

BAIL (AMENDMENT) ACT 1989 No. 109

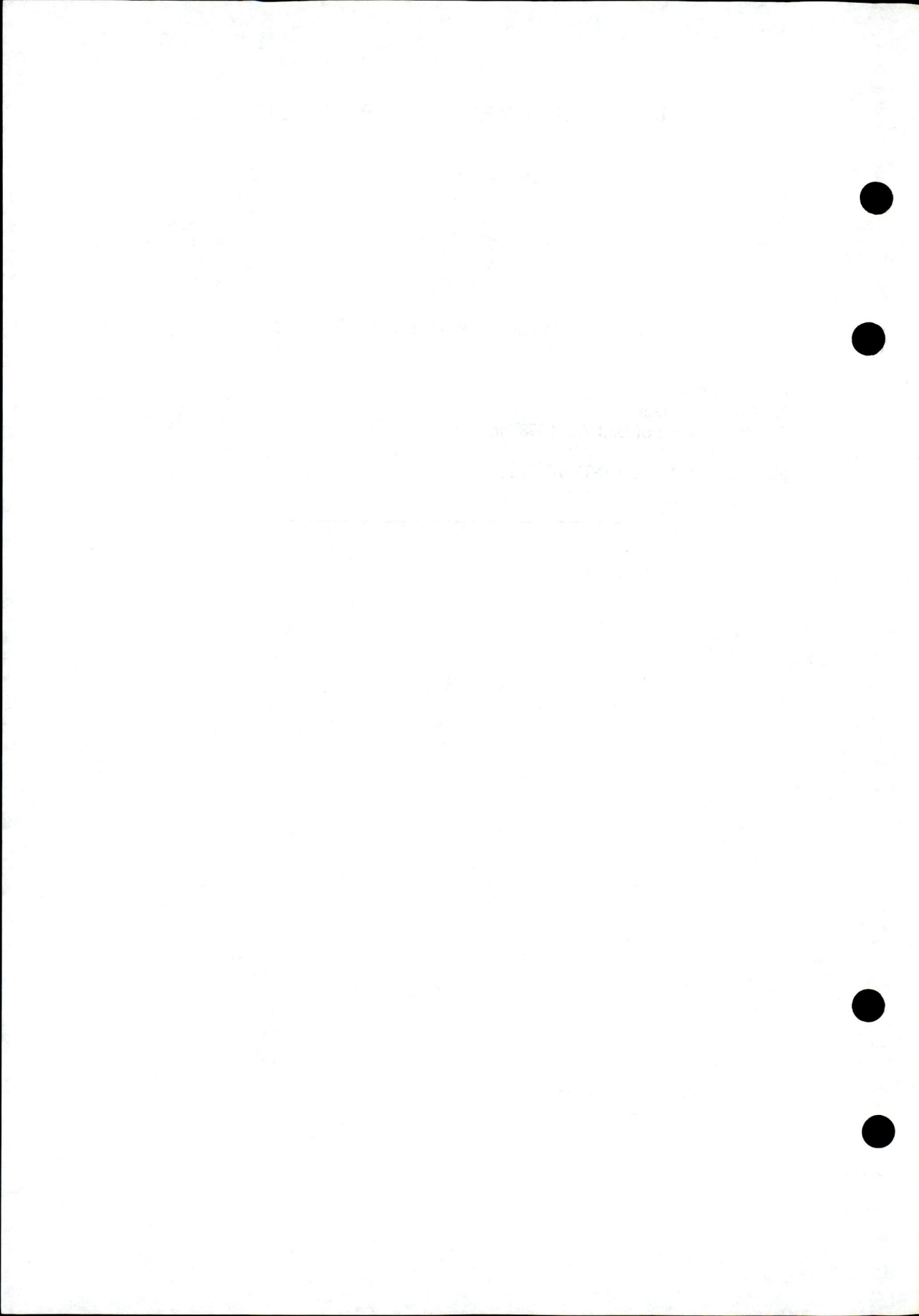
NEW SOUTH WALES



TABLE OF PROVISIONS

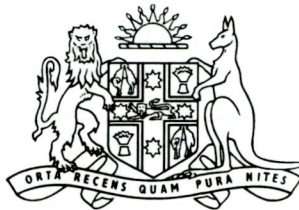
1. Short title
2. Commencement
3. Amendment of Bail Act 1978 No. 161

SCHEDULE 1 - AMENDMENTS



BAIL (AMENDMENT) ACT 1989 No. 109

NEW SOUTH WALES



Act No. 109, 1989

An Act to amend the Bail Act 1978 to make further provision with respect to applications for bail and the review of bail decisions; and for other purposes. [Assented to 24 August 1989]

The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the Bail (Amendment) Act 1989.

