

# Bail Regulation 2021

[2021-454]



New South Wales

## Status Information

### Currency of version

Current version for 11 October 2024 to date (accessed 22 December 2024 at 23:06)

Legislation on this site is usually updated within 3 working days after a change to the legislation.

### Provisions in force

The provisions displayed in this version of the legislation have all commenced.

### Notes—

- **See also**  
[Crimes Amendment \(Animal Sexual Abuse\) Bill 2024](#) [Non-government Bill— the Hon Emma Hurst, MLC]
- **Staged repeal status**  
This legislation is currently due to be automatically repealed under the [Subordinate Legislation Act 1989](#) on 1 September 2026

### Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the [Interpretation Act 1987](#).

File last modified 20 November 2024

# Bail Regulation 2021



New South Wales

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# Bail Regulation 2021



New South Wales

## Part 1 Preliminary

### 1 Name of Regulation

This Regulation is the *Bail Regulation 2021*.

### 2 Commencement

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

**Note—**

This Regulation repeals and replaces the *Bail Regulation 2014*, which would otherwise be repealed on 1 September 2021 by the *Subordinate Legislation Act 1989*, section 10(2).

### 3 Definitions

(1) In this Regulation—

**approved** means approved by the Attorney General for the purposes of the provision in which the expression occurs.

**bail decision**, in relation to a domestic violence offence, includes the following—

- (a) a bail decision about an application for an apprehended domestic violence order, if the defendant is, by the *Crimes (Domestic and Personal Violence) Act 2007*, section 83, taken to be an accused person charged with an offence,
- (b) a bail decision about an appeal against an apprehended domestic violence order, if the defendant is, by the *Crimes (Domestic and Personal Violence) Act 2007*, section 85, taken to be an accused person who is in custody.

**domestic violence offence** has the same meaning as in the *Crimes (Domestic and Personal Violence) Act 2007*.

**general manager of a correctional centre** means the general manager or other officer for the time being in charge of, or having the control or management of, the correctional centre.

**personal violence offence**—see section 15.

**registrar of a court** includes the following—

- (a) a registrar of the Supreme Court,
- (b) the Registrar of the Court of Criminal Appeal,
- (c) the Registrar of the Land and Environment Court,
- (d) a registrar of the District Court,
- (e) a registrar of the Local Court,
- (f) a Children’s Registrar, or other Registrar of the Children’s Court, under the [Children’s Court Act 1987](#).

**sexual assault offence**—see section 15.

**the Act** means the [Bail Act 2013](#).

**Note—**

The Act and the [Interpretation Act 1987](#) contain definitions and other provisions that affect the interpretation and application of this Regulation.

- (2) To avoid doubt, a reference in this Regulation to a bail authority includes a reference to an appropriate officer acting as, or on behalf of, a bail authority under the Act, section 95.

## **Part 2 Making and variation of bail decisions**

### **Division 1 General**

#### **4 Notice of hearing—the Act, s 33(2)(a)**

- (1) For the purposes of the Act, section 33(2)(a), a notice of the court in which a person is required to appear, and of the time, date and place of that appearance—
  - (a) may be included in a copy of the bail acknowledgment given to the person or in a notice setting out the terms of the bail acknowledgment, and
  - (b) if included, must be in the approved form.
- (2) The notice may—
  - (a) be given personally, or
  - (b) be sent by post, or
  - (c) be given or sent in another way that the court before which the person is to

appear may determine.

- (3) If proceedings in which an accused person granted bail is required to appear are adjourned, a notice in an approved form must be given to the person specifying—
- (a) the court in which the person is next required to appear, and
  - (b) the time, date and place of the appearance.

