

Bail (Domestic Violence) and Another Act Amendment Bill 2017

Explanatory Notes

Short title

The short title of the Bill is the Bail (Domestic Violence) and Another Act Amendment Act 2017

Policy objectives and the reasons for them

The objectives of the Bill are to:

1. Reverse the presumption of bail for an alleged offender charged with a relevant domestic violence offence;
2. Establish a special bail condition for a tracking device (or GPS tracker) to be imposed by a court or a police officer authorised to grant bail, against a person charged with a relevant domestic violence offence;
3. Introduce a new system to alert the victim of a relevant domestic violence offence when the defendant applies for bail, is released on bail or receives a variation to a bail condition;
4. Introduce a mandatory reporting provision to the parole system for when a prisoner applies for and receives parole so that a victim of domestic violence can receive information about a prisoner, even if the offence that the prisoner was convicted for is not a domestic violence offence; and
5. Introduce a provision to allow for an urgent review of a bail decision in a higher court. The original bail decision would be stayed for up to three business days ensuring that the alleged offender would not be released during that period.

Achievement of policy objectives

To achieve these objectives, the Bill amends the *Bail Act 1980* and *Corrective Services Act 2006*.

1. In relation to point 1 above, the *Bail Act 1980* is amended to widen the circumstances in which a court or police officer authorised to grant bail shall refuse bail. This is done by amending section 16 of the existing Act.
2. In relation to point 2 above, amending section 11 of the existing Act to allow the court to impose a specific condition relating to the fitting of a tracking device (GPS tracker) as a bail condition for a defendant charged with a relevant domestic violence offence.
3. In relation to point 3 above, provision is made by inserting a new provision in the existing Act to ensure that when a defendant is charged with a relevant domestic violence offence and they make an application for bail or for a variation of bail to a court, the prosecutor or a person appearing on behalf of the Crown must notify the complainant of the application within 24 hours. A new section is also provided to ensure that a person at risk of a domestic violence offence is notified once a defendant charged with a relevant domestic violence offence is released on bail, immediately after the decision is made or within 24 hours after the court or police officer becomes aware the person is a person at risk of domestic violence from the defendant.

4. In relation to point 4 above, the *Corrective Services Act 2006* is amended to ensure that the eligible persons register already established under the Act includes victims of domestic violence, even if the prisoner is incarcerated for an unrelated offence.

For example, if a convicted offender is incarcerated for grievous bodily harm, the present situation is that the only the immediate victim is able to be notified in relation to parole release details – not necessarily a domestic violence victim if that same convicted offender was also subject to a domestic violence order, or had a history of domestic violence.

5. In relation to point 5 above, the *Bail Act 1980* is amended to provide that if a prosecutor or a person appearing on behalf of the Crown applies to the reviewing court for a review of the bail decision, the decision about release is stayed until the earliest of the following:
 - a) the reviewing court makes an order subject to additional or substitute evidence;
 - b) the review application is discontinued; or
 - c) 4pm on the day that is 3 business days after the day on which the decision about release was made.

A safeguard is provided to ensure this provision is effective in limiting serious domestic violence through the insertion of a two year review, which will need to be tabled in the Parliament by the Minister upon completion.

Alternative ways of achieving policy objectives

There are no known alternate ways of achieving the same policy objectives.

Estimated cost for government implementation

It is not possible to estimate the financial impact of implementation for government as the relevant costs will depend on the application that result from the changes.

Consistency with fundamental legislative principles

Breaches of fundamental legislative principles are considered appropriate as they are balanced against the competing interests of public safety and welfare of victims (and their families, often children) of relevant domestic violence related offences.

The right of police to arrest and bring an accused person to court is an exception to the general rights of freedom of movement. Bail is a beneficial exception to this rule. However, the right to arrest and detain someone who has not yet been proven guilty would be intolerable without provision for bail.

The Scrutiny Committee has acknowledged that these freedoms under the common law are not absolute, and that Parliament has the power to restrict them by legislation but should not do so lightly.

Bail is an important process in the criminal justice system that provides an opportunity for dangerous offenders to be remanded in custody, pending their trial.

Consultation

There was consultation undertaken on the draft bill with the Queensland Law Society, Queensland Police Union of Employees, Womens Legal Service Queensland and other academics and legal practitioners.

Consistency with legislation of other jurisdictions

There are a myriad of other approaches dealing with bail processes and domestic violence related offences in other states and territories.

As outlined by the Australian Law Reform Commission (ALRC) presumptions in favour of bail are displaced in New South Wales for family violence offences and breach of protection orders in circumstances where the accused has a history of violence; has previously been violent to the victim of the alleged offence in the past or has failed to comply with a protective bail condition. Presumptions in favour of bail are also displaced in certain family violence circumstances in Victoria, the ACT, and the Northern Territory.

