

BAIL AND CRIMES AMENDMENT BILL 2024

STATEMENT OF PUBLIC INTEREST

Need: Why is the policy needed based on factual evidence and stakeholder input?

NSW Bureau of Crime Statistics and Research (BOCSAR) data indicates that there has been an increase in break and enter offences and motor vehicle theft offences being committed by young people, especially in regional areas. Recent ministerial visits to the community of Moree highlighted this as a primary concern for people living in regional areas.

The Bill seeks to reduce rates of reoffending for these offences by introducing a new targeted bail test for young people aged between 14 and 18 who are charged with committing serious break and enter or motor theft offences while on bail for an earlier offence of that type.

There have also been troubling reports, particularly from regional communities, of offenders posting footage of motor theft offending or break and enter offending on social media. This type of 'performance crime' can encourage others to engage in similar criminal behaviour and may also cause further distress or trauma to victims of the substantive offence.

The Bill aims to recognise the seriousness of this conduct by introducing a new offence targeting offenders of motor theft or break and enter offences who also disseminate material to advertise their offending conduct. This will attract a maximum penalty that is the total of the maximum penalty for the relevant motor theft offence or break and enter offence, plus two years' imprisonment.

Objectives: What is the policy's objective couched in terms of the public interest?

This Bill aims to improve public safety, especially in regional areas, by reducing rates of motor vehicle thefts and break and enter offences committed by young people.

The Bill also aims to deter performance crime in connection with motor theft and break and enter offending. It is in the public interest for an increased penalty to apply to behaviour that encourages the commission of similar dangerous offending.

Options: What alternative policies and mechanisms were considered in advance of the bill?

It should be noted that this Bill is not being introduced in isolation and other policies and mechanisms are being introduced. The legislation is complemented by other Government announcements in relation to regional crime and a place-based response in Moree.

Extension of the 'show cause' test to young people charged with these offences was considered and determined not to be appropriate. The show cause test has never applied to children, in accordance with the recommendation in the 2014 Hatzistergos *Review of the Bail Act 2013* that young persons should be exempt from the show cause provisions, but remain subject to the unacceptable risk test "given the inexperience and vulnerable position of children".

Legislative amendment is necessary to introduce a new offence of 'performance crime', targeting offenders of a motor theft offence or a breaking and entering offence who also disseminate material to advertise their offending conduct.

Analysis: What were the pros/cons and benefits/costs of each option considered?

Extending the 'show cause' test to children would have impacted a broader category of accused in a less targeted way, result in more children being remanded into custody, with particularly adverse consequence for Closing the Gap Targets. It would also have introduced a reverse onus bail test for children.

The proposed bespoke test does not apply such a broad high bar as the 'show cause' test but instead applies a clear and targeted, temporary response to the offending behaviours of concern for young persons who repeatedly engage in serious break and enter and motor vehicle theft offences. The proposed amendment sets an additional test, but unlike the 'show cause' test, its narrow focus ensures it will not have further widespread impacts that could significantly increase remand populations more broadly.

The proposed 'performance crime' offence takes a targeted approach to avoid creating broad or unintentional adverse consequences, while also addressing pressing community safety concerns. The proposed offence requires both:

- the offender's act or omission to constitute a motor theft offence or a breaking and entering offence, and
- the offender to have disseminated material in order to advertise their offending conduct.

This is to ensure the offence does not capture other scenarios, such as accidental filming of an offence by a member of the public, or publication of criminal acts by journalists for a media report. The NSW Government considers that the proposed offence strikes the right balance between avoiding overreach of the criminal law and recognising the seriousness of performance crime in connection with motor theft or break and enter offending.

Pathway: What are the timetable and steps for the policy's rollout and who will administer it?

The Bill commences on assent. The Department of Communities and Justice will notify relevant stakeholders. Bail authorities will be responsible for applying the new test when it comes into effect.

Consultation: Were the views of affected stakeholders sought and considered in making the policy?

The amendments were progressed on an urgent basis.