

FIRST PRINT

## BAIL (AMENDMENT) BILL 1992

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 so as to allow:

- \* the Land and Environment Court; or
- \* the Industrial Court; or
- \* the District Court; or
- \* a Magistrate,

to review a bail determination made by the Supreme Court if the person in respect of whom the determination was made is appearing before one of those Courts or a Magistrate in criminal proceedings and the Court or Magistrate is satisfied that special facts or special circumstances justify such a review.

Any such review will be subject to such limitations as may be prescribed by regulations made under the Act and to the provisions of Part 6 of the Act.

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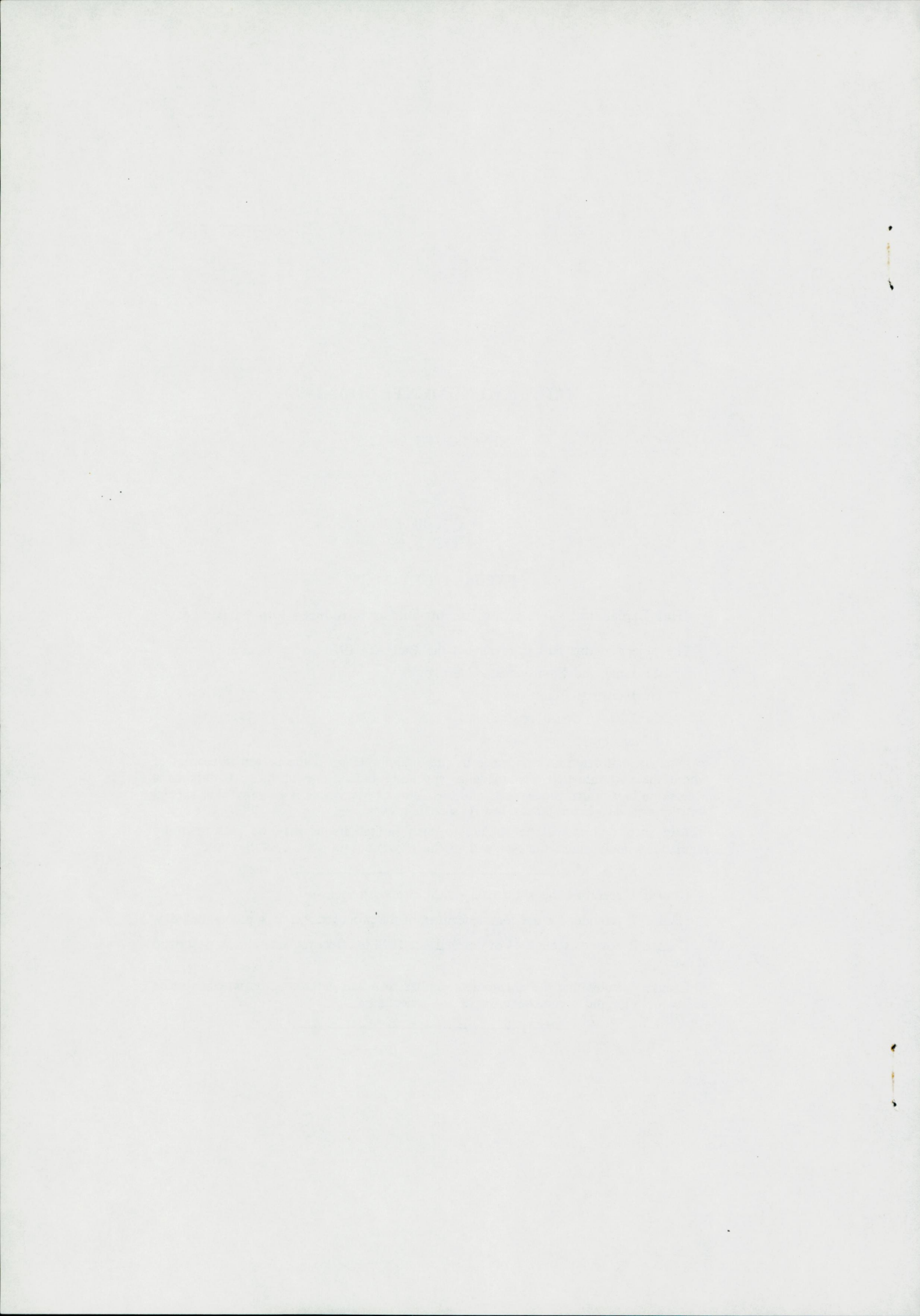
Clause 1 specifies the short title of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a proclaimed day.