**5 Information about review or variation of decision to be given to accused person—the Act, ss 33(4)(d) and 34(1)(b)**

For the purposes of the Act, sections 33(4)(d) and 34(1)(b), the information to be included in a bail acknowledgment or given to the accused person is as follows—

- (a) an explanation of the meaning of “bail decision”,
- (b) information specifying the courts or persons that may make bail decisions, including the circumstances in which a decision of the Supreme Court may be varied by another court or person,
- (c) information specifying the bail applications that may be made and the persons who may make a bail application,
- (d) information about the special powers of courts and authorised justices to review bail conditions under the Act, section 55 if a person granted bail remains in custody because a bail condition has not been complied with,
- (e) information about the special powers of authorised justices to vary reporting conditions, residence conditions, association conditions and curfew conditions under the Act, section 52,
- (f) details of the way in which an accused person may make a bail application,
- (g) information to the effect that a court to which a bail application is made may confirm or vary the decision or give a new decision.

**6 Notice required if accused person granted bail remains in custody**

The notice required by the Act, section 42 if an accused person granted bail remains in custody must be given in the approved form.

**7 Particulars of orders in bail decisions**

- (1) If an accused person is, as a consequence of a bail decision, committed to a correctional centre—
- (a) by warrant—the court or person issuing the warrant must cause the required particulars to be endorsed on the form of warrant, or



- (b) otherwise than by warrant—the court must cause the required particulars to be notified to the general manager of the correctional centre to which the accused person is committed.
- (2) If an accused person is held in custody as a consequence of a bail decision and, as a consequence of a further bail decision, bail is granted, refused or dispensed with for the offence concerned, the court must cause the required particulars to be notified to the general manager of the correctional centre at which the accused person is in custody.
- (3) The **required particulars** are particulars of an order in the bail decision relating to—
  - (a) the grant, refusal or dispensation of bail for the offence concerned, and
  - (b) conditions imposed on the grant of bail, if any, and
  - (c) for the purpose of a bail condition that imposes a security requirement—a decision as to the nature and sufficiency of security that is acceptable security, and
  - (d) for the purpose of a bail condition that requires entry into a bail security agreement—a decision as to the person or persons, or the class or description of persons, who are acceptable persons, and the number of acceptable persons required, to enter into a bail security agreement, and
  - (e) for the purposes of a bail condition that requires a character acknowledgment—a decision as to the person or persons, or the class or description of persons, who are acceptable, and the number of acceptable persons required, to provide a character acknowledgment.

## **8 Notification of bail acknowledgment and compliance with bail conditions**

- (1) This section applies if—
  - (a) an accused person is in custody as a consequence of a bail decision, and
  - (b) the person subsequently gives a bail acknowledgment, and
  - (c) all bail conditions are complied with so that the person may be released from custody in relation to the offence.
- (2) The bail authority that accepts the bail acknowledgment from the accused person must immediately notify the general manager of the correctional centre at which the accused person is detained that—
  - (a) the accused person has signed the bail acknowledgment, and
  - (b) bail conditions have been complied with.

## 9 Exercise of certain functions by court staff and police officers

- (1) The following persons are prescribed as appropriate officers under the Act, section 95(2)(f) in relation to the bail acknowledgment functions of a bail authority—
  - (a) if the bail decision is made by a court or authorised justice—an officer of the Department of Communities and Justice who is—
    - (i) employed in a court registry, or
    - (ii) authorised by the Attorney General for the purposes of this section,
  - (b) if the bail decision is made by a police officer with power to grant bail—a police officer.
- (2) The following functions are the ***bail acknowledgment functions*** of a bail authority—
  - (a) the function of giving an accused person a bail acknowledgment or another notice required to be given by the bail authority,
  - (b) the function of accepting a signed bail acknowledgment from the accused person.
- (3) This section does not permit a police officer who does not have power to grant bail to exercise a function of deciding whether a person or security is acceptable under the Act, section 26(4) or 27(3).
- (4) Accordingly, if a decision referred to in subsection (3) has to be made by the police officer to whom a bail acknowledgment is given, the function of accepting the signed bail acknowledgment, and making the decision, must be exercised by a police officer with power to grant bail.

### 9A Proceedings for the administration of sentence

For the purposes of the Act, Schedule 1, clause 1(2)(e), proceedings under the [Children \(Detention Centres\) Act 1987](#) for an alleged failure by the person to comply with obligations under a parole order are prescribed as ***proceedings for the administration of sentence***.

