

Bail (Domestic Violence) and Another Act Amendment Bill 2017

Explanatory Notes

FOR

Amendments To Be Moved During Consideration In Detail By The Honourable Yvette D'Ath MP

Title of the Bill

The short title of the Bill is the Bail (Domestic Violence) and Another Act Amendment Bill 2017.

Objectives of the Amendments

The amendments to be moved during consideration in detail, together with amendments to be moved during consideration in detail of the Victims of Crime Assistance and Other Legislation Amendment Bill 2016, support the fundamental policy underpinning the Bill. That is, to improve safety for victims of domestic violence and to hold perpetrators of domestic violence to account. The amendments acknowledge and better respond to concerns raised about the Bill during consultation and better deliver on the policy objectives.

The objectives of the amendments to the Bill are to:

- reflect feedback from key stakeholders in the domestic violence sector to the Legal Affairs and Community Safety Committee who highlighted the importance of the court being properly informed of all relevant matters, including comprehensive risk factors, when considering bail for domestic violence related offending;
- reflect known domestic violence risk factors, including that strangulation by a partner is accepted as a predictive risk factor for future domestic violence and future domestic homicide;
- more closely align Queensland's bail laws, in terms of the approach to bail for domestic violence perpetrators, with other Australian jurisdictions;

- draw attention to existing provisions of the *Bail Act 1980* (the Bail Act) that allow a court to receive and take into account evidence relating to the risk of further domestic violence when hearing an application for bail. Such evidence may include evidence from victims of domestic violence or evidence based risk-assessments;
- provide an appropriate and effective legislative framework for the use of electronic monitoring as a condition of bail by a court, regardless of the offence type;
- ensure that the availability of electronic monitoring as a condition of bail must not influence the decision of a court to release a person to bail in circumstances where they would otherwise have been remanded in custody; and
- provide that the provisions relating to electronic monitoring as a condition of bail, are to commence on proclamation to enable crucial implementation work to occur before commencement.

Achievement of the Objectives

The objectives are achieved by making the following amendments:

- amending clause 6 of the Bill to add to the list of show cause circumstances in section 16(3) of the Bail Act, effectively reversing the presumption in favour of bail, defendants charged with a relevant offence which is defined as:
 - an offence against section 315A of the Criminal Code (Choking, suffocation or strangulation in a domestic setting); or
 - an offence with a maximum penalty of 7 years imprisonment or more if the offence is also a domestic violence offence; or
 - an offence against the Criminal Code sections 75 (Threatening violence), 328A (Dangerous operation of a vehicle), 359E (Unlawful stalking), 355 (Deprivation of liberty), or 468 (Injuring animals) if the offence is also a domestic violence offence; or
 - an offence against section 177(2) of the *Domestic and Family Violence Protection Act 2012* (Contravention of domestic violence order) if:
 - the contravention itself involved the use, threatened use, or attempted use of unlawful violence to person or property; or
 - in the last five years, the defendant has been convicted of an offence involving the use, threatened use, or attempted use of unlawful violence to person or property; or
 - in the last two years the defendant has been convicted of another offence of Contravention of a domestic violence order.

This amendment draws on the established definition of domestic violence offence in section 1 of the Criminal Code and includes an identified category of offending behaviours which suggest a heightened risk of further domestic violence; serious offences that are also domestic violence offences; and more closely aligns with the approach taken in other Australian jurisdictions.

- amending clause 6 of the Bill to expressly provide in section 16 of the Bail Act that in considering an application for bail regarding any domestic violence offence or the offence of Contravening a domestic violence order, the court or police officer must specifically consider the risk of further domestic violence or associated domestic violence being committed by the defendant in assessing whether the defendant represents an unacceptable risk;
- amending clause 6 of the Bill to include a legislative note referring to existing section 15(1)(e) of the Bail Act regarding the evidence the court may receive and take into account in considering the risk of further domestic violence or associated domestic violence being committed by the defendant;
- amending clauses 4 and 6 of the Bill to introduce a new legislative framework for the use of electronic monitoring as a condition of bail (but not specifically anchored to domestic violence perpetrators) by:
 - amending clause 4 to clarify in section 11 of the Bail Act that only a court, and not a police officer, may impose a condition of bail requiring a person to wear a tracking device;
 - amending clause 4 to clarify in section 11 of the Bail Act that the court may impose any other condition necessary for the proper operation of that bail condition, and list a number of key conditions that could be imposed as legislative examples, such as, to:
 - facilitate the device being fitted to the defendant;
 - ensure police have the authority to install equipment necessary for the device to function in the defendant's home;
 - ensure the defendant takes the steps necessary to ensure the device or any equipment needed remain in good working order;
 - ensure police have the authority to ensure that the device or necessary equipment remain in good working order; and
 - ensure police have the authority to direct the person to take action that is reasonably necessary for the operation of the device;
 - amending clause 4 to make it clear that a court, in assessing whether a defendant is an unacceptable risk (and therefore should be remanded in custody), cannot have regard to the availability of electronic monitoring as a condition of bail; and
 - inserting a new provision to ensure commencement of the provisions relating to electronic monitoring as a condition of bail will occur on proclamation and not assent to allow for implementation planning;
- amending the long and short titles of the Bill to reflect the other amendments to be moved during consideration in detail; and
- omitting all other substantive clauses of the Bill.

Alternative Ways of Achieving Policy Objectives

There are no alternative ways of achieving the policy objectives.

Estimated Cost for Government Implementation

Any costs associated with the amendments to be moved during consideration in detail, beyond those costs arising from the amendments already in the Bill, are anticipated to be minimal.