Clause 3 amends section 44 of the Bail Act 1978 to effect the amendment described above.

Clause 4 states that the amendment applies to a bail determination whether made before or after the commencement of the amendment.

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FIRST PRINT

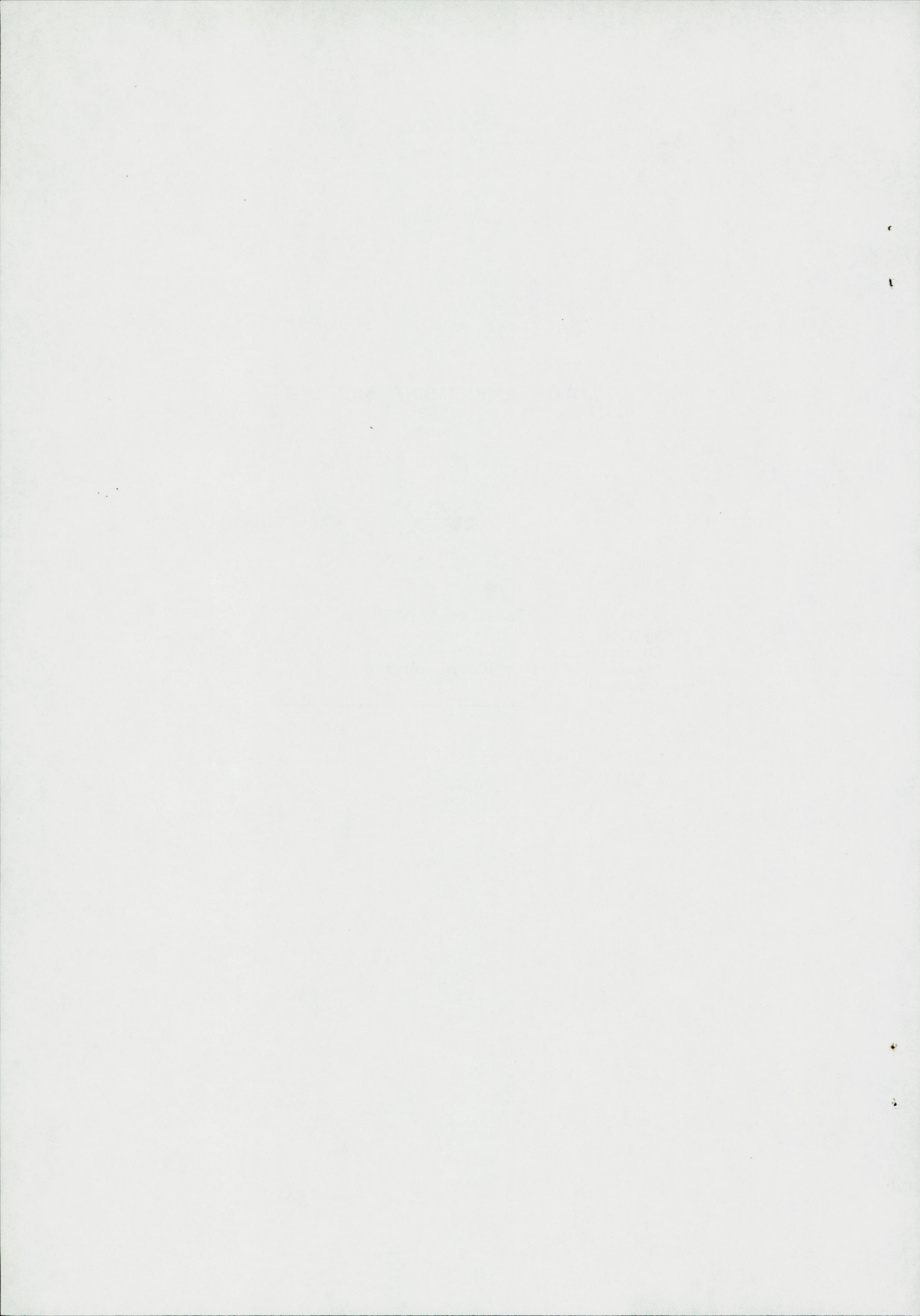
**BAIL (AMENDMENT) BILL 1992**

NEW SOUTH WALES



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**BAIL (AMENDMENT) BILL 1992**