## Division 2 Special provisions for police bail

### 10 Bail eligibility information—the Act, s 44

- (1) For the purposes of the Act, section 44, the bail eligibility information required to be given to a person in police custody charged with an offence must include the following—
  - (a) an explanation that the accused person is entitled to be granted bail for the offence, or released without bail, unless—

- (i) a show cause requirement applies, or
  - (ii) an exceptional circumstances requirement applies, or
  - (iii) there is an unacceptable risk,
- (b) if a show cause requirement applies to the offence or offences with which the person has been charged—information to the effect that there is a requirement for the accused person to show cause as to why detention is not justified,
- (c) if an exceptional circumstances requirement applies to the offence or offences with which the person has been charged—information to the effect that there is a requirement that bail for the accused person must be refused unless it is established exceptional circumstances exist that justify a decision to grant bail or dispense with bail,
- (d) a list of the 4 types of “unacceptable risk” under the Act,
- (e) an explanation of the bail decisions that can be made if there are no unacceptable risks,
- (f) an explanation of the bail decisions that can be made if the offence is an offence for which there is a right to release.

**Note—**

The Act, section 22A(2) provides that if a person is charged with an offence that is both subject to that section and a show cause offence, the requirement that the accused person establish exceptional circumstances exist that justify a decision to grant bail or dispense with bail applies instead of the requirement that the accused person show cause detention is not justified.

- (2) The information must be given in an approved form.
- (3) In this section, **exceptional circumstances requirement** means the requirement under the Act, section 22A that a bail authority must refuse bail for an offence referred to in the section unless it is established exceptional circumstances exist.

**11 Records verifying bail eligibility information was given—the Act, s 44(2)**

- (1) For the purposes of the Act, section 44(2), the prescribed form in which a record must be kept verifying a person in police custody charged with an offence has been given the bail eligibility information is a form that contains the following information—
- (a) the name of the police officer who gave the person charged with the offence the bail eligibility information,
  - (b) the police station or hospital at which the bail eligibility information was given,
  - (c) the name of the person charged with the offence,

(d) a description of the offence with which the person is charged,

(e) the date on which the bail eligibility information was given.

(2) The record may be made and kept in electronic form.

## **12 Record of reasons for decision**

(1) A police officer who makes a bail decision must ensure the record of reasons for the decision is made in the approved form and endorsed in the approved way.

(2) The police officer must ensure the endorsed form, or a copy of the form, is immediately sent to the court before which the accused person is required to appear.

(3) If a bail decision is made in relation to more than one offence, the reasons for the refusal of bail may be recorded on one form.

## **13 Facilities to be provided by police if accused person not released**

(1) The facilities required by the Act, section 46(2) to be made available to an accused person in police custody who is refused bail or not released on bail by a police officer are as follows—

(a) facilities for an accused person to wash, shower or bathe,

(b) facilities for an accused person to change clothing.

(2) Nothing in this section requires a police officer to provide clothing for an accused person unless—

(a) the clothing is brought to the police station at which the person is in custody, whether by a member of the accused person's family or by some other person, and

(b) the person who brings the clothing consents to the clothing being searched.

## **Division 3 Special provisions for sexual assault and personal violence offences**

### **14 Bail authority to notify informant of bail decision for domestic violence offence**

(1) A bail authority that grants or refuses bail for a domestic violence offence must immediately give notice of the bail decision to the informant, unless the informant is a police officer.

(2) The notice may be given personally or by post.

(3) The notice must contain the information referred to in section 5.

(4) A notice given of a decision to grant bail must specify the bail conditions.

(5) In this section—

**informant** includes a protected person within the meaning of the *Crimes (Domestic and Personal Violence) Act 2007*.

#### **15 Police to give notice of bail decisions for sexual assault and personal violence offences**

(1) As soon as practicable after a bail decision is made in relation to a sexual assault offence or a personal violence offence, the informant for the offence, if a police officer, must take appropriate steps to ensure notice of the bail decision is given—

(a) to the alleged victim of the offence, or

(b) if it is alleged the victim died as a result of the offence—to a close relative of the alleged victim of the offence.

(2) The notice may be given personally or by post.

