes to appear within 10 days after the decision of the Court of Appeal has been given—

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(i) before the trial Judge or such other Judge as may then be sitting to abide the decision; or

(ii) before the Judge to whom the matter is remitted by the Court of Appeal,

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unless the determination appealed against is reversed;

(d) in the case where he was ordered to pay a sum of money, he deposits with the Prothonotary the sum ordered to be paid; and

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(e) he deposits with the Prothonotary such sum as may be fixed by the trial Judge as the costs of the proceedings before the Court of Appeal.

(2) Where—

(a) an appeal has been lodged as provided by section 24; and

Supreme Court (Summary Jurisdiction) Bail (Amendment).

SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

- (b) the appellant is granted bail in accordance with the Bail Act, 1978,
- 5 he shall not be released on bail unless—
- (c) in his bail undertaking, he undertakes to appear at such time and place as may be directed by the trial Judge to abide the decision of the Court of Appeal;
- 10 (d) in the case where he was ordered to pay a sum of money, he deposits with the Prothonotary the sum so ordered to be paid; and
- (e) he deposits with the Prothonotary such sum as may be fixed by the trial Judge as the costs of the proceedings before the Court of Appeal.
- 15
- (3) Where the appellant referred to in subsection (1) or (2) is, having given the undertaking so referred to, released from custody, the execution of the conviction or order made in the proceedings in respect of which the case was stated, or appealed against, shall be stayed until the decision of the Court of Appeal is given.
- 20
- (4) Where—
- (a) a case has been stated for the opinion of the Court of Appeal or an appeal has been lodged as provided by section 24; and
- 25 (b) the appellant is not in custody,
- the conviction or order made in the proceedings in respect of which the case was stated, or appealed against, shall be stayed until the decision of the Court of Appeal is given if—
- 30 (c) in the case where upon the conviction the defendant was sentenced to imprisonment, he enters into a recognizance, with or without

Supreme Court (Summary Jurisdiction) Bail (Amendment).

SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

5 sureties, as the trial Judge may direct, conditioned for the appearance of the defendant at such time and place as may be directed by that Judge to abide the decision of the Court of Appeal or of the Judge to whom the matter is remitted by the Court of Appeal;

10 (d) in the case where he was ordered to pay a sum of money, he deposits with the Prothonotary the sum so ordered to be paid; and

(e) he deposits with the Prothonotary such sum as may be fixed by the trial Judge as the costs of the proceedings before the Court of Appeal.

15 (8) Section 28A—

After section 28, insert :—

28A. Except where expressly provided, the Bail Act, ^{Bail Act,} 1978, shall prevail to the extent of any inconsistency ^{1978, to} between that Act and this Act. ^{prevail.}

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SCHEDULE 2.

Sec. 6.

SAVINGS AND TRANSITIONAL PROVISIONS.

1. In this Schedule—

“authorised” means duly authorised by the Supreme Court of New South Wales or any Judge thereof;

25 “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.

Supreme Court (Summary Jurisdiction) Bail (Amendment).

SCHEDULE 2—*continued.*

SAVINGS AND TRANSITIONAL PROVISIONS—*continued.*

2. This Act does not affect a recognizance of bail authorised or entered into under the Principal Act before the commencement of this Schedule, 5 and for the purposes of or for purposes connected with any such 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 10 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 recognizance of bail referred to in that clause relates or is connected.