Commencement

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

Amendment of Bail Act 1978 No. 161

3. The Bail Act 1978 is amended as set out in Schedule 1.

SCHEDULE 1 - AMENDMENTS

(Sec. 3)

- (1) Section 16 (**Extension of meaning of adjournment in sec. 6**):

Section 16 (c):

Omit "as referred to in section 153A of the Justices Act 1902", insert instead "whether issued by a Judge or a magistrate".

- (2) Section 22A:

After section 22, insert:

Special power of Supreme Court to refuse to entertain bail application

22A. Despite section 22 (1) and (2), the Supreme Court may refuse to entertain an application in relation to bail if:

- (a) an application in relation to that bail has already been made and dealt with by the Supreme Court (however constituted); and

SCHEDULE 1 - AMENDMENTS - *continued*

- (b) the Court is not satisfied that there are special facts or special circumstances that justify the making of the application.

(3) Section 48A:

After section 48, insert:

Special limited review - bail conditions

48A. (1) If an accused person has remained in custody after being granted bail because any condition of the bail has not been complied with, the decision in relation to bail may be reviewed pursuant to this Part by way of a bail condition review:

- (a) at the request of the accused person; or
- (b) at the request of a police officer; or
- (c) of the court's own motion.

(2) A bail condition review is a review pursuant to this Part of the decision in relation to bail to the extent only that it relates to the conditions of bail.

(3) A bail condition review requested under this section by a police officer is not to be conducted unless the court is satisfied that the request was made:

- (a) for the purpose of benefiting the accused person; and
- (b) with the consent of the accused person.

(4) On a bail condition review, the power to review the bail decision pursuant to this Part is a power to do any of the following:

- (a) to affirm the decision as to the conditions of bail;
- (b) to vary the decision by removing or imposing bail conditions;
- (c) to grant bail unconditionally.

(5) Despite section 45, the Supreme Court is empowered to conduct a bail condition review only in respect of bail granted by the Supreme Court (however constituted).

SCHEDULE 1 - AMENDMENTS - *continued*

- (6) This section does not affect:
- (a) the power of a court to review a decision in relation to bail pursuant to a request under section 48 (1); or
 - (b) the right of a person to request such a review.

(4) Section 54A:

After section 54, insert:

Special notice where accused person remains in custody after bail granted

54A. (1) This section applies to a person who has been granted bail but who has remained in custody since bail was granted because a condition of the bail has not been complied with.

(2) The governor of the prison or the person in charge of the lock-up or police station where a person to whom this section applies is in custody shall give or cause to be given to an appropriate court notice that the person is still in custody because of a failure to meet a bail condition.

(3) An appropriate court is a court authorised to conduct a bail condition review in relation to the bail of its own motion, as referred to in section 48A.

(4) The notice must be given to an appropriate court before the expiration of 8 days after the person is received into custody.

(5) A notice under this section is required to be given only once in respect of any particular grant of bail.

(6) The regulations may make provision for the form of a notice under this section and for the information to accompany the notice.

(5) Schedule 1 (Savings and transitional provisions):

- (a) Part 1, heading:

Before clause 1, insert:

PART 1 - GENERAL

SCHEDULE 1 - AMENDMENTS - *continued*

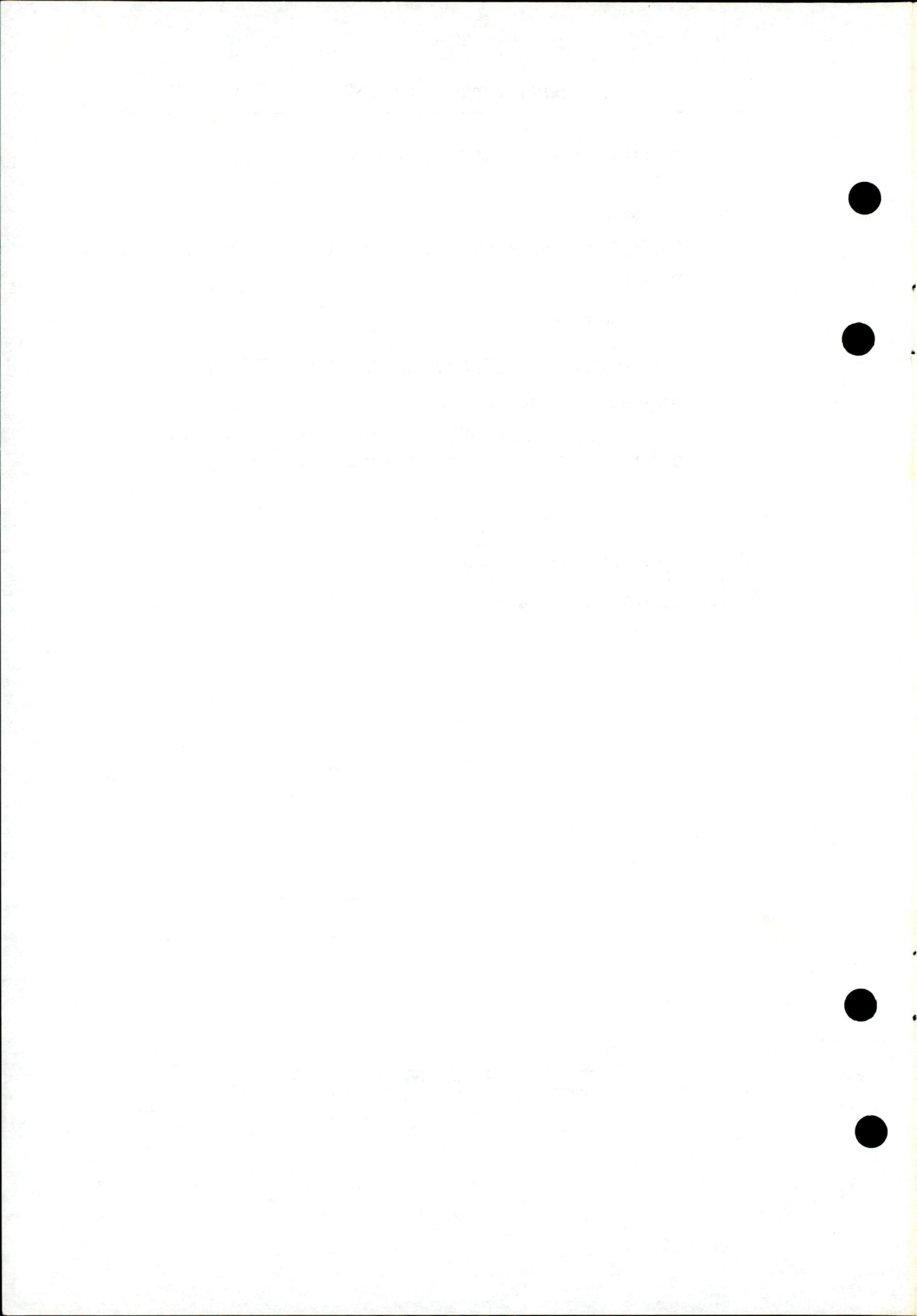
- (b) Clause 1:
Omit "In this Schedule", insert instead "In this Part".
- (c) Part 2:
After clause 4, insert:

PART 2 - BAIL (AMENDMENT) ACT 1989

Application of amendments

5. Neither section 48A nor section 54A applies in respect of bail granted before the section commences.

*[Minister's second reading speech made in -
Legislative Assembly on 3 May 1989
Legislative Council on 1 August 1989]*



BAIL (AMENDMENT) BILL 1989

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 Bail Act 1978—

- (a) to qualify the right of an accused person to make repeated bail applications to the Supreme Court by empowering the Court to refuse to entertain a further application unless special facts or special circumstances justify the application; and
- (b) to provide for the review of bail conditions by a court at the request of the accused person or of the court's own motion if the person is granted bail but remains in custody because a bail condition has not been met (this will be in addition to the current right to request a general review of the bail decision); and
- (c) to provide that, when a person remains in custody because a bail condition has not been met, the court authorised to conduct a review of bail conditions under the proposed provision referred to in paragraph (b) must be notified that the person is still in custody; and
- (d) to provide that a provision of the Act relating to bail for a person in custody under a bench warrant applies to a bench warrant issued by a magistrate; and
- (e) to enact a transitional provision.

Clause 1 specifies the short title of the proposed Act.

Clause 2 provides that the proposed Act commences on a day or days to be appointed by proclamation.

Clause 3 is a formal provision that gives effect to the Schedule of amendments to the Principal Act.

SCHEDULE 1—AMENDMENTS

Power of Supreme Court to reject repeated bail applications

Schedule 1 (2) qualifies the current right of an accused person to make repeated bail applications to the Supreme Court by authorising the Court to refuse to entertain a bail application if it has previously dealt with the matter and is not satisfied that there are special facts or special circumstances justifying a further application.

Bail (Amendment) 1989

Review of bail conditions

Schedule 1 (3) inserts a provision dealing with a review of bail conditions. It authorises a court to review bail conditions when a person is granted bail but remains in custody because bail conditions are not met. The review can be initiated by a request from the person granted bail or by the court of its own motion. The review is limited to changing the conditions of bail. The current right of an accused person to request a complete review of a bail decision is not affected.

Special notice where bail conditions not met

Schedule 1 (4) requires the person who has custody of an accused person still in custody because bail conditions have not been met to inform the court that is authorised to review the bail conditions under the proposed bail condition review provision. The court must be informed within 8 days of the person being received into custody.

Adjournments—bench warrants issued by magistrates

Schedule 1 (1) provides that the period between the apprehension of a person under a bench warrant issued in criminal proceedings by a magistrate and the next court appearance of the person is to be considered to be an adjournment so that bail can be granted. Such a provision currently applies to a bench warrant issued by a judge.