(3) Nothing in this section affects the duty of a bail authority to notify a bail decision to an informant under section 14.

(4) In this section—

**domestic relationship** has the same meaning as in the *Crimes (Domestic and Personal Violence) Act 2007*.

**personal violence offence** has the same meaning as in the *Crimes (Domestic and Personal Violence) Act 2007*, but includes an offence under the *Crimes Act 1900*, section 61 or an offence of attempting to commit an offence under the section, only if the accused person has a domestic relationship with the alleged victim of the offence.

**sexual assault offence** means—

(a) an offence under the *Crimes Act 1900*, Part 3, Division 10, other than section 79 or 80, and

(b) providing the attempt to commit an offence involves an assault on a person—an offence, whether under section 344A or otherwise, of attempting to commit an offence referred to in paragraph (a).

**victim**, in relation to an offence under the *Crimes (Domestic and Personal Violence) Act 2007*, section 14 of contravening a prohibition or restriction specified in an order, means the person for whose protection the order was made.

(5) In the definition of **sexual assault offence** in subsection (4), a reference to an offence under the *Crimes Act 1900*, Part 3, Division 10 is taken to extend to a repealed offence that was contained in the Division if a bail decision relates to the offence.

## **Part 3 Bail applications**

### **Division 1 Release applications**

#### **16 Making of release application**

- (1) An accused person must make a release application in the following way—
  - (a) if the person is at that time appearing before the court—orally,
  - (b) if the person is not appearing before the court—in writing in the approved form.
- (2) A written release application may be signed by—
  - (a) the accused person, or
  - (b) on the accused person's behalf by the accused person's lawyer, spouse, de facto partner, parent or guardian.
- (3) A court or authorised justice may make a decision on a release application even if the accused person has not complied with the provisions of subsection (1) or (2).
- (4) An accused person may, in one application, make a release application to a court or authorised justice in relation to more than one offence.
- (5) If an accused person who makes a release application is in custody at a correctional centre, the general manager of the correctional centre must forward the application, without undue delay, to the registrar of the court to which the application is made.
- (6) A prosecutor is not required to give notice to an accused person of a decision to oppose a release application.

### **Division 2 Detention applications**

#### **17 Making of detention application**

- (1) Where practicable, a prosecutor must make a detention application in writing and in the approved form.
- (2) A court or authorised justice must not decline to hear a detention application only on the basis the detention application is not made in writing.
- (3) A court or authorised justice may make a decision on a detention application even if the application does not comply with this section.
- (4) A prosecutor may, in one detention application, make a detention application in relation to more than one offence committed or alleged to have been committed by the same person.

## **18 Notice of detention application**

- (1) On receipt of a detention application, a court or authorised justice must give notice of the time and place of hearing to—
  - (a) the applicant, and
  - (b) the accused person.
- (2) The notice is not required to be given to a person if the court or authorised justice is satisfied written notice has already been given to the accused person by a police officer.
- (3) If the accused person does not appear at the hearing, the court or authorised justice, on proof of notice having been given to the person, may proceed to hear and determine the application.
- (4) A court or authorised justice may dispense with the giving of notice if satisfied—
  - (a) the accused person is evading service or cannot be contacted, or
  - (b) the interests of justice so demand.

## **19 Withdrawal by Crown of detention application—the Act, s 40(2)(b)**

For the purposes of the Act, section 40(2)(b), a notice that the Crown does not intend to proceed with a detention application may be filed with the Local Court.

## **Division 3 Variation applications**

### **20 Making of variation application**

- (1) An interested person must make a variation application in writing and in the approved form.
- (2) An accused person may make a variation application orally if the person is before the court.
- (3) A court or authorised justice may make a decision on a variation application even if the application does not comply with subsection (1).
- (4) An interested person may, in one variation application, make a variation application in relation to more than one offence committed or alleged to have been committed by the same person.
- (5) If an accused person who makes a variation application is in custody at a correctional centre, the general manager of the correctional centre must forward the variation application, without undue delay, to the registrar of the court to which the application is made.

