



Standing Committee on Justice and Community Safety

Inquiry into the Administration of Bail in the ACT **ANSWER TO QUESTION TAKEN ON NOTICE**

Asked by Mr Peter Cain MLA on 18 June 2024: Ms Amanda Nuttall, CEO, ACT Courts and Tribunal took on notice the following question:

Reference: Hansard [uncorrected] proof transcript [18 June 2024] [PAGE 29]

In relation to:

THE CHAIR: So fail to appear, does that then create a presumption against bail or it does not interfere with the presumption at all?

Ms Nuttall: I am not across the legislation, Mr Cain. I would have to—a matter in the legislation, whether there is a presumption. I think it would depend on the offence.

THE CHAIR: Take that on notice then.

Ms Nuttall: Sure.

[Mr Shane Rattenbury MLA]: The answer to the Member's question is as follows:

A person commits an offence if they give an undertaking to appear before a court and fail to carry out the undertaking (section 49(1) of the *Bail Act 1992*).

Part 2 of the *Bail Act 1992* (the *Bail Act*) provides for a presumption for bail, no presumption for bail (a neutral presumption) and a presumption against bail.

In general terms, a failure to answer bail does not affect the operation of the presumptions. There are two exceptions.

The first exception is where a person is entitled to bail pursuant to section 8(1)(a) or (b). Section 8 of the *Bail Act* provides for entitlement to bail for certain minor offences, including for offences not punishable by imprisonment (section 8(1)(a)), and offences punishable by imprisonment for not longer than 6 months (section 8(1)(b)). In both cases, section 9 of the *Bail Act* removes the entitlement to bail if the person has previously failed to comply with an undertaking to appear, or a bail condition imposed, in relation to the same or similar offence.

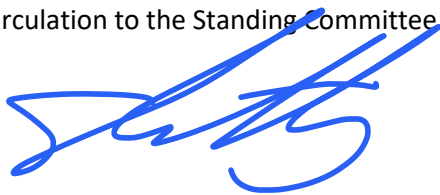
The second exception is where a person is arrested for breach of the peace or apprehended breach of the peace. There is an entitlement to bail under section 8(1)(c) of the Bail Act unless the person has previously, without reasonable excuse, failed to comply with an undertaking to appear, or a bail condition imposed, in relation to a breach of the peace or apprehended breach of the peace (section 9(2) of the Bail Act).

In both cases, the person is still entitled to be granted bail unless the court or authorised officer is satisfied that refusal is justified after considering the criteria for granting bail section 22 of the Bail Act (for adults) or section 23 of the Bail Act (for children). Any failure to answer bail in the current or any previous proceedings may be considered under those criteria.

It may of assistance to note that the offence to failure to answer bail carries a maximum penalty of 200 penalty units or imprisonment for 2 years or both (section 49(1) of the Bail Act). This means it is not classified as a serious offence and does not trigger the operation of section 9D of the Bail Act, which provides for a presumption against bail for a serious offence committed while a charge for another serious offence is pending or outstanding.

Approved for circulation to the Standing Committee on Justice and Community Safety

Signature:



Date:

7/7/24

By the Attorney-General, Mr Shane Rattenbury MLA