

# Departmental Disclosure Statement

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Bail (Electronic Monitoring) Amendment Bill
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The departmental disclosure statement for a Government Bill seeks to bring together in one place a range of information to support and enhance the Parliamentary and public scrutiny of that Bill.

It identifies:

- the general policy intent of the Bill and other background policy material;
- some of the key quality assurance products and processes used to develop and test the content of the Bill;
- the presence of certain significant powers or features in the Bill that might be of particular Parliamentary or public interest and warrant an explanation.

This disclosure statement was prepared by the Ministry of Justice, New Zealand Police, and Department of Corrections.

The Ministry of Justice certifies that, to the best of its knowledge and understanding, the information provided is complete and accurate at the date of finalisation below.

March 2025

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## Part One: General Policy Statement

This Bill amends the Bail Act 2000 (the Act). The provisions amended relate to the absences of criminal defendants who are granted bail with an electronic monitoring (EM) condition imposed under section 30B of the Act (EM bail). Defendants who are remanded in custody while awaiting the conclusion of their criminal charges may be placed on EM bail if the court considers EM bail restrictions will mitigate the risks they would otherwise pose in the community. A defendant placed on EM bail may only leave their EM address either for specific reasons, such as to seek urgent medical treatment, or as authorised under section 30M of the Act. Under section 30M, a court may, when granting EM bail, authorise the defendant to be absent for particular purposes and at particular times (**an authorisation**). Courts grant authorisations for specified purposes. In practice, such purposes can include medical appointments, attending meetings with lawyers, appointments with government agencies, or shopping for essential household supplies.

The Bill clarifies that the court may authorise EM assessors (as defined in section 3 of the Act) to approve a defendant to be absent from their EM address for court authorised purposes. This codifies the usual practice taken by agencies and the courts to section 30M, which enables the efficient and practical management of the large population of defendants on EM bail. It will enable EM assessors to approve absences in line with court-specified purposes (and any other details the court has specified). The court may continue to specify particular absences, where it considers this is appropriate.

The Bill applies to authorisations that occur after commencement, regardless of when the defendant was placed on EM bail, and including variations of existing authorisations.

The Bill validates authorisations that occurred under section 30M before commencement that authorised another person to approve absences of defendants from their EM bail address. This prevents the need for the conditions of defendants currently on EM bail to be remade once the Bill passes into law.

The Bill ensures that validated authorisations are ended after 60 working days if the court enablement is of only one or more approvers, none of whom is an EM assessor or specified employee. This provides sufficient time to regularise a small number of authorisations in accordance with the Bill's provisions, and means that after 60 working days only EM assessors or specified employees will be authorised to approve absences.

The Bill does these things by provisions to achieve the following:

- in authorising a defendant to be absent from the EM address, the court must specify the authorisation's purpose or purposes:
- in authorising a defendant to be absent from the EM address, the court must also specify all details of an authorisation, or enable an EM assessor to approve, in the EM assessor's discretion, the defendant to be absent from the EM address in line with an authorisation's—
  - specified purpose or purposes; and
  - specified required details:
- in enabling an EM assessor to approve an authorised absence, the court must—
  - specify all required details of an authorisation; or
  - specify some details of an authorisation and enable or require an EM assessor to specify other details of the authorisation that—
    - are not inconsistent with those specified by the court; and

- are or include the time or times of any day during which the defendant may be absent, if not specified by the court; or
    - enable or require an EM assessor, in approving the authorised absence, to specify all details of an authorisation:
- details of an authorisation are not only the time or times of any day during which the defendant may be absent, but also the place or places that the defendant may go to while absent, and any other requirements that the defendant must meet that the court, or an EM assessor enabled by the court, thinks fit to specify in line with the authorisation's specified purpose or purposes, for example,—
  - authorised routes to or from an authorised place; and
  - authorised modes of transport to or from an authorised place:
- certain pre-commencement authorisations are validated (must be taken to have been valid from when the authorisations occurred):
- certain validated authorisations (if the court enablement is of only one or more approvers none of whom is an EM assessor or specified employee) are ended on the 61st working day after commencement, but without otherwise affecting the EM condition.

## Part Two: Background Material and Policy Information

### Published reviews or evaluations

<b>2.1. Are there any publicly available inquiry, review or evaluation reports that have informed, or are relevant to, the policy to be given effect by this Bill?</b>	<b>NO</b>
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### Relevant international treaties

<b>2.2. Does this Bill seek to give effect to New Zealand action in relation to an international treaty?</b>	<b>NO</b>
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### Regulatory impact analysis

<b>2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill?</b>	<b>NO</b>
The proposal to clarify that Corrections can authorise electronically monitored bail absences is not subject to the RIA requirements. To the extent the proposal results in any change to current policy, the proposal has been exempted by the Ministry for Regulation on the basis that there are no or only minor economic, social or environmental effects.	