(6) In this section—

***interested person*** has the same meaning as in the Act, section 51.

## **21 Notice of variation application**

(1) On receipt of a variation application, a court or authorised justice must give notice of the time and place of hearing to—

- (a) the applicant, and
- (b) the accused person, if not the applicant, and
- (c) the prosecutor, if not the applicant.

(2) The notice is not required to be given to a person if the court or authorised justice is satisfied the notice has already been given to the person by a police officer.

(3) If the accused person does not appear at the hearing, the court or authorised justice, on proof of notice having been given to the person, may proceed to hear and determine the application.

(4) A court or authorised justice may dispense with the giving of notice if it is satisfied—

- (a) the accused person is evading service or cannot be contacted, or
- (b) the interests of justice so demand.

(5) The Supreme Court must give notice to a person who makes a variation application of a decision to refuse to entertain the application.

(6) In this section—

***prosecutor*** has the same meaning as in the Act, section 51.

## **Part 4 Bail conditions**

### **Division 1 Security requirements**

#### **22 Evidence of identity and residential address to be provided**

- (1) A bail authority may refuse to make a decision that a person is an acceptable person, or that security is acceptable security, for the purposes of a security requirement until the bail authority is satisfied, on the evidence that appears to the authority to be sufficient, as to the identity and residential address of the person who proposes to enter into the relevant bail security agreement or deposit the relevant security.
- (2) Nothing in this section limits the powers of a bail authority in relation to the making of a decision as to whether a person is an acceptable person or security is acceptable security as referred to in the Act, section 26.



### **23 Verification proposed bail guarantor is acceptable person**

A bail authority must not enter into a bail security agreement with a person unless the bail authority is satisfied—

- (a) a decision has been made as to which person, or class or description of persons, is an acceptable person to enter into the bail security agreement, and
- (b) the person—
  - (i) is an acceptable person referred to in the decision, or
  - (ii) belongs to a class or description of acceptable persons referred to in the decision.

### **24 Deposit of security**

A bail authority must not accept the deposit of security for the purposes of compliance with a security requirement of a bail condition unless the bail authority is satisfied—

- (a) a decision has been made as to what security is acceptable security for the purposes of the security requirement, and
- (b) the security is acceptable security under the decision.

### **25 Acceptance of distant sureties**

A person who cannot reasonably attend, because of distance or for another reason, before the bail authority to which the bail acknowledgment was given for the purposes of entering into a bail security agreement or depositing security required to comply with a security requirement may—

- (a) enter into an agreement with another bail authority, or
- (b) deposit a security or amount of money with another bail authority.

### **26 Dealing with money or security—the Act, s 82(2)**

For the purposes of the Act, section 82(2), if money or security is deposited under a security requirement of a bail condition otherwise than at a court, the bail authority that accepts the money or security must, as soon as practicable, lodge with the registrar of a court—

- (a) the money or security, and
- (b) the relevant bail acknowledgment, and
- (c) the relevant bail security agreement.

## **Division 2 Character acknowledgments**

### **27 Content and form of character acknowledgment**

- (1) A character acknowledgment required by a bail condition must contain the following details—
  - (a) the period during which the person making the acknowledgment has been acquainted with the accused person,
  - (b) the nature of the person's acquaintance with the accused person.
- (2) A character acknowledgment must be in the approved form.

### **28 Acceptable person to provide evidence of identity and residential address**

- (1) A bail authority may refuse to make a decision that a person is an acceptable person for the purposes of a bail condition that requires a character acknowledgment until the bail authority is satisfied, on evidence that appears to the authority to be sufficient, as to the person's identity and residential address.
- (2) Nothing in this section limits the powers of a bail authority in relation to the making of a decision as to whether a person is an acceptable person as referred to in the Act, section 27.

### **29 Verification as acceptable person**

A bail authority must not accept a character acknowledgment from a person unless the bail authority is satisfied—

- (a) a decision has been made as to which person, or class or description of persons, is an acceptable person for the character acknowledgment, and
- (b) the person—
  - (i) is an acceptable person referred to in the decision, or
  - (ii) belongs to a class or description of acceptable persons referred to in the decision.

