



Counter-Terrorism Legislation Amendment (2019 Measures No. 1) Act 2019

No. 119, 2019

**An Act to amend the law relating to
counter-terrorism, and for related purposes**

Note: An electronic version of this Act is available on the Federal Register of Legislation
(<https://www.legislation.gov.au/>)

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Counter-Terrorism Legislation Amendment (2019 Measures No. 1) Act 2019

No. 119, 2019

An Act to amend the law relating to counter-terrorism, and for related purposes

[Assented to 11 December 2019]

The Parliament of Australia enacts:

1 Short title

This Act is the *Counter-Terrorism Legislation Amendment (2019 Measures No. 1) Act 2019*.

No. 119, 2019 Counter-Terrorism Legislation Amendment (2019 Measures No. 1) Act 1
2019

2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this Act	The day after this Act receives the Royal Assent.	12 December 2019

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

- (2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

3 Schedules

Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Restrictions on bail and parole

Part 1—Amendments

Crimes Act 1914

1 Subsection 15AA(1)

Omit “(the *defendant*) charged with, or convicted of, an offence covered by subsection (2)”, substitute “covered by subsection (2) or (2A), in relation to an offence against a law of the Commonwealth”.

2 At the end of subsection 15AA(1)

Add:

Note: For persons under 18 years of age, see subsection (3AA).

Persons covered by this section

3 Subsection 15AA(2)

Omit “covers:”, substitute “covers a person (the *defendant*) charged with, or convicted of, any of the following offences:”.

4 Paragraph 15AA(2)(a)

Repeal the paragraph, substitute:

(a) a terrorism offence;

5 Subparagraphs 15AA(2)(b)(ii) and (c)(ii)

Omit “and”.

6 Paragraph 15AA(2)(d)

Omit “; and”, substitute “;”.

7 After subsection 15AA(2)

Insert:

(2A) This subsection covers the following persons:

(a) a person who is subject to a control order within the meaning of Part 5.3 of the *Criminal Code* (terrorism);

- (b) a person who the bail authority is satisfied has made statements or carried out activities supporting, or advocating support for, terrorist acts within the meaning of that Part.

8 Subsection 15AA(3A)

Repeal the subsection, substitute:

Determining exceptional circumstances in relation to persons under 18 years of age

- (3AA) In determining whether exceptional circumstances exist to justify granting bail to a person who is under 18 years of age, without limiting the matters the bail authority may have regard to, the bail authority must have regard to:
 - (a) the protection of the community as the paramount consideration; and
 - (b) the best interests of the person as a primary consideration.

Appealing decisions of bail authority

- (3A) Despite any law of the Commonwealth, the Director of Public Prosecutions, or a person covered by subsection (2) or (2A), may appeal against a decision of a bail authority:
 - (a) to grant bail to a person covered by subsection (2) or (2A) on the basis that the bail authority is satisfied that exceptional circumstances exist; or
 - (b) to refuse to grant bail to a person covered by subsection (2) or (2A) on the basis that the bail authority is not satisfied that exceptional circumstances exist.

9 Before subsection 15AA(3C)

Insert:

Staying decisions to grant bail if decision appealed

10 Paragraph 15AA(3C)(a)

Omit “charged with or convicted of an offence covered by subsection (2)”, substitute “covered by subsection (2) or (2A)”.

11 Subsection 15AA(4)

Repeal the subsection, substitute:

Relationship with laws of States and Territories

- (4) To avoid doubt, except as provided by subsections (1), (3AA), (3A), (3B), (3C) and (3D), this section does not affect the operation of a law of a State or a Territory.

Note: These provisions indirectly affect laws of the States and Territories because they affect section 68 of the *Judiciary Act 1903*.

12 Before subsection 15AA(5)

Insert:

Definitions

13 After subsection 19AG(4)

Insert:

Fixing non-parole periods for persons under 18 years of age

- (4A) In imposing a sentence for an offence covered by this section on a person who is under 18 years of age, the court must comply with subsection (2) unless the court is satisfied that exceptional circumstances exist to justify fixing a shorter single non-parole period.
- (4B) In determining whether exceptional circumstances exist to justify fixing a shorter single non-parole period in relation to the person, without limiting the matters the court may have regard to, the court must have regard to:
- (a) the protection of the community as the paramount consideration; and
 - (b) the best interests of the person as a primary consideration.

Relationship with sections 19AB, 19AC, 19AD, 19AE and 19AR

14 Subsection 19AL(1) (note)

Omit “Note”, substitute “Note 1”.

15 At the end of subsection 19AL(1)

Add:

Note 2: See also sections 19ALA (matters that may be considered in decisions about parole orders) and 19ALB (decisions about parole orders—terrorism and control orders).