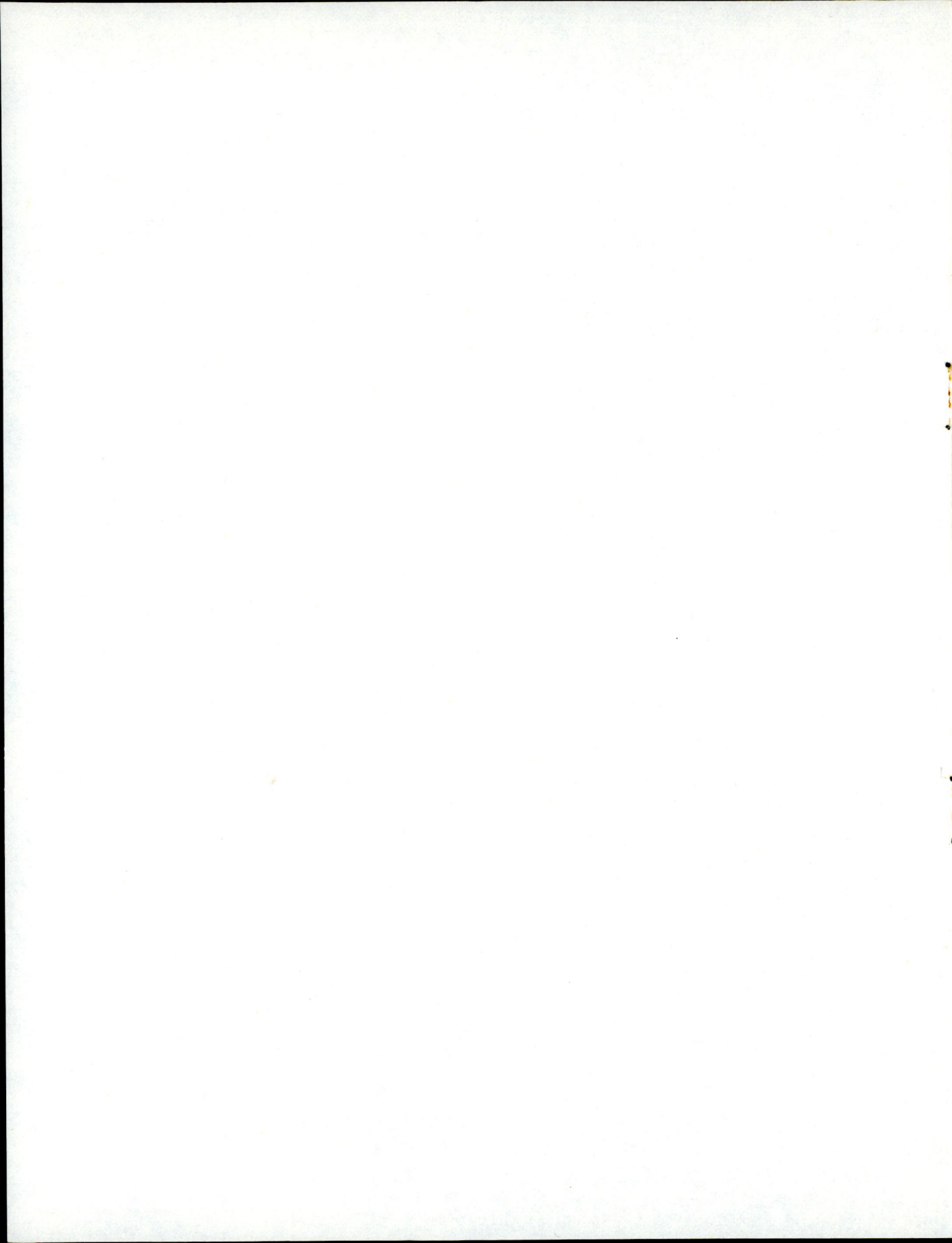
4. A committal of a person to a prison under the Principal Act before 15 the commencement of this Schedule shall, while the person remains there after that commencement, be deemed to have been effected under the Principal Act, as amended by this Act.

5. Rules of court may be made under the Supreme Court Act, 1970, 20 containing 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.

BY AUTHORITY

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





**SUPREME COURT (SUMMARY JURISDICTION)
BAIL (AMENDMENT) ACT, 1978, No. 164**

New South Wales



ANNO VICESIMO SEPTIMO

ELIZABETHÆ II REGINÆ

Act No. 164, 1978.

An Act to amend the Supreme Court (Summary Jurisdiction) Act,
1967, consequent upon the enactment of the Bail Act, 1978.
[Assented to, 29th December, 1978.]

Supreme Court (Summary Jurisdiction) 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 "Supreme Court (Summary Jurisdiction) 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 Supreme Court (Summary Jurisdiction) Act, 1967, 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. 72, 1967.** **5.** The Principal Act is amended in the manner set forth in Schedule 1.
- Savings and transitional provisions.** **6.** Schedule 2 has effect.

Supreme Court (Summary Jurisdiction) Bail (Amendment).

SCHEDULE 1.

Sec. 5.

AMENDMENTS TO THE PRINCIPAL ACT.

(1) Sections 5, 5A—

Omit section 5, insert instead :—

5. Where any person apprehended pursuant to an order made under section 4 (1) (b) is brought before a Judge, the Judge shall, subject to the Bail Act, 1978, by warrant commit him to prison and order him to be there detained until he is brought before a Judge at a time and place specified in the order to answer to the offence with which he is charged.

Powers of Judge where defendant apprehended.

5A. (1) The Prothonotary shall, as soon as practicable after the making of any order under section 5, cause notice of the order to be given to the prosecutor.

Notices to be given to prosecutor.

(2) The Prothonotary shall, as soon as practicable after a notice is given or sent (as referred to in section 34 of the Bail Act, 1978) to a person referred to in section 5, cause a copy of the notice to be given to the prosecutor.