### **30 Acceptance of distant character acknowledgments**

A person who cannot reasonably attend, because of distance or for another reason, before the bail authority to which the bail acknowledgment was given for the purposes of giving a character acknowledgment may make an acknowledgment to another bail authority.

## **Division 3 Accommodation requirements**

### **31 Information about action taken to secure accommodation for accused person**

- (1) The information the court may direct an officer of a Division of the Government

Service to provide under the Act, section 28(5) may be lodged in writing or can be provided orally in court.

- (2) The information must identify the address at which the accused person will reside while on bail, if the address has been determined.

## **Division 4 Mandatory electronic monitoring, serious domestic violence offences—the Act, s 28B(4)**

### **31A Definitions**

In this section—

**approved electronic monitoring system** means an electronic monitoring system approved by the Commissioner under section 31C.

**authorised person** means a person authorised by the Commissioner for the purposes of this division.

**Commissioner** means the Commissioner of Corrective Services.

**electronic monitoring condition** means a bail condition under the Act, section 28B(2).

**electronic monitoring transmitter** means electronic monitoring transmitter approved by the Commissioner as part of an approved electronic monitoring system.

### **31B Application of division**

This division applies only to electronic monitoring imposed under the Act, section 28B as a bail condition for serious domestic violence offences.

### **31C Approval of electronic monitoring systems**

The Commissioner may approve electronic monitoring systems for this division.

### **31D Information to be given by bail authority to accused person**

A bail authority that grants bail to an accused person subject to an electronic monitoring condition must, with the bail acknowledgement given to the accused person, provide information about the obligations of the accused person under section 31G.

### **31E Information to be given by bail authority to Commissioner**

A bail authority that grants bail to an accused person subject to an electronic monitoring condition must give the Commissioner notice, by email or other electronic means, that the accused person is subject to an electronic monitoring condition.

### **31F Fitting of electronic monitoring transmitter**

The Commissioner must ensure an accused person subject to an electronic monitoring

condition is fitted with an electronic monitoring transmitter as soon as practicable after the person has met the other conditions of the person's release on bail.

**31G Compliance by accused person with electronic monitoring**

- (1) An accused person subject to an electronic monitoring condition must submit to an electronic monitoring transmitter being fitted to the accused person by an authorised person.
- (2) An accused person fitted with an electronic monitoring transmitter under this section must—
  - (a) as soon as possible after being released on bail—
    - (i) travel to the accused person's residence, and
    - (ii) contact an authorised person to establish that the transmitter and related equipment is functioning, and
  - (b) keep the transmitter charged in accordance with directions given by an authorised person, and
  - (c) keep the transmitter and all related equipment secure, and
  - (d) immediately notify an authorised person of any concerns about the operation of the transmitter and related equipment, and
  - (e) give an authorised person the accused person's preferred email address and mobile phone number to enable an authorised person to contact the accused person, and
  - (f) notify an authorised person of a change in the accused person's preferred email address and mobile phone number within 24 hours after the change occurs, and
  - (g) not remove, damage, disable or otherwise interfere with the transmitter or related equipment, and
  - (h) comply with all other reasonable directions of the Commissioner or an authorised person about the transmitter or related equipment, including a direction requiring the accused person to—
    - (i) attend at a specified place and time for testing or maintenance of the transmitter or related equipment, or
    - (ii) return the transmitter or related equipment to a specified place at a specified time, or
    - (iii) allow the collection of the transmitter or related equipment from the person's residence, or

- (iv) allow an authorised person to enter the person's residence to test, and take action necessary for the effective functioning of, the transmitter or related equipment.

**Note—**

Failure of an accused person to comply with an obligation under this section may be dealt with under the Act, Part 8, as a breach of a bail condition.

**31H Reporting of accused person's non-compliance**

- (1) An authorised person must notify a member of the NSW Police Force of the following matters as soon as practicable after becoming aware of the matter—
  - (a) failure of an accused person to comply with an obligation under section 31G(2),
  - (b) unexplained loss of signal from the electronic monitoring transmitter fitted to an accused person.
- (2) If information obtained by electronic monitoring indicates an accused person may have breached one or more of the accused person's bail conditions, an authorised person must notify a member of the NSW Police Force of the possible breach and give the member the relevant monitoring information.

