

BAIL AMENDMENT (BAN ON PRIVATE ELECTRONIC MONITORING) BILL 2025

STATEMENT OF PUBLIC INTEREST

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

Concerns have been expressed by the community and media about the quality and reliability of some privately arranged and funded electronic monitoring providers who monitor accused people under bail conditions.

While providers are required to meet the minimum standards for electronic monitoring introduced in June 2022, feedback from stakeholders and the reported incidents in recent months indicate that the minimum standards are insufficient to ensure all private electronic monitoring is suitable.

A recent unexpected closure of one private provider resulted in a number of accused persons being left unmonitored, demonstrating the significant limitations of private electronic monitoring. Unlike electronic monitoring managed by Corrective Services NSW (CSNSW), private providers may not use the best quality monitoring systems or have the requisite additional safeguards and supervision in place.

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

This Bill will ban the use of privately arranged and funded electronic monitoring. Eliminating the option to impose bail conditions requiring electronic monitoring by a private provider will resolve concerns about the quality and reliability of these services, address community safety concerns, and support public trust in the justice system.

The Bill will not impact the mandatory electronic monitoring for people charged with certain domestic violence offences conducted by the CSNSW.

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

The Government considered the practicality and feasibility of a Government agency becoming a provider of optional electronic monitoring to accused people on bail in place of privately arranged electronic monitoring.

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

There would be significant risks to 'insourcing' independent electronic monitoring, including a reputational risk in relation to access to justice. Providing a user-pays, Government provided, electronic monitoring service would create an access to justice issue for those who cannot afford to pay. This approach would also likely give rise to substantial costs and would be highly resource intensive.

Government-provided electronic monitoring would address some of the concerns raised about private electronic monitoring, for example, in relation to the unexpected closure of a private provider and the quality of systems provided; however, these factors are not sufficient to outweigh the risks. Community safety is the NSW Government's primary concern and the Government is taking decisive action to resolve the risks posed by privately arranged and funded electronic monitoring.

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

This Bill commences on assent. The Department of Communities and Justice (DCJ) will notify relevant stakeholders.

The Bill incorporates a transition period of three months from the commencement of the Bill so that accused persons who are currently subject to a private electronic monitoring bail condition can be dealt with by the court during that period. During this time, the prosecuting authorities and the accused person will be able to apply for a bail variation or revocation of bail by way of a detention application.

For this particular cohort, the electronic monitoring bail condition will remain enforceable during the transition period, until removed. This will ensure the relevant accused persons continue to be monitored until their bail has been redetermined by the court.

An accused person will be taken to be in breach of bail due to failure to comply with the bail condition if they remain subject to a private electronic monitoring condition at the end of the transition period, and the police will be required to take action accordingly.

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

The Government's intention to ban private electronic monitoring in New South Wales was announced on 4 March 2025.

Following this announcement, a targeted consultation was conducted with:

- NSW Government agencies, including the NSW Police Force, the Office of the Director of Public Prosecutions, Legal Aid NSW, the Public Defenders, Corrective Services NSW, Youth Justice NSW, and the Cabinet Office.
- Heads of Jurisdiction for the Supreme, District, Local and Children's Courts
- Legal stakeholders, including the Law Society of NSW, the NSW Bar Association and the Aboriginal Legal Service NSW/ACT.
- Commonwealth Director of Public Prosecutions.