

## Bail compliance checks in NSW

Each year, police in NSW conduct more than 100,000 bail compliance checks. They do this to monitor that bailed people are complying with their bail conditions. The statutory framework governing bail compliance checks is contained in the *Bail Act 2013* (NSW).

Commonly imposed bail conditions include a requirement for the bailed person to reside at a specific address, and submit to a curfew. Bail compliance checks for these conditions include police checking the bailed person is at their home.

Some bail compliance checks are conducted because a court-issued enforcement condition has specified that police can monitor an underlying condition. For example, a bail condition requiring that a person not consume alcohol may be accompanied by an enforcement condition which authorises police to conduct a breath test on the bailed person.

Police in NSW regularly conduct bail compliance checks in circumstances where there are *no* bail enforcement conditions. Police rely on the doctrine of implied licence to enter the property and request the bailed person to present at the front door.

Under the doctrine of implied licence, police may enter a property and knock on the door for the purpose of undertaking enquiries, however, the occupier is under no obligation to answer the door. The occupier may also revoke the implied licence at any time via words or actions.

## Our issues paper about bail compliance checks

The Commission is exploring whether police practices for conducting bail compliance checks are effective, appropriate and lawful.

In particular, we are considering whether such checks ought to be conducted when there is no bail enforcement condition imposed by the court.

Our paper explores some of the issues we have seen raised in complaints, along with the legislative framework governing the way police monitor bail compliance.

## What are the main issues?

- whether the NSWPF can rely on the doctrine of implied licence to undertake bail compliance checks
- whether s 77 of the Bail Act proscribes police from conducting bail compliance checks where there is no enforcement condition
- whether enforcement conditions are a prerequisite to bail compliance checks undertaken outside of s 77
- whether the *Bail Act* should be amended to allow bail compliance checks without an enforcement condition
- the impact of bail compliance checks on other residents in the property
- whether the Bail Act should be amended to clarify the circumstances in which police can do bail compliance checks when they do not have grounds to suspect that bail conditions are being breached.

### Call for submissions

We are keen to hear the views of the community, to understand if the legislative framework provides sufficient clarity about when and how bail monitoring can be conducted by police. This will help us to evaluate police practice against the legislative framework, and whether changes to either may be needed.

We have set out 8 issues for consideration. They can be found on our website [here](#).

We welcome written submissions on those issues.

**Deadline for submissions – 25 July 2024.**