**Note—**

Police officers may, under the Act, Part 8, take action to enforce bail conditions.

**31I Non-compliance caused by failure of electronic monitoring**

- (1) If at any time an authorised person determines the electronic monitoring transmitter fitted to an accused person, or related equipment, is not functioning effectively, whether for technical or other reasons, the authorised person must give notice to the following—
  - (a) a member of the NSW Police Force,
  - (b) the accused person or the accused person's legal representative.
- (2) Notice under this section must be given—
  - (a) within 2 days after an authorised person determines the electronic monitoring transmitter fitted to an accused person, or related equipment, is not functioning effectively, and
  - (b) in the way approved by the Commissioner.
- (3) The NSW Police Force must ensure that notice received under this section is dealt with in accordance with the Act, section 77.
- (4) If, following receipt of notice under this section, the accused person makes a variation

application, the Court must list the application for hearing as soon as practicable.

## **Division 5 Independent electronic monitoring—the Act, s 30A**

### **31J Minimum standards for electronic monitoring**

- (1) For the Act, section 30A(a) and (b), the minimum standards for electronic monitoring are set out in Schedule 1.
- (2) This section does not apply to electronic monitoring imposed as a bail condition under the Act, section 28B(2).

## **Part 5 General provisions about security requirements**

### **Division 1 General**

#### **32 Application for discharge of liability**

An application under the Act, section 83 for discharge of liability under a bail security agreement must be in an approved form.

#### **33 Form of arrest warrant**

A warrant issued under the Act, section 83(3)(a) must be in an approved form.

#### **34 Revocation of bail if security no longer intact—the Act, s 85(4)(a)**

- (1) For the purposes of the Act, section 85(4)(a), a written notice of the court's intention to revoke a person's bail on the ground that the person's current bail security is no longer intact, must contain the following information—
  - (a) the date on which the person was granted bail, and the offence or offences to which the bail relates,
  - (b) the reason for which the court considers the current bail security is no longer intact,
  - (c) information to the effect that the court proposes to revoke the person's bail unless the person—
    - (i) demonstrates to the court the current bail security is still intact, or
    - (ii) arranges for the deposit of replacement or supplementary security, whether by the person who deposited the current bail security or by some other person,
  - (d) the date on which the court proposes to revoke the person's bail if neither of the things referred to in paragraph (c) is done, and the procedure to be followed if the person wishes to do either of the things referred to in the paragraph.

- (2) The written notice must be accompanied by a copy of the relevant bail security agreement.

## **Division 2 Forfeiture of security**

### **35 Appropriate State authorities in relation to forfeiture orders**

- (1) For the purposes of the Act, Schedule 2, clause 1(1), definition of **appropriate State authority**, the following persons and bodies are declared to be appropriate State authorities for the forfeiture orders specified—
  - (a) the Commissioner of Police—for a forfeiture order relating to bail money under a bail security agreement for—
    - (i) an offence being prosecuted by a police officer, or
    - (ii) an offence being prosecuted by another person in the Local Court, otherwise than on behalf of a public authority or the Director of Public Prosecutions,
  - (b) the public authority concerned—for a forfeiture order relating to bail money under a bail security agreement for an offence being prosecuted by or on behalf of a public authority,
  - (c) the Director of Public Prosecutions—for a forfeiture order relating to bail money under a bail security agreement for—
    - (i) an offence being prosecuted by or on behalf of the Director of Public Prosecutions, or
    - (ii) an offence being prosecuted by another person, other than a police officer and otherwise than on behalf of a public authority, in a court other than the Local Court.
- (2) In this section, **public authority** means the Crown, a Minister of the Crown or a statutory body representing the Crown, and includes a council or county council within the meaning of the [Local Government Act 1993](#).

