



New South Wales

Bail Amendment (Enforcement Conditions) Act 2012 No 87

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Bail Amendment (Enforcement Conditions) Act 2012 No 87

Act No 87, 2012

An Act to amend the *Bail Act 1978* to make further provision in relation to the bail conditions that may be imposed on an accused person. [Assented to 20 November 2012]

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Bail Amendment (Enforcement Conditions) Act 2012*.

2 Commencement

This Act commences on the date of assent to this Act.

Schedule 1 Amendment of Bail Act 1978 No 161

[1] Section 4 Definitions

Omit “or 36B” from the definition of *bail condition* in section 4 (1).

Insert instead “, 36B or 37AA”.

[2] Section 4 (3) (a)

Omit “or section 36B (1) (a) or (b)”.

Insert instead “, section 36B (1) (a) or (b) or section 37AA (1)”.

[3] Section 32 Criteria to be considered in bail applications

Insert after section 32 (7):

- (8) This section does not prevent consideration of the matters required to be considered in imposing an enforcement condition under section 37AA.

[4] Section 37 Restrictions on imposing bail conditions

Insert after section 37 (2):

- (2AA) An enforcement condition (within the meaning of section 37AA) may be imposed for the purpose of monitoring or enforcing compliance with a condition imposed for a purpose referred to in subsection (1). Subsection (2) does not apply in respect of an enforcement condition.

Note. However, see section 37AA, which requires, among other things, the condition to be reasonable and not unduly onerous.

[5] Section 37AA

Insert after section 37:

37AA Enforcement conditions

- (1) On the grant of bail to an accused person, a court may impose a condition (an *enforcement condition*) that requires the accused person to comply, while at liberty on bail, with one or more specified kinds of directions that are given by police officers for the purpose of monitoring or enforcing compliance with an underlying bail condition.
- (2) An *underlying bail condition* is a bail condition imposed for a purpose referred to in section 37 (1).

- (3) An enforcement condition is to specify:
- (a) the kind of directions that may be given to the accused person while at liberty on bail, and
 - (b) the circumstances in which each kind of direction may be given (in a manner that ensures the compliance with the condition is not unduly onerous), and
 - (c) the underlying bail condition or conditions in connection with which each kind of direction may be given.

Note. For example, an enforcement condition imposed in connection with an underlying bail condition that requires an accused person to refrain from consuming drugs or alcohol may require the accused person to undergo testing for drugs or alcohol as directed by a police officer and may include specifications as to when such directions may be given.

- (4) An enforcement condition may be imposed only if the court considers it reasonable and necessary in the circumstances, having regard to the following:
- (a) the history of the accused person (including the criminal history and particularly if the accused person has a criminal history involving serious offences or a large number of offences),
 - (b) the likelihood or risk of the accused person committing further offences while at liberty on bail,
 - (c) the extent to which compliance with a direction of a kind specified in the condition may unreasonably affect persons other than the accused person.
- (5) A court may impose an enforcement condition only at the request of the prosecutor in the proceedings.
- (6) If an accused person granted bail enters into an agreement that contains an enforcement condition, a police officer may give a direction of a kind specified in the enforcement condition:
- (a) in the circumstances specified in the enforcement condition, or
 - (b) at any other time the police officer has a reasonable suspicion that the accused person has contravened the underlying bail condition in connection with which the enforcement condition is imposed.
- (7) The regulations may apply, with modifications, any of the provisions of the *Road Transport (Safety and Traffic Management) Act 1999* relating to drug or alcohol testing to or in respect of directions specified in enforcement conditions that require an accused person to undergo drug or alcohol testing.

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- (8) For the purposes of this Act, an enforcement condition is a condition of a kind referred to in section 36 (2) (a) and the method for imposing the condition is the same as for other conditions under section 36 (2) (a). That is, the accused person is to enter into an agreement to observe the condition.
- (9) In this section, a reference to a court does not include a reference to an authorised justice exercising the functions of a court.

[6] Section 39 Entry into agreement and acceptance of acknowledgment or security

Omit “under section 36, 36A or 36B”.

[Second reading speech made in—

Legislative Council on 24 October 2012

Legislative Assembly on 14 November 2012]