



New South Wales

Bail and Other Legislation Amendment (Domestic Violence) Bill 2024

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The objects of this Bill are to—

- (a) amend the *Bail Act 2013* to—
 - (i) make certain domestic violence offences show cause offences, and
 - (ii) require a bail authority to consider additional matters when assessing bail concerns, and
 - (iii) require or permit electronic monitoring of the accused person when granting bail or imposing pre-release requirements, and
 - (iv) provide for bail conditions and pre-release requirements in relation to electronic monitoring for certain domestic violence offences, and
 - (v) provide for bail decisions to be stayed for certain domestic violence and sexual assault offences in certain circumstances, and
- (b) amend the *Surveillance Devices Act 2007* to remove the requirement for an offence of install, use or maintain a tracking device to determine the geographical location of a person to be instituted with the written consent of the Attorney General where the offence is charged as a domestic violence offence.

Outline of provisions

Clause 1 sets out the name, also called the short title, of the proposed Act.

Clause 2 provides for the commencement of the proposed Act.

Schedule 1 Amendment of Bail Act 2013 No 26

Schedule 1[1] inserts a definition of *domestic violence offence* consistent with the *Crimes (Domestic and Personal Violence) Act 2007*. The following definitions are also inserted—

- (a) *intimate partner*, of a person (the *first person*), means a person who is or has been married to the first person, is or has been a de facto partner of the first person, or has or has had an intimate personal relationship with the first person, whether or not the intimate relationship involves or has involved a relationship of a sexual nature,
- (b) *serious domestic violence offence* means an offence under the *Crimes Act 1900* (the *Crimes Act*), Part 3 with a maximum penalty of imprisonment for 14 years or more, if the offence is committed by a person against an intimate partner, or an equivalent offence committed in another jurisdiction.

Schedule 1[2] requires a bail authority to refuse bail if the accused is charged with a serious domestic violence offence or the coercive control offence under the Crimes Act, section 54D that involves an intimate partner, unless the accused person shows cause why the accused's detention is not justified.

Schedule 1[3] and [4] require a bail authority to consider the following when assessing whether there are any bail concerns for an accused person—

- (a) whether the accused has engaged in behaviour that constitutes domestic abuse,
- (b) in the case of a domestic violence offence against an intimate partner—the views of any victim or family member of a victim if available to the bail authority.

Schedule 1[5] provides that if an accused person is subject to the requirement to show cause under section 16A for a show cause offence referred to in section 16B(1)(c1) and bail is granted, a bail condition requiring the accused person to be subject to electronic monitoring must be imposed unless the bail authority is satisfied sufficient reasons exist, in the interests of justice, to justify not imposing the condition. Regulations may be made about the supervision, monitoring and enforcement of electronic monitoring imposed as a bail condition in relation to offences referred to in section 16B(1)(c1). **Schedule 1[6]** provides that a similar requirement can be imposed by a bail authority as a pre-release requirement and **Schedule 1[7]** provides that regulations may be made about the supervision, monitoring and enforcement of electronic monitoring imposed as a pre-release requirement.

Schedule 1[8] provides that a decision of a court or authorised justice to grant bail or dispense with bail for the following offences is stayed for up to 3 days pending a further application to the Supreme Court—

- (a) a serious domestic violence offence,
- (b) an offence against the Crimes Act, section 54D,
- (c) an offence against a provision of the Crimes Act, Part 3, Division 10, Subdivision 2.

A decision is stayed only if a police officer or an Australian legal practitioner appearing on behalf of the Crown complies with certain requirements.

Schedule 1[9] provides that an amendment made by the proposed Act extends to offences committed or alleged to have been committed, or charged, before the commencement of the amendment.

Schedule 2 Amendment of Surveillance Devices Act 2007 No 64

Schedule 2[2] makes it clear that the written consent of the Attorney General is not required for the institution of proceedings for an offence of install, use or maintain a tracking device to determine the geographical location of a person where the offence is charged as a domestic violence offence. **Schedule 2[1]** makes a consequential amendment.



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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.

Legislative Assembly

Clerk of the Legislative Assembly



New South Wales

Bail and Other Legislation Amendment (Domestic Violence) Bill 2024

No. _____, 2024

A Bill for

An Act to amend the *Bail Act 2013* and the *Surveillance Devices Act 2007* as part of the Government's response to domestic violence.

The LEGISLATIVE COUNCIL has this day agreed to this Bill with/without amendment.

Legislative Council

Clerk of the Parliaments

Tabling copy

The Legislature of New South Wales enacts—

1

1 Name of Act

2

This Act is the *Bail and Other Legislation Amendment (Domestic Violence) Act 2024*.

