



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.