

2017

LEGISLATIVE ASSEMBLY OF THE
NORTHERN TERRITORY

ATTORNEY-GENERAL AND MINISTER FOR JUSTICE

Bail Amendment Bill 2017

SERIAL NO. 18

EXPLANATORY STATEMENT

GENERAL OUTLINE

The purpose of the Bail Amendment Bill 2017 is to amend the *Bail Act* to allow electronic monitoring to form part of a conduct agreement for accused persons on police bail and to make consequential amendments to the *Sentencing Act* and the *Surveillance Devices Regulations*.

NOTES ON CLAUSES

Part 1 Preliminary matters

Clause 1. Short Title

This is a formal clause which provides for the citation of the Bill. The Bill, when passed, may be cited as the *Bail Amendment Act 2017*.

Clause 2. Commencement

This is a formal clause which provides when the Act will commence. The Act will commence on a day fixed by the Administrator by Gazette notice.

Part 2 Amendment of Bail Act

Clause 3. Act amended

This Part amends the *Bail Act*.

Clause 4. Section 3 amended

This clause inserts the definition of ‘approved police monitoring device’ and ‘police monitoring device’.

Clause 5. Section 27A amended

This clause amends section 27A of the *Bail Act*, which sets out the requirements that may be contained in a conduct agreement.

Subclause (1) inserts a new paragraph (iaa), which allows an authorised member to require an accused person to wear an approved police monitoring device as part of a conduct agreement and to comply with the reasonable directions of a police officer in the use of the device while on bail. For example, that it needs to be recharged daily.

Subclause (1) also inserts a new paragraph (iab), giving an additional power to courts to, in effect, enlarge the electronic monitoring requirement on police bail on the same terms and conditions when an accused person first appears in court, namely to require the accused person to wear an approved police monitoring device while on bail and to comply with the reasonable directions of a police officer in the use of the device. This provision is necessary because there would otherwise be a gap between electronic monitoring on police bail ending and electronic monitoring on court ordered bail commencing.

Subclause (2) amends the example for subsection (2A) by inserting (iaa) and (iab) as examples of ancillary provisions.

Clause 6. Section 27B amended

Subclause (1) inserts new subsections (1AA) and (1AB), which allow a police officer to touch the accused person in order to place on, attach to, or remove from, the accused person an approved police monitoring device and give reasonable directions to the accused person regarding the use of the device.

Clause 7. Section 28 amended

Subclause (1) inserts a new subsection (3). This provision states that an authorised member may only impose a requirement of electronic monitoring if the accused person will be required to reside at a specified place and that the authorised member is satisfied that the accused person is a suitable person. This provides parameters to the exercise of the new police power to impose an electronic monitoring requirement as, in order for the device to work, the accused person must have a residence that will support the technology and the authorised member must also be satisfied that the accused person is otherwise suitable.

Subclause (1) also inserts a new subsection (3A)(a), which provides that a court may only enlarge police bail pursuant to new section 27A(1)(iab) where the accused person was subject to electronic monitoring on police bail up to the time of their appearance in court and that the court orders a full assessment report from the Commissioner of Correctional Services. This is because electronic monitoring on police bail is an interim measure only, pending a full assessment.

Subclause (1) also inserts new subsection (3A)(b), which, read with new section 28(5), rewrites current section 28(3). The rewriting is a consequence of the other amendments to section 28.

Subclause (2) inserts a new subsection (5) which defines 'assessment report' as a report prepared by the Commissioner of Correctional Services as mentioned in section 27A(1)(ia) or (ib).

Clause 8. Section 38A amended

This clause inserts 'approved police monitoring device' into section 38A so that whether an accused person is on police bail or court ordered bail with an electronic monitoring requirement, if the relevant device is damaged, the costs are recoverable by the Territory.

Clause 9. Section 52B inserted

This clause inserts a new section 52B, which gives the Commissioner of Police the power to approve a police monitoring device. This is necessary because the definition of ‘approved monitoring device’ currently within the Act only refers to the technology used by Correctional Services for court ordered electronic monitoring, which is approved by the Commissioner of Correctional Services. Correctional Services will not be involved in the operation of electronic monitoring on police bail, therefore it is appropriate that the Commissioner of Police has the power to approve the devices used by police.

Clause 10. Part 9, Division 4 inserted

This clause contains the transitional provisions and relevant definitions relating to the *Bail Amendment Act 2017*. New section 62 contains definitions of ‘amending Act’ and ‘commencement’. New section 63 relates to the operation of the amendments to section 27A. It provides that 27A applies in relation to a conduct agreement entered into after the commencement of the Act, even if the alleged offence to which the bail relates was committed before the commencement of the Act.

Part 3 Consequential amendments

Division 1 Sentencing Act

Clause 11. Act amended

This Division amends the *Sentencing Act*.

Clause 12. Section 5 amended

Section 5 of the *Sentencing Act* sets out the matters a court must have regard to in sentencing an offender.

This clause amends section 5(2)(k) of the *Sentencing Act* by including section 27A(iaa) and (iab) of the *Bail Act*. Currently court ordered bail with an electronic monitoring requirement is included in this provision. This amendment expands the provision to include police bail with an electronic monitoring requirement.

Division 2 Surveillance Devices Regulations**Clause 13. Regulations amended**

This Division amends the *Surveillance Devices Regulations*.

Clause 14. Regulation 3 amended

Regulation 3 of the *Surveillance Devices Regulations* sets out when a tracking device may be installed, used or maintained.

Subclause (1) inserts new Regulation 3(1)(da), which allows the installation, use or maintenance of a tracking device in accordance with the directions of the Commissioner of Police to monitor the location of an accused person on police bail with an electronic monitoring requirement.

Subclause (2) inserts the definition of 'relevant conduct agreement' into Regulation 3(2).

Part 4 Expiry of Act**Clause 15. Expiry of Act**

This is a standard clause which provides that the *Bail Amendment Act 2017* expires the day after it commences. As this is an amending Act, there is no need to retain the Act on the statute book, once the amendments to the *Bail Act* have been effected.