



Shane Rattenbury MLA

Attorney-General
Minister for Consumer Affairs
Minister for Water, Energy and Emissions Reduction
Minister for Gaming

Member for Kurrajong

Mr Jeremy Hanson CSC MLA
Chair
Justice and Community Safety Committee (Legislative Scrutiny)
ACT Legislative Assembly
London Circuit
CANBERRA ACT 2600

Dear Mr Hanson

Joemy

Thank you for Scrutiny of Bills Report No. 2 of 24 March 2021. I offer the following response to the Committee's comments on the Government Amendments to the *Crimes Legislation Amendment Bill 2020* (the Bill).

The Committee expressed concerns that proposed amendments to the circumstances in which bail continuance notices are served may limit the right to a fair trial and rights in criminal proceedings. The Committee also expressed concerns that facilitating service of a continuance notices other than by personal service may limit the right to liberty and security of person.

I enclose a revised version of the proposed Government Amendments and a copy of the proposed Bail Amendment Regulation 2021 (the Regulation), both of which have been amended to take account of the Committee's comments.

The Committee noted that 'any dilution of the current requirements to provide notice in person may give rise to significant human rights concerns'. The Committee also noted that it was appropriate for explicit restrictions on possible methods of service to be included in the Bail Act amendments.

I thank the Committee for raising these matters which I have carefully considered. As a result, I have included an additional provision in the Bail Act amendments, specifying that an accused person can nominate their preferred (prescribed) method of delivery of bail continuance notices, and if nominated, the court must serve the person according to their nominated preference. The only constraint on nomination is that the accused person cannot nominate personal service (and then potentially seek to evade and frustrate personal service).

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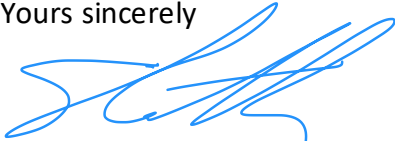
This approach supports the right to liberty, the right to a fair trial and rights in criminal proceedings by allowing a notice of continued bail to be service in a way which is efficient and effective for both the accused person and the court. Permitting an accused person to nominate a method of service ensures that they do not have to monitor multiple ways of service and will receive the notice in a manner that is convenient to them.

I have also, at the recommendation of ACT Courts and Tribunal and the Director of Public Prosecution, and supported by the Human Rights Commission, included a specific provision to the effect that a failure by the court to comply with service requirements, does not invalidate the continuance of bail.

The draft explanatory statement for the Government amendments provides a full human rights analysis of the revised provisions. I draw to the Committee's attention that the amendments may both limit and support the human rights of the accused person and strike a balance that allows the service of bail notices to be modernised while ensuring that an accused's rights are protected.

Finally, as a general comment on the entirety of the amendments, I note that for any prosecution for an offence of failure to answer bail (s 49 Bail Act) there is a defence of reasonable excuse open to the accused person and the opportunity to raise non-receipt of a bail continuation notice as a reasonable excuse. Whether the court accepts this excuse will be a matter of evidence.

Yours sincerely



Shane Rattenbury MLA
Attorney-General

29/3/21

Encl.

**Australian Capital Territory
Legislative Assembly**

Crimes Legislation Amendment Bill 2020

Amendments to be moved by the Attorney-General

1
Clause 3
Page 2, line 9—

insert

- *Bail Act 1992*
- *Bail Regulation 1992*

2
Proposed new parts 1A and 1B
Page 2, line 13—

insert

Part 1A Bail Act 1992

3A Written notice of conditions of bail
Section 34 (4)

substitute

- (4) A court continuing bail on an adjournment or a postponement of a proceeding must give the accused person written notice stating—
- (a) that bail is continued until the proceeding resumes; and

- (b) the place, day and time at which the proceeding will resume or, if that is not yet decided, that the proceeding will resume at a place, day and time stated in an additional written notice; and
 - (c) the conditions on which bail is allowed.
- (5) A notice under subsection (4) must be given—
- (a) as soon as practicable—
 - (i) after deciding to continue bail; or
 - (ii) for an additional notice—after deciding the place, day and time for resuming the proceeding; and
 - (b) in a way—
 - (i) prescribed by regulation (a *prescribed way of service*); or
 - (ii) if the accused person makes a nomination under subsection (6)—nominated by the person.
- (6) The accused person may nominate a prescribed way of service for being given a notice under subsection (4), other than a way that involves personal service on the person or any other person.
- (7) Failure to comply with subsection (4) or (5) does not invalidate the continuation of bail.

Part 1B **Bail Regulation 1992**

3B **Section 4 heading**

substitute

4 **Service of notice—Act, section 34 (5) (b) (i)**

Bail Amendment Regulation 2021 (No)

Subordinate Law SL2021-

The Australian Capital Territory Executive makes the following regulation under the *Bail Act 1992*.

Dated 2021.

Minister

Minister

Bail Amendment Regulation 2021 (No)

Subordinate Law SL2021-

made under the

[Bail Act 1992](#)

1 Name of regulation

This regulation is the *Bail Amendment Regulation 2021 (No)*.

2 Commencement

This regulation commences on the day after its notification day.

Note The naming and commencement provisions automatically commence on the notification day (see [Legislation Act](#), s 75 (1)).

3 Legislation amended

This regulation amends the *Bail Regulation 1992*.

4 Section 4

substitute

4 Service of notice—Act, section 34 (4) (c)

- (1) A notice must be given to the accused person.
- (2) A notice may be given—
 - (a) by giving it to the accused person personally; or
 - (b) by sending it by registered post, addressed to the accused person, to a home or business address of the person; or
 - (c) by emailing it to an email address of the accused person; or
 - (d) by leaving it, addressed to the accused person, at a home or business address of the person with someone who appears to be at least 16 years old and to live or be employed at the address.
- (3) For subsection (2), a home or business address or email address for an accused person may be given to the court by—
 - (a) the accused person; or
 - (b) a lawyer who represents, or has represented, the accused person in the proceeding.

Endnotes

1 Notification

Notified under the [Legislation Act](#) on 2021.

2 Republications of amended laws

For the latest republication of amended laws, see www.legislation.act.gov.au.

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