

23 July 2024

The Hon Peter Johnson SC
Chief Commissioner
Law Enforcement Conduct Commission
Level 3, 111 Elizabeth St, Sydney NSW 2000

By email: engage@lecc.nsw.gov.au

Dear Chief Commissioner,

Bail compliance checks in NSW

Thank you for the opportunity to make this submission in response to the LECC's *Bail compliance checks in NSW – Issues Paper* (May 2024) ('Issues Paper').

This submission was written by members of the Centre for Criminology, Law and Justice (CCLJ), a research centre at the Faculty of Law and Justice, University of New South Wales.¹ The CCLJ was established in 2018, building on a long tradition of criminal justice research and scholarship at UNSW. The Centre produces high quality scholarship on important topics in criminal law, criminal justice, criminology, crime prevention and policing that are of pressing local, national and international significance. Core themes for the Centre's research are: the relationship between criminal justice administration and social justice and human rights; and the relevance of race, Aboriginality, gender, disability and socioeconomic disadvantage to victimisation, criminalisation, the criminal process and punishment.

Introduction

The data summarised in Table 1 of the Issues Paper (p. 11) powerfully capture the scale of the NSW Police Force practice of conducting bail compliance checks without the authority provided by court-imposed bail enforcement conditions under s 30 of the *Bail Act 2013* (NSW) ('Bail Act'). Police powers have been incrementally expanded by legislation in NSW over the last 25 years, and there is strong evidence that existing legislative powers are over-used, including unlawfully.² The data confirm that, in addition, police are exercising powers in relation to bail compliance that have no statutory basis in the Bail Act, the *Law*

¹ Professor Julia Quilter (School of Law, University of Wollongong) is currently a Visiting Professor at CCLJ.

² See D Brown, et al *Criminal Laws: Materials and Commentary on Criminal Law and Process of New South Wales* (Sydney: Federation Press, 7th ed, 2020) pp 440-464; M Grewcock and V Sentas, 'Strip searches, police power and the infliction of harm: An analysis of the New South Wales strip search regime' (2021) 10(3) *International Journal for Crime, Justice and Social Democracy* 191-206. <https://doi.org/10.5204/ijcjsd.1665>

Enforcement (Powers and Responsibilities) Act 2022 (NSW) ('LEPRA') or any other statute. This is reminiscent of the infamous Suspect Targeting Management Plan (STMP) – the subject of damning findings by researchers and the LECC,³ and which the NSW Police Force has now officially abandoned. Given the context of over-policing, over-criminalisation and over-incarceration, it is especially troubling that such high numbers of Aboriginal and Torres Strait Islander people (7058 in 2021/22, including 1124 children) are being subjected to frequently intrusive and disruptive bail compliance checks even where no bail enforcement conditions were imposed by a Magistrate or Judge.

Our primary submissions are:

- i) frequent, intrusive and disruptive bail compliance checks at a bailed person's place of residence to proactively assess compliance with curfew and accommodation conditions represent an unacceptable police practice that should be discontinued;
- ii) bail compliance checks should be permitted only where they are undertaken pursuant to, and in conformity with court-imposed enforcement conditions under s 30 of the Bail Act, and the associated power to give directions in s 81 of the Bail Act; and
- iii) enforcement conditions related to curfew and accommodation conditions should only be imposed in line with the high s 30(5) threshold, including being proportionate to the risk posed, and having consideration of the impact on family members and other co-residents of the bailed person.

We note that proactive 'at home' bail checks are not the only way that police can monitor compliance with curfew and accommodation conditions. For example, observing a bailed person at another location at a time when a curfew condition required them to be at home would provide the police with grounds to suspect that a bail condition was being breached. Section 77 of the Bail Act sets out a list of actions which police are authorised to take where they believe on reasonable grounds that a bail condition has been breached. It follows that, to the extent that this submission draws attention to legislative limits to the capacity of the police to conduct bail compliance checks, our position is that they do not amount to undue curtailment of police powers related to bail.