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2 Commencement

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

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Schedule 1	Amendment of Bail Act 2013 No 26	1
[1] Section 4 Definitions		2
	Insert in alphabetical order in section 4(1)—	3
	<i>domestic violence offence</i> has the same meaning as in the <i>Crimes (Domestic and Personal Violence) Act 2007</i> .	4
	<i>intimate partner</i> , of a person (the <i>first person</i>), means a person who—	5
	(a) is or has been married to the first person, or	6
	(b) is or has been a de facto partner of the first person, or	7
	Note— “De facto partner” is defined in the <i>Interpretation Act 1987</i> , section 21C.	8
	(c) has or has had an intimate personal relationship with the first person, whether or not the intimate relationship involves or has involved a relationship of a sexual nature.	9
	<i>serious domestic violence offence</i> means—	10
	(a) an offence under the <i>Crimes Act 1900</i> , Part 3 with a maximum penalty of 14 years imprisonment or more if the offence is committed by a person against an intimate partner, or	11
	(b) an offence under a law of the Commonwealth, another State or Territory or another jurisdiction that is similar to an offence under that part.	12
[2] Section 16B Offences to which the show cause requirement applies		13
	Insert after section 16B(1)(c)—	14
	(c1) a serious domestic violence offence,	15
	(c2) an offence under the <i>Crimes Act 1900</i> , section 54D,	16
[3] Section 18 Matters to be considered as part of assessment		17
	Insert after section 18(1)(d)—	18
	(d1) behaviour engaged in by the accused that may, under the <i>Crimes (Domestic and Personal Violence) Act 2007</i> , section 6A(2), constitute domestic abuse,	19
	Examples of behaviour— behaviour that is physically abusive or violent, including strangulation and sexual assault, animal abuse and stalking	20
[4] Section 18(1)(o)		21
	Insert “or a domestic violence offence against an intimate partner” after “serious offence”.	22
[5] Section 28B		23
	Insert after section 28A—	24
28B Bail condition must impose electronic monitoring for certain offences		25
	(1) This section applies if an accused person is—	26
	(a) subject to the requirement to show cause under section 16A for a show cause offence referred to in section 16B(1)(c1), and	27
	(b) granted bail.	28
	(2) The grant of bail must be subject to a bail condition that the accused person be subject to electronic monitoring, unless the bail authority is satisfied sufficient reasons exist, in the interests of justice, to justify not imposing the condition.	29
	Note— See also section 30A, which provides for matters relating to electronic monitoring.	30

(3)	To avoid doubt, nothing in this section—	1
(a)	prevents a bail authority, in relation to matters to which this section does not apply, from imposing a bail condition in accordance with this Act that an accused person be subject to electronic monitoring, or	2 3 4
(b)	requires or permits a bail authority, in making a decision under Division 1A or Division 2, to be satisfied the accused person’s detention is not justified, or there is not an unacceptable risk, on the basis a bail condition may be imposed requiring the accused person to be subject to electronic monitoring under this section.	5 6 7 8 9
(4)	The regulations may provide for matters relating to the supervision, monitoring and enforcement of electronic monitoring imposed on accused persons as a bail condition under this section.	10 11 12
[6]	Section 29 Limitation on power to impose pre-release requirements	13
	Insert after section 29(1)(e)—	14
(f)	a requirement that the accused person be subject to electronic monitoring.	15 16
[7]	Section 29(5A)	17
	Insert after section 29(5)—	18
(5A)	The regulations may provide for matters relating to the supervision, monitoring and enforcement of electronic monitoring imposed on accused persons as a pre-release requirement under this section.	19 20 21
[8]	Section 40 Stay of release decision if detention sought	22
	Insert at the end of section 40(5), definition of <i>serious offence</i> , paragraph (b)—	23
	, or	24
(c)	a serious domestic violence offence, or	25
(d)	an offence against the <i>Crimes Act 1900</i> , section 54D, or	26
(e)	an offence against a provision of the <i>Crimes Act 1900</i> , Part 3, Division 10, Subdivision 2.	27 28
[9]	Schedule 3 Savings, transitional and other provisions	29
	Insert after clause 14—	30
Part 5	Provision consequent on enactment of Bail and Other Legislation Amendment (Domestic Violence) Act 2024	31 32 33
15	Application of amendments	34
	An amendment made to this Act by the <i>Bail and Other Legislation Amendment (Domestic Violence) Act 2024</i> extends to offences committed or alleged to have been committed, or charged, before the commencement of the amendment.	35 36 37 38

Schedule 2	Amendment of Surveillance Devices Act 2007 No 64	1
		2
[1]	Section 56 Consent of Attorney General to prosecutions	3
	Omit “Proceedings” in section 56(1).	4
	Insert instead “Subject to subsection (1A), proceedings”.	5
[2]	Section 56(1A)	6
	Insert after section 56(1)—	7
	(1A) Subsection (1) does not apply to proceedings for an offence against section 9 where the offence is charged as a domestic violence offence, within the meaning of the <i>Crimes (Domestic and Personal Violence) Act 2007</i> .	8
		9
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