Transitional provision

Schedule 1 (5) provides that the proposed provisions concerning bail condition reviews do not apply in respect of bail granted before the new provisions commence.

BAIL (AMENDMENT) BILL 1989

NEW SOUTH WALES



TABLE OF PROVISIONS

1. Short title
2. Commencement
3. Amendment of Bail Act 1978 No. 161

SCHEDULE 1—AMENDMENTS

BAIL (AMENDMENT) BILL 1989

NEW SOUTH WALES



No. , 1989

A BILL FOR

An Act to amend the Bail Act 1978 to make further provision with respect to applications for bail and the review of bail decisions; and for other purposes.

*Bail (Amendment) 1989***The Legislature of New South Wales enacts:****Short title**

1. This Act may be cited as the Bail (Amendment) Act 1989.

Commencement

- 5 2. This Act commences on a day or days to be appointed by proclamation.

Amendment of Bail Act 1978 No. 161

3. The Bail Act 1978 is amended as set out in Schedule 1.

SCHEDULE 1—AMENDMENTS

10

(Sec. 3)

- (1) Section 16 (**Extension of meaning of adjournment in sec. 6**)—

Section 16 (c)—

Omit “as referred to in section 153A of the Justices Act 1902”, insert instead “whether issued by a Judge or a magistrate”.

- 15 (2) Section 22A—

After section 22, insert:

Special power of Supreme Court to refuse to entertain bail application

20 22A. Despite section 22 (1) and (2), the Supreme Court may refuse to entertain an application in relation to bail if—

- (a) an application in relation to that bail has already been made and dealt with by the Supreme Court (however constituted); and
- 25 (b) the Court is not satisfied that there are special facts or special circumstances that justify the making of the application.

- (3) Section 48A—

After section 48, insert:

Special limited review—bail conditions

30 48A. (1) If an accused person has remained in custody after being granted bail because any condition of the bail has not been complied with, the decision in relation to bail may be reviewed pursuant to this Part by way of a bail condition review—

- (a) at the request of the accused person; or

*Bail (Amendment) 1989*SCHEDULE 1—AMENDMENTS—*continued*

(b) of the court's own motion.

(2) A bail condition review is a review pursuant to this Part of the decision in relation to bail to the extent only that it relates to the conditions of bail.

5 (3) On a bail condition review, the power to review the bail decision pursuant to this Part is a power to do any of the following:

(a) to affirm the decision as to the conditions of bail;

10 (b) to vary the decision by removing or imposing bail conditions;

(c) to grant bail unconditionally.

(4) Despite section 45, the Supreme Court is empowered to conduct a bail condition review only in respect of bail granted by the Supreme Court (however constituted).

15 (5) This section does not affect—

(a) the power of a court to review a decision in relation to bail pursuant to a request under section 48 (1); or

(b) the right of a person to request such a review.

(4) Section 54A—

20 After section 54, insert:

Special notice where accused person remains in custody after bail granted

25 54A. (1) This section applies to a person who has been granted bail but who has remained in custody since bail was granted because a condition of the bail has not been complied with.

30 (2) The governor of the prison or the person in charge of the lock-up or police station where a person to whom this section applies is in custody shall give or cause to be given to an appropriate court notice that the person is still in custody because of a failure to meet a bail condition.

(3) An appropriate court is a court authorised to conduct a bail condition review in relation to the bail of its own motion, as referred to in section 48A.

35 (4) The notice must be given to an appropriate court before the expiration of 8 days after the person is received into custody.

(5) A notice under this section is required to be given only once in respect of any particular grant of bail.

*Bail (Amendment) 1989*SCHEDULE 1—AMENDMENTS—*continued*

(6) The regulations may make provision for the form of a notice under this section and for the information to accompany the notice.

(5) Schedule 1 (**Savings and transitional provisions**)—

5 (a) Part 1, heading—

Before clause 1, insert:

PART 1—GENERAL

(b) Clause 1—

Omit “In this Schedule”, insert instead “In this Part”.

10 (c) Part 2—

After clause 4, insert:

PART 2—BAIL (AMENDMENT) ACT 1989

Application of amendments

15 5. Neither section 48A nor section 54A applies in respect of bail granted before the section commences.