16 After section 19ALA

Insert:

19ALB Decisions about parole orders—terrorism and control orders

- (1) Despite any law of the Commonwealth, the Attorney-General must not make a parole order in relation to a person covered by subsection (2) unless the Attorney-General is satisfied that exceptional circumstances exist to justify making a parole order.
- (2) This subsection covers the following persons:
 - (a) a person who has been convicted of a terrorism offence, including a person currently serving a sentence for a terrorism offence;
 - (b) a person who is subject to a control order within the meaning of Part 5.3 of the *Criminal Code* (terrorism);
 - (c) a person who the Attorney-General is satisfied has made statements or carried out activities supporting, or advocating support for, terrorist acts within the meaning of that Part.

Determining exceptional circumstances in relation to persons under 18 years of age

- (3) In determining whether exceptional circumstances exist to justify making a parole order in relation to a person who is under 18 years of age, without limiting the matters the Attorney-General may have regard to, the Attorney-General must have regard to:
 - (a) the protection of the community as the paramount consideration; and
 - (b) the best interests of the person as a primary consideration.

Part 2—Application of amendments

17 Application—previous offences and activities

The amendments of the *Crimes Act 1914* made by Part 1 of this Schedule apply in relation to a decision in relation to bail or parole made on or after the commencement of this item (whether the decision applies to a person because of an offence, control order or action committed, made or undertaken before, on or after that commencement).

Schedule 2—Amendments relating to continuing detention orders

Part 1—Concurrent and cumulative sentences

Criminal Code Act 1995

1 Section 105A.2 of the *Criminal Code* (definition of *terrorist offender*)

After “see”, insert “section 105A.2A,”.

2 After section 105A.2 of the *Criminal Code*

Insert:

105A.2A Persons who have escaped from custody

For the purposes of this Division (except section 105A.4), if a person escapes from custody, the person is taken to be detained in custody and serving a sentence of imprisonment until the person resumes serving the person’s sentence.

3 Paragraph 105A.3(1)(b) of the *Criminal Code*

Omit “either”, substitute “any of the following applies”.

4 Subparagraph 105A.3(1)(b)(i) of the *Criminal Code*

Omit “; or”, substitute “;”.

5 After subparagraph 105A.3(1)(b)(i) of the *Criminal Code*

Insert:

- (ia) the person is detained in custody and serving a sentence of imprisonment for an offence other than the offence referred to in paragraph (a), and has been continuously detained in custody since being convicted of the offence referred to in that paragraph;

6 Paragraph 105A.3(1)(c) of the *Criminal Code*

Repeal the paragraph, substitute:

- (c) if subparagraph (b)(i) applies—the person will be at least 18 years old when the sentence referred to in that subparagraph ends; and
- (d) if subparagraph (b)(ia) applies—the person will be at least 18 years old when the sentence referred to in that subparagraph ends.

7 After subsection 105A.3(1) of the *Criminal Code*

Insert:

- (1A) To avoid doubt, subparagraph (1)(b)(ia) applies:
 - (a) whether the offence for which the person is serving the sentence of imprisonment is an offence against a law of the Commonwealth, a State or a Territory; and
 - (b) whether the sentence served for the offence referred to in paragraph (1)(a) was served concurrently or cumulatively, or both, with:
 - (i) the sentence referred to in subparagraph (1)(b)(ia); or
 - (ii) any of the other sentences served by the person since being convicted of the offence referred to in paragraph (1)(a) (the *other sentences*); and
 - (c) whether the sentence referred to in subparagraph (1)(b)(ia) or the other sentences were imposed before or after, or at the same time as, the sentence for the offence referred to in paragraph (1)(a); and
 - (d) whether or not the person has been continuously serving a sentence of imprisonment for an offence since being convicted of the offence referred to in paragraph (1)(a).

8 Paragraph 105A.5(2)(a) of the *Criminal Code*

Repeal the paragraph, substitute:

- (a) a sentence of imprisonment referred to in:
 - (i) subparagraph 105A.3(1)(b)(i); or
 - (ii) subparagraph 105A.3(1)(b)(ia);that the offender is serving, at the end of which the offender would be required to be released into the community; or

9 Paragraph 105A.9(2)(a) of the *Criminal Code*

Omit “either”, substitute “any”.

