



Bail Amendment (Enforcement Conditions) Bill 2012

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Extract from NSW Legislative Council Hansard and Papers Wednesday 24 October 2012.

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Bill introduced, and read a first time and ordered to be printed on motion by the Hon. Michael Gallacher.

Second Reading

The Hon. MICHAEL GALLACHER (Minister for Police and Emergency Services, Minister for the Hunter, and Vice-President of the Executive Council) [11.37 a.m.]: I move:

That this bill be now read a second time.

The purpose of the Bail Amendment (Enforcement Conditions) Bill 2012 is to amend the Bail Act 1978 to authorise the imposition of enforcement conditions on a grant of bail. An enforcement condition is a bail condition requiring the accused whilst at liberty on bail to comply with certain directions issued by police for the purpose of monitoring or enforcing compliance with an underlying bail condition. These reforms are being made in response to the recent decision of the Supreme Court in *Lawson v Dunlevy*. In that matter the accused had been granted bail which included a condition that he abstain from alcohol. A further condition had been imposed requiring that the accused submit to a breath test, as directed by police, to check his compliance with the abstinence condition.

On appeal the Supreme Court held that the breath test condition was not lawful under the current conditions of the Bail Act as it was inconsistent with the purposes for which bail conditions can be imposed and more onerous than required by the circumstances. Whilst it only considered the particular breath test condition before it, the judgement of the court made it clear that all enforcement conditions are unlawful under the current terms of the Act. Enforcement conditions are a particularly useful tool for monitoring and enforcing compliance with bail, particularly for high-risk accused persons. They ensure that police can take steps to verify that an accused is complying with their bail conditions by, for example, directing the accused to present at the front door of their home to check that they are complying with a curfew condition.

The NSW Police Force has advised the Government that the absence of enforcement conditions is negatively impacting on their ability to check that an accused person or accused persons are complying with their bail conditions. The Government is committed to ensuring that the NSW Police Force has all the tools necessary to properly enforce the law. Bail conditions are imposed on accused persons as part of a court order and it is expected that they be complied with. It is appropriate that police be able to take steps to check, and compliance and enforcement conditions facilitate the checking.

As members will be aware, the Law Reform Commission recently completed a review of bail laws. The report on the review was tabled in both Houses of Parliament on 13 June 2012. The Government response to the review will be finalised by the end of the year. The Law Reform Commission in its framework recommended consultation and a framework for enforcement conditions, which it referred to as "enforcement conduct directions". Given that the impact that absence of enforcement conditions is having on police operations, the Government decided to bring forward its response to this recommendation and consulted legal stakeholders accordingly. The reform incorporates elements of the framework recommended by the Law Reform Commission while still providing flexibility to courts when imposing enforcement conditions and flexibility for police when issuing directions pursuant to an enforcement condition.

The bill incorporates safeguards to ensure that enforcement conditions are not imposed in inappropriate cases or in a way which makes compliance too onerous. For example, police will not have the power to impose enforcement conditions when they make a bail determination. Enforcement conditions will be imposed only by the courts. Further, the bill sets out considerations which must be taken into account before an enforcement condition can be imposed including considering the accused's criminal history and particularly whether they are a high-volume or serious offender. These considerations will ensure that enforcement conditions are targeted at accused persons who represent a risk of further offending in the community. The NSW Police Force will develop

standard operating procedures for monitoring bail conditions and enforcement that recognise the requirements set out in the bill. These are wise reforms.

I will now turn to the main detail of the bill. Schedule 1, item [4] provides that an enforcement condition may be imposed on an accused person for the purpose of monitoring or enforcing the accused person's compliance with an underlying bail condition imposed for one of the existing purposes. Schedule 1, item [5] inserts new section 37AA into the Bail Act, which will be the substantive provision governing enforcement conditions. Section 37AA (1) defines an "enforcement condition" to mean a condition that requires the accused person to comply, while at liberty on bail, with one or more specified kinds of directions that are given by police officers for the purpose of monitoring or enforcing compliance with an underlying bail condition.

Section 37AA (2) defines an "underlying bail condition" as one which is imposed for the purposes referred to in section 37 (1) of the Bail Act. Section 37AA (3) provides that an enforcement condition is to specify the kinds of directions that may be given to the accused person, the underlying bail conditions with which each kind of direction may be given and the circumstances must be specified in a manner that ensures that compliance with the condition is not unduly onerous. This requirement addresses a specific criticism made of the enforcement condition considered in *Lawson v Dunlevy*.

Section 37AA (4) states that an enforcement condition may be imposed only if the court considers it reasonable and necessary in the circumstances having regard to the history of the accused person, including their criminal history, particularly where it involves serious offences or a large number of offences. The court is also to have regard to the likelihood of the risk of the accused person committing further offences while on bail and the extent to which compliance with a direction specified in the condition may unreasonably affect persons other than the accused person. This latter consideration addresses stakeholder concerns about the impact complying with the enforcement conditions may have on those persons with whom the accused resides.

Section 37AA (5) provides that a court may impose an enforcement condition only at the request of the prosecution. This will ensure that enforcement conditions are not imposed in cases where police do not require them. Section 37AA (6) provides that a police officer may give a direction to an accused person in the circumstances specified in the enforcement condition or at any other time the police officer has a reasonable suspicion that the accused person has contravened the underlying bail condition. This provision authorises police to use a direction pursuant to an enforcement condition outside the circumstances specified by the court but only if they have formed a reasonable suspicion of a breach of the underlying bail condition.

For example, if the court has imposed an enforcement condition requiring that the accused present at the front door of their premises when directed to by a police officer for a curfew check but has restricted the times at which such a direction may be given, the police will be able to direct the accused to present outside those times but only where they reasonably suspect the accused is in breach of his or her curfew. These provisions will ensure that the court can set limits on the enforcement condition but if a reasonable suspicion is formed then action can be taken by police. This approach means that police can check whether or not the accused is complying before commencing breach action.

Section 37AA (7) provides that the regulations may apply—with modifications—any of the provisions of the Road Transport (Safety and Traffic Management) Act 1999 relating to drug or alcohol testing to directions specified in enforcement conditions that require an accused person to undergo drug or alcohol testing. Schedule 1, item [3] makes it clear that section 32 of the Bail Act, which sets out the exhaustive criteria to be considered when deciding whether to grant bail, does not prevent the matters referred to in section 37AA being taken into account when imposing an enforcement condition. Schedule 1, items [1], [2] and [6] are consequential amendments. I commend the bill to the House.

Debate adjourned on motion by the Hon. Adam Searle and set down as an order of the day for a future day.