SECOND PRINT

BAIL (AMENDMENT) BILL 1989

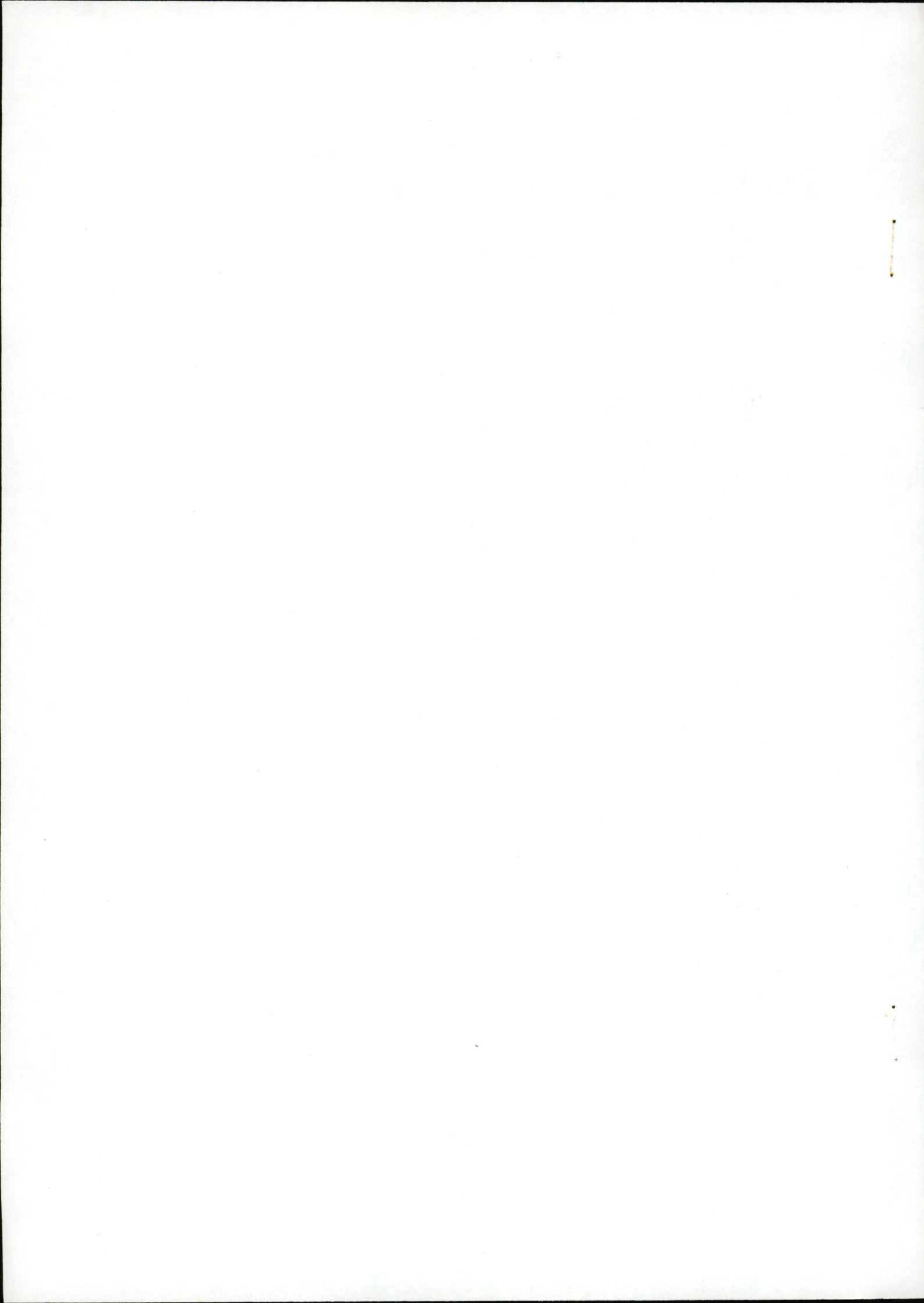
NEW SOUTH WALES



TABLE OF PROVISIONS

1. Short title
2. Commencement
3. Amendment of Bail Act 1978 No. 161

SCHEDULE 1 - AMENDMENTS



This PUBLIC BILL originated in the LEGISLATIVE ASSEMBLY and, having this day passed, is now ready for presentation to the LEGISLATIVE COUNCIL for its concurrence.