For police bail, in the ACT, there is a presumption against granting bail for family violence offences. The Bail Act 1992 (ACT) provides that police must not grant bail to a person accused of a domestic violence offence unless satisfied that the person 'poses no danger to a protected person while released on bail'.

The South Australian family violence legislation amends the Bail Act 1985 (SA) to include a presumption against bail for certain family violence offences involving physical violence or the threat of violence.

In relation to the provision of a tracking device (GPS tracker) as a special bail condition, New South Wales has undertaken a trial of GPS tracking for high-risk domestic violence offenders released on bail.

Finally, the provisions relating to the urgent bail review application are similar to and taken from section 40 of the New South Wales bail legislation.

Notes on provisions

Clause 1 refers to the short title of the Bill.

Clause 2 refers to Part 2 of the Bill, which relates to amendments to the *Bail Act 1980*.

Clause 3 provides definitions including for an electronic address and electronic means, for the purposes of notification of a bail application or bail decision to a domestic violence victim. It also provides a definition for a 'relevant domestic violence offence' being an offence against section 315A of the Criminal Code, or an offence against sections 355, 359E or 461 of the Criminal Code, or a provision of the Criminal Code mentioned in Schedule 1 of the *Penalties and Sentences Act 1992*, which already defines a serious violent offence. The offence is a relevant domestic violence offence if the act constituting the offence is a domestic violence offence or associated domestic violence offence, under the *Domestic and Family Violence Protection Act 2012* or a contravention of the *Domestic and Family Violence Protection Act 2012* – section 177 (2), which relates to a domestic violence order.

Clause 4 ensures that a tracking device (GPS tracker) must be considered as a condition of release on bail for an offender charged with a relevant domestic violence offence.

Clause 5 inserts a new section 11C to enable the process of informing a complainant of a relevant domestic violence offence, when the defendant makes an application for bail or for a variation of bail to a court. A new section 11D is also inserted into the Act relating to the notification process for when a defendant charged with a relevant domestic violence offence is released on bail. The court or police officer must give information about the defendant's release to a person at risk of domestic violence, in certain circumstances. This has to be done immediately if the court or police officer is aware the person is a person at risk of domestic violence from the defendant at the time the bail decision is made, or within 24 hours after the court or police officer becomes aware the person is a person at risk of domestic violence from the defendant.

Clause 6 amends the existing section 16 of the Bail Act in relation to bail for a relevant domestic violence offence, therefore reversing the presumption in favour of bail.

Clause 7 inserts a new section 19CA into the Act, providing a process for the stay of a release decision relating to a relevant domestic violence offence. The decision about the release is stayed until no longer than 4pm on the day that is 3 business days after the day on which the decision about release was made. The new section 19CA also provides that a decision about release does not entitle a person to be at liberty which the release decision is stayed. This will provide an urgent appeal right for the prosecutor or a person appearing on behalf of the Crown in circumstances where they believe there is an urgent and imminent risk to public safety for the release of a defendant charged with a relevant domestic violence offence.

Clause 8 amends the existing section 19D of the Act, relating to the efficiency of the new section 19CA and to ensure that a warrant can be issued to give effect to a stay under section 19CA. This will provide a process for an urgent review of a bail decision in a higher court and ensure that the process for lodging that urgent review avoids, where possible, the imposition on a defendant being released from custody and then remanded in custody while the original bail release decision is stayed.

Clause 9 inserts a two year review clause for the new domestic violence provisions outlined in the new sections 19CA and 19D(2). The Minister must table the review in the Legislative Assembly as soon as practicable after the review is completed.

Clause 10 refers to Part 3 of the Bill, which relates to amendments to the *Corrective Services Act 2006*.

Clause 11 replaces the existing section 320 of the Act regarding the provision of an eligible persons register. The chief executive must keep a register of persons who are eligible to receive information about a prisoner. This clause provides that a domestic violence victim can be an eligible person and receive information about a prisoner, even if the offence for which a person is imprisoned, does not directly relate to the domestic violence victim or a relevant domestic violence offence.

Clause 12 ensures that once a domestic violence victim is added to the eligible persons register to receive information about the pending parole of a prisoner, the chief executive must provide the information as outlined, as soon as practicable after the chief executive becomes aware of the information, or at least 14 days before the prisoner's date of discharge or release.

Clause 13 amends the existing section 325 as a consequential amendment to Clause 11, relating to the general release of prisoner information to an eligible person, as considered appropriate by the chief executive.