In the balance of this submission, we respond to issues 1, 2, 3, 4, 6, 7 and 8 from the Issues Paper.

Issue 1: To what extent can the doctrine of implied licence be relied upon by police officers when undertaking bail compliance checks?

We submit that the framework for bail compliance monitoring set out under the Bail Act was intended to cover the field. The interaction between ss 20A, 30, 81 and 77 clearly operates to abolish the common law doctrine of implied licence which *may* previously have permitted police to enter private property to make enquiries as to whether an occupant who is subject to a curfew or accommodation condition is complying with that condition. It is our view, that in

³ LECC, *An investigation into the use of the NSW Police Force Suspect Targeting Management Plan on children and young people*. Operation Tepito. Final Report (October 2023); V Sentas and C Pandolfini, *Policing Young People in NSW: A study of the Suspect Targeting Management Plan* (Youth Justice Coalition, 2017).

the absence of an enforcement condition (s 30) and the power to give directions under enforcement conditions (s 81), police who enter private property for the purpose of bail compliance monitoring are committing a trespass. If police are of the view that it is necessary to monitor a bailed person for compliance with an accommodation or curfew condition, the Bail Act provides an effective solution: a prosecutor may request a court (s 30(3)(b)) to impose an enforcement condition to give police statutory power to enter private property for the purpose of bail compliance checks.

Alternatively, if the LECC takes the view that the Bail Act does not abolish the doctrine of implied licence in this context, we submit that the implied licence may only be relied upon by police when entering private property for the purpose of undertaking bail compliance monitoring in very limited circumstances.

We agree with the summary of the case law on the doctrine of implied licence in Part 4 of the Issues Paper. The threshold for police to rely on implied licence to enter onto private property requires:

1. the **absence of a notice** or other indication (e.g., a locked gate) that entry by visitors (or certain visitors) is forbidden;
2. an **unobstructed path or driveway** for police to walk up leading to the front door;
3. for police to have a **legitimate purpose** for that entry;
4. for that legitimate purpose to **not cause ‘interference with possession or injury to those present’**; and
5. to leave the property as soon as the occupier, by words or actions, **revokes the implied licence** for police to be on their property.

These factors ‘provide the limits of the licence which the law will imply’ to permit entry onto private property without express permission from the occupier.⁴

Limitations 1, 2 and 5 above are relatively straightforward for current purposes and we do not feel they need further discussion beyond what is covered in the Issues Paper. We discuss limitations 3 and 4 below.

Legitimate purpose for entry onto private property

The common law has established that entry onto private property is authorised if it is for a ‘legitimate purpose’, which includes where the purpose is to conduct ‘lawful communication’ with an occupier.⁵ In the case of police, the High Court recently confirmed that lawful communication with an occupier includes entering the private property for an ‘*investigative*’ purpose, such as to undertake enquiries as to whether a breach of the law has occurred and/or an offence has been committed.⁶ As stated by Keane and Edelman JJ:

The police have the same implied licence as other members of the public to approach and knock on a front door, or ring a front doorbell, for the purpose of lawful communication with an occupier. The licence implied in law for all members of the public with a purpose of communicating with an occupier is not negated by the presence of some additional, perhaps contingent, subjective motivation. So too, the

⁴ *Roy v O’Neill* (2020) 385 ALR 187, 191 [13] (per Kiefel CJ).

⁵ *Halliday v Neville* (1984) 155 CLR 1, 7; *Roy v O’Neill* (2020) 385 ALR 187, 191 [12] (per Kiefel CJ), 203-204 [70] (per Keane and Edelman JJ).