### Extent of impact analysis available

<b>2.4. Has further impact analysis become available for any aspects of the policy to be given effect by this Bill?</b>	<b>NO</b>
<b>2.5. For the policy to be given effect by this Bill, is there analysis available on:</b>	
(a) the size of the potential costs and benefits?	<b>NO</b>
(b) the potential for any group of persons to suffer a substantial unavoidable loss of income or wealth?	<b>NO</b>
<b>2.6. For the policy to be given effect by this Bill, are the potential costs or benefits likely to be impacted by:</b>	
(a) the level of effective compliance or non-compliance with applicable obligations or standards?	<b>NO</b>
(b) the nature and level of regulator effort put into encouraging or securing compliance?	<b>NO</b>

## Part Three: Testing of Legislative Content

### Consistency with New Zealand's international obligations

<b>3.1. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with New Zealand's international obligations?</b>
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The Bill seeks to ensure the status quo of managing EM bail absences continues. It has operated effectively for over a decade. No conflicts with international obligations have been identified.
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### Consistency with the government's Treaty of Waitangi obligations

<b>3.2. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with the principles of the Treaty of Waitangi?</b>
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Māori are disproportionately represented in the criminal justice system, including as part of the EM bail population. This Bill does not increase or decrease this existing overrepresentation as it seeks to continue existing practice. Due to time constraints, there has been no consultation with Māori on the proposals in the Bill.
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### Consistency with the New Zealand Bill of Rights Act 1990

<b>3.3. Has advice been provided to the Attorney-General on whether any provisions of this Bill appear to limit any of the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990?</b>	<b>YES</b>
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The Bill will be vetted for consistency with the New Zealand Bill of Rights Act 1990 by Crown Law Office.
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Advice provided to the Attorney-General by the Crown Law Office is generally expected to be available on the Ministry of Justice's website upon introduction of a Bill. Such advice, or reports, will be accessible on the Ministry's website at <a href="https://www.justice.govt.nz/justice-sector-policy/constitutional-issues-and-human-rights/the-bill-of-rights-act/">https://www.justice.govt.nz/justice-sector-policy/constitutional-issues-and-human-rights/the-bill-of-rights-act/</a>
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### Offences, penalties and court jurisdictions

<b>3.4. Does this Bill create, amend, or remove:</b>	
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<b>(a) offences or penalties (including infringement offences or penalties and civil pecuniary penalty regimes)?</b>	<b>NO</b>
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<b>(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?</b>	<b>YES</b>
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The Bill does affect the jurisdiction of the court by making clear that it is able to authorise EM bail assessors (as part of an executive agency) to approve absences for EM bail defendants consistently with the purposes specified by the court, where previously only the court or a Registrar (with prosecution agreement) could do so. The EM bail assessors will only be able to approve absences within the parameters still set by the court. This amendment is central to the purpose of the Bill.
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### Privacy issues

<b>3.5. Does this Bill create, amend or remove any provisions relating to the collection, storage, access to, correction of, use or disclosure of personal information?</b>	<b>YES</b>
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The Bill does have privacy implications resulting from the sharing of personal information by defendants with Corrections staff that will then be used to verify appointments and confirm arrangements. However, the Bill is in effect confirming the current and longstanding practice. The Office of the Privacy Commissioner was consulted on a summary of the proposal and agreed it did not create additional privacy concerns.

Corrections will review current processes and practices related to personal information to ensure they remain fit for purpose and consider whether any improvements can be made, including if any changes are required to comply with the new information privacy principle that will be established by the Privacy Amendment Bill.

Advice will be sought from Corrections' Privacy Team and/or the Office of the Privacy Commissioner as required.

## External consultation

3.6. Has there been any external consultation on the policy to be given effect by this Bill, or on a draft of this Bill?	YES
<p>Due to time constraints, limited consultation with the public sector was undertaken in the development of the Bill. The Ministry of Justice worked with NZ Police, Department of Corrections and Oranga Tamariki in the development of the Bill and engaged with the following organisations: Ministry for Women, Te Puni Kōkiri, Ministry for Pacific Peoples, Ministry for Ethnic Communities, Ministry for Social Development, Office of the Privacy Commissioner, Whaikaha – Ministry of Disabled People and Crown Law Office. Department of Prime Minister and Cabinet and Treasury were informed of the policy.</p> <p>Some consultation has taken place with members of the judiciary, who broadly agreed that making this change would address the problem and prevent anticipated impacts on the courts. The judiciary were consulted on a draft version of this bill to test workability and impact on the courts; this consultation was necessarily brief given the short timeframes involved. The feedback provided has informed the development of the bill.</p> <p>No public consultation has been undertaken as reflected the Bill.</p>	