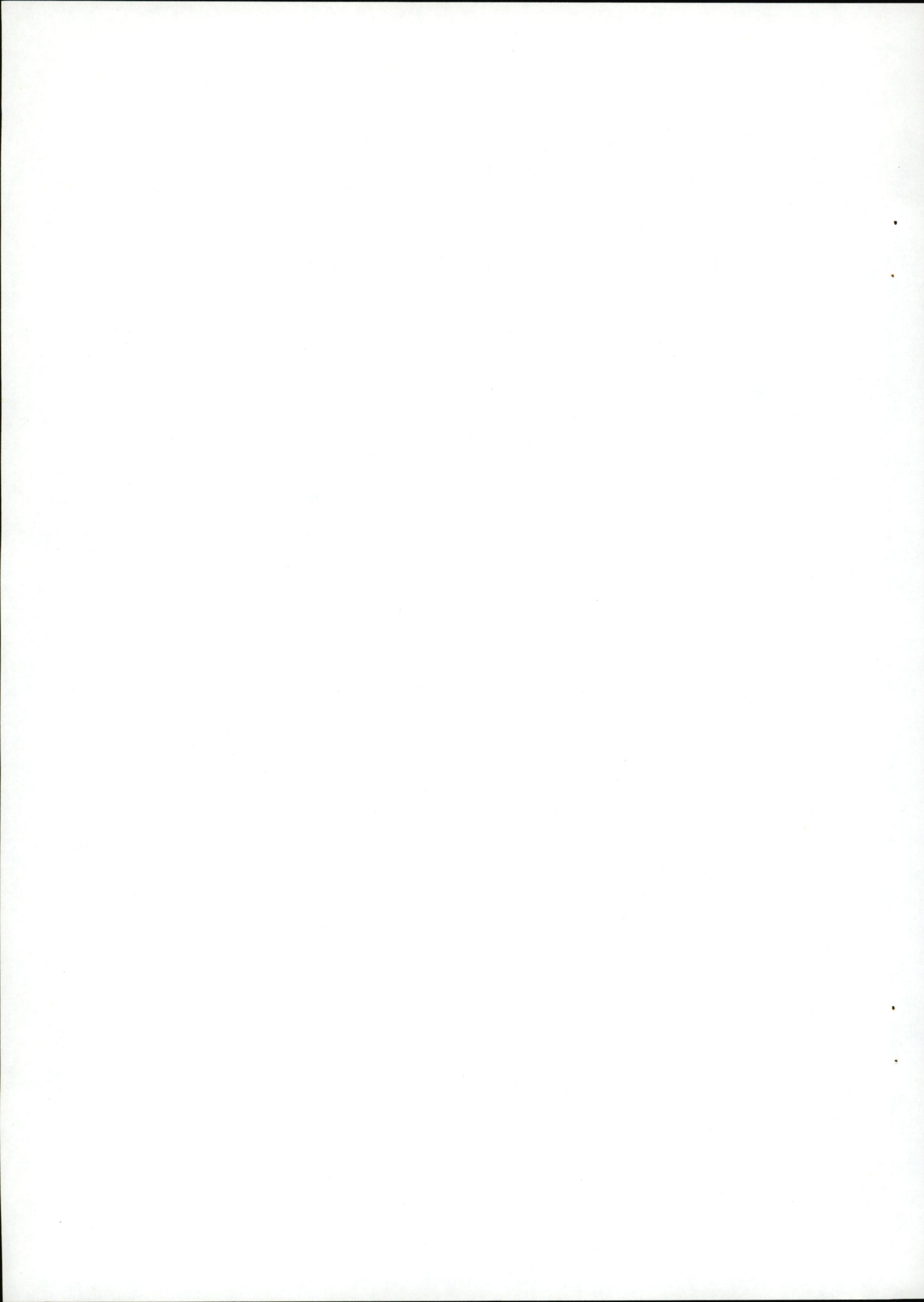
Clerk of the Legislative Assembly.
Legislative Assembly Chamber,
Sydney, , 1989

NEW SOUTH WALES



Act No. , 1989

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The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the Bail (Amendment) Act 1989.

Commencement

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

Amendment of Bail Act 1978 No. 161

3. The Bail Act 1978 is amended as set out in Schedule 1.

SCHEDULE 1 - AMENDMENTS

- (1) Section 16 (**Extension of meaning of adjournment in sec. 6**): (Sec. 3)
Section 16 (c):
Omit "as referred to in section 153A of the Justices Act 1902", insert instead "whether issued by a Judge or a magistrate".