⁶ *Roy v O’Neill* (2020) 385 ALR 187, 192 [15], 193 [18] (per Kiefel CJ), 195 [34] (per Bell and Gageler JJ), 205-206 [77]-[78] (Keane and Edelman JJ).

implied licence for police to communicate with an occupier is not negated by a subjective, perhaps contingent, motivation for the communication to investigate an occupier for the commission of a criminal offence.⁷

However, and as the Issues Paper notes, while lawful communication with an occupant is a legitimate purpose to enter private property, an occupant is *not required* to answer the door nor to speak with police. The doctrine of implied licence does not create a coercive power nor can it be relied upon by police when entering private property for a coercive purpose.⁸ Therefore, in the absence of a court ordered enforcement condition under the Bail Act, police conducting bail compliance checks may enter private property for the *sole purpose of forming an opinion*⁹ as to whether an occupant is complying with a bail condition, but police are not permitted to enter the property for the purpose of *directing* any occupant, including a person subject to bail conditions, to do or refrain from doing anything.¹⁰ Not only is the common law clear on this limitation of the implied licence, but the types of coercive powers created by ss 30 and 81 requiring individuals to present themselves at the front door on the direction of police (as described in Appendix A of the Issues Paper) would be otiose if no such limitation existed. So, unless the bailed person chooses to open the front door so the police can be satisfied no breach of an enforcement condition has occurred, the implied licence does not permit police to compel any occupant to present the bailed person at the front door.

The practice of police directing a third-party occupant – such as a relative of a young person subject to bail conditions – to present a bailed person at the front door (e.g., Issues Paper, Case Study 4, p. 33) amounts to exercising a coercive power and is therefore unlawful. Even when police ‘request’ a bailed person to present at the door, such an invitation by uniformed police officers backed with the authority of the law and State, combined with an occupant’s layperson assessment of possible consequences of non-cooperation, is coercive in its *effect*, and is therefore beyond the scope of what the common law intended to be permitted by the licence. As noted by Kiefel CJ in *Roy v O’Neill*,¹¹ when determining whether the purpose of entry is permissible, ‘one looks to the effects of the purpose carried out upon the occupier’s rights and its impact on those present.’

In our view, the conduct of police in conducting bail compliance checks in the absence of an enforcement condition routinely goes beyond merely making enquiries and is tantamount to exercising the coercive power provided in ss 30 and 81 of the Bail Act – without the judicial authorisation which is essential to render such conduct lawful.

No interference with possession or injury to those present

For the police to rely on the implied licence to enter private property, the legitimate purpose must not interfere with the occupant’s possession, or cause injury to the occupant or any other person present at the premises.¹² ‘Injury’ is defined broadly in this context, and ‘may include an affront to a person’s dignity or apprehension of harm’, including if such injury is caused

⁷ *Roy v O’Neill* (2020) 385 ALR 187, 205-206 [77] (Keane and Edelman JJ).

⁸ *Roy v O’Neill* (2020) 385 ALR 187, 192 [16]-[17] (per Kiefel CJ), 196 [36]-[37] (per Bell and Gageler JJ), 207 [81] (Keane and Edelman JJ).

⁹ *Roy v O’Neill* (2020) 385 ALR 187, 197 [43] (per Bell and Gageler JJ).

¹⁰ *Roy v O’Neill* (2020) 385 ALR 187, 196 [36] (per Bell and Gageler JJ).

¹¹ (2020) 385 ALR 187, 191 [13] (per Kiefel CJ).

¹² *Roy v O’Neill* (2020) 385 ALR 187, 191 [13] (per Kiefel CJ), 207 [70] (Keane and Edelman JJ).

by unauthorised coercive powers such as an unlawful search.¹³ The courts are clear that an investigative purpose alone does not involve an interference with the occupier's possession or injury to anyone present at the premises.¹⁴

As noted in the Issues Paper, this limitation requires consideration of 'the *effects* of the purpose carried out upon the occupier's rights and its impact on those present'.¹⁵ The circumstances surrounding bail compliance checks must therefore be considered to determine whether police were acting in accordance with what is permitted by the implied licence. We agree with the LECC's observation that the timing and frequency of bail compliance checks is relevant to an assessment of whether they involved interference with possession or injury to those present. We also agree with the proposition that bail compliance checks at very late or very early hours, and/or multiple times a day or night, would likely constitute an affront to those persons' dignity, especially if the effect of those checks is that the occupant or others present at the premises are woken from sleep. Such conduct is likely to cause any reasonable person to apprehend injury, broadly construed. Further, where police go beyond the front door, path or driveway and knock on windows and side doors and/or shine torches through windows, their conduct well-exceeds the limits of implied licence. These unlawful searches and surveilling and harassing behaviours undoubtedly cause interference with possession or injury to those present and therefore amount to trespass.