(2) Section 7—

Omit the section, insert instead :—

7. Where the hearing of the proceedings for an offence punishable in the summary jurisdiction of the Court is adjourned, whether under section 6 or otherwise, the Judge before whom the proceedings are taken may, subject to the Bail Act, 1978, by warrant commit the defendant to prison and order him to be there detained until he is brought before the Judge at a time and place specified in the order to answer further to the offence with which he is charged.

How defendant dealt with during adjournment.

Supreme Court (Summary Jurisdiction) Bail (Amendment).

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

(3) (a) Section 9—

Omit “subsection (1) of section 5” wherever occurring, insert instead “section 5”.

(b) Section 9 (2)—

At the end of section 9, insert :—

(2) If, upon the day and at the time and place specified in a notice referred to in section 5A (2), the prosecutor does not appear in person or by his counsel or attorney, but the defendant attends, and the prosecutor has received a copy of the notice, the Judge shall dismiss the charge unless for some reason he thinks it proper to adjourn the hearing.

(4) (a) Section 18 (2)—

Omit “or 22”, insert instead “,22 or 26A”.

(b) Section 18 (2) (a)—

After “as”, insert “, or as including,”.

(5) Section 19 (2)—

Omit the subsection.

(6) Section 25—

Omit the section.

Supreme Court (Summary Jurisdiction) Bail (Amendment).

SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(7) Section 26A—

After section 26, insert :—

26A. (1) Where—

- (a) a case has been stated for the opinion of the Court of Appeal; and
- (b) the appellant is granted bail in accordance with the Bail Act, 1978,

Release of
appellant
and stay of
conviction
or order.

he shall not be released on bail unless—

- (c) in his bail undertaking, he undertakes to appear within 10 days after the decision of the Court of Appeal has been given—
 - (i) before the trial Judge or such other Judge as may then be sitting to abide the decision; or
 - (ii) before the Judge to whom the matter is remitted by the Court of Appeal, unless the determination appealed against is reversed;
- (d) in the case where he was ordered to pay a sum of money, he deposits with the Prothonotary the sum ordered to be paid; and
- (e) he deposits with the Prothonotary such sum as may be fixed by the trial Judge as the costs of the proceedings before the Court of Appeal.

(2) Where—

- (a) an appeal has been lodged as provided by section 24; and

Supreme Court (Summary Jurisdiction) Bail (Amendment).

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

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

he shall not be released on bail unless—

- (c) in his bail undertaking, he undertakes to appear at such time and place as may be directed by the trial Judge to abide the decision of the Court of Appeal;
- (d) in the case where he was ordered to pay a sum of money, he deposits with the Prothonotary the sum so ordered to be paid; and
- (e) he deposits with the Prothonotary such sum as may be fixed by the trial Judge as the costs of the proceedings before the Court of Appeal.

(3) Where the appellant referred to in subsection (1) or (2) is, having given the undertaking so referred to, released from custody, the execution of the conviction or order made in the proceedings in respect of which the case was stated, or appealed against, shall be stayed until the decision of the Court of Appeal is given.

(4) Where—

- (a) a case has been stated for the opinion of the Court of Appeal or an appeal has been lodged as provided by section 24; and
- (b) the appellant is not in custody,

the conviction or order made in the proceedings in respect of which the case was stated, or appealed against, shall be stayed until the decision of the Court of Appeal is given if—

- (c) in the case where upon the conviction the defendant was sentenced to imprisonment, he enters into a recognizance, with or without

Supreme Court (Summary Jurisdiction) Bail (Amendment).

SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

sureties, as the trial Judge may direct, conditioned for the appearance of the defendant at such time and place as may be directed by that Judge to abide the decision of the Court of Appeal or of the Judge to whom the matter is remitted by the Court of Appeal;

(d) in the case where he was ordered to pay a sum of money, he deposits with the Prothonotary the sum so ordered to be paid; and

(e) he deposits with the Prothonotary such sum as may be fixed by the trial Judge as the costs of the proceedings before the Court of Appeal.

(8) Section 28A—

After section 28, insert :—

28A. 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 the Supreme Court of New South Wales or any Judge thereof;

“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.

Supreme Court (Summary Jurisdiction) Bail (Amendment).

SCHEDULE 2—*continued.*SAVINGS AND TRANSITIONAL PROVISIONS—*continued.*

2. This Act does not affect 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 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 recognizance of bail referred to in that clause relates or is connected.

4. A committal of a person to a prison 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. Rules of court may be made under the Supreme Court Act, 1970, containing 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.*