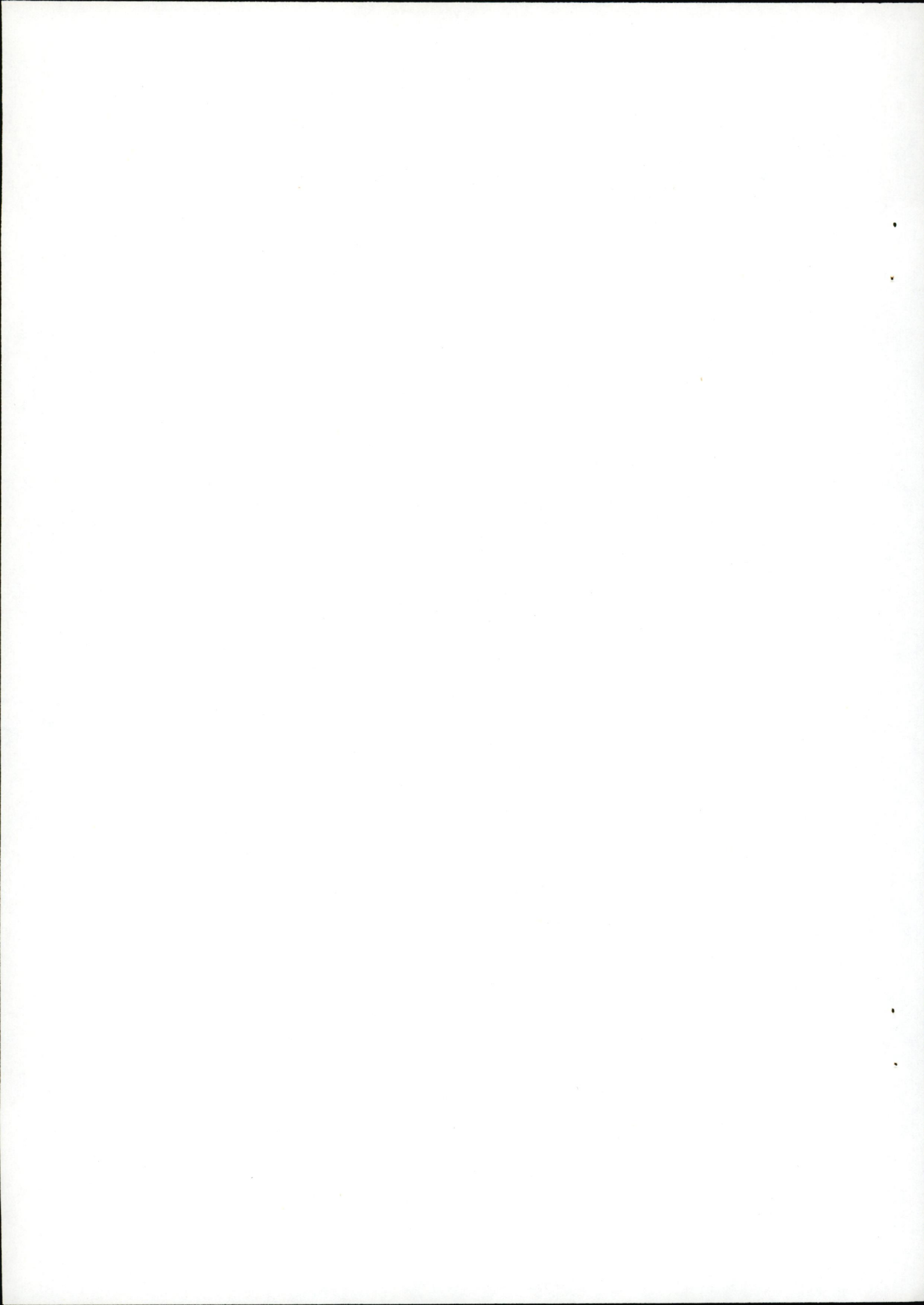
- (2) Section 22A:

After section 22, insert:

Special power of Supreme Court to refuse to entertain bail application

22A. Despite section 22 (1) and (2), the Supreme Court may refuse to entertain an application in relation to bail if:

- (a) an application in relation to that bail has already been made and dealt with by the Supreme Court (however constituted); and



SCHEDULE 1 - AMENDMENTS - *continued*

- (b) the Court is not satisfied that there are special facts or special circumstances that justify the making of the application.

(3) Section 48A:

After section 48, insert:

Special limited review - bail conditions

48A. (1) If an accused person has remained in custody after being granted bail because any condition of the bail has not been complied with, the decision in relation to bail may be reviewed pursuant to this Part by way of a bail condition review:

- (a) at the request of the accused person; or
- (b) at the request of a police officer; or
- (c) of the court's own motion.

(2) A bail condition review is a review pursuant to this Part of the decision in relation to bail to the extent only that it relates to the conditions of bail.