Issue 2: Does the Bail Act proscribe police from conducting bail compliance checks when police are operating outside of s 77 and in circumstances where there is no enforcement condition?

The Bail Act does not expressly proscribe police from conducting bail compliance checks when they are operating outside s 77 or where there is no enforcement condition but does so by necessary implication. The Bail Act – via the interaction of ss 20A, 30, 81 and 77 – limits the police to only two sources of power to monitor or enforce bail conditions imposed pursuant to s 20A: the power to operationalise bail enforcement conditions (s 30) and give directions (s 81); and, where a breach of bail is suspected, the power of arrest, and its alternatives (s 77).

Section 20A provides for the imposition of bail conditions only if there are bail concerns, and conditions must only be made if they address those concerns and meet all six mandatory criteria as set out in s 20A(2). Subsection (3) critically provides that 'this section does not limit a power of the court to impose enforcement conditions', followed by a note explaining that 'Enforcement conditions are imposed for the purpose of monitoring or enforcing compliance with other bail conditions. Section 30 provides for this type of bail condition.' Section 20A as a whole must be read as delimiting when a bail condition can be imposed, and in doing so, recognises the only available cognate power to authorise monitoring; namely, bail enforcement conditions.

Section 30(1) sets out the purpose of bail enforcement conditions imposed by a court: to monitor or enforce compliance with an underlying bail condition. Where an enforcement condition exists, the scope of associated police power is to give the person bailed a direction specified by a court (s 81). Enforcement conditions are purposively constructed as the only

¹³ *Roy v O'Neill* (2020) 385 ALR 187, 191 [16] (per Kiefel CJ).

¹⁴ *Halliday v Neville* (1984) 155 CLR 1, 7; *Roy v O'Neill* (2020) 385 ALR 187, 192 [15] (per Kiefel CJ).

¹⁵ *Roy v O'Neill* (2020) 385 ALR 187, 191 [13] (per Kiefel CJ).

available power to police to *direct* a person for the purpose of monitoring compliance with bail conditions. Section 81 goes on to establish the thresholds for the lawful exercise of the power for police to give a direction under an enforcement condition.

Separately, and not contingent on the existence of an enforcement condition, s 77 of the Bail Act sets out the exhaustive range of powers available to police if they have the requisite belief on reasonable grounds that a person has failed (or is about to fail) to comply with a bail condition. The options include warnings, CANs and arrest. An important feature of s 77 is that police discretion is regulated both by the high threshold of belief on reasonable grounds, and the illustrative matters to be considered by police in subsection (3) in deciding to exercise the power.

We submit that the clear legislative purpose of the provisions discussed here militates against the existence of a general ‘bail compliance check’ power. Parliament has established clear limits on police powers in relation to the oversight of bail compliance. The power associated with the enforcement condition regime (ss 30 and 81) is the only police power envisaged in the Act, while s 77 provides for the exercise of the power of arrest (or its alternatives) where police have a reasonable belief that a bail condition has been breached (or is about to be breached).

Issue 3: If the court fixes an accommodation or curfew condition, is a bail enforcement condition a necessary pre-requisite to the conduct of any bail compliance checks that are undertaken outside of s 77 of the Bail Act?