## Other testing of proposals

3.7. Have the policy details to be given effect by this Bill been otherwise tested or assessed in any way to ensure the Bill's provisions are workable and complete?	YES
<p>The Bill will ensure Corrections can continue to efficiently and effectively manage EM bail absences within parameters set by the courts, as has been the conventional practice since 2013. In this sense, the policy has been tested thoroughly through over a decade of operational implementation.</p> <p>Corrections currently approves on average over 30,000 absences per month for defendants on EM bail. This long-standing practice provides confidence that the approach is workable.</p>	

## Part Four: Significant Legislative Features

### Compulsory acquisition of private property

<b>4.1. Does this Bill contain any provisions that could result in the compulsory acquisition of private property?</b>	<b>NO</b>
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### Charges in the nature of a tax

<b>4.2. Does this Bill create or amend a power to impose a fee, levy or charge in the nature of a tax?</b>	<b>NO</b>
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### Retrospective effect

<b>4.3. Does this Bill affect rights, freedoms, or impose obligations, retrospectively?</b>	<b>YES</b>
<p>The Bill validates conditions that enabled Corrections and other parties to approve section 30M bail absences, covering both conditions relating to defendants currently on EM bail and previously on EM bail. This validation applies to conditions imposed before the Bill's commencement so in that respect may be considered retrospective.</p> <p>To the extent that there is any retrospectivity, this is justified because validation would be to the benefit of defendants (by continuing the existing condition which provides a more flexible and workable process for absences, and avoiding the need to seek a variation from the court). The validation also relates to matters generally understood and intended to be lawful and address a matter essential to public safety.</p> <p>The Bill's transitional provisions apply the main Bail Act amendments <i>prospectively</i> to existing proceedings and defendants. The amendments will still only apply to authorisations that occur <i>after commencement</i>. Therefore there is not considered to be any issue arising with retrospectivity in respect of the transitional provisions for the substantive amendments to the Act.</p>	

### Strict liability or reversal of the usual burden of proof for offences

<b>4.4. Does this Bill:</b>	
<b>(a) create or amend a strict or absolute liability offence?</b>	<b>NO</b>
<b>(b) reverse or modify the usual burden of proof for an offence or a civil pecuniary penalty proceeding?</b>	<b>NO</b>

### Civil or criminal immunity

<b>4.5. Does this Bill create or amend a civil or criminal immunity for any person?</b>	<b>YES</b>
<p>The Bill validates conditions that enabled parties other than the court or a Registrar to approve section 30M absences, and current conditions authorising Corrections to approve absences. While not directly creating an immunity, this validation effectively provides an immunity from civil suit for those who approved absences in accordance with a historical court authorisation. This limited form of civil immunity is necessary to provide legal certainty for those whose past decisions made in good faith under what were understood to be valid bail conditions, and to ensure the continued effective operation of the EM bail system.</p>	



## Significant decision-making powers

<b>4.6. Does this Bill create or amend a decision-making power to make a determination about a person's rights, obligations, or interests protected or recognised by law, and that could have a significant impact on those rights, obligations, or interests?</b>	<b>YES</b>
<p>The Bill enables courts to authorise those responsible for managing EM bail (currently the agency responsible for monitoring is Corrections) to make decisions about when defendants on EM bail may be absent from their address in accordance with the purposes specified by the court. These decisions directly engage certain rights including defendants' freedom of movement and right to be released on reasonable terms and conditions (sections 18 and 24(b) of NZBORA).</p> <p>This amendment codifies practice that has been in place since 2013. Safeguards to ensure this power is properly constrained include that the court, not Corrections, specifies the purposes for which absences may be granted, and whether Corrections can approve absences. Corrections' decisions must be in accordance with these court-specified purposes, and Corrections must apply appropriate administrative law principles when making these decisions. Additionally, defendants can apply to the court to vary their bail conditions if they believe the management of their absences is unreasonable.</p> <p>Enabling the court to confer this role on Corrections is necessary to ensure the practical and efficient management of the large number of absence requests (over 30,000 per month) from defendants on EM bail, and avoid adverse impacts on the courts including court timeliness.</p>	

## Powers to make delegated legislation

<b>4.7. Does this Bill create or amend a power to make delegated legislation that could amend an Act, define the meaning of a term in an Act, or grant an exemption from an Act or delegated legislation?</b>	<b>NO</b>
<b>4.8. Does this Bill create or amend any other powers to make delegated legislation?</b>	<b>NO</b>

## Any other unusual provisions or features

<b>4.9. Does this Bill contain any provisions (other than those noted above) that are unusual or call for special comment?</b>	<b>NO</b>
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