



Tabled, ~~by leave,~~

Minister Jackson  
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Clerk of the Parliaments  
5 / 6 / 24

## BAIL AND OTHER LEGISLATION AMENDMENT (DOMESTIC VIOLENCE) BILL 2024

### STATEMENT OF PUBLIC INTEREST

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

Nearly 1 in 4 women and 1 in 8 men in Australia have experienced violence by an intimate partner or family member since the age of 15. It is critical to have the right measures in place to respond to high risk domestic violence offending. This Bill is part of an ongoing multifaceted Government response to address the community's concerns about the unacceptable rates of domestic, family and sexual violence in NSW.

The Bill includes measures that target domestic violence offenders and alleged offenders by:

- expanding the offences to which the show cause requirement applies to include 'serious domestic violence offences' and the coercive control offence;
- requiring a bail authority, when applying the unacceptable risk test, to consider behaviour of an accused that may constitute domestic abuse 'red flags', as well as the views of victims of intimate partner domestic violence and the views of their family;
- providing that an electronic monitoring bail condition must be imposed for anyone granted bail for a 'serious domestic violence offence' unless there are sufficient reasons in the interests of justice not to do so;
- providing that a decision to grant bail for certain serious domestic violence related offences, and serious sexual assault offences, may be stayed pending the prosecution making a detention application to the Supreme Court; and
- streamlining the procedures for prosecutions of offences relating to the use of tracking devices under the *Surveillance Devices Act 2007* where an offence is charged as a domestic violence offence.

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

The Bill aims to improve community safety, particularly the safety of women, by tightening the current settings in the *Bail Act 2013*. The changes in the Bill better account for the risks posed by those charged with most serious domestic violence offences, and enshrine measures targeted to reduce rates of serious domestic violence offending.

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

Legislative amendment of the *Bail Act 2013* is the only mechanism by which the bail decision making framework can be changed. Similarly, policy relating to consent for prosecution of offences under section 9 of the *Surveillance Devices Act 2007* can be only be implemented through legislative amendment to that Act.

However, it should be noted that this Bill is not being introduced in isolation and other Government policies and mechanisms are being developed and will be introduced. The legislation is complemented by other Government announcements in relation to domestic and family violence.

Extending electronic monitoring to a larger cohort, as contemplated by the Opposition's Bail Amendment (Serious Personal Violence and Electronic Monitoring) Bill 2024, was



considered but determined not to be appropriate. The Government's Bill instead expands the show cause test, introduces an electronic monitoring requirement for serious domestic violence offences, makes changes to the unacceptable risk test and amends the existing provision regarding stays. This approach ensures consideration of risks at multiple stages of the bail decision making process and, importantly, ensures consideration of 'red flags' in all domestic violence matters.

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

The Bill targets serious domestic violence offenders to keep victim survivors and the community safer. Expanding the show cause requirement to additional offences, strengthening the unacceptable risk test and extending the availability of stays under section 40 of the *Bail Act 2013* will likely increase the number of people held on remand. Government expenditure will be required to respond to this increase, as well as to implement an electronic monitoring system to respond to high-risk domestic violence offenders granted bail. However, this expenditure will be well-targeted with considerable benefits to the community, as the people captured by the amendments are some of the most serious offenders, and their victims are at the highest risk of continued domestic violence.

The Opposition's Bail Amendment (Serious Personal Violence and Electronic Monitoring) Bill 2024 would extend electronic monitoring to a larger cohort of accused offenders without making changes to the offences captured by the show cause requirement or the unacceptable risk test. The Government's Bill is better targeted. The Government's legislative amendments make it more likely that those accused of the most serious domestic violence offences against current or former intimate partners will be remanded in custody rather than granted bail, while still ensuring that the accused in this category who are granted bail will be subject to electronic monitoring.

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

The Bill will commence on proclamation, as time is needed to establish the necessary infrastructure and processes for implementation. The provisions will commence once that has taken place.

The Department of Communities and Justice will notify relevant stakeholders in advance of the commencement of the Bill. Bail authorities will be responsible for applying the new provisions when they come into effect.

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

The amendments were progressed on an urgent basis. Targeted consultation was undertaken with representatives from the domestic and family violence sector, including from Domestic Violence NSW, Full Stop Australia, the Women's Legal Service NSW, No to Violence, and Wirringa Baiya Aboriginal Women's Legal Centre.