Given our response to Issues 1 and 2, and the provisions in ss 30 and 81 of the Bail Act, we submit that a bail enforcement condition *is* a necessary pre-requisite to the conduct of bail compliance checks outside s 77 of the Bail Act. Bail enforcement conditions are the mechanism by which police powers to issue directions to persons with regard to their bail conditions are regulated. Police powers to issue directions in contexts outside of the bail regime are regulated through statutory limits (such as those contained in LEPRA). As noted by the NSWLRC in 2012, the powers that police are afforded with respect to bail compliance checks go beyond the powers provided for and regulated by LEPRA.¹⁶ It is inconsistent with the framework adopted to regulate police powers in LEPRA for police to be empowered to engage in conduct that may amount to a significant intrusion upon the rights of an accused person, and those with whom they reside, without the imposition of similar and well-understood limits. In its current form, the Bail Act establishes those limits.

The importance of ensuring appropriate limits on and regulation of police powers cannot be understated. The powers that police possess, and the vast discretion that is afforded to them in executing those powers, provide police with the authority to interact with citizens in ways that can be coercive, highly disruptive, and invasive of their bodily and property rights. Policing scholars have long argued that the exercise of police powers can serve as a mechanism for social control by subjecting individuals or communities to frequent surveillance, interaction and disruption in the name of proactive policing where the justification for use of powers is otherwise not met. The now defunct STMP program is just one example of how police powers can be exercised to unreasonably interfere with the lives and activities of citizens in circumstances where those subject to the powers have limited practical recourse to protect themselves from such interference.¹⁷ There is an inherent

¹⁶ NSW Law Reform Commission, *Bail*. Report No 133 (April 2012), [16.20], [16.22].

¹⁷ Brown et al (n 2) 432-433; LECC, ‘Operation Tepito’ (n 3); Sentas and Pandolfini (n 3).

imbalance of power in police-citizen interactions that is exacerbated when police interact with those experiencing vulnerability. In the context of bail compliance checks, young people and Aboriginal and Torres Strait Islander people are particularly vulnerable owing to the imposition of accommodation and/or curfew conditions when granted bail, as noted in the Issues Paper (p. 38).

We submit that the provisions of the Bail Act impose limits on the powers of police to undertake bail compliance checks, making such checks contingent on the terms of an enforcement condition imposed by a judicial officer when bail is granted. Specifically, ss 30 and 81, respectively, provide for the imposition of enforcement conditions and define the limited circumstances in which police may act outside the terms of the enforcement condition imposed by a court. As such, in building upon our submission that police may not rely on the doctrine of implied licence to perform bail compliance checks, we further submit that the Bail Act does not reflect an intention that accommodation and curfew conditions should, by default, always be accompanied by an enforcement condition. Such a construction would be inconsistent with the terms of the legislation that provide for the imposition of enforcement conditions.¹⁸

As noted above, s 30(1) expressly states that the purpose of enforcement conditions is ‘monitoring or enforcing compliance with another bail condition (the ***underlying bail condition***)’. The definition of this purpose in terms that directly link the enforcement condition to the underlying bail condition suggests an intention to limit the scope of interference permitted by a given enforcement condition. Sections 30(3)-(5) further reflect an intention that enforcement conditions be specific, targeted, and restricted in their operation. The limitation that enforcement conditions may only be imposed by a court, and only upon the request of the prosecutor, positions the court as the bulwark against the interference of bail compliance checks undertaken by police (s 30(3)). Enforcement conditions are to specify the types of directions that may be given by police to a person while on bail, the circumstances in which those directions may be given so as to ensure the condition is not unduly onerous on the bailed person, and the underlying bail condition/s to which the enforcement condition attaches (s 30(4)). Further, the court must determine that the enforcement condition is ‘reasonable and necessary’ having regard to the history of the person granted bail, the risk of offending while on bail, and possible impacts of the condition on persons other than the person granted bail (s 30(5)). Finally, s 81 explicitly empowers police to give directions in accordance with the circumstances specified in an enforcement condition, and permits the giving of directions under any other circumstances only where there is reasonable suspicion that the underlying bail condition has been breached.¹⁹ These provisions provide a clear framework for the formulation and imposition of enforcement conditions that is inconsistent with the view that enforcement conditions are not a pre-requisite for the undertaking of bail compliance checks.