NEW SOUTH WALES



No.           , 1992

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**A BILL FOR**

An Act to amend section 44 of the Bail Act 1978 with respect to the review of bail determinations made by the Supreme Court.

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*Bail (Amendment) 1992*

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**The Legislature of New South Wales enacts:**

**Short title**

1. This Act may be cited as the Bail (Amendment) Act 1992.

**Commencement**

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

**Amendment of Bail Act 1978 No. 161, s. 44**

3. The Bail Act 1978 is amended by inserting after section 44 (5) the following subsection:

- 10 (6) A decision of the Supreme Court (however constituted) in relation to bail may be reviewed by the Land and Environment Court, the Industrial Court, the District Court or a magistrate if:

- 15 (a) the person to whom the decision relates is appearing before the Court or magistrate in proceedings for an offence; and  
(b) the Court or magistrate is satisfied that special facts or special circumstances justify the review.

This subsection has effect subject to any exceptions or other limitations prescribed by the regulations and to the other provisions of this Part.

**Transitional**

- 20 4. The Bail Act 1978, as amended by this Act, applies to a decision of the Supreme Court (however constituted) in relation to bail made before or after the commencement of this Act.
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BAIL (AMENDMENT) BILL 1992

SECOND READING SPEECH  
LEGISLATIVE COUNCIL

MR PICKERING TO SAY:

MR SPEAKER -

I MOVE THAT THIS BILL BE NOW READ  
A SECOND TIME.

(DELIVER SPEECH)

THE BAIL (AMENDMENT) BILL 1992 IS A RESPONSE  
TO THE DECISION IN THE CASE OF R -v- MASTERS,  
RICHARDS AND WUNDERLICH DELIVERED BY THE  
COURT OF CRIMINAL APPEAL ON 6TH APRIL, 1992.





IN THAT CASE THE THREE ACCUSED PERSONS APPEARED BEFORE THE DISTRICT COURT CHARGED WITH CONSPIRING TO SUPPLY A COMMERCIAL QUANTITY OF CANNABIS LEAF. THIS IS AN OFFENCE TO WHICH SECTION 8A OF THE BAIL ACT APPLIES, THEREFORE THERE WAS A PRESUMPTION WAS A PRESUMPTION AGAINST BAIL. UPON APPEAL AGAINST CONVICTION, THE CIRCUMSTANCES OF THE APPELLANT RICHARDS RAISED QUESTIONS ABOUT THE OPERATION OF PART 6 OF THE BAIL ACT, WHICH RELATES TO REVIEW OF BAIL DECISIONS.

RICHARDS HAD BEEN COMMITTED FOR TRIAL TO THE DISTRICT COURT ON THE CONSPIRACY CHARGE AND WAS LATER GRANTED BAIL BY THE SUPREME COURT. WHILE ON BAIL HE WAS ARRESTED IN SOUTH AUSTRALIA FOR OTHER DRUG OFFENCES (IN RESPECT OF WHICH HE MADE ADMISSIONS) AND WAS GRANTED BAIL IN THAT STATE.



IN VIEW OF THESE OFFENCES, THE NEW SOUTH WALES CROWN APPLIED TO THE DISTRICT COURT FOR REVOCATION OF THE BAIL GRANTED BY THE SUPREME COURT. BECAUSE OF THE LIKELIHOOD OF RICHARDS COMMITTING FURTHER OFFENCES, THE DISTRICT COURT REVOKED THE SUPREME COURT BAIL AND THEN REFUSED BAIL. THE COURT OF CRIMINAL APPEAL LATER RULED THAT THE DISTRICT COURT HAD NO POWER TO REVOKE THE BAIL GRANTED BY THE SUPREME COURT.