### **36 Forfeiture notice given to persons affected by forfeiture order**

- (1) The information the Act, Schedule 2, clause 4 requires to be contained in a forfeiture notice is the following—
  - (a) the terms of the relevant forfeiture order and the date on which it was made,
  - (b) information to the effect that a person affected by the order may object to the confirmation of the forfeiture order,
  - (c) the date on which the forfeiture order will be confirmed if no objection is made,

(d) the procedure to be followed if the person wishes to object to the confirmation of the forfeiture order.

(2) The written notice must be accompanied by a copy of the relevant bail security agreement.

### **37 Giving of notice of objection to confirmation of forfeiture order**

(1) The way in which the Local Court must give the notice of an objection required by the Act, Schedule 2, clause 5 to the appropriate State authority is by written notice sent to the authority.

(2) The written notice must—

(a) if a date has been fixed for the hearing of the objection—set out the date, and

(b) be accompanied by a copy of the objection as filed in the court.

### **38 Giving of notice of informal objection to confirmation of forfeiture order**

(1) The way in which a court must give notice of an objection required by the Act, Schedule 2, clause 8 to the appropriate State authority is by written notice sent to the authority.

(2) If a representative of the appropriate State authority is appearing before the court when the objection is made, notice of the objection may instead be given to the authority by oral statement to the representative.

(3) The notice or statement must—

(a) if a date has been fixed for the hearing of the objection—indicate the date, and

(b) include particulars of the objection.

### **39 Written notice concerning taking effect of forfeiture order**

(1) The information to be contained in a written notice given under the Act, Schedule 2, clause 11 to a person affected by a forfeiture order, is the following—

(a) the terms of the order and the date on which it was made,

(b) information to the effect that the order has taken effect,

(c) the person's obligations under the Act in relation to the payment of bail money forfeited by the order,

(d) information to the effect that the person may apply to have the order set aside,

(e) the procedure to be followed if the person wishes to apply to have the order set aside.



- (2) The written notice must be accompanied by a copy of the relevant bail security agreement.

## **Part 6 Miscellaneous**

### **40 Requirement to appear when bail is dispensed with**

- (1) If proceedings in which a person for whom bail has been dispensed with is required to appear are adjourned, a notice of the following must be given to the person—
  - (a) the court in which the person is next required to appear,
  - (b) the time, date and place of the appearance.
- (2) The notice must be in an approved form.

### **41 Facilitation of proof of failure to appear—the Act, s 94(1) and (2)**

A police officer with power to make a bail decision is prescribed as a court officer for the purposes of the Act, section 94(1) and (2).

### **42 Entry into arrangements with courts of other States and Territories**

- (1) A court (a **NSW court**) may make an arrangement with a court of another State that enables the court of the other State to exercise 1 or more of the following functions of the NSW court, including ancillary functions, under the Act on behalf of the NSW court—
  - (a) accepting a character acknowledgment,
  - (b) entering into a bail security agreement,
  - (c) accepting money or security deposited under a bail condition.
- (2) Anything done by, or in relation to, a court of another State under an arrangement is to be treated as if it were done by or in relation to the NSW court on whose behalf the relevant function was exercised.
- (3) For the purposes of the Act, section 95(2)(f), an **appropriate officer** includes an officer of a court of another State exercising a function referred to in subsection (1) in accordance with an arrangement referred to in the subsection.
- (4) In this section—

**State** includes a Territory.

### **43 Appropriate officers—juvenile justice—the Act, s 95(2)(f)**

- (1) For the purposes of the Act, section 95(2)(f), each of the following persons is prescribed as an **appropriate officer**—

- (a) a centre manager or an assistant manager of a detention centre,
- (b) a member of staff of the Department of Communities and Justice who is—
  - (i) employed in the Youth Justice Branch of the Department, and
  - (ii) is a justice of the peace.

(2) In this section—

**centre manager** and detention centre have the same meanings as in the *Children (Detention Centres) Act 1987*.

**justice of the peace** has the same meaning as in the *Justices of the Peace Act 2002*.

#### 44 Repeal and Savings

- (1) The *Bail Regulation 2014* is repealed.
- (2) Any act, matter or thing that, immediately before the repeal of the *Bail Regulation 2014*, had effect under that Regulation continues to have effect under this Regulation.

#### 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.

## 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.