Consequently, we reject the NSWPF’s assertion (Issues Paper, p. 31) that enforcement conditions are not a pre-requisite for undertaking bail compliance checks. In response to the NSWPF’s assertion that enforcement conditions are ‘largely unworkable and do not make it any easier for police to check compliance’, we submit that the status quo provides insufficient certainty to enable police to carry out bail compliance checks without breaching the rights of accused individuals and those with whom they reside. We further submit that the current

¹⁸ Noting that the provisions in s 30 appear to be in response to *Lawson v Dunlevy* (2012) where enforcement conditions were found to be unlawful because they were not sufficiently specific and were not formulated with any limits, making them overly onerous on the accused person.

¹⁹ On reasonable suspicion see: *Rondo* (2001) NSWCCA 540.

approach to bail compliance checks creates a situation by which such checks can be used for purposes beyond monitoring and enforcing an underlying bail condition – an important limitation that applies to the imposition of enforcement conditions in s 30(1). Without such a limitation, the exercise of bail compliance checks may be used for broader purposes of surveillance and disruption, as illustrated in Case Studies 1, 4 and 5 where bail compliance checks were used as a strategy in the STMP of the bailed person.

The challenges police report facing in undertaking bail compliance checks, such as being unable to issue a direction where they attend a property and the door is not answered or is answered by someone other than the person on bail, reflects a tension between the objectives of the police and the rights of citizens to resist interference by the police in the absence of a statutory or court ordered obligation to comply with a given direction. This tension is central to the provisions in s 30(4) and (5), which require that enforcement conditions are not ‘unduly onerous’ on the accused person, and that they do not ‘unreasonably’ impact on persons other than the accused person.

The balancing of the circumstances, risks and impact of enforcement conditions (required by s 30) is likely to provide greater clarity to police, the accused person and those with whom they reside with regard to acceptable levels of interference. Such specificity (which must be capable of being appropriately translated into the COPS database on which police rely), will support police by providing clarity on the limits of their powers, especially where a person is bailed on multiple matters with different bail conditions. It is imperative for police in such situations to have ready access to unambiguous information on their authority to perform bail compliance checks. Though police will initially be required to request an enforcement condition and justify the need for it as part of the bail hearing, doing so will reduce the risk of subsequent bail reviews to clarify what is acceptable and the risk of civil action taken against the police for overstepping their authority.

We reject the assertion of the police (Issues Paper pp. 34, 37) that placing limits on the times at which and the number of times a bail compliance check may be performed may result in an accused person modifying their behaviour to breach a curfew condition or commit offences once the ‘quota’ of bail compliance checks has been exhausted. Section 81 permits police to undertake further bail compliance checks where they form reasonable suspicion that such a modification in behaviour has occurred. An accused person who has been granted bail has, by definition, been determined to not pose an unacceptable risk by the court. They also continue to enjoy the presumption of innocence with regard to the matters for which they have been granted bail. The enforcement condition regime established by the Bail Act (ss 30 and 81) provides a fair and balanced framework for providing police, in an appropriate case, with additional tools for monitoring compliance with bail conditions. Where the police seek to take action outside of this regime, it is appropriate that they be limited by the requirement that they must first believe on reasonable grounds that a bail condition has been breached (or is about to be breached (s 77)).

In conclusion, we submit that a bail enforcement condition is a necessary pre-requisite to the carrying out of bail compliance checks in relation to accommodation and curfew conditions. Section 30 offers a reasonable and appropriate safeguard to protect the rights of accused persons and those with whom they reside.

Issues 4: How could an enforcement condition relating to an underlying curfew or accommodation condition be crafted in a manner that ensures it is not unreasonable (taking into consideration the bailed person and any other residents of the property at

which the bailed person resides), but remains an effective tool for checking compliance with the underlying condition?