Consistency with Fundamental Legislative Principles

The proposed amendment to add a new category of offending to the show cause circumstances in section 16 of the Bail Act potentially impacts on the rights and liberties of individuals as the amendment effectively reverses the presumption for bail, and displaces the general expectation for bail, under the former law in certain circumstances. The amendment is justified to better protect victims of domestic violence from the risk of further violence. Further, the amendment is limited to an identified category of offending behaviours that suggest a heightened risk of further domestic violence, or serious offences that are also domestic violence offences.

The proposed amendments to establish a legislative framework to support the use of electronic monitoring as a condition of bail potentially impact on the rights and liberties, and infringes the right to privacy, of an individual who has not been convicted of an offence. The potential breach of fundamental legislative principles is considered justified as the amendments will support the court to exercise an existing discretion to impose any condition thought fit, which may include ordering that a person wear an electronic monitoring device as a condition of bail. Further, such a condition can only be imposed in circumstances where it is considered necessary to help ensure that while released on bail a person will not commit an offence, endanger the safety or welfare of the public, interfere with witnesses or otherwise obstruct the course of justice.

The amendments limit the application of the framework supporting the use of an electronic monitoring condition only to orders imposed by a court and not by a police officer as an additional safeguard.

A transitional provision clarifies that these amendments will apply to offenders after commencement regardless of when the alleged offence was committed. This retrospective application is justified as the provision is procedural in nature.

Consultation

The amendments have been informed by community, legal and government stakeholder feedback on the Bail (Domestic Violence) and Another Act Amendment Bill 2017, including through submissions to the Legal Affairs and Community Safety Committee (the Committee), at the public hearing of the Committee and during a roundtable consultation meeting convened by the Honourable Yvette D'Ath MP, Attorney-General and Minister for Justice and Minister for Training and Skills on 8 March 2017.

NOTES ON PROVISIONS

Amendment 1 amends the short title to remove the reference to another Act.

Amendment 2 inserts a new clause 1A to provide that clauses 4 and 6(2) commence on a day fixed by proclamation.

Amendment 3 omits clause 3 of the Bill to retain existing section 6 of the *Bail Act 1980* (Definitions).

Amendment 4 amends clause 4 subclause (1) of the Bill by omitting proposed new subsections 11(4B), (4C) and (4D) and inserting new subsections 11(9B) and (9C).

New subsection 11(9B) clarifies that a court, and not a police officer, can impose a condition on bail requiring the defendant to wear a tracking device.

New subsection 11(9C) clarifies that the court may impose any condition the court considers necessary to facilitate the operation of the tracking device. A legislative example is included setting out a number of key conditions that the court may consider necessary to facilitate the operation of the tracking device. The inclusion of appropriate conditions is required to provide police with the necessary authority to ensure the tracking device and any equipment necessary for the operation of the tracking device are, or remain in, good working order.

Amendment 5 amends clause 4 subclause (2) of the Bill to include in the definition of ‘*tracking device*’, the chief executive of the department in which the Corrective Services Act is administered, for operational purposes.

Amendment 6 omits clause 5 of the Bill as relevant provisions regarding notification of information to victims are provided for under the *Victims of Crime Assistance Act 2009*, and expanded upon under the *Victims of Crime Assistance and Other Legislation Amendment Bill 2016*.

Amendment 7 amends clause 6 of the Bill by omitting proposed subsection 16(3)(g) and makes the following amendments to section 16:

- amends section 16(2) to require consideration of the risk of further domestic violence or associated domestic violence being committed by the defendant when assessing whether there is an unacceptable risk with respect to bail if the defendant is charged with a domestic violence offence (as defined in section 1 of the Criminal Code) or contravening a domestic violence order (section 177(2) *Domestic and Family Violence Protection Act 2012*).
- inserts a legislative note referring to existing section 15(1)(e) of the Bail Act regarding the evidence the court may receive and take into account in considering the risk of further domestic violence or associated domestic violence being committed by the defendant. It is intended that the court may receive and take into account evidence from victims of domestic violence or evidence based risk-assessments, subject to the requirements under section 15;
- inserts a new subsection 16(2A) to state that, in assessing whether there is an unacceptable risk under subsection (1)(a) a court must not have regard to the effect on the risk of imposing a condition under proposed new section 11(9B) i.e. the availability of electronic monitoring as a condition of bail.

- inserts a new subsection 16(3)(g) to introduce a new category of offending, a relevant offence, to the list of show cause circumstances.
- inserts a new subsection 16(7) to insert definitions. Domestic violence offence is defined by reference to section 1 of the Criminal Code. Relevant offence is defined by reference to specific offences or offences committed in specified circumstances. For the purpose of new subsection 16(7) definition of relevant offence paragraph (d)(ii), it does not matter whether or not the other offence involved domestic violence or was recorded as a domestic violence offence. Further, it does not matter whether or not the other offence involved the same alleged victim.

Amendment 8 omits clause 7. The perceived need for this amendment is significantly reduced by the proposed introduction of new section 16(2)(f) which is expected to lead to better informed bail outcomes.

Amendment 9 omits clause 8 consequential to amendment 8.

Amendment 10 omits clause 9 consequential to amendment 8.

Amendment 11 inserts a new clause 9A providing a transitional provision to clarify that the amendments to sections 11 and 16 apply in relation to the release of a person on bail after commencement regardless of whether the alleged offence in relation to which the person is released to bail happened, or the proceeding for the offence started before or after commencement.

Amendment 12 omits Part 3 of the Bill (Amendment of Corrective Services Act 2006) consistent with the Government's response to the Queensland Parole System Review.

Amendment 13 omits clauses 10 to 13 consequential to amendment 12.

Amendment 14 amends the long title to remove the reference to the *Corrective Services Act 2006* consequential to amendments 12 and 13.