

Bail Amendment Regulation 2021 (No 1)

Subordinate law SL2021-4

made under the

Bail Act 1992

EXPLANATORY STATEMENT

Section 34 of the *Bail Act 1992* (the Act) provides that an accused person granted bail must be given certain information about their bail, by written notice.

The section also requires that a court continuing bail on an adjournment or postponement of proceedings give the accused person a notice to continue bail.

Section 4 of the *Bail Regulation 1992* (the Regulation) prescribes the methods of service that can be used to give the accused person a notice to continue bail. These are currently limited to giving the notice to the person or leaving it at the person's last known home or business address with someone who appears to be over 16 years old.

The decision of the Chief Magistrate in *Elder v Metyang* [2020] ACTMC 24 (*Elder*) has highlighted that the methods of service available for notices to continue bail are unduly limited and do not reflect contemporary methods of communication.

Clearly prescribing service requirements for notices to continue bail, reflecting more contemporary methods of communication, will remove any uncertainty on the approach to be taken in a given case, noting that other provisions of the Act provide for the service of notices by means other than personal service (section 30(4) *Note 1*).

This Bail Amendment Regulation will put in place clear provisions for more flexible and contemporary methods of service for bail continuation notices to support the

amendments to section 34 of the Act proposed by the *Crimes Legislation Amendment Bill 2020*.

Human Rights

Service of bail continuation notices may engage rights under the *Human Rights Act 2004* (HR Act), including section 18 (Right to liberty and security of person), section 21 (Right to a fair trial) and section 22 (Rights in criminal proceedings), if a person is subsequently prosecuted for failing to answer bail under section 49 of the Act.

Section 30 of the HR Act requires that all Territory laws be interpreted in a way that is compatible with human rights. The court, in considering the service methods in section 4 of the amended Regulation, should adopt a method that is compatible with the rights of the accused person. The method adopted may vary with the particular circumstances of each accused person and consideration may be given to factors such as whether the accused person is legally represented or attended court on the previous occasion.

In the event of any prosecution for the offence of failing to answer bail, there is a defence of reasonable excuse available 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.

A more detailed analysis of the human rights implications is set out in the explanatory statement to the *Crimes Legislation Amendment Bill 2020*.

Clause notes

Clause 1 Name of regulation

This clause provides that the name of the regulation is the *Bail Amendment Regulation 2021 (No 1)*.

Clause 2 Commencement

This clause provides that the regulation commences the day after its notification day.

Clause 3 Legislation amended

This clause provides that the regulation amended is the *Bail Regulation 1992*.

Clause 4 Section 4

This clause substitutes a replacement section 4 in the Regulation. The change effected by this regulation is that, in addition to being able to serve a notice of continuation of bail by giving it to the accused person personally, or leaving it with someone aged over 16 at the accused person's home or business address, service of the notice may also be by:

- sending it by registered post to the person's home or business address; or
- emailing it to an email address of the accused person.

The substituted section 4 of the Regulation makes clear that a home, business or, email address can be provided by the accused person or their lawyer.