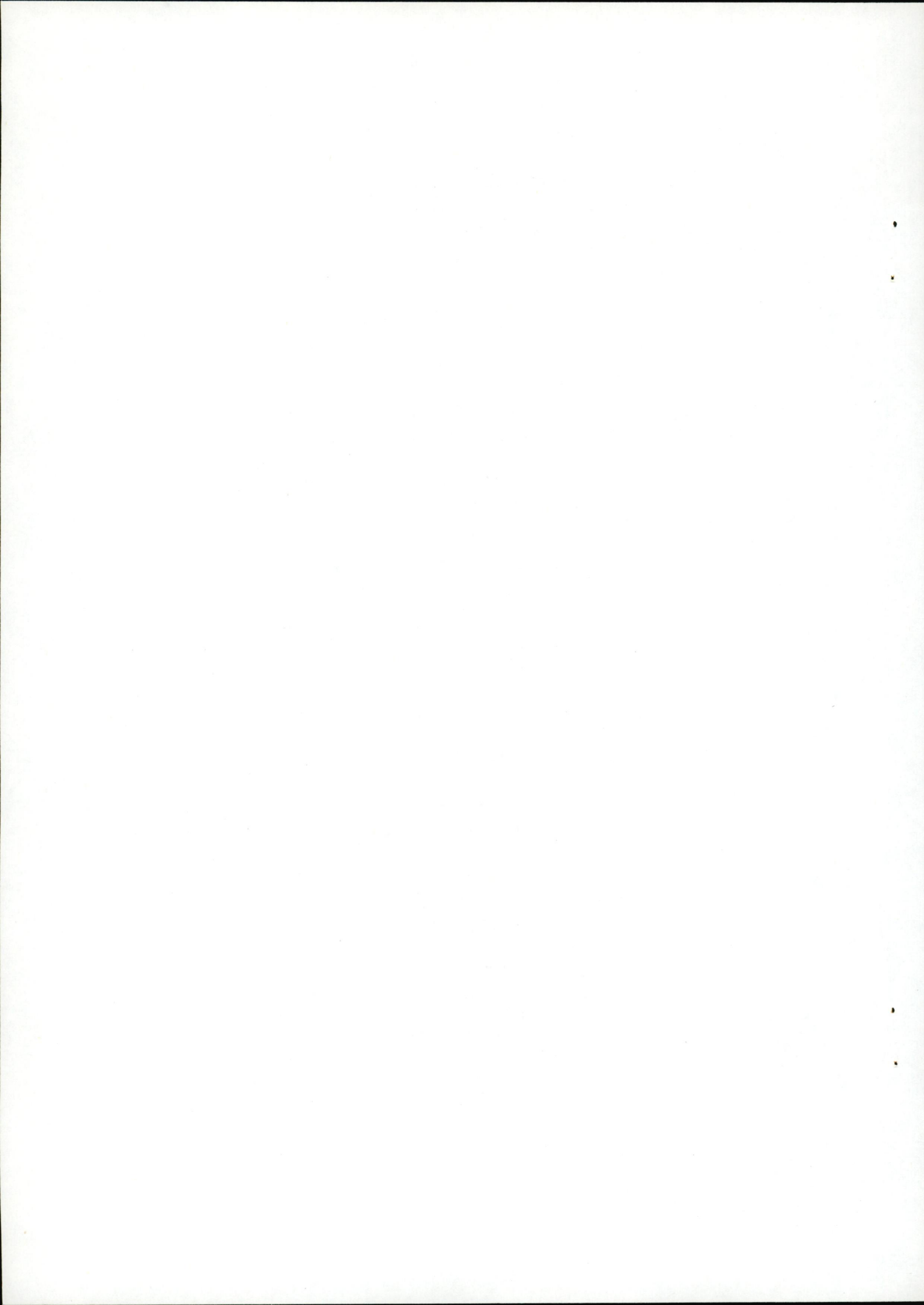
(3) A bail condition review requested under this section by a police officer is not to be conducted unless the court is satisfied that the request was made:

- (a) for the purpose of benefiting the accused person; and
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(4) On a bail condition review, the power to review the bail decision pursuant to this Part is a power to do any of the following:

- (a) to affirm the decision as to the conditions of bail;
- (b) to vary the decision by removing or imposing bail conditions;
- (c) to grant bail unconditionally.

(5) Despite section 45, the Supreme Court is empowered to conduct a bail condition review only in respect of bail granted by the Supreme Court (however constituted).



SCHEDULE 1 - AMENDMENTS - *continued*

(6) This section does not affect:

- (a) the power of a court to review a decision in relation to bail pursuant to a request under section 48 (1); or
- (b) the right of a person to request such a review.

(4) Section 54A:

After section 54, insert:

Special notice where accused person remains in custody after bail granted

54A. (1) This section applies to a person who has been granted bail but who has remained in custody since bail was granted because a condition of the bail has not been complied with.

(2) The governor of the prison or the person in charge of the lock-up or police station where a person to whom this section applies is in custody shall give or cause to be given to an appropriate court notice that the person is still in custody because of a failure to meet a bail condition.

(3) An appropriate court is a court authorised to conduct a bail condition review in relation to the bail of its own motion, as referred to in section 48A.

(4) The notice must be given to an appropriate court before the expiration of 8 days after the person is received into custody.

(5) A notice under this section is required to be given only once in respect of any particular grant of bail.

(6) The regulations may make provision for the form of a notice under this section and for the information to accompany the notice.

(5) Schedule 1 (**Savings and transitional provisions**):

(a) Part 1, heading:

Before clause 1, insert:

PART 1 - GENERAL

Bail (Amendment) 1989

SCHEDULE 1 - AMENDMENTS - *continued*

- (b) Clause 1:
Omit "In this Schedule", insert instead "In this Part".
- (c) Part 2:
After clause 4, insert:

PART 2 - BAIL (AMENDMENT) ACT 1989

Application of amendments

- 5. Neither section 48A nor section 54A applies in respect of bail granted before the section commences.
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