



New South Wales

Bail Amendment (Enforcement Conditions) Bill 2012

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The object of this Bill is to amend the *Bail Act 1978* to enable a court, when granting bail to an accused person, to impose a bail condition (an ***enforcement condition***) that requires the accused person to comply, while on bail, with specified kinds of directions that are given by police officers for the purpose of monitoring or enforcing compliance with another bail condition. For example, an enforcement condition may require an accused person, who is subject to another bail condition that requires the accused person to refrain from consuming drugs or alcohol while on bail, to undergo testing for drugs or alcohol as directed by a police officer.

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 on the date of assent to the proposed Act.

Schedule 1 Amendment of Bail Act 1978 No 161

Schedule 1 [5] enables a court to impose an enforcement condition when granting bail to an accused person. An *enforcement condition* is a 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 another bail condition (the *underlying bail condition*).

An enforcement condition is to specify the kinds of directions that may be given to the accused person and 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).

An enforcement condition may be imposed only if the court considers it reasonable and necessary in the circumstances, having regard to the history of the accused person, the likelihood or risk of the accused person committing further offences while on bail and the extent to which compliance with a direction of a kind specified in the condition may unreasonably affect persons other than the accused person.

A police officer may give a direction to an accused person in the circumstances specified in the enforcement condition or at any other time the police officer has a reasonable suspicion that the accused person has contravened the underlying bail condition.

Currently, bail conditions may only be imposed for certain purposes, including promoting effective law enforcement, the protection and welfare of any specially affected person or the community and reducing the likelihood of future offences being committed by promoting the treatment or rehabilitation of an accused person.

Schedule 1 [4] provides that an enforcement condition may be imposed on an accused person for the purpose of monitoring or enforcing the accused person's compliance with an underlying bail condition imposed on the accused person for one of those existing purposes.

Schedule 1 [3] makes it clear that the criteria to be taken into account when determining whether to impose an enforcement condition are additional to the existing criteria to be considered by a court in determining whether to grant bail to an accused person.

Schedule 1 [1], [2] and [6] are consequential amendments.

First print



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New South Wales

Bail Amendment (Enforcement Conditions) Bill 2012

No. , 2012

A Bill for

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.

The Legislature of New South Wales enacts:	1
1 Name of Act	2
This Act is the <i>Bail Amendment (Enforcement Conditions) Act 2012</i> .	3
2 Commencement	4
This Act commences on the date of assent to this Act.	5

Schedule 1	Amendment of Bail Act 1978 No 161	1
[1]	Section 4 Definitions	2
	Omit “or 36B” from the definition of <i>bail condition</i> in section 4 (1).	3
	Insert instead “, 36B or 37AA”.	4
[2]	Section 4 (3) (a)	5
	Omit “or section 36B (1) (a) or (b)”.	6
	Insert instead “, section 36B (1) (a) or (b) or section 37AA (1)”.	7
[3]	Section 32 Criteria to be considered in bail applications	8
	Insert after section 32 (7):	9
	(8) This section does not prevent consideration of the matters required to be considered in imposing an enforcement condition under section 37AA.	10 11 12
[4]	Section 37 Restrictions on imposing bail conditions	13
	Insert after section 37 (2):	14
	(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.	15 16 17 18 19
	Note. However, see section 37AA, which requires, among other things, the condition to be reasonable and not unduly onerous.	20 21
[5]	Section 37AA	22
	Insert after section 37:	23
	37AA Enforcement conditions	24
	(1) On the grant of bail to an accused person, a court may impose a condition (an <i>enforcement condition</i>) 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.	25 26 27 28 29 30
	(2) An <i>underlying bail condition</i> is a bail condition imposed for a purpose referred to in section 37 (1).	31 32

- (3) An enforcement condition is to specify: 1
- (a) the kind of directions that may be given to the accused person while at liberty on bail, and 2
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 - (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 4
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 - (c) the underlying bail condition or conditions in connection with which each kind of direction may be given. 7
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- 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. 9
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- (4) An enforcement condition may be imposed only if the court considers it reasonable and necessary in the circumstances, having regard to the following: 14
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- (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), 17
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 - (b) the likelihood or risk of the accused person committing further offences while at liberty on bail, 21
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 - (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. 23
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- (5) A court may impose an enforcement condition only at the request of the prosecutor in the proceedings. 26
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- (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: 28
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- (a) in the circumstances specified in the enforcement condition, or 31
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 - (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. 33
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- (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. 37
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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.	1 2 3 4 5
(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 7
[6]	Section 39 Entry into agreement and acceptance of acknowledgment or security	8 9
	Omit “under section 36, 36A or 36B”.	10