We have submitted that s 30 of the Bail Act provides the exclusive legal framework for authorising and regulating bail compliance checks, and have emphasised that enforcement conditions should only be imposed where the judicial officer assesses them to be *necessary*. They should not become routine features of a grant of bail. We note that this is not a suggestion for a modification of the status quo; rather, it reflects the high threshold currently established by s 30(5). This sub-section also requires that enforcement conditions be *reasonable*. We submit that this involves balancing the legitimate objective of bail compliance with the legitimate expectations of bailed persons, family members and other co-residents not to have their homes, lives and privacy interrupted without cause.

Put another way, we submit that proportionality is required in the setting of enforcement conditions. This requires that enforcement provisions be struck with precision, so that police are not given *carte blanche* to continue the intrusive and unreasonable practices that have brought this matter to the LECC's attention. Enforcement conditions should expressly limit the obligation of bailed persons to present themselves to police at the front door in terms of: i) the span of hours during which this request can be made by the police; ii) the number of times per week that police can attend at a property for this purpose; and iii) where the risk posed is considered so great that daily checks may be authorised, the number of times per day that police can attend at a property for this purpose.

We note that the Children's Court 'standard bail conditions' document (Issues Paper, Appendix H) is better suited to record the level of specificity required, than the Local Court's 'standard bail conditions' document (Appendix J) or the Supreme Court's 'standard conditions of bail' document (Appendix D).

Section 30(5)(c) of the Bail Act requires that enforcement conditions should also be *customised* to the specific circumstances of where the bailed person resides, taking into account the interests of family members and other co-residents. By way of illustration, we submit that, where a person is bailed to an address where young children reside, enforcement conditions should usually not authorise police attendance late at night or early in the morning.

Issue 6: What issues should be considered in relation to other residents of the property at which a bailed person resides, and the capacity for police to ask or require them to assist in checking bail compliance?

We submit that persons who reside at the same property as the bailed person have no obligation to assist police with the task of monitoring bail compliance. Enforcement conditions should be framed in such a way that engaging family members or other co-residents in this way is not required. For example, an enforcement condition may include a requirement that the bailed person 'presents' themselves at the front door upon police request. Where a family member is *invited* to assist with or facilitate a bail compliance check (lawfully undertaken pursuant to an enforcement condition), we submit that police should be required to advise them they have no legal obligation to do so.

Issue 7: Should the Bail Act make provision for the carrying out of bail compliance checks, in the absence of a bail enforcement condition?

Consistent with the views already expressed, we submit that the Bail Act should *not* make provision for the carrying out of bail compliance checks in the absence of a bail enforcement condition. Section 30 should be regarded as the only legal framework that can authorise bail compliance checks. The Issues Paper presents compelling evidence that police are routinely by-passing the established pathway for authorised bail compliance checks that have been laid down by the legislature. Police objections to the (reasonable) limitations on their powers constituted by s 30 do not constitute grounds for the creation of an alternative pathway. Adherence to the current Bail Act framework is the best mechanism for ensuring that police measures to monitor compliance with bail conditions are lawful and proportionate to the risk posed, and do not constitute improper targeting strategies pursued under the ‘cover’ of concerns for bail compliance (see Issues Paper, p. 25).

Issue 8: How could the Bail Act be amended to make clearer the circumstances in which police can do bail compliance checks when they do not have grounds to suspect that bail conditions are being breached?

We submit that the only circumstances in which police can carry out bail compliance checks when they do not have grounds to suspect that a bail condition is being breached is pursuant to court-imposed enforcement conditions. Outside of this context, any form of ‘no grounds’ coercive bail compliance check should be regarded as unlawful.

Please [contact us](#) if we can be of any further assistance on this topic.

Yours sincerely,

Associate Professor Helen Gibbon

Professor Luke McNamara

Professor Julia Quilter

Associate Professor Vicki Sentas

Dr Leah Williams

Faculty of Law & Justice, University of New South Wales | School of Law, University of Wollongong