10 Subparagraph 105A.9(2)(a)(i) of the *Criminal Code*

Repeal the subparagraph, substitute:

- (i) if subparagraph 105A.3(1)(b)(i) applies—the sentence of imprisonment referred to in that subparagraph that the offender is serving;
- (ia) if subparagraph 105A.3(1)(b)(ia) applies—the sentence of imprisonment referred to in that subparagraph that the offender is serving;

11 Subparagraph 105A.18(1)(b)(i) of the *Criminal Code*

Repeal the subparagraph, substitute:

- (i) if subparagraph 105A.3(1)(b)(i) applies—the sentence of imprisonment referred to in that subparagraph that the offender was serving ends; or
- (ia) if subparagraph 105A.3(1)(b)(ia) applies—the sentence of imprisonment referred to in that subparagraph that the offender was serving ends; or

12 Paragraph 105A.18(2)(a) of the *Criminal Code*

Repeal the paragraph, substitute:

- (a) the offender is taken to remain a terrorist offender:
 - (i) who is detained in custody and serving a sentence of imprisonment; or
 - (ii) in relation to whom a continuing detention order or interim detention order is in force;
- despite being released from custody; and

13 At the end of subsection 105A.23(1) of the *Criminal Code*

Add “, or at the end of any later sentence if the person is continuously detained in custody and would otherwise be released into the community”.

Part 2—Giving information in applications to offenders

Criminal Code Act 1995

14 Paragraph 105A.5(3)(aa) of the *Criminal Code*

After “made”, insert “, except any information, material or facts that are likely to be protected by public interest immunity (whether the claim for public interest immunity is to be made by the AFP Minister or any other person)”.

15 At the end of subsection 105A.5(3) of the *Criminal Code*

Add:

Note 3: For public interest immunity, see also subsection (9).

16 Subsection 105A.5(6) of the *Criminal Code*

Repeal the subsection (including the note), substitute:

- (6) However, the applicant must (subject to subsection (7)) give the offender personally a complete copy of the application if:
- (a) the decision-maker decides not to take any of the actions referred to in any of paragraphs (5)(a) to (d); or
 - (b) the Minister gives a certificate referred to in paragraph (5)(a); or
 - (c) the Court makes an order in relation to action taken by the decision-maker under paragraph (5)(b) or (d).
- Note: For giving an offender documents, see section 105A.15.
- (7) Subsection (6) is subject to:
- (a) the certificate referred to in paragraph (5)(a); or
 - (b) any order made by the Court.
- (8) The copy of the application must be given:
- (a) within 2 business days of:
 - (i) the decision-maker’s decision not to take any of the actions referred to in any of paragraphs (5)(a) to (d); or

Schedule 2 Amendments relating to continuing detention orders

Part 2 Giving information in applications to offenders

- (ii) the giving of the certificate referred to in paragraph (5)(a); or
 - (iii) the order referred to in paragraph (6)(c) being made; and
- (b) within a reasonable period before the preliminary hearing referred to in section 105A.6.

Public interest immunity

- (9) If information (however described) is excluded from an application on the basis of public interest immunity as mentioned in paragraph (3)(aa), the applicant must give written notice to the offender personally stating that the information has been excluded on the basis of public interest immunity. The notice must be given at the time that a copy of the application is given to the offender.
- (10) To avoid doubt, nothing in this section imposes an obligation on the offender to satisfy the Court that a claim of public interest immunity should not be upheld.

Note: The offender may seek to access any information, material or facts that are likely to be protected by public interest immunity (for example, through a subpoena). Under the law of public interest immunity, the person claiming the immunity must make and substantiate the claim, and satisfy the Court that the claim should be upheld.

Part 3—Application provisions

Criminal Code Act 1995

17 In the appropriate position in Division 106 of the *Criminal Code*

Insert:

106.10 Application—*Counter-Terrorism Legislation Amendment (2019 Measures No. 1) Act 2019*

- (1) The amendments of Division 105A made by Part 1 of Schedule 2 to the *Counter-Terrorism Legislation Amendment (2019 Measures No. 1) Act 2019* apply in relation to:
 - (a) any person who, on the day this section commences, is detained in custody; and
 - (b) any person who, on or after that day, begins a sentence of imprisonment for an offence referred to in paragraph 105A.3(1)(a) (whether the conviction for the offence occurred before, on or after that day).
- (2) To avoid doubt, the amendments of Division 105A made by Part 1 of Schedule 2 to the *Counter-Terrorism Legislation Amendment (2019 Measures No. 1) Act 2019* apply in relation to a person referred to in paragraph (1)(a) of this section whose sentence of imprisonment for an offence referred to in paragraph 105A.3(1)(a) ended before the day this section commences.
- (3) The amendments of section 105A.5 made by Part 2 of Schedule 2 to the *Counter-Terrorism Legislation Amendment (2019 Measures No. 1) Act 2019* apply in relation to any application for a continuing detention order made after the commencement of this section.

*[Minister's second reading speech made in—
Senate on 1 August 2019
House of Representatives on 4 December 2019]*

(151/19)

*14 Counter-Terrorism Legislation Amendment (2019 Measures No. 1) Act No. 119, 2019
2019*