MR SPEAKER, SECTION 28 OF THE BAIL ACT ALLOWS THE SUPREME COURT TO GRANT BAIL TO ANY PERSON ACCUSED OF ANY OFFENCE, EVEN WHEN HE OR SHE IS APPEARING BEFORE ANOTHER COURT, SUCH AS THE LOCAL COURT OR DISTRICT COURT, IN RESPECT OF THE OFFENCE. THE CHIEF JUDGE OF THE DISTRICT COURT HAS INFORMED ME THAT PRIOR TO THE COURT OF CRIMINAL APPEAL'S DECISION IN R -v- MASTERS, RICHARDS AND WUNDERLICH, IT WAS



ASSUMED THAT A DISTRICT COURT JUDGE CONDUCTING THE TRIAL OF AN ACCUSED PERSON WHO HAD PREVIOUSLY BEEN GIVEN BAIL BY A SUPREME COURT JUDGE, HAD EFFECTIVE JURISDICTION OVER THE ACCUSED PERSON AND COULD MAKE FRESH ORDERS FOR BAIL, WHETHER ALTERING THE BAIL OR REVOKING IT. HOWEVER, THE COURT OF CRIMINAL APPEAL HAS NOW DECIDED THAT THE DISTRICT COURT HAS NO SUCH POWER.

THE EFFECT OF THE COURT OF CRIMINAL APPEAL DECISION IS THAT WHERE THE SUPREME COURT HAS GRANTED BAIL TO AN ACCUSED PERSON AT ANY STAGE OF CRIMINAL PROCEEDINGS, THE LOWER COURT BEFORE WHICH THE PROCEEDINGS ARE ACTUALLY BEING DETERMINED HAS NO POWER TO VARY OR REVOKE THAT SUPREME COURT BAIL. ONLY THE SUPREME COURT CAN VARY OR REVOKE ITS BAIL DECISION.



A PROBLEM WILL OCCUR WHEN FRESH FACTS OR CIRCUMSTANCES ARISE AFTER THE SUPREME COURT'S BAIL DECISION, WHICH WOULD JUSTIFY VARIATION OR REFUSAL OF BAIL BY THE LOWER COURT WHICH IS DEALING WITH THE ACCUSED PERSON. AN EXAMPLE WOULD BE WHERE A PERSON GIVEN BAIL BY THE SUPREME COURT IN RESPECT OF AN OFFENCE IS LATER CONVICTED OF THAT OFFENCE IN THE DISTRICT COURT AND FACES A CUSTODIAL SENTENCE.

THE SENTENCING JUDGE WOULD PROPERLY WISH TO ADJOURN SENTENCING FOR THE PURPOSE OF OBTAINING A PRE-SENTENCE REPORT. HOWEVER, THE DISTRICT COURT HAS NO POWER TO REVOKE THE SUPREME COURT BAIL AND REFUSE BAIL IN THE INTERIM. THEREFORE, THE CONVICTED PERSON IS FREE TO ABSCOND. IN THEORY THE CROWN COULD APPLY TO THE SUPREME COURT FOR REVOCATION OF ITS BAIL, BUT THIS INVOLVES DELAY, AND MEANWHILE THE CONVICTED PERSON WALKS FREE.





THE COURT OF CRIMINAL APPEAL IN ITS DECISION IN R -v- MASTERS, RICHARDS AND WUNDERLICH SAID "SUCH A SITUATION IS ABSURD". MR SPEAKER, IN THE GOVERNMENT'S VIEW IT IS MORE THAN ABSURD, IT IS DANGEROUS.

THE COURT OF CRIMINAL APPEAL WENT ON TO SUGGEST THAT PART 6 OF THE BAIL ACT SHOULD BE AMENDED TO PERMIT A DISTRICT COURT JUDGE (AND POSSIBLY ALSO A MAGISTRATE OF THE LOCAL COURT) TO REVIEW A PREVIOUS BAIL DETERMINATION BY THE SUPREME COURT RELATING TO A PERSON ACTUALLY APPEARING BEFORE HIM OR HER FOR TRIAL OR SENTENCE, WHERE THE JUDGE OR MAGISTRATE IS SATISFIED THAT SPECIAL FACTS OR SPECIAL CIRCUMSTANCES JUSTIFY SUCH A REVIEW.

THIS SUGGESTION HAS FORMED THE BASIS OF THE AMENDMENT PROPOSED BY THE BILL. THE GOVERNMENT HAS INCLUDED IN THE BILL PROVISIONS WHICH WILL ALSO GIVE THE POWER OF



REVIEW TO THE LAND AND ENVIRONMENT COURT AND THE INDUSTRIAL COURT, AS CRIMINAL PROCEEDINGS BEFORE THOSE COURTS MAY ALSO BE AFFECTED BY BAIL DECISIONS MADE BY THE SUPREME COURT.

IMPORTANTLY, THE POWER OF REVIEW MAY BE USED AT ANY STAGE OF CRIMINAL PROCEEDINGS, NOT ONLY DURING TRIAL OR WHEN CONSIDERING SENTENCE. THERE ARE TWO REASONS FOR THIS: FIRSTLY, SPECIAL FACTS OR SPECIAL CIRCUMSTANCES WHICH WOULD JUSTIFY REVIEW OF BAIL MIGHT ARISE AT ANY TIME. SECONDLY, IT IS APPROPRIATE THAT THE POWER OF REVIEW SHOULD ALSO APPLY TO COMMITTAL PROCEEDINGS.

MR SPEAKER, THE GOVERNMENT RECOGNISES THE SUPERIOR STATUS OF THE SUPREME COURT IN RELATION TO BAIL DECISIONS AND WISHES TO PRESERVE THAT COURT'S POWER TO REVIEW ANY BAIL DECISION MADE BY ANY COURT. THE BILL DOES NOT RESTRICT THAT POWER: A PERSON DISSATISFIED WITH A LOWER COURT'S USE OF THE POWER OF REVIEW WILL STILL BE ABLE TO APPLY TO THE SUPREME COURT FOR REVIEW OF THAT



DECISION. WHAT THE BILL DOES IS PROTECT THE COMMUNITY BY ALLOWING LOWER COURTS TO REFUSE BAIL OR IMPOSE STRICTER CONDITIONS ON BAIL WHEN THE SITUATION REQUIRES IT, NOTWITHSTANDING THAT AN ACCUSED PERSON HAS, AT AN EARLIER STAGE OF PROCEEDINGS, BEEN GRANTED BAIL BY THE SUPREME COURT.

I COMMEND THE BILL TO THE HOUSE.



**BAIL (AMENDMENT) ACT 1992 No. 16**

NEW SOUTH WALES



**Act No. 16, 1992**

An Act to amend section 44 of the Bail Act 1978 with respect to the review of bail determinations made by the Supreme Court. [Assented to 11 May 1992]

*Bail (Amendment) Act 1992 No. 16*

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**The Legislature of New South Wales enacts:**

**Short title**

1. This Act may be cited as the Bail (Amendment) Act 1992.

**Commencement**

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

**Amendment of Bail Act 1978 No. 161, s. 44**

3. The Bail Act 1978 is amended by inserting after section 44 (5) the following subsection:

(6) A decision of the Supreme Court (however constituted) in relation to bail may be reviewed by the Land and Environment Court, the Industrial Court, the District Court or a magistrate if:

- (a) the person to whom the decision relates is appearing before the Court or magistrate in proceedings for an offence; and
- (b) the Court or magistrate is satisfied that special facts or special circumstances justify the review.

This subsection has effect subject to any exceptions or other limitations prescribed by the regulations and to the other provisions of this Part.

**Transitional**

4. The Bail Act 1978, as amended by this Act, applies to a decision of the Supreme Court (however constituted) in relation to bail made before or after the commencement of this Act.

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*[Minister's second reading speech made in—  
Legislative Assembly on 29 April 1992  
Legislative Council on 6 May 1992]*