



New South Wales

Bail Amendment Regulation 2022

under the

Bail Act 2013

His Honour the Administrator, with the advice of the Executive Council, has made the following Regulation under the *Bail Act 2013*.

MARK SPEAKMAN, MP
Attorney General

Explanatory note

This Regulation amends the *Bail Regulation 2021* to prescribe minimum standards for electronic monitoring required by bail conditions.

This Regulation also includes a transitional provision, consequent on the commencement of the *Bail Amendment Act 2022* (the ***Amendment Act***), that for clarity restates the principle that the amendments made by the Amendment Act apply to any bail decision made after the commencement of that Act, even if the relevant offence was committed or charges were laid, or relevant conviction or plea of guilt occurred, before the commencement.

This Regulation is made under the *Bail Act 2013*, including sections 30A and 98 (the general regulation-making power) and Schedule 3, clause 1.

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1 Name of Regulation

This Regulation is the *Bail Amendment Regulation 2022*.

2 Commencement

This Regulation commences on the day on which this Regulation is published on the NSW legislation website.

Schedule 1 Amendment of Bail Regulation 2021

[1] Part 4, Division 4

Insert after Division 3—

Division 4 Electronic monitoring

31A Minimum standards for electronic monitoring—the Act, s 30A

For section 30A(a) and (b), the minimum standards for electronic monitoring are set out in Schedule 1.

[2] Clause 45

Insert after clause 44—

45 Transitional provision for Bail Amendment Act 2022—the Act, Schedule 3, cl 1

To avoid doubt, the amendments to the Act made by the *Bail Amendment Act 2022* apply to any bail decision made after the commencement of that Act.

[3] Schedule 1

Insert at the end of the Regulation—

Schedule 1 Minimum standards for electronic monitoring

section 31A

Part 1 Minimum standards for electronic monitoring devices

1 Electronic monitoring devices

- (1) The electronic monitoring device used for electronic monitoring—
 - (a) must consist of an ankle strap and any necessary additional components, a dedicated charger and an instruction manual, and
 - (b) must have a GPS that includes the ability to—
 - (i) record and report on its position to the system, and
 - (ii) generate alerts 24 hours per day, and
 - (c) must have a casing that has an Ingress Protection rating of 68 (known as IP68) that provides for submersion in water with a depth of 5 metres for a period of up to 60 minutes, and
 - (d) must be robust, UV resistant and made of materials that are highly resistant to unauthorised removal or tampering, and
Example— kevlar, industrial-grade plastic
 - (e) must be designed to meet all atmospheric and environmental conditions experienced in Australia, and
 - (f) must not give a person to whom the device is attached an indication of when it is offline or has otherwise ceased to operate, and
 - (g) must store any geofences applicable to the person to whom the device is attached, including exclusion zones of any shape.

- (2) The ankle strap and other components of the electronic monitoring device must be capable of removal by using a proprietary tool that is not available to the public.
- (3) The ankle strap of the electronic monitoring device—
 - (a) may be disposable or designed to be reused, and
 - (b) must have a minimum life of 6 months at the time it is fastened to the accused person, and
 - (c) must be made from hypoallergenic materials and meet any applicable health or safety standards, and
 - (d) must be replaced as necessary.

Part 2 Minimum standards for stationary beacon or home unit

2 Stationary beacons or home units

The stationary beacon or home unit used in connection with the electronic monitoring device used for electronic monitoring—

- (a) must be reasonably robust and tamper-resistant, and
- (b) must utilise the latest radio frequency technology to provide maximum frequency in detecting the person to whom the electronic monitoring device is attached, and
- (c) must be able to communicate with the electronic monitoring device via radio frequency, and
- (d) must be able to automatically tether to the person to whom the electronic monitoring device is attached when the person is within range, and
- (e) must be designed and operate in a way that ensures signals from the beacon and the electronic monitoring device are not readily capable of interception and tracking.

Part 3 Minimum standards for battery and charging for electronic monitoring device

3 Batteries and charging

The electronic monitoring device used for electronic monitoring must—

- (a) have a sealed battery pack that is tamper-resistant, and
- (b) provide reports for monitoring purposes about the status of the device's battery charge, and
- (c) provide an alert and a report for monitoring purposes if the device's battery charge is low, and
- (d) be able to receive and transmit data while the device's battery is being charged.

Part 4 Minimum standards for monitoring and notifications

4 Monitoring and notifications

The electronic monitoring system used for electronic monitoring must—

- (a) include continual monitoring and provide reports and alerts to the satisfaction of the person or body enforcing the bail condition, and
- (b) operate on GPS and mobile networks with Australia-wide coverage, and
- (c) utilise online maps that—
 - (i) are not limited to New South Wales, and
 - (ii) are part of a pre-loaded mapping system that displays the position and movements of the person to whom the electronic monitoring device is attached, and
 - (iii) are updated regularly to ensure the latest maps are used, and
- (d) have the following abilities relating to providing alerts and reports—
 - (i) an ability to report on the position and movements of the person to whom the electronic monitoring device is attached in near real-time,
 - (ii) an ability to update in a way that ensures the accuracy of street labelling and house or lot number details,
 - (iii) an ability to easily determine addresses,
 - (iv) an ability to create and report on inclusion and exclusion zones,
 - (v) an ability to generate and communicate near real-time alerts and notifications about violations,
 - (vi) an ability to print maps that indicate the direction of travel of the person to whom the device is attached, within particular timeframes, including by using numbered